
(1953) 05 CAL CK 0039
In the Calcutta High Court

Jatindra Nath and Another

APPELLANT

Vs

State on complaint of Bhutamani Dasi

RESPONDENT

Date of Decision : 19-05-1953

Acts Referred:

Penal Code, 1860 (IPC) — Section 366

Citation : (1954) CriLJ 1621

Hon'ble Judges : K.C. Chunder, J

Bench : Single Bench

Judgement

K.C. Chunder, J.—This Rule was issued at the instance of two accused persons who have been directed by the learned Sessions Judge of Midnapore to be committed to the Court of Session on a charge u/s 366, Penal Code and such other sections as may apply.

2. Briefly, the facts are that according to the evidence on record a young girl aged about thirteen formerly living with her step-mother was recovered by the police from a locked-up room of petitioner 2, Bhutnath Maity. The further evidence is that the girl was taken away by Jatindra Nath Maity, petitioner 1, from her step-mother making a false representation, that is, obtained her consent by fraud. Under the criminal law also fraud vitiates consent. The object or purpose it is said, was to force the girl to marry somebody. Evidence has been given that the girl was absolutely unwilling to marry and was being forced to do so and an attempt to help her to come away proved abortive. The learned Magistrate was mainly swayed by the consideration that in a station diary entry the actual false representation that was made was not stated in so many words and therefore he proceeded to perform the function of the jury in the present case in disbelieving the whole prosecution evidence.

It is obvious whether such a thing is mentioned or not mentioned in the station diary entry that the step-mother was not likely to consent to the taking away of a young girl of thirteen to be locked-up in another man's house. That certainly was not the purpose or object which could have been at all revealed to the step-

mother. Therefore, the learned Magistrate was not right in taking as a criterion an omission, may be an omission on the part of the recording police, by which he as the jury could decide the case finally. The learned Sessions Judge rightly did not agree to such procedure and considered that the function of the Magistrate was not to decide the case but to see whether there was evidence sufficient to justify a commitment, that is, whether the evidence is such that the accused should be placed for final decision of the case before a Judge and a Jury. That is quite a different objective than that of ascertaining the truth or falsity of a story or the guilt or innocence of accused persons. The law is clear and requires no re-iteration by me. The learned Judge rightly set aside the order of discharge passed by the learned Magistrate.

The order that he should have passed in the present case is not an order for commitment though under the law he is entitled to pass such an order. As it appears that there was no examination of defence witnesses u/s 211, Criminal P. C. and as in some decisions of this Court great stress seems to have been laid upon such examination it is desirable that the order of the learned Sessions Judge should be varied. I do not for a moment say that I agree with those decisions on Section 211. In proper time I may have to say many things including the consideration whether two Judicial Committee and one Supreme Court decisions had been noticed by the learned Judges but It is unnecessary in this case to go into the matter.

3. The order will be that the learned Magistrate will frame a charge u/s 21.0 and take the defence evidence u/s 211, Criminal P. C. and then in accordance with the procedure laid down in the Criminal Procedure Code commit to the Court of Session if he finds that there is a case to go before a Judge and a jury and remember that he is not the final authority to decide on the credibility of witnesses.

4. The Rule is discharged with these observations and modifications of the order of the learned Sessions Judge.