

# ORISSA HIGH COURT

Sarat Chandra Das

Vs

State (Orissa)

Criminal Revn. No. 262 of 1951

(Panigrahi, J.)

21.03.1952

## JUDGMENT

### **Panigrahi, J.**

1. Petitioner No. 1, Sarat Chandra Das, is the Patjoshi of the Maharaja of Mayurbhanj and Petitioner No. 2, Gananath Tripathy, is the Purohit of the Maharaja. They have both been convicted under Section 500, Indian Penal Code and sentenced to pay a fine of Rs. 40/- each.

2. The complainant, Bhagaban Das is the Patjoshi appointed by the State to perform the Jayadurga Puja at the palace of the Maharaja on the Gamha Purnima Day. His case was that on 27-8-50 he went to Kichakeswari temple, inside the Palace, to perform certain initial ceremonies connected with the Durga Puja, by getting rice and nut touched at the feet of the Deity. The two petitioners who were there prevented him from doing so and insulted him by using certain words alleged to be defamatory in character. The complainant examined P. W. 2 the Mahaldar and P. W. 3, said to be a Brahmottardar of the palace, in support of his case.

3. The Magistrate who tried the case found that the words complained of had been proved to have been used and convicted the petitioners as aforesaid. The conviction and sentence were affirmed, on appeal, by the learned Sessions Judge, Mayurbhanj.

4. In the complaint-petition the words alleged to be defamatory are set out as follows:

" 'You (the complainant) have admitted into the society Kurangis and washermen, and you being a Government Officer are admitting untouchables, and by holding conferences for the uplift of untouchables are moving with them'. Having said this the accused persons told me that I have been outcasted and prevented me from getting on with my work". In the sworn statement all that the complainant alleged was that the accused persons told him

that he had been ex-communicated by their caste and, as such, he could not perform sehapuja of the Maharaja. In his evidence he elaborated this case further and deposed as follows : "The accused Gananath said 'You are not a Brahmin, You are a Chandal, you cannot be allowed to perform the puja'. Accused Sarat told me 'You have no Nishta. You take food from Dhobies and Kurangis and have performed pujas in their houses. You, as government servant, partook of food with untouchables at meetings.' "

Against both the accused there was one charge framed and that charge did not set out the precise words alleged to have been attributed to each of them. The charge itself was vague and general in character. It merely recited that the accused had defamed the complainant by falsely imputing against him, before others in the Temple, that he was chandal and had taken food in the houses of Dhobies and Kurangis, knowing that such imputation would harm his reputation. It will thus be noticed that the words attributed to the different accused have been clubbed together and a consolidated charge has been framed against both. In a trial for defamation it is essential that the words alleged to be defamatory in character should be precisely set out and the accused should be individually given notice of what he is charged with. It is the words so set out that will constitute the foundation for defamation. It is essential that not only the words in question should be proved but also that the charge should set out the precise words complained of. The petitioner Gananath is said to have used the word 'chandal' and prevented the complainant from performing the sehapuja; while the petitioner Sarat is said to have remarked that the complainant had no Nishta or sense of purity in his conduct as he had taken food with washermen and Kurangis. But the charge as it stands would make it appear as though petitioner Sarat also used the word 'chandal' and was called upon to answer for that. If the case had rested on this alone I would "have no hesitation in quashing the conviction on the ground that the petitioners have been gravely prejudiced by the omission to state in the charge the precise words alleged to have been used by each of them.

5. But this apart the mere use of the expression 'chandal' cannot form the foundation for an action for defamation. It may amount to at best a form of scurrilous abuse and cannot, in my opinion, be interpreted as conveying any imputation against the reputation of a person. The word has been in such frequent use that it may be said to have lost all its etymological and literal meaning except as a term of abuse uttered in a fit of anger, as was certainly the case here. It is not unusual for parents to use this word towards the children or for brothers towards those younger than themselves. The reputation of a person is certainly not affected by his being abused in this manner, and intention to cause loss of reputation which is the essential ingredient of the offence cannot be attributed to a person who indulges in abuse, in a fit of excitement. I would, therefore, hold, even assuming that petitioner Gananath used the word 'chandal' that he cannot be said to have had the intention or motive to damage the reputation of the complainant so as to bring the case within Section 500, Indian Penal Code.

6. So far as the words alleged to have been used by petitioner Sarat are concerned, they sound

more in the nature of an admonition rather than purporting to lower the reputation of the complainant. To tell a person that he has no Nishta or regard for ceremonials, is neither abusive nor defamatory. To tell a person that he has taken food in the company of those who were, till a few years ago, regarded as untouchables does not necessarily import an intention to degrade him in society. Every social reformer who goes out of the beaten track invites comment with regard to his conduct, and cannot afford to be so touchy as to take offence when such remarks are made. It is not denied that the complainant was associating himself with movements for the uplift of the 'untouchables' and possibly he also joined social dinners. It may be that by pointing to these facts the petitioner meant to convey his disapproval of his conduct, but I cannot gather any intention to lower his reputation. The complainant himself appears to have been neither afraid nor ashamed of his activities in mixing with people of different types and partaking of their food, etc., nor was there anything secretive about such activities. It may be that what he did openly may not have met with the approval of the other priests of the Temple. But it cannot by any means be said that the reputation of the complainant was intended to be attacked by using the words complained of. I am unable therefore to agree with the Courts below that the words said to have been uttered, even if they are to be attributed to the accused, would amount to defamation.

7. But as I have already stated above I am not sure that the complainant has proved that the words were used at all. There is no mention of the specific words put into the mouth of the petitioners, either in the complaint petition or in the sworn statement, and it appears to me that the complainant has made some attempt to embellish his case at different stages. Nor is the evidence adduced in support of his case at all convincing. P. W. 2 is not altogether a disinterested witness. P. W. 3 is a stranger and his presence at the scene cannot be said to have been established beyond all doubt. According to the complainant there were a number of persons present, but why out of so many persons only two, whose integrity is not above reproach, should have been examined I cannot understand.

8. Having regard to these circumstances, I am of opinion that the prosecution was misconceived and that the petitioners have been wrongly convicted. I would accordingly allow this petition, set aside the conviction of the petitioners, and direct that the fines, if paid, shall be refunded.

Petition allowed.