

CALCUTTA HIGH COURT

Prithi Missir

Vs

Harak Nath Singh

(Henderson, J.)

08.05.1936

JUDGMENT

Henderson, J.

1. This is a rule calling upon the District Magistrate of the 24-Perganas to show cause why the conviction of the petitioner of an offence punishable under Section 498, Penal Code, should not be set aside. The case made by the complainant was one of enticement. But the Magistrate, who tried the case, was not satisfied that this had been made out; he, however, found the petitioner guilty of "detaining" the complainant's wife. This decision was affirmed on appeal by Mr. N.N. Sen, a Magistrate of the First Class vested with appellate powers under Section 407 (2), Criminal P. C.

2. The question that has been argued before us is the meaning of the word "detain" in Section 498, Penal Code. In support of this rule, Mr. Mukerjea contended that detention implies that the woman is being kept against her will and in support of that proposition relied upon the judgment of Lort-Williams, J., in Criminal Revision Case No. 618 of 1935. I cannot find that this decision goes to such a length. On the other hand, it is clear that some definite meaning must be attached to the word and, in my opinion, it is of ejusdem generis with enticement and concealment. There must be evidence to show that the accused did something, which had the effect of preventing the woman from returning to her husband.

3. The evidence in the present case is extremely scanty. In dealing with it, the learned Magistrate in the Court, below has not come to any definite findings of fact. Had he done so, it would have been possible for us to determine whether on those findings the conviction is sustainable. There is, however, no finding whether the petitioner was keeping the complainant's wife as his mistress, whether they were living together or whether they were having merely casual intercourse. In these circumstances, it becomes necessary to examine the evidence in order to see whether the conviction can be supported. The only evidence bearing on the point relates to the incident when the complainant went with his father and some other persons to the house of the petitioner's father. The witnesses are unanimous that the woman ran out of the room, as soon as she saw her husband: it is clear that the petitioner was in no way responsible for this. The only other fact proved is that the petitioner expressed a hope that there would be no disturbance and asked the husband to go to Court. The most that could be inferred from this is that he was unwilling to use

force to compel the woman to return to her husband against her will. In my opinion, such conduct would not amount to "detention" within the meaning of the section. The rule must accordingly be made absolute and the conviction and sentence are set aside. The petitioner is discharged from his bail and the fine, if paid, will be refunded

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Cunliffe, J.

4. I agree.