

G. Narasimhan, G. Kasturi and K. Gopalan

Vs

T. V. Chokkappa

Frank Morses and M. Krishnaswami

Vs

T. V. Chokkappa

A. M. Sivaraman and M. Krishnaswami

Vs

T. V. Chokkappa

Criminal Appeal No. 53, 54 and 18 of 1972

(K. S. Hegde. P. Jagmohan Reddy, H. R. Khanna JJ)

04.09.1972

JUDGMENT

SHELAT, J. -

1. These appeals, founded on special leave, are directed against the judgment of the learned Single Judge of the High Court of Madras dismissing the applications filed by the appellants for quashing charges under Sections 500 and 501 of the Penal Code framed by the Presidency Magistrate, Madras. The common question raised in all these appeals is whether the respondent (the original complainant) was an aggrieved person competent to file the said complaints within the meaning of Section 198 of the Code of Criminal Procedure read with Section 499, Explanation (2) of the Penal Code.

2. The complaint came to be filed in the following circumstances :

3. The Dravida Kazhagam, a party having a platform for social reforms, has according to counsel for the respondent, a membership of about 4000 persons in Madras City and elsewhere. The aims and objects of the party are to bring about social reforms and in particular to eradicate certain customs and practices, which, according to its promoters, are sheer superstitions. The party sponsored and organised a conference, which held its sessions on January 23 and 24, 1971. The conference passed a number of resolutions, the one relevant for these appeals was, as translated in English by the High Court, as follows :

"It should not be made an offence for a person's wife to desire another man."

The object of this resolution, according to the respondent, was to achieve total emancipation of women and to establish absolute equality in social life between men and women.

4. The appellants are and were at the material time the editors and publishers of three daily newspapers, the Dinamani, the Hindu and the Indian Express, all printed and published in Madras. In the issues of January 25 and 26, 1971, there appeared in the Hindu, as also in the other two papers, a news item under the caption "Demonstration against the obscene Tableau" in which among other things was published the following :

"The Conference passed a resolution requesting the Government to take suitable steps to see that coveting another man's wife is not made an offence under the Indian Penal Code."

The news item emanated from a report from a correspondent, dated January 24, 1971. The news item reported that about 300 persons had staged a black flag demonstration against the procession taken out in connection with the said conference in which tableau alleged to be obscene and depicting certain Hindu deities and mythological figures formed part. The processionists shouted anti-God slogans, which were replied to by the demonstrators with counter-slogans. The news item further reported that E. V. Ramaswami Naicker, the leader of the Dravida Kazhagam, seated in a tractor, was at the rear of the procession. He also presided over the said conference which was inaugurated by one G. D. Naidu. The respondent's case was that what came to be published in the said news item was not the actual resolution passed by the conference, but the reverse of it. But the news item stated that it was the conference and not the Dravida Kazhagam which had passed the resolution set out in it as aforesaid.

5. On January 28, 1971, the respondent, signing as the chairman of the reception committee of the said conference, called upon the editor of the Hindu to publish a correction and clarification stating that the resolution published in that daily was a distorted version of the resolution actually passed by the conference, that the resolution passed by the conference was that "it should not be made an offence for a person's wife to desire another man", and not that a man coveting another man's wife should not be an offence, and that those who were aware of the opinions of the said E. V. Ramaswami Naicker would find that the resolution was in keeping with his views, namely, that marriage was a contract terminable at the instance of either party and not an interminable sacrament, and lastly, that the resolution was intended to highlight the disabilities of women which prevented them from attaining their full stature. On February 5, 1971, the Hindu published the said clarification as demanded by the respondent under the caption "Salem Conference Resolutions" together with the version of its own representative at Salem according to which the resolution passed by the conference was the one published in the Hindu. On February 1, 1971, the respondent, by his Advocate's letter, called upon the editor to publish the correct text of the resolution stating that what was published in the Hindu was "not only a travesty of truth but also highly defamatory so as to tarnish the image of the conference", of whose reception committee he was the chairman and called upon the editor to express an apology.

6. No such apology having been tendered, the respondent filed complaints on February 9, 1971, against the editors and publishers of the three dailies under Sections 500 and 501 of the Penal Code in the Court of the Chief Presidency Magistrate, Madras. In these complaints, the respondent described himself as an important member of the Dravida Kazhagam and of the Self-respect Movement organised by that party, as also an ardent disciple of its leader, the said E. V. Ramaswami Naicker. He further stated that the Dravida Kazhagam had organised the said conference for the eradication of superstitious beliefs, that he was the chairman of its reception committee, that the conference passed several resolutions, one of which was the resolution advocating that it should not be an offence for a person's wife to desire another man, that he was one of the members responsible

"for sponsoring and piloting that resolution", that the conference was attended "by a large number of leaders, members, followers, sympathisers of the Kazhagam, besides a large number of public at large, occupying varied state of the society", and that the Hindu published a wrong version of the said resolution implying that the resolution advocated adultery, an offence under the Penal Code. The complaint further stated that the news item published in the newspaper was quite contrary to the actual resolution passed by the conference, that it contained "imputations on the sponsors of the resolution" by publishing the resolution in a distorted and false form thereby lowering in the estimation of those who read the said news item and the complainant and other members of the party responsible for sponsoring the resolution, making out by such imputation that the sponsors of the resolution "have stooped to the level of passing a resolution requesting the Government to legalise adultery which will tend to degrade social life". To the complaint was attached a list of witnesses, who, we were told by the respondent's counsel, were all members of the Dravida Kazhagam.

7. It may be recalled that though the complaint alleged that the impugned news item contained imputations against the sponsors of the said resolution, no such imputations, either against the respondent or the sponsors of the resolution, are to be found therein. A perusal of the news item shows that it concerned itself with the protest demonstration against the procession taken out on that occasion and the tableau presented in the procession, the resolution in question passed at the conference held thereafter and the fact of the said E. V. Ramaswami Naicker having presided over that conference. The news item, thus, did not mention either the respondent or any of the alleged sponsors of the said resolution either by name or otherwise.

8. In his sworn statement before the Magistrate at the time when he presented the complaint on February 9, 1971, the respondent himself stated that the conference was organised by the Dravida Kazhagam, and that it was the conference which had passed the said resolution. He, however, insisted that the impugned news item was motivated and malicious and was calculated to affect the leader of the movement and its members, including himself, and was per se defamatory of the persons who sponsored the resolution, namely, the members of the Dravida Kazhagam. In the evidence he gave before the Magistrate of May 22, 1971, the respondent claimed that it was he, who, as the chairman of the reception committee of the conference, had scrutinised and given shape to the draft resolution sent at the conference for being moved thereat, that the said draft resolution was sent by one Pariaswami, the Secretary of the Trichy District branch of the Dravida Kazhagam, and which he had settled in the abridged form in which the conference on January 24, 1971, ultimately passed unanimously. He also deposed that the conference consisted of "comrades of our movement, other social reform minded sympathisers and about 5000 women". In regard to the conference and its set-up, he said that on December 13, 1970, a meeting was held for organising the conference. At that meeting one or two persons suggested that he should be the chairman of the reception committee, and that was how he was selected as the chairman. One Pachaimuthu and R. Natesan were appointed secretaries of the conference and they were responsible for the proceeding. The object of the conference was "generally to do away with all superstitious beliefs relating to religion and relating to society". The conference had its own office and it was there that correspondence relating to its work was dealt with. He claimed that as the chairman of the reception committee, the entire responsibility for the conference was his but admitted that there was no record to show either his election or his functions and duties or his responsibilities. Asked about the procedure followed at the conference, he said that "nobody spoke, proposed individually each resolution or seconded". Regarding the resolution in question, he said that "after the President Pariyar proposed nobody announced opposition to the resolution. The meaning is, that all approved".

9. Two facts clearly emerge from this evidence : (1) that though the conference was organised by the Dravida Kazhagam, it was a separate body with its own organisation and office where correspondence relating to it was received and dealt with and had its own secretaries, and (2) that though the draft of the resolution was prepared and sent of the conference by the secretary of the Trichy District branch and was put in shape by the respondent, it was moved by the President of the conference and passed by the conference which, as testified by the respondent, consisted of members of the Dravida Kazhagam, sympathisers of its social reform programme, other social reform leaders and outsiders, including about 5000 women. The resolution was thus the resolution of the conference and not of the Dravida Kazhagam, though it was organised by that party. The resolution having been moved by the President himself, there was also no question of the respondent or any other person having piloted it at the conference.

10. The Magistrate, on the basis of the complaint and the evidence he recorded, decided to issue process and to proceed with the trial. The appellants in all these appeals thereupon approached the High Court under Section 561-A of the Code of Criminal Procedure for quashing the said proceedings. The appellants' main contention before the High Court was that the respondent was not an aggrieved party within the meaning of Section 198 of the Code, that he had filed the complaint in his capacity as the chairman of the reception committee of the conference and not in his individual capacity, that in the absence of any reference to him in the said news item had no cause for complaint, and that the conference being an undefined had an amorphous body, the respondent as a member or part of such a body could not lodge the complaint.

11. A learned Single Judge of the High Court, who heard the said applications, rejected the said contention in the following words :

"The Dravida Kazhagam is an identifiable group. The complainant is a member of this Kazhagam. He was the Chairman of the Reception Committee in the conference. He is active member of the Dravida Kazhagam. He was one of those who piloted and sponsored the resolution. Certainly he is a person aggrieved within the meaning of Section 198 of the Criminal Procedure Code. The complaint by him is competent."

12. The statement in this para that the respondent piloted and sponsored the resolution in question was factually incorrect, as the respondent's evidence itself showed that the resolution was moved not by him, but by the President of the conference, who read it out and as no one opposed, it was taken to have been approved by all. The only thing which the respondent claimed to have done as the chairman of the reception committee was to give shape to the draft resolution by abridging it. The respondent may have been interested in the resolution and its being passed, but the resolution certainly was neither moved nor piloted by him. Indeed, if any one could be said to have piloted it, it was the President of the conference. Furthermore, the resolution was of the conference and the only contribution of the respondent to it was his having given shape to the original draft.

13. Counsel for the appellants seriously challenged the correctness of the paragraph from the High Court's judgment quoted above, that being the really operative and decisive part of the judgment, firstly, on the ground that those observations were not in consonance with Section 198 of the Code even when read with Section 499, Expl. (2) of the Penal Code, and secondly, on the ground of the failure of the High Court to perceive the separate entities of the Dravida Kazhagam and the conference and its omission to realise that the resolution was the resolution of the conference and not of the Dravida Kazhagam. The news item in question referred to the conference and not to the Dravida Kazhagam, and therefore, if anybody was defamed by the said news item, it was the

conference and not the Dravida Kazhagam which had only organised that conference. Mr. Frank Anthony, on the other hand, urged that though it was the conference which had passed the resolution and though the news item referred to that conference and not the Dravida Kazhagam and the respondent was not mentioned or referred to therein, in substance and in effect it was the Dravida Kazhagam which was defamed, for, it was that party which had organised the conference and sponsored the resolutions passed thereat. Therefore, the respondent, as a leading member of that party and the chairman of the reception committee, could claim that the defamatory imputations in the said news item were relatable to him and the other members of the Dravida Kazhagam, and he was consequently entitled to file the complaint.

14. On these contentions, the principal question for determination is whether the respondent could be said to be an aggrieved person entitled to maintain the complaint within the meaning of Section 198 of the Code. That section lays down that no magistrate shall take cognizance of an offence falling inter alia under Chapter XXI of the Penal Code (that is, Sections 499 to 502) except upon a complaint made by some persons aggrieved of such offence. Section 198, thus, lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not, and modifies that rule by permitting only an aggrieved person to move a magistrate in cases of defamation. The section is mandatory, so that if a magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an aggrieved person, the trial and conviction of an accused in such a case by the magistrate would be void and illegal.

15. Prima facie, therefore, if Section 198 of the Code were to be noticed by itself, the complaint in the present case would be unsustainable, since the news item in question did not mention the respondent nor did it contain any defamatory imputation against him individually. Section 499 of the Penal Code, which defines defamation, lays down that whoever by words, either spoken or intended to be read or by signs etc. makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that the imputation will harm the reputation of such person, is said to defame that person. This part of the section makes defamation in respect of an individual an offence. But Explanation (2) to the section lays down the rule that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. A defamatory imputation against a collection of persons thus falls within the definition of defamation. The language of the Explanation is wide, and therefore, beside a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Where a writing in weighs against mankind in general, or against a particular order of men, e.g., men of gown, it is no libel. It must descend to particulars and individuals to make it a libel ((1699) 3 Salk 224, cited in Ratanlal and Dhirajlal; Law of Crimes (22nd ed.)). In England also, criminal proceedings would lie in the case of libel against a class provided such a class is not indefinite, e.g., men of science, but a definite one, such as, the clergy of the diocese of Durham, the justices of the peace for the county of Middlesex. [see Kenny's Outlines of Criminal Law (19th ed.) 235]. If a well-defined class is defamed, every particular of that class can file a complaint even if the defamatory imputation in question does not mention him by name.

16. In this connection, counsel for the appellants leaned heavily on *Knupffer v. London Express Newspaper Ltd.* The passage printed and published by the respondents and which was the basis of the action there read as follows :

"The quislings on whom Hitler flatters himself he can build a pro-German movement within the Soviet Union are an emigrate group called Mlado Russ or Young Russia. They are a minute body professing a pure Fascist ideology who have long sought a suitable Further - I know with what success."

The appellant, a Russian resident in London, brought the action alleging that the aforesaid words had been falsely and maliciously printed and published of him by the respondents. The evidence was that the Young Russia party had a total membership of 2000, that the headquarters of the party were first in Paris but in 1940 were shifted to America. The evidence, however, showed that the appellant had joined the party in 1928, that in 1935 he acted as the representative of the party and as the head of the branch in England, which had 24 members. The appellant had examined witnesses, all of whom had said that when they read the said article their minds went up to the appellant. The House of Lords rejected the action, Lord Simon saying that it was an essential element of the cause of action in a libel action that the words complained of should be published of the plaintiff, that where he was not named, the test would be whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. The question whether they did so in fact would not arise if they could not in law be regarded as capable of referring to him, and that that was not so as the imputations were in respect of the party which was in Paris and America. Lord Porter agreed with the dismissal of the action but based his decision on the ground that the body defamed had a membership of 2000, which was considerable, a fact vital in considering whether the words in question referred in fact to the appellant. The principle laid down here was that there can be no civil action for libel if it relates to a class of persons who are too numerous and unascertainable to join as plaintiffs. A single one of them could maintain such an action only if the words complained of were published "of the plaintiff", that is to say, if the words were capable of a conclusion that he was the person referred to. [See Gately on Libel and Slander (6th ed.) 288] Mr. Anthony, however, was right in submitting that the test whether the members of a class defamed are numerous or not would not be apt in a criminal prosecution where technically speaking it is not by the persons injured but by the state that criminal proceedings are carried on and a complaint can lie in a case of libel against a class of persons provided always that such a class is not indeterminate or indefinite but a definite one. [Kenny's Outlines of Criminal Law (19th ed.) p. 235]. It is true that where there is an express statutory provision, as in Section 499, Explanation (2), the rules of the Common Law of England cannot be applied. But there is no difference in principle between the rule laid down in Explanation (2) to Section 499 and the law applied in such cases in England. When, therefore, Explanation (2) to Section 499 talks of a collection of persons as capable of being defamed, such collection of persons must mean a definite and a determinate body.

17. This was the construction of Explanation (2) to Section 499 adopted in *Sahib Singh Mehra v. State of U.P.* ((1965) 2 SCR 823, 828 : AIR 1965 SC 1451 : (1966) 1 SCJ 294.), and which guided the decision in that case. The article complained of there was one printed and published in the appellant's newspaper called *Kalivug* of Aligarh which contained the following :

"How the justice stands at a distance as helpless spectator of the shows as to the manner in which the illicit bribe money from plaintiffs and defendants enters into the pockets of public prosecutors and assistant public prosecutors and the extent to which it reaches and to which use it is put."

This Court held that the prosecuting staff of Aligarh and even the prosecuting staff in the State of U.P. formed an identifiable group or "collection of persons" within the meaning of Section 499, Explanation (2) in the sense that one could with certainty say that a group of persons has been

defamed as distinguished from the rest of the community, and therefore, a complaint by the public prosecutor and eleven Assistant Public Prosecutors was a competent complaint. Following the test laid down in this decision, the High Court of Allahabad in *Tek Chand v. R. K. Karanjia* (1969 Cri LJ 536.), held that the Rashtriya Swayam Sevak was a definite and an identifiable body, that defamatory imputations regarding it would be defamation within the meaning of Section 499, Explanation (2), that such imputations would be defamation of the individual members of that body or class and that a complaint by an individual member of such a body was maintainable. (See also the dictum of Kendall, J. in *Wahid Ullah Ansari v. Emperor* (AIR 1935 All 743.))

18. This being the position in law, the question upon which these appeals must be decided is : which was the class or body in respect of which defamatory words were used and whether that body was a definite and an identifiable body or class so that the imputations in question can be said to relate to its individual components enabling an individual member of it to maintain a complaint ?

19. The High Court, after citing *Tek Chand's* case (supra), went on to say that the Dravida Kazhagam was an identifiable group, that the respondent was an active member of that body, that he was also the chairman of the reception committee of the conference and that he was one of those who piloted and sponsored the resolution, which was said to have been wrongly reproduced and distorted in the news item in question. Apart from the fact already mentioned by us earlier that neither the complaint nor the evidence of the respondent indicated that the resolution was piloted by him, the news item nowhere referred to or even mentioned the Dravida Kazhagam. As already pointed out, the conference was a body distinct from that party, having its own organization, its own secretaries who dealt with the correspondence to and by the conference and its own office where its work was conducted. No doubt, the conference was organised by the Dravida Kazhagam, but that would not mean that both were the same or that the members of the Dravida Kazhagam and those of the conference or those who attended it were the same. Indeed, the principal function of the reception committee would be to enroll members of the conference and thus collect fund to defray its expenses. In fact, the evidence of the respondent indicated that the conference was attended not only by the members of the Dravida Kazhagam but also by outsiders who included as many as 5,000 women. It is, therefore, wrong to identify one with the other or to say that defamation of the conference as a class or collection of persons was the defamation of the Dravida Kazhagam. That was not and indeed could not be the case of the respondent.

20. The news item complained of clearly stated that the resolution was passed by the conference and not by the Dravida Kazhagam. In his very first letter, dated January 28, 1971, which the respondent signed describing himself as the chairman of the reception committee and not as an important member of the Dravida Kazhagam, the respondent complained that the news item had distorted the resolution passed by the conference and asked the editor to publish his "correction and clarification" of that resolution. There is no grievance there that the Dravida Kazhagam suffered injury in reputation or otherwise by that alleged distortion. In his advocate's letter, dated February 1, 1971. The respondent's complaint was that the news item was highly defamatory and had tarnished the image of the conference, of whose reception committee he was the chairman. In his evidence before the Magistrate also he clearly stated that the resolution was the resolution moved by the president of and passed by the conference. Thus, his case throughout was that the publication of the said resolution reported in the said news item in a distorted form had tarnished the image not of the Dravida Kazhagam but of the conference.

21. That being so, the High Court completely missed the real issue, viz., whether the conference was a determinate and an identifiable body so that defamatory words used in relation to the resolution

passed by it would be defamation of the individuals who composed it, and the respondent, as one such individual and chairman of its reception committee could maintain a complaint under Section 500 of the Penal Code. Whether the Dravida Kazhagam was an identifiable group or not was beside the point, for, what had to be decided was whether the conference which passed the resolution in question and which was said to have been distorted was such a determinate body, like the Rashtriya Swayam Sevak in Tek Chand's case (supra) or the body of public prosecutors in Sahib Singh Mehra's case (supra) as to make defamation with respect to it a cause of complaint by its individual members. In our view the High Court misdirected itself by missing the real and true issue arising in the applications before it and deciding an issue which did not arise from those application. The judgment of the High Court, based on an extraneous issue, therefore, cannot be sustained.

22. In this view of the matter, we would have ordinarily remanded the case of the High Court. But such a procedure, appears to be unnecessary, as in our view, the conference was not such a determinate class like the one in the cases referred to earlier, where complaints by its individual member or members were held maintainable. It is impossible to have any definite idea as to its composition, the number of persons who attended, the ideas and the ideologies to which they subscribed, and whether all of them positively agreed to the resolution in question. The evidence simply was that the person presiding it read out the resolution and because no one got up to oppose it, it was taken as approved of by all. The conference clearly was not an identifiable or a definitive body so that all those who attended it could be said to be its constituents who, if the conference was defamed, would, in their turn, be said to be defamed.

23. In these circumstances and for the reasons set out above, we allow these appeals, set aside the order of the High Court and quash the proceedings taken out by the Magistrate on the ground that the respondent's complaint was not competent.

</html