

returned to him. He dishonestly disposed of the machine and appropriated the money to his own use. He is in my opinion guilty of an offence punishable under section 406 of the Penal Code.

The State  
v.  
Jage Ram,  
son of  
Datta Ram

For these reasons, I would accept the appeal, and set aside the order of acquittal and convict the respondent under section 406 of the Indian Penal Code. I would sentence him to six months' rigorous imprisonment.

Bhandari J.

SONI, J. I agree. There is any how no doubt whatsoever that an offence under section 403 was committed and the Magistrate had no justification in acquitting the respondent.

Soni J.

I agree with the sentence proposed.

### FULL BENCH

#### MATRIMONIAL REFERENCE

*Before Bhandari, Harnam Singh and Soni JJ*

PARBATI MUKERJEE,—*Petitioner,*

*versus*

SAMRENDRA NATH RAKSHIT,—*Respondent.*

1951

April 2

#### Matrimonial Reference No. 4 of 1950

*Special Marriage Act (III of 1872) sections 2 (3) and 17—Marriage—Person below 21 years—without guardian's consent—Annulment.*

P. M. married S. N. R. under the Special Marriage Act. Later on she brought a suit for the annulment of the marriage on the ground that she was below the age of 21 and had not obtained the consent of her father to the marriage.

*Held,* that the marriage was null and void in view of sections 2 (3) and 17 of the Special Marriage Act.

*Basara Sen v. Aghora Nath Sen* (1), *Dolly Bathera v. Shaik Fazle Ellahi* (2), relied upon and *Ganesh Prasad-Ram Prasad v. Damavanti* (3), dissented.

(1) 1929 A.I.R. (Cal.) 631. (2) 1942 A.I.R. (Cal.) 42.  
(3) 1946 A.I.R. (Nag.) 60.

Parbati Mukerjee  
 v.  
 Samrendra Nath Rakshit ● GAURI DAYAL, for Petitioner.

*Matrimonial reference under section 17 of Act IV of 1869, for confirmation of the decree of Shri S. S. Dulat, District Judge, Delhi, dated the 15th May 1950. . . . .*

NEMO, for Respondent.

#### JUDGMENT

Bhandari J.

BHANDARI, J. This is a petition for a declaration of nullity of marriage filed by Shrimati Parbati Mukerjee of New Delhi, against her husband Samendra Nath Rakshit on the grounds that she was below 21 years of age on the date of her marriage, that the consent of her father or guardian was not obtained and that the purported marriage is therefore void *ab initio*. The learned District Judge granted the decree prayed for, and has referred the case of the petitioner to this Court under the provisions of section 17 of the Indian Divorce Act. No appearance has been put in on behalf of the husband even though he was duly served.

It is alleged on behalf of the petitioner that the respondent who was a private tutor of the petitioner represented to her that he was holding the post of an Assistant in the Government of India and lured her to marry him. The petitioner being of an impressionable age presented an application to the Registrar of Marriages, Delhi, desiring that she may be married to the respondent. The matter was kept a closely guarded secret and neither the father nor the mother nor any of the relations of the petitioner were informed of the adventure on which she was about to embark. On the 20th December 1948, she went through the marriage ceremony with the respondent under the provisions of the Special Marriage Act. Immediately after the marriage she went back to live with her parents where she was already residing and the respondent went back to his own house. Parbati's parents did not approve of the marriage and the present suit for declaration was brought on the grounds to which a reference has already been made. The marriage was never consummated.