

# CALCUTTA HIGH COURT

Yunus Shaikh

Vs.

State (Calcutta)

Criminal Revn. No. 1018 of 1951

(Harries, C.J. and S.R. Das Gupta, J.)

06.03.1952

## JUDGMENT

### **Harries, C.J.**

1. This is a petition for revision of an order of a learned Sessions Judge directing a Magistrate to commit the opposite party to the Court of Session for trial upon a charge under Section 366, Penal Code.
2. The charge against the petitioner was that he had gone off with the wife of one Fakir Mohammed and apparently had lived with her for some time.
3. A complaint was made and the matter was investigated by a Magistrate. Two possible charges could have been framed, one under Section 366, Penal Code and one under Section 498, Penal Code. After hearing the evidence the learned Magistrate framed a charge under Section 498 that is of enticing away a married woman with intent that she may have illicit intercourse with another person.
4. The Sessions Judge was moved in revision and he appears to have thought that the proper charge here was under Section 366, Penal Code and he directed a commitment upon that charge. The learned Judge assumes that what the husband said that the girl was seventeen is true. It must be remembered that the learned Magistrate had the advantage of not only hearing the girl but seeing her and forming his own impression about her age.
5. Mr. Sudhangshu Mukherjee has contended that the learned Sessions Judge had no power whatsoever to make this order under Section 437, Criminal Procedure Code. The learned Sessions Judge can make an order directing the accused to be committed to Sessions only in a case where an accused person has been improperly discharged by the inferior Court. The

petitioner was not improperly discharged. He has been charged with a serious offence and he is now awaiting the conclusion of the trial. Therefore this case does not fall within the four corners of Section 437, Criminal Procedure Code. That was the view of a Bench of this Court consisting of Derbyshire, C. J., and Henderson, J., in the case of - '*Haripada Biswas v. Emperor*'<sup>1</sup>, (A). There is also an earlier Bench decision of this Court in - '*Abdul Hakim v. Buzruk Ali*'<sup>2</sup>, (2) (B), where it has

<sup>1</sup> Criminal Revn. No. 273 of 1937

<sup>2</sup> AIR 1918 Cal 943

been pointed out that the accused must be improperly discharged before a learned Sessions Judge can exercise his powers under Section 437.

6. It seems clear that the learned Sessions Judge had no power to make the order which he did and that being so the order must be set aside. The Rule is accordingly made absolute.

**S.R. Das Gupta, J.**

7. I agree.

Rule made absolute.