CRIMINAL MOTION.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

1891
February 18.

IN THE MATTER OF RAM KUMARI, PETITIONER.*

Bigamy—Marriage—Conversion of Hindu wife to Mahomedanism—Marriage with Mahomedan—Penal Code, s. 494.

The petitioner, originally a Hindu woman, and the illegitimate offspring of Chattri parents, was duly married according to Hindu rites to *D*, who was also by caste a Chattri. Subsequent to the marriage the petitioner became a convert to Mahomedanism and then married a Mahomedan. She was charged with and convicted of an offence under section 494 of the Penal Code.

It was contended on her behalf that—(1) the marriage between her and *D* was invalid under Hindu law by reason of her illegitimacy and the consequent difference of caste between the contracting parties; (2) the marriage between her and *D* became dissolved under the Hindu law on her conversion to Mahomedanism; and (3) the second marriage was not void under the Mahomedan law by reason of its taking place in the lifetime of *D* and that the conviction was therefore erroneous. There was no evidence of any notice having been given to *D* previous to the second marriage calling on him to become a Mahomedan.

Held, that illegitimacy under Hindu law is no absolute disqualification for marriage, and that when one or both contracting parties to a marriage are illegitimate, the marriage must be regarded as valid, if they are recognized by their caste people as belonging to the same caste.

Held, also, that there is no authority in Hindu law for the proposition that an apostate is absolved from all civil obligations, and that so far as the matrimonial bond is concerned, such a view would be contrary to the spirit of that law, which regards it as indissoluble, and that accordingly the marriage between the petitioner and *D* was not, under the Hindu law, dissolved by her conversion to Mahomedanism.

Rahmed Beebee v. *Rokeya Beebee* (1) dissented from.

Held, further, that as the validity of the second marriage depended on the Mahomedan law and as that law does not allow a plurality of husbands, it would be void or valid according as the first marriage was or was not subsisting at the time it took place; that no notice having been given to *D*

* Criminal Motion No. 559 of 1890; against the order passed by H. Beveridge, Esq., Sessions Judge of Alipore, dated the 2nd December 1890.

(1) 1 Norton's Leading cases on Hindu Law, p. 12.

as required by Mahomedan law previous to the second marriage, and no recourse having been had to the Courts for the purpose of obtaining a declaration that the former marriage was dissolved, and as British India cannot be held to be a foreign country for the purpose of rendering such notice unnecessary, the previous marriage was not dissolved under Mahomedan law and the subsequent marriage was therefore void.

Held, accordingly, that the conviction was right.

The petitioner in this case was convicted of an offence under section 494 of the Penal Code, and sentenced by the Additional Sessions Judge of the 24-Pergunnahs to one month's rigorous imprisonment. One Ori Lal was charged with having abetted the offence of the petitioner, and was tried jointly with her, but acquitted.

The facts of the case appear fully in the judgment of the Sessions Judge, the material portion of which was as follows:—

"This was a case of bigamy. Dukhi Singh states that he was married to the prisoner Ram Kumari by the rites of the Hindu religion three or four years ago at Garden Reach, and that she has since then, and while his marriage with her was undissolved, become a Mahomedan and married a Mahomedan. The prisoner admits that she was a Hindu and has been converted to Mahomedanism, and that she has married a Mahomedan (Guzaffer). She denies that she ever was married to Dukhi. Both the Assessors have found that the marriage with Dukhi took place, and I am of the same opinion. The marriage has been fully proved. * * *

"It was argued that the marriage was not legal, because Dukhi and Ram Kumari were of different castes. This, however, was not shown. They are both of up-country origin, and both appear to be Chattris. Dukhi is the son of Malchand Singh, and he tells us that though his father afterwards kept a Bengali woman named Doya, and who is now dead, he (Dukhi) is the son of an up-country woman, who died before his father came to Calcutta. Dukhi at one place calls Doya his mother, because she brought him up, but he adds that she was really only his step-mother. There is nothing to contradict this evidence. It would appear then that Dukhi is not illegitimate, but is a Chattri on both sides and born in wedlock. However, if he is illegitimate, he is not the less a Hindu, and is capable of making a valid Hindu marriage. Ram Kumari is no doubt illegitimate, being the daughter of Kampta Singh's deceased wife's sister. It is not clear whether Kampta Singh or

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Ori Lal was her father, for it seems that Kampta Singh turned her mother out of his house while she was pregnant of Ram Kumari because he suspected her of infidelity with Ori Lal. Ram Kumari's mother is a Chattri, and I find no evidence that there could not be a valid Hindu marriage between Ram Kumari and Dukhi. The real law point in the case, and the one which the Mahomedan Deputy Magistrate has discussed in his order of commitment, is as to whether Ram Kumari's Hindu marriage did not become dissolved by her conversion to Mahomedanism. On this point I regard the case of *The Government of Bombay* v. *Ganga* (1) as conclusive. It is on all fours with the present case. The case has, I think, to be decided by Hindu law, and not Mahomedan law. But further I do not find that even according to Mahomedan law Ram Kumari's marriage with Dukhi was dissolved by her conversion. It is certain that she never gave notice to Dukhi of her conversion, and it has not been argued before me that British India is a foreign country (Darulparh). There is also no evidence that Ram Kumari had three menstrual periods before she married Guzaffer. Granting that British India is a foreign country, still it never can be the law that the mere conversion to Mahomedanism avoids marriage without any notice being given to the other side or any opportunity afforded the one who stays behind of embracing the new faith also. Ram Kumari admits the Mahomedan marriage, and it has also been proved by two witnesses. At that time her marriage with Dukhi was in my opinion still in force, and so her marriage with Guzaffer was bigamous. It was argued that she was a minor and that the marriage was really made by her mother. But the Judge and the Assessors were satisfied that the girl is now 16. She is certainly over 12, and so cannot get any help from section 83 of the Penal Code. The witness Abdur Rohoman, who performed the ceremony of the Mahomedan marriage, proves that he asked both the girl and her mother for their consent.

"I therefore find Ram Kumari guilty, but I do not think that she deserves a severe punishment. There is nothing to show that the conversion to Mahomedanism was not conscientious, or that she became a Mahomedan merely in order to be free, as she

(1) I. L. R., 4 Bom., 330.

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supposed, from her marriage with Dukhi. The whole family turned Mahomedan, and I daresay that Ram Kumari's account of the motive is the correct one. I sentence her to be rigorously imprisoned for one month. I do not find that there is any evidence of abetment against Ori Lal. He seems to have kept in the background and not to have taken any part in the marriage. It was the mother who, according to Abdur Rohoman, gave the girl in marriage. This is probable, as Ori Lal must have felt that he had no authority over the girl. He was perhaps not her father, and he was not married to her mother. I acquit and discharge him."

Ram Kumari then applied to the High Court under its revisional powers to send for the record and set aside the above conviction and sentence on the following grounds :—

(1) That the lower Court should have held that the marriage between the petitioner and Dukhiram was not proved.

(2) That the lower Court having held that Dukhiram was a genuine Chattri, and the petitioner an illegitimate child, should have held that there could have been no valid marriage between them under the Hindu law.

(3) That the lower Court was wrong in holding that Dukhiram was a Chattri by caste.

(4) That the lower Court should have held on the evidence that the petitioner was not 12 years old when she was married to Guzaffer Ali, and that such marriage being voidable under the Mahomedan law on the petitioner coming of age, no offence could be committed by her under section 494.

(5) That assuming that the petitioner was married to Dukhiram, the lower Court should have held that such marriage was dissolved by the conversion to Mahomedanism of the petitioner, and that as the alleged marriage with Guzaffer was not void under Mahomedan law, the petitioner could not be found guilty of the offence charged.

Upon that application a rule was issued which now came on to be heard.

No one appeared to show cause.

Baboo *Surut Chunder Chatterjee* for the petitioner in support of the rule.

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The arguments advanced in support of the rule appear sufficiently from the judgment of the High Court (MACPHERSON and BANERJEE, JJ.) which was as follows :—

The petitioner in this case has been convicted by the Additional Sessions Judge of 24-Pergunnahs under section 494 of the Indian Penal Code of the offence of marrying again during the lifetime of her husband, and has been sentenced to rigorous imprisonment for one month. The sentence not being an appealable one, the case comes before us by way of revision.

The facts found by the Court below are shortly these. The petitioner and one Dukhi were originally both Hindus belonging to the Chattri caste, the former being, however, an illegitimate offspring of Chattri parents. They were duly married according to Hindu rites. Some time after the marriage the petitioner Ram Kumari became a convert to Mahomedanism, and after her conversion married a Mahomedan named Guzaffer.

Upon these facts the learned Sessions Judge has held that the petitioner's marriage with Dukhi was a valid Hindu marriage, that it was not dissolved by her conversion to Mahomedanism, and that her subsequent marriage to Guzaffer was consequently void; and he has accordingly convicted her under section 494 of the Indian Penal Code.

It is now contended for the petitioner before us that the conviction is wrong : *first*, because the marriage between the petitioner and Dukhi could not have been a valid marriage under the Hindu law by reason of the illegitimacy of the petitioner, and the consequent difference of caste between the parties; *secondly*, because the former marriage became dissolved under the Hindu law by the conversion of Ram Kumari to Mahomedanism; and *thirdly*, because the second marriage was not void by the Mahomedan law, which is the law governing the parties to it, by reason of its taking place in the lifetime of the petitioner's former husband.

We do not think there is any force in the first contention, regard being had to the facts of this case. In our opinion illegitimacy is no absolute disqualification for marriage, and where one or both parties to a marriage are illegitimate, the correct view seems to us to be to regard the marriage as valid if they are in point of fact recognised by their castemen (as the parties in this case are in effect

found to have been) as belonging to the same caste. In this view of the case it is unnecessary for us to say more upon this point.

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In support of the second contention, namely, that the marriage of the petitioner with her first husband became dissolved under the Hindu law by her conversion to Mahomedanism, we were referred to the case of *Rahmed Beebee* v. *Rokeya Beebee* (1). That case, no doubt, supports the petitioner's view, but we are unable to accept it as correct. It was argued that the Hindu law would regard the apostate wife as beyond its pale and as a person that is civilly dead. That may be so as regards her civil rights, but we find no authority in Hindu law for the position that a degraded person or an apostate is absolved from all civil obligations incurred before degradation or apostacy. So far as the matrimonial bond is concerned, such a view would, we think, be contrary to the spirit of the Hindu law which regards that bond as absolutely indissoluble (see Manu V, 156-158; IX, 46). This view is in accordance with the case of *The Government of Bombay* v. *Ganga* (2), and also with those of *Administrator-General of Madras* v. *Anandachari* (3) and *In re Millard* (4).

It remains now to consider the third contention for the petitioner, which raises important questions not altogether free from difficulty. The conviction of the petitioner under section 494 of the Indian Penal Code can stand only if her second marriage is void by reason of its taking place during the life of her former husband. Now the validity or otherwise of this second marriage, the parties to which are both Mahomedans, must be tested with reference to the Mahomedan law; and as that law does not allow a plurality of husbands, the second marriage would be void or valid according as the first one was or was not subsisting at the time. It was contended for the petitioner that her marriage with her Hindu husband became dissolved under the Mahomedan law by her conversion to the Mahomedan religion, and in support of this contention we have been referred to the Hedaya, Bk. II, Ch. V (Grady's edition of Hamilton's translation, pp. 64-65) and Baillie's Digest of Mahomedan Law (2nd edition, pp. 180-181) According to these authorities, when the wife becomes a convert to the Mussalman faith, and the husband is an unbeliever, the magistrate

(1) 1 Norton's Leading cases on Hindu law, p. [illegible]2.
(2) I. L. R., 4 Bom., 330. (3) I. L. R., 9 Mad., 467.
(4) I. L. R., 10 Mad., 218.

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is to call upon him to embrace Islam, and if he does so, the woman continues his wife, but if he refuse, the magistrate must separate them; and if the wife embrace the Mahomedan faith in a foreign country, and the husband is an unbeliever, separation takes place on the expiration of three terms of the wife's courses. These rules may be said to favour conversion to Islam; but the former meets the obvious requirements of justice by allowing an equal freedom of conscience to both parties and giving due notice to the non-converted husband, and is somewhat similar to the provision laid down in Act XXI of 1866 in the case of native converts to Christianity, while the latter rule is justified in the Hedaya upon the express ground of necessity, as requiring the other party to embrace the faith is impracticable in a foreign country.

The second marriage in this case has taken place without any notice to the former husband.

If, therefore, it could be held that British India was a foreign country within the meaning and intention of the foregoing rules, it would have been necessary to take further evidence to ascertain whether the second marriage took place before or after the expiration of three terms of the wife's courses, as the evidence on the record is not sufficient to clear up this point. But we cannot hold that British India is a foreign country within the meaning and intention of the above rules, so that a Hindu marriage would here become dissolved by the conversion of the wife to Islam, on the expiration of a certain interval without any notice to the husband.

There does not exist in the case of persons residing in British India that necessity upon which alone is based the latter of the two rules referred to above, by which the prior marriage of a convert to Islam is said to become dissolved without any order of a Court or notice to the other side. In British India, to use the words of Lord Justice James in *Skinner* v. *Orde* (1), "all or almost all the great religious communities of the world exist side by side " the impartial rule of the British Government. While Brah- 3uddhist, Christian, Mahomedan, Parsee and Sikh are one enjoying equal political rights and having perfect equality he tribunals, they co-exist as separate and very distinct 'es having distinct laws affecting every relation of life." ?r did not give any notice to her former husband, nor

(1) 14 Moore's I. A., 309.

did she seek the intervention of the Courts of Justice as she might have done by instituting a suit after notice to the husband for a declaratory decree that under the Mahomedan law, which was her personal law since her conversion, her former marriage was dissolved and that she was competent to marry again. That being so, we do not think that the rule of Mahomedan law which declares a convert to Mahomedanism in a foreign country absolved from any prior matrimonial tie upon the expiration of a certain time, without notice to his or her spouse, can have any application here. A sacred and solemn relation like marriage cannot, we think, be regarded as terminated simply by the change of faith of either spouse without notice to the other, or the intervention of a Court of Justice.

The questions that arise in this case are, as we have already observed, not free from doubt and difficulty, but after giving our best attention to them, the conclusion we arrive at is that the first marriage of the petitioner was not dissolved by reason of her change of faith according to the Hindu law or the Mahomedan law, and that her second marriage was in consequence void. In this view of the case we must reject the application and affirm the conviction and sentence complained against.

H. T. H. *Rule discharged.*

CIVIL RULE.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Prinsep, and Mr. Justice Ameer Ali.

1891
February 9.

GOGHUN MOLLAH AND OTHERS (PETITIONERS) *v.* RAMESHUR NARAIN MAHTA AND OTHERS (OPPOSITE-PARTY).

RAMESHUR NARAIN MAHTA AND OTHERS (PETITIONERS) *v.* GOGHUN MOLLAH AND OTHERS (OPPOSITE-PARTY).*

Bengal Tenancy Act (VIII of 1885), s. 84, Construction of—Acquisition of land by landlord—Reasonable and sufficient purpose—Certificate of Collector—Functions of the Civil Court.

The proprietors of a taluk who had constructed an indigo factory and employed a European manager applied to the Civil Court, under section 84

* Civil Rules Nos. 1369 and 1692 of 1890, against the order of A. C. Brett, Esq., Judge of Tirhoot, dated the 24th of July 1890, reversing the order of Baboo Bhaba Churn Mukerjee, Munsiff of Somastipur, dated the 30th of May 1890.