Appellate Jurisdiction (a)

Criminal R. A. No. 406 *of* 1869.

Ex-parte PADMAVATI.....*Appellant, (3rd Prisoner.)*

The prisoners were convicted, the one of disposing of, and the other of receiving two, children, females under the age of 16 years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing girls.

Held:—That offences under Sections 372 and 373 of the Indian Penal Code had been committed, and that the prisoners were properly convicted.

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THIS was an appeal against the sentence of R. W. Barlow, the Acting Session Judge of Chingleput, in Case No. 66 of the Calendar for 1869.

Three women named Tayee, Rajam, and Padmavati were charged before the Session Judge of Chingleput, the charge against Tayee being that she, on or about the 14th day of July 1869 at Triporoor, disposed of her daughters Mangal and Marakalam, then being minors under the age of 16 years to Rajam (2nd prisoner) and Padmavati with intent that such minors should be used for the purpose of prostitution, and that she had thereby committed an offence punishable under Section 372 of the Indian Penal Code, and the charge against Rajam and Padmavati being that they obtained possession of the minors with the like intent under Section 373 of the Penal Code.

The 1st and 3rd prisoners were convicted and sentenced to rigorous imprisonment for two years. The 2nd prisoner was acquitted.

The evidence shewed that the 2nd and 3rd prisoners were dancing girls of the Soobramania Swamy Pagoda of Triporoor; that the 3rd prisoner took the two daughters of the 1st prisoner to the Pagoda to be marked as dancing girls; that they were so marked, and their names entered in the accounts of the pagoda; and that the 1st prisoner disposed of the children to the 3rd prisoner for the consideration of a neck ornament and Rupees 35. The children appeared to be of the age of seven and two years respectively. Evidence was taken which tended to prove that dancing girls (who never married) gained their livelihood by the performance of cer-

(a) Present: Holloway and Innes, JJ.

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tain offices in pagodas, by assisting in the performance of ceremonies in private houses, by dancing and singing upon occasions of marriage, and by prostitution. The Calendar contained the following remarks of the Session Judge:—"The "result of the trial leaves no doubt in my mind that the "children were deliberately sold by their mother, the 1st "prisoner, to the 3rd prisoner for the purpose of training "them as dancing girls, a class of notorious prostitutes."

The 3rd prisoner appealed to the High Court.

Miller, for the prisoner.

The Court delivered the following

JUDGMENT:—The prisoners have been convicted of respectively disposing of and obtaining two children with intent that they should be used for the purpose of prostitution.

The disposing to and the obtaining by Padmavati, a pagoda dancing girl, and the registration of the children as belonging to the pagoda, are undisputed, and the only question is whether the transaction is beyond all reasonable doubt such a disposing and obtaining as the section contemplates.

In consultation with the Judges who did not take part in the disposal of this the first case of the kind which has come before us, we directed evidence to be taken of the mode of employment of pagoda dancing girls.

The implicit admissions of the witnesses who resist the inference, no less than the direct evidence of those who assert that inference to be irresistible, renders it abundantly clear that girls so sold and so registered are brought up as prostitutes, and that one principal purpose of such a transaction is that they shall be so brought up. The Abbé Dubois and many other authorities had placed the matter beyond historical doubt.

The argument that the treatment of such a transaction as criminal is impossible, because the Hindu religion sanctions the practice and the Private Law recognizes private rights as flowing from it, is manifestly of no weight. An offence is every transgression of a Penal Law, and a rule of Penal Law is a rule of Public Law, and necessarily overrides

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every precept of Private Law and cannot be affected by any argument derived from that Law.

The fact of a transaction being in violation of Public Law may prevent the arising of rights which would otherwise have the sanction of Private Law; although Harvey *v.* Bridges (14, M. and W., 442) is an example of the contrary; but the fact that rights would, according to Private Law, spring from an act transgressing a precept of Penal Law can never prevent that act from being an offence.

With respect to the argument from religion, it is only necessary to observe that if the precepts of a particular religion enjoin acts which transgress the rules of Penal Law, these acts will clearly be offences. Where the Legislature intended that acts which would otherwise be offences should not be so because connected with religious observances they have expressed that intention.—(Penal Code, Sec. 292.)

Feeling it impossible to draw any other inference than that the purpose of these transactions was the purpose expressed in the sections under which the prisoners were indicted, we affirm the conviction appealed against.

In this, the first case of the kind, we have reduced the sentences to 18 months' imprisonment on each prisoner, being unable to say that one is more guilty than the other.

Conviction affirmed.

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Civil Miscellaneous Regular Appeal No. 94 *of* 1870.

SIVU and 5 others.....*Petitioners.*

CHENAMMA and another.....*Counter-Petitioners.*

The provisions in the Code of Civil Procedure for review of judgment are not applicable to Act XXVII of 1860. Where the Civil Court granted a certificate under the Act to the Petitioner, and subsequently made an order granting a certificate to the Counter-Petitioner, the High Court set aside the latter order.

1870. *August 5.* *C. M. R. A. No.* 94 *of* 1870.

APPEAL against the orders of M. J. Walhouse, the Civil Judge of Mangalore, dated 23rd September 1869 and 5th February 1870, passed on Miscellaneous Petitions, No. 961 of 1869 and No. 1492 of 1869 respectively

(*a*) Present: Scotland, C. J. and Holloway, J.