
(1933) 03 CAL CK 0033
In the Calcutta High Court

Kaluram Daga

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 03-03-1933

Acts Referred:

Child Marriage Restraint Act, 1929 — Section 11, 6

Citation : AIR 1933 Cal 433

Hon'ble Judges : Guha, J

Bench : Division Bench

Judgement

Guha, J.—The appellant in this case has been convicted by the learned Chief Presidency Magistrate, Calcutta, u/s 6, Child Marriage Restraint Act, 1929 and has been sentenced to pay a fine of Rs. 500, in default to undergo simple imprisonment for a month. So far as the proceedings before the learned Magistrate was concerned, there has been a material irregularity in the matter of compliance with the provisions of the law under which the accused, appellant, was prosecuted on the complaint of a person who was the secretary of an Association described as the Balya Bibaha Birodhini Samiti. The Child Marriage Restraint Act provides for the taking of security from the complainant, and Section 11(1) of the Act is as follows:

At any time after examining the complainant and before issuing process for compelling the attendance of the accused, the Court shall except for reasons to be recorded in writing require the complainant to execute a bond with or without sureties, for a sum not exceeding Rs. 100 as security for payment of any compensation which the complainant may be directed to pay u/s 250, Criminal P.C., 1898; and if such security is not furnished within such reasonable time as the Court may fix, the complaint shall be dismissed.

2. The provision is imperative, and the learned Chief Presidency Magistrate has not recorded any reason why the complainant in this case was not required to execute a bond. The irregularity in the proceeding could not be cured by anything contained in Section 537, Criminal P.C., and the conviction of the

accused is liable to be set aside for the reason of this material irregularity, seeing that the right of the accused to get compensation was not kept in view, when the learned Magistrate proceeded with the trial in entire disregard of the provision contained in Section 11, Child Marriage Restraint Act. The procedure adopted by the learned Magistrate is open to this comment, that at the very inception the Court was convinced of the truth of the complainant's case. As the learned advocate for the appellant did not lay very great stress on the irregularity in the procedure referred to above, I do not propose to pursue the matter further. (After discussing the evidence, the judgment concluded.) On the whole the evidence on the record does not establish the case for the prosecution; and the inclination of my opinion as indicated above is that the defence version of the case is supported by the oral evidence in the case; the evidence afforded by the birth certificates produced in the case by the complainant is of an inconclusive nature, of which full advantage may be taken by the defence. In the above view of the case the appeal is allowed; the conviction of the appellant and the sentences passed on him by the learned Chief Presidency Magistrate u/s 6, Child Marriage Restraint Act, 1929, is set aside, and the appellant is acquitted. The fine imposed if realized must be refunded to the appellant.