# Mohan Lal Vs State of H.P.

**Court:** High Court of Himachal Pradesh

**Date of Decision:** March 16, 2011

**Acts Referred:** Penal Code, 1860 (IPC) â€" Section 100, 104, 415, 469, 499

**Citation:** (2011) CriLJ 2413 : (2011) 5 RCR(Criminal) 289

**Hon'ble Judges:** Dev Darshan Sud, J

**Bench:** Single Bench

## Judgement

Dev Darshan Sud, J.
The Petitioner has preferred this revision against the judgment in appeal of the learned Fast Track Court, Hamirpur.

2. The Respondent instituted a complaint u/s 500 IPC against the Petitioner on the allegations that he is a retired army personnel. On 12.7.2000 at

about 8.30 AM Smt. Leela Devi, wife of Shri Raj Kumar, resident of village Ghumarwin, Tehsil Barsar came to his house and told him that some

members of the Gram Panchayat Baliah along with the villagers have come to her residence to inspect the spot about which there was a dispute.

She informed him that she was raising some pillars on the land which was her property and she went to build a house there. Since her husband was

not at home, she requested the Respondent to accompany her to the spot. The complainant/Respondent who claimed to be a social worker

accompanied her to the spot. At about 8.45 AM, he found that the members of the Panchayat and residents of the village had gathered there and

were asking Smt. Leela Devi to stop work immediately. When this matter was being discussed, the Petitioner came to the spot with his brother

Shri Khalelu Ram and pounced upon the complainant, shouted at him and asked him as to how he was present on the spot. When Smt. Leela Devi

intervened and told the accused that she had asked him to help her, the accused is supposed to have remarked ""behan chod bakwas karta hai,

Yahan sey Dafa ho ja. Dafa hota hai ki nahin."" The complainant-Respondent did not retaliate and the people on the spot namely Karam Chand,

Anant Ram and others condemned the behaviour of the Petitioner. The gist of the case set out by the complainant was that by abusing him in the

vilest terms willfully and consciously, the Petitioner has harmed his reputation and lowered his prestige in the estimation of the general public. There

was no justification for these remarks/vulgar abuse.

3. After recording preliminary evidence, the Petitioner-accused was summoned to Court to face trial u/s 500 IPC. He denied his guilt and claimed

trial. He insisted that he was called on the spot by the Gram Panchayat. His defence was that the evidence produced against him was false and the

witnesses were lying.

4. The complainant appeared as P.W. 1 and stated that the words, as reproduced above, were used by the Respondent. P.W. 5 Leela Devi also

corroborated the case including the words used, the entire prosecution evidence in its entirety. She went out to say that the accused had torn the

report prepared by the Panchayat. A suggestion was put to her that she encroached upon the land of someone, which she denied, but admitted the

fact that she has received summons from the Court of Naib Tehsildar. The other witnesses are P.W. 2 Karam Chand, P.W. 3 Anant Ram and

P.W. 4 Mansho Devi. P.W. 3 also states that the complainant was asked to get out from the gathering etc.

5. The Petitioner also produced defence evidence D.W. 1 Nikka Ram who states that no interrogatory words were used by the accused against

the complainant. To similar effect is the statement of D.W. 2 Siri Ram, D.W. 3 Amru Ram, D.W. 4 Parkash Chand and D.W. 5 Chet Ram. D.W.

3 and D.W. 4 were produced to show that on 18.7.2000 a complaint was lodged against the complainant by Petitioner Mohan Lal. D.W..4 states

that there was some report of Patwari dated 2.8.2000 Ext. D.W. 4/A noticing some encroachment etc.

6. While considering the case of the parties, the learned trial Magistrate held that the foundation of the defence of the Petitioner herein was that

there was enmity between the parties as two complaints Mark A and Mark B made by the Petitioner herein to the DFO, Hamirpur against the

complainant but the same were made after the incident. He uses this as a factor to appreciate the evidence on record and to hold that since this

document came on record after the incident, the Petitioner was making an effort to create evidence of enmity. He accordingly accepted the case of

the Respondent and sentenced the Petitioner herein for rigorous imprisonment for a period of one month and fine of Rs. 2000/-, and in default, to

undergo simple imprisonment for seven days.

7. The Petitioner herein challenged the verdict before the learned Presiding Officer, Fast Track Court. On reappreciation of evidence, the learned

Appellate Court holds that the defence evidence especially Ext. D.W. 4/A, Mark A and Mark B have been filed after the institution of the

complaint out of which this revision arises and this was an attempt made to create evidence in favour of the Petitioner. The learned Appellate

Court, therefore, proceeded to dismiss the appeal. Relying upon the decision in Dhruba Charan Khandal Vs. Dinabandhu Patri, and M.B.

Kanwar, Editor, Printer and Publisher of ''Rana Partap'', Ambala Vs. The State, the learned Court holds that the words used by the Petitioner

herein in an open assembly where there were more than 50-60 people and in the presence of Panchas etc. harmed/damaged the reputation of the

Respondent and have lowered his prestige in the eyes of society.

8. The Petitioner is now before this Court in revision. I have heard learned Counsel appearing for the parties and gone through the record.

9. On the question as to whether the words actually uttered by the Petitioner, both the Courts had concurrently held on this issue and I need not to

discuss the evidence. I also find that parameters used by the Courts below in reaching this conclusion are not perversed. There is no relationship

between the Respondent and P.W. 5 Leela Devi, which would in any manner establish that she had concocted the evidence against the Petitioner.

In fact as I have noticed in earlier part of the judgment that the Petitioner had refuted the case of complainant on the ground that complaints were

pending against the complainant before the Tehsildar and the DFO and for this reason he was arraigned before the Court. In Raja Ram Singh Vs.

Emperor, the Court dealing with the ambit of Section 500 IPC held:

This is an application in revision by one Raja Ram Singh, who has been convicted on a charge u/s 500, I.P.C. and sentenced to a fine of Rupess

50, the case against him being that the used language of an obscene and insulting nature in speaking of a respectable Mukhtar of the name of

Muhammad Ali Khan. I do not propose to go into the unedifying details of the quarrel between these two gentlemen. The trying Magistrate has

gone into the evidence very thoroughly and has written a carefully considered judgment. I accept his finding as to the words used by Raja Ram

Singh and the circumstances under which they were spoken. The point taken on behalf of the applicant is that the words used were obviously not

intended to be understood literally and amounted to no more than an open expression of the fact that the accused was very angry with the

complainant. There is some authority for the proposition that words prima facie defamatory used in a stree quarrel should be regarded as mere

vulgar abuse and that their utterance under such circumstances does not necessarily suggest an intention to harm the reputation of the person to

whom they are applied. I am content to refer to the case of Empress v. Behari (1883) A.W.N. 36. I think the present case distinguishable; the

words in respect of which Raja Ram Singh has been convicted were not used in the course of a quarrel; they were not addressed to Muhammad

Ali Khan at all, but were spoken of him after the altercation between the parties was over. Assuming in the applicants favour that he did not intend

that his hearers should take literally the disgusting imputation conveyed by his words, I do not see that he is in any better position than he would

have been if he said:

I wish to convey to you in the most emphatic language at my command, that I consider Muhammad Ali Khan a worthless and despicable

blackguard.

Surely the Sub Inspector would not wish me to hold that his own credit and reputation amongst his acquaintances stands so low that he has himself

no ""reason to believe"" that such an expression of opinion on his part would harm the reputation of the person of whom it was made. I hold that

Raja Ram Sigh was rightly convicted on the facts found and I dismiss his application.

10. Similarly in Maung Maung v. Kind Emperor 1933 Rangoon 148 the Courtruled that the words uttered in the heat of passon may not amount to

defamation and in that case the Court recommended reduction of sentence.

11. The Allahabad High Court had again occasion to consider the ambit of Section 500 in Harakh Chand Vs. Ganga Prasad and Others, . The

allegations in that case were:

(1) Tell bahanchod Harakh Chand that is he has a great aspiration to become a Chairman, he should come today in open field. (Kahdeo

bahanchod Harakh Chand se agar bara dawa Chairmani ka hai to aj maidan men a jawae.)

(2) Tell the sala (wife''s brother) Bania that it he wants to remain safe, he should remain quiet and should not stand against us otherwise he would

receive thousands of shoes. (Banai sale se kahdeo ki ab agar apni khairiat chahta hai to khamosh rahe, ham logenke muquable men dawa na kare

warna hazoren jute parenge.)

(3) Tell the sala Bania that far from becoming a Chairman, he would again have to weigh flour and dal for us and that if he would not do so, he

would be beaten with shoes. (Bania sale se kaho ki Chairmani to dur gai phis hamlogen ka ata dal taulna parega na kareja to jute khaiga.)

(4) Tell the sala of illegitimate birth that we are standing and that if he has courage he should come out. (Kaho harami sale se hamlog khare hain

dawa hai to keon nahin nikalta).

In two separate, but concurring judgments, the Court held that there is no distinction in India between slander and libel. Adverting to the decision

of Girish Chandra Mitter v. Jatadhari (1899) 26 Cal. 653 the Court accepted that though words may not become per se actionable but the

tendency and probable effect of words must be determined in reference to the circumstances in which they were used.

12. Further adverting to the decision of Sukam Teli v. Bipal Teii (1906) 34 Cal. 48 the Court held that distinction has to be drawn between mere

verbal abuse and the words which were defamatory in themselves. In AIR 1936 294 (Lahore) the Court was called upon to adjudicate on a

document which was the basis of prosecution levelling allegations on Mr. Tek Chand, who was a Barrister. After considering the evidence, the

Court holds:

...There cannot be any doubt that the heading: Mr. Tek Chand ki barristri ki pol khul gai means that the unsoundness of Mr. Tek Chand''s

knowledge or capacity as a Barrister has been exposed. This imputation undoubtedly is calculated to lower in the estimation of others the

intellectual qualities and the aptitude for his profession as a Barrister in Mr. Tek Chand....(at p. 296)

13. Learned Counsel then referrred to Sarat Chandra Das and Another Vs. The State, to urge that in a trial for defamation it is essential that the

words alleged to be defamatory in character should be precisely set out and the mere use of the expression ''Chandal'' cannot form the foundation

for an action. It may amount to scurrilous abuse but nothing beyond that. He also relied upon the decision of the Supreme Court in Veeda

Menezes Vs. Yusuf Khan and Another, to urge that no damage has been established to the reputation of the Respondent and therefore, the Courts

below were wrong in coming to the conclusion that complaint was in fact maintainable. The Court ruled:

4. The expression ""harm"" has not been defined in the Indian Penal Code: in its dictionary menating it connotes hurt; injury; damage; impairment;

moral wrong or evil. There is no warrant for the contention raised that the expression ""harm"" in Section 95 does not include physical injury. The

expression ""harm"" is used in many sections of the Indian Penal Code. In Sections 81, 87, 88, 89, 91, 92, 100, 104 and 106 the expression can

only mean physical injury. In Section 93 it means an injurious mental reaction. In Section 415 it means injury to a person in body, mind, reputation

or property. In Sections 469 and 499 ""harm"", it is plain from the context, is to be reputation of the aggrieved party. There is nothing in Section 95

which warrants a restricted meaning which counsel for the Appellant contends should be attributed to that word. Section 95 is a general exception,

and if that expression has in many other sections dealing with general exceptions a wide connotation as inclusive of physical injury, there is no

reason to suppose that the Legislature intended to use the expression ""harm"" in Section 95 in a restricted sense. (at p. 1774-1775)

In Dhruba Charan Khandal''s case (supra), the Orissa High Court held:

10. The learned Counsel for the Respondent contended that there is a variance in the evidence of the different witnesses about the words actually

used by the accused. It is pointed out that the evidence of P.W. 3 shows that the accused abused him as Sala. Chora and Rakshyasa, but P.W. 1

has deposed that the accused said ""Chora,"" ""Rakshyasa"" and ""madua"" whereas P.W. 4 B.D.O., has not referred to any such words of abuse but

made a general statement that the accused said that ""this ""Rakhyasha"" (meaning P.W. 3) has spoiled this area and deserves nothing more than

beating. It was contended by Mr. Dhal that the prosecution must establish by evidence the exact words used by the accused before any action u/s

500 is called for. Apart from the minor variation, it is however, clear from the evidence that the accused used such words as Chora, Rakhyasha,

Madua etc. as has been mentioned in the charge. Moreover, there are authorities to show that it is sufficient for the purpose of an offence u/s 500 if

witnesses are agreed in a substantial measure on the words of imputation uttered as it is hardly possible even for most honest witnesses to

reproduce every such word or expression : (see a decision of the Allahabad High Court) in Bhola Nath Vs. Emperor, and of the Mysore High

Court in Namjundaiah v. Thippanna 1952 Cri.LJ 1633 : (AIR 1952 Mys 123).

11. It was next contended that there is nothing in the evidence to show that by reason of such abuse the position of the complainant was lowered in

the estimation in this case. This, however, is not essential. The essence of the offence is that the person who makes an imputation should do so

intending to har or knowing or having reason to believe that such impugnation will harm the reputation of such person. To constitute the offence u/s

500 I.P.C., it is not necessary that the evidence should show that the complainant has been injuriously affectedly such alleged defamation. This was

the view expressed by a Division Bench of the Calcutta High Court in Govinda Prasad Pandey v. G.L. Gartha ILR Cal 63 . Manoharlal J. in a

case of the Patna High Court in Jagannath Misra Vs. Ram Chandra Deo, took the same view and held that it is not necessary that to make out the

offence there must be some evidence to show that the words as found to have been used by the accused lowered the prestige of the complainant in

the estimation of others. The Bombay High Court in a case, Alex Pimento v. Emperor 22 Cri.L.J. 58 : (AIR 1920 Bom 339) held that it is not

essential part of the offence that harm should be caused to the reputation of the person against whom the imputation is made. (at p. 16-17)

The Court further ruled that the essence of the offence u/s 500 is an intention to cause harm to the person abused.

14. Considering the nature of abuse hurled at the complainant and that too in an open meeting in front of the gathering, I cannot persuade myself to

hold that complaint was not maintainable. There was mere a scuffle between the parties as reported but these words were not uttered in the heat of

moment but as a calculated measure as observed by the two Courts below. Accusing a person of having illicit relations with his sister in the open in

front of the public can not be considered to have been uttered merely as scurrilous abuse in the situation in which they were used against the

accused.

15. Both the Courts below have rightly held that the defence, put up by the Petitioner herein, has been procured only to render the case set up by

the Respondent-complainant to be false. The Courts rightly held that the complaints have been lodged by the Petitioner subsequent to and at a later

point of time to the case being instituted by the Respondent-complainant and in this event no reliance could be placed on the defence set up that

present complaint was instituted solely for the purpose of settling scores with the Petitioner. As already held that the words used by the Petitioner,

not only accusing a person of having illicit relations with his sister, but he was also told to get lost from the assembly in the most derogatory manner.

These words were not used in the heat of moment as scurrilous abuse or merely as vulgar epithets, but calculated in the situation they were used to

convey what the Petitioner thought about the Respondent-complainant. He was abused and rebuked in an open gathering when not only the

members of the Gram Panchayat were present but also the members of the General Public. In these circumstances, the submission made on behalf

of the Petitioner that the words were not used in the heat of movement cannot be accepted more so when the evidence does not establish such

fact. This revision petition is accordingly dismissed.

16. Adverting to the aspect of sentencing I find from the judgment of the trial Court that the Petitioner was aged about 58 years in 2002 which

means that now he is about 67 years. In these circumstances, the sentence of imprisonment is set aside, subject to the condition that the Petitioner

herein shall pay a sum of Rs. 10,000/- to the Respondent which amount should be deposited with the learned trial Court within a period of three

months from the date of judgment. On such depositing being made, the amount shall be disbursed to the Respondent. It is further clarified that in

case of non-deposit, the sentence of imprisonment shall revive and it shall be duly executed by the learned trial Court. Petition stands disposed of.