

(1936) 12 MAD CK 0046
In the Madras High Court

T. Sreeramamurthy and Others

APPELLANT

Vs

T. Ranganayakulu, Honorary Secretary, Sarada Act
Committee

RESPONDENT

Date of Decision : 08-12-1936

Acts Referred:

Child Marriage Restraint Act, 1929 — Section 5, 6

Citation : AIR 1937 Mad 273 : (1937) 45 LW 210 : (1937) 1 MLJ 388

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—The petitioners in this case were convicted by the District Magistrate of Kistna, the first four of them under Sections 5 and 6 of the Child Marriage Restraint Act of 1929 and the remaining one u/s 5 of that Act and sentenced to pay fines. Their convictions were confirmed in appeal by the Sessions Judge though the fines were reduced in the case of some of them.

2. The only point argued in this revision petition is that the proceedings in the Court below were void ab initio because they were instituted prior to the declaration by the Government that the locality in which the marriage took place, namely, Frenchpet in Masulipatam, was part of British India. The marriage itself was celebrated in Frenchpet. It was declared by the Advocate-General in a case last year in this Court that Frenchpet was part of His Majesty's dominions and this declaration was accepted by the Bench which heard the case. The marriage in the present case was no doubt celebrated before this declaration was made and it is contended at that time it was generally believed that Frenchpet was not part of British India but was French territory. Even assuming that the petitioners were labouring under a bona fide mistake of fact that Frenchpet was French territory, it does not follow that their convictions are wrong or the proceedings in the Court below are void. A mistake of fact like this can be pleaded successfully only if on account of such mistake an act which otherwise would be an offence ceases to be an offence. The question therefore is whether the petitioners can

say that they have not committed an offence punishable under the Child Marriage Restraint Act simply because the commission of the offence was in what they believed to be French territory. I am of opinion that they cannot do so because the Child Marriage Restraint Act makes it an offence to celebrate a child marriage. This penal law applies not only to the celebration of such marriages within British India by any one but also to the celebration of such marriages even outside British India by native Indian subjects. Section 3 of the Penal Code provides that:

Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

3. Reference may be made in this connection also to Sections 186 and 188 of the Code of Criminal Procedure. The Penal Code as well as the Child Marriage Restraint Act are extra territorial to this extent, namely, that if native Indian subjects like the petitioners commit offences punishable under these laws even outside British India, they are liable to be tried and punished when found in British India. The mistake of fact under which the petitioners are said to have laboured does not have the effect of rendering the celebration of the child marriage in question innocuous or innocent. The Child Marriage Restraint Act, 1929, can pursue them even when they have broken that law after going outside British India, and a fortiori, after going to a place which they believed to be not part of British India but is really part of British India. I am of opinion therefore that there is nothing illegal in the convictions of the petitioners, and I am not prepared to reduce the fines imposed upon the petitioners in the circumstances of the case. The petition is therefore dismissed.