

Thakur Das Sur Vs Adhar Chandra Misri

Court: Calcutta High Court

Date of Decision: April 13, 1904

Judgement

1. In this case a rule was issued, calling upon the Magistrate of the District to show cause why the conviction of and sentence of fine passed upon

the Petitioner should not be set aside on the ground that the Court had no jurisdiction to entertain the case on the complaint of Adhar Chandra

Misri. The rule was issued under the following circumstances : Adhar Chandra Misri is the brother of one Soudamini Debi. This lady happens to be

a widow ; and she resides with her brother the complainant. They are both Brahmins of Bengal ; and according to Hindu notions and the manners

and customs of the country, Soudamini is a member of the family and practically under the guardianship of her brother. Any false charge made

against her reputation affects the character of the person in whose house and under whose charge she is living.

2. The accused who obtained this rule, appears to have made serious imputations against Soudamini, accusing her of immorality. Adhar Chandra

Misri, the complainant, being aggrieved at the imputations against his sister, who was as already mentioned, living in his house, preferred a

complaint, under sec. 500 of the Indian Penal Code, against the accused. The trying Magistrate found the charge proved and convicted the latter.

3. The present rule was obtained on the ground that the person who ought to have made the charge was Soudamini herself and not Adhar Chandra

Misri, because Soudamini was the person defamed.

4. The learned Magistrate has submitted an explanation in which he points out the circumstances under which the prosecution was instituted and

the case tried.

5. The learned pleader for the accused refers us to secs. 198 and 199 of the Code of Criminal Procedure and points out the difference between

the phraseology of the two sections. Those two sections refer to two distinct kinds of offences. Sec. 199, in our opinion, has nothing to do with the

present case. We have to deal with sec. 198 and see whether the complaint is properly laid under that section. Sec. 345 gives us no assistance,

because that section deals only with the compounding of offences. It states that when a charge of defamation is made the person who is defamed

can compound it. The pleader for the Petitioner states that in this particular case the person aggrieved is Soudamini and that therefore her brother

was not entitled to lay the complaint under sec. 198 ; and he produces the case of Chhotalal Lallubhai v. Nathabhai Bechar I. L. R. 25 Bom. 151

(F. B.) (1900) upon which he reasons that, inasmuch as it has been held by a majority of the Full Bench of the Bombay High Court that only a

husband can lay a charge of defamation when a wife is defamed, that rule ought not to be extended to complaints of other relatives. He also relies

upon the view expressed by Mr. Justice Ranade, the dissenting Judge.

6. We are not prepared to agree with the view expressed by that learned Judge. Whatever may be the conditions of life in the Western Presidency,

the learned pleader for the accused admits that the circumstances and conditions under which people live in this part of India are different. A Hindu

lady residing with her father, her brother or her son is a member of his family ; and her reputation is bound up with the reputation of the person in

whose house and under whose charge she is living. If any imputation is made against her character, that would affect as much the relative with

whom she is living as herself. In that view of the matter we think that the brother with whom this lady was living was as much aggrieved by the

imputation made against Soudamini as the lady herself, and that, therefore, it was competent to the Court to take cognizance of the offence of

defamation upon his complaint.

7. The case in the Madras High Court also referred to by the learned pleader for the accused relates to a suit for damages which has nothing to do

with a complaint in a Criminal Court.

8. For these reasons we are of opinion that the complaint was properly brought and properly tried, and that there was no want of jurisdiction in the

Court trying it. We accordingly discharge this rule.