

CRIMINAL REVISION.

Before Chotzner and Gregory JJ.

MAHIM CHANDRA ROY

v.

A. H. WATSON.*

1928

Feb. 10.

Defamation--Hindu widows—Class—Process—Penal Code (Act XLV of 1860), s. 499, expl. 2—Further enquiry.

Where the "Statesman" had published an article libelling Hindu widows as a *class*, and on that ground alone the Magistrate had refused to issue process for defamation on its editor and printer,

Held, that the complainant should be given an opportunity of proving his case (*i.e.*, a further enquiry should be held).

RULE obtained by Mahim Chandra Roy, complainant.

The following imputations *inter alia* appeared in an article published in a Calcutta English daily. "The 'Statesman,' in its issue of the 12th August 1927 :—

"The marriage age of the Hindu woman was still between nine and thirteen, the average weight of the Indian baby at birth was hardly over 4 lbs. ; the country's widows to the number of nearly 30 millions were regarded as under God's curse, sluts at home and prostitutes abroad ; the Indian village was described in a recent Government report as an aggregation of human dwellings situated on a dung hill."

On the 5th September 1927 a petition of complaint was filed against A. H. Watson, editor, and the printer of the "Statesman" under section 500, Indian Penal Code, in the Court of the Police Magistrate of Sealdah, the complainant having purchased his copy of the "Statesman" from a hawker within the jurisdiction of

* Criminal Revision No. 1225 of 1927, against the order of G. C. Sankey, Sessions Judge of 24-Parganas, dated Oct. 28, 1927, affirming the order of S. C. Sinha, Police Magistrate of Sealdah, dated Sep. 9, 1927.

that Court. The complainant alleged that the above imputation was absolutely false and malicious and grossly defamatory, and as several near relations of his were widows the aforesaid imputation had lowered their reputation and credit as well as those of the complainant in the estimation of others and in consequence the complainant was an aggrieved person. Without summoning the accused the learned Police Magistrate on the 9th September 1927 *suo motu* dismissed the complaint delivering an elaborate judgment in which he observed *inter alia* that a collection of men or women as such in its corporate character could not complain of any imputation as regards his or her personal reputation and that the class defamed itself must not be too large, and the expression "country's widows to the number of nearly 30 millions" was too wide to hurt any one, and thus it ceased to be criminal. The complainant then moved Mr. Sankey, the learned Sessions Judge of 24-Parganas, to set aside the aforesaid order of dismissal and direct a further enquiry, but on the 28th October 1927 this application was dismissed with the following remarks:—

"This is a petition for further enquiry into a complaint lodged under section 500, Indian Penal Code, dismissed under section 205, Criminal Procedure Code, by the learned Police Magistrate of Sealdah. I have heard the learned pleader for the applicant at length. I need only say that I agree entirely with the judgment passed by the learned Magistrate. With regard to the contention that the Magistrate was wrong in relying on the judgment of Mr. Justice B. B. Ghose (29 C. W. N. 904) in view of the fact that his conclusions were not maintained by the third Judge (Mr. Justice Buckland) to whom that case was referred, I would only say, that there are certain words in that judgment with which there has been no disagreement and which seem to me to provide the true test in a case of this kind. 'The true rule appears to be that if a person complains that he has been defamed as a member of a class he must satisfy the Court that the imputation is against him personally and he is the person aimed at, before he can

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“maintain a prosecution for defamation’. By that test this case clearly fails. The applicant can hardly pretend that the speaker had the ladies of his family in mind when he spoke the words complained of (assuming that these words were spoken at all). I see no reason therefore to issue ‘a rule. The motion is rejected”.

The complainant thereupon moved the High Court and obtained the present Rule on the 6th ground in his petition, *viz.*, “that the learned Magistrate was wrong in law in dismissing the petition of complaint without giving an opportunity to the petitioner to substantiate the charge by adducing evidence”.

Babu Tarakeswar Pal Chowdhury (with him *Babu Rainendra Nath Ghose* and *Babu Bireswar Chatterjee*), for the petitioner. (After reading the petition and the judgment of the Sessions Judge refusing further enquiry.) The Courts below have totally misconceived the law relating to defamation of a class or association of persons, and have erred in law in holding that the extract from the “Statesman” complained of does not amount to defamation under explanation 2 of section 499, Indian Penal Code. The learned Sessions Judge has not given the complainant an opportunity to prove his case in further enquiry, which is just what he wants, and yet the Judge says that the complainant must satisfy the Court that the imputation is against him. In the “*Nil Darpan*” defamation case [*Cited in Mayne’s Criminal Law of India, 4th Edition, page 863 (1)*] and also in the *Char Maniar* defamation case [*Pratap Chandra Guha Roy v. King-Emperor (1)*] complaints were entertained from particular individuals of the class concerned, where Indigo Planters as a whole and the Police as such had been defamed. The learned Police Magistrate of Sealdah has wrongly distinguished the “*Nil*

Darpan" case on the ground that the imputation reflected upon *each* of all Indigo Planters, as the author presented the mirror to the Indigo Planters' hands and asked each of them to see the reflection of his own face and erase the freckle of the stain of selfishness from his forehead. Further on a correct construction of the decision in *Pratap Chandra's* case (1) it really supports my contention as to the editor and printer of the "Statesman" being criminally liable for defamation. This speech was made by Mr. George Pilcher, M. P., at a meeting of the members of the 1912 Club at Buckler's Bury in England and in the "Statesman" of 19th October 1927 appears a contradiction by Mr. Pilcher of the report thereof published in the "Statesman" of 12th August 1927.

[CHOTZNER J. We are with you on ground No. 6. Does anyone appear to show cause?]

No, my Lord. The Magistrate having refused to issue process this Rule could not be issued on the accused as none has been summoned.

CHOTZNER J. We are of opinion after hearing the learned Vakil for the petitioner that this rule should be made absolute on the sixth ground specified in the petition. We, therefore, remit the case to the learned Magistrate so that the petitioner may be given an opportunity of proving his case.

GREGORY J. agreed.

G. S.

Rule absolute.

(1) (1925) 29 C. W. N. 904.