

staircase was sold, the other owners of the staircase should be regarded as co-sharers in the property sold, and we can see no reason for supposing that they intended ownership rights in a common wall to confer a higher status upon a pre-emptor than such rights in a common staircase.

It follows that Rajindra Singh has nothing more than contiguity to support his claim and that Umrao Singh being the owner of a dominant property has the superior right of pre-emption under section 16. His suit was rightly decreed by the trial Court and we dismiss the appeal with costs.

A. R.

*Appeal dismissed.*

### REVISIONAL CRIMINAL.

*Before Mr. Justice Scott-Smith and Mr. Justice Harrison.*

GURDIT SINGH AND OTHERS—Petitioners

1924

*versus*

March 7.

THE CROWN—Respondent.

Criminal Revision No. 1160 of 1923.

*Indian Penal Code, 1860, section 500—Defamation of wife—Complaint by husband—Criminal Procedure Code, Act V of 1898, section 198—“ Person aggrieved.”*

*Held*, that in the case of defamation of a married woman by the imputation of unchastity her husband is a person aggrieved within the meaning of section 198 of the Code of Criminal Procedure, and the Court can take cognizance of the offence upon complaint made by him.

*Chellam Naidu v. Ramasami* (1), and *Chhotalal Lallubhai v. Nathabhai Bechar* (2), followed.

*Anantha Goundan v. King-Emperor* (3), and *Thakar Das Sar v. Adhar Chandra Missri* (4), referred to.

*Daood v. Empress* (5), distinguished.

(1) (1891) I. L. R. 14 Mad. 379.

(3) (1901) 15 Mad. L. J. 224.

(2) (1900) I. L. R. 25 Bom. 151 (F. B.). (4) (1904) I. L. R. 32 Cal. 425.

(5) 22 P. R. (Cr.) 1884

1924

GURDIT SINGH  
v.  
THE CROWN.

Case reported by Lt.-Col. F. C. Nicolas, Additional Sessions Judge, Lahore, with his No. 559 of 7th June 1923.

ICHHAR CHAND, for Petitioners.

PUBLIC PROSECUTOR, for Respondent.

The case came up first before Mr. Justice Moti Sagar who delivered the following order on the 16th November 1923, referring the case to a Division Bench.

The Additional Sessions Judge of Lahore has reported this case to the High Court under section 438 of the Criminal Procedure Code with a recommendation that the conviction of the present petitioners under section 500 of the Indian Penal Code be quashed. The facts are briefly these:—In a criminal case under section 456 of the Indian Penal Code the petitioners appeared as defence witnesses and in their statements made certain imputations against the character of one *Mussammat Ram Rakhi*, wife of Kesar Mal, who is the complainant in this case. Kesar Mal thereupon brought a complaint under section 500 of the Indian Penal Code against each of the four petitioners with the result that each of them was convicted and sentenced to two months' rigorous imprisonment. The learned Sessions Judge is of opinion that the conviction cannot be sustained inasmuch as the person defamed is not the complainant but his wife *Mussammat Ram Rakhi*. In coming to this conclusion the learned Sessions Judge has followed *Daood v. Empress* (1) in which it has been held that under section 499 of the Indian Penal Code the reputation to be harmed must be the reputation of the very person concerning whom the imputation is made and not of some other person. There is no doubt that this authority is directly in point and supports the learned Sessions Judge in his view. A contrary view, however, has been held by the Bombay High Court in a Full Bench case reported as *Chhotalal Lallubhai v. Nathabhai Bechar* (2). The Madras High Court is also of opinion that in a case in which a married woman is defamed by the imputation of unchastity her husband is the person aggrieved by the defamation upon whose complaint the Magistrate may take cognizance of the offence under section 198 of the Code of Criminal Procedure, *vide*

(1) 22 P. R. (Cr.) 1884.

(2) (1900) I L. R. 25 Bom. 151 (F. B.).

*Chellam Naidu v. Ramasami* (1). The learned Judges there observed that the reputation of a husband is so intimately connected with that of his wife that it would be unreasonable to hold that the defamation would ordinarily be not as hurtful to his feelings as it is to those of his wife. In my opinion the view taken by the Bombay and Madras High Courts is the sounder view, and I am inclined to think that the expression "some person aggrieved" in section 198 of the Criminal Procedure Code is not necessarily limited to the person defamed but has a wider significance and includes also a husband who is undoubtedly a person aggrieved by the imputation of unchastity of his wife with whom he is living. As there is a conflict of authority upon this point between this Court and other High Courts in India, and as the question is one of great importance I think it would be proper if the case was decided by a Division Bench. I accordingly refer the case to a Division Bench.

1924

GURDIT SINGH  
v.  
THE CROWN.

The judgment of the Court was delivered by—

SCOTT-SMITH J.—The facts are given in the referring order. The point which we have to decide is whether when a married woman is said to have been defamed, her husband is a person aggrieved within the meaning of section 198, Criminal Procedure Code, so as to enable a Court to take cognizance of an offence under section 500, Indian Penal Code, upon a complaint made by him. The learned Sessions Judge was of opinion that the Court could not take cognizance of such complaint, and he based his opinion upon the case of *Daood and another v. Empress* (2). That case, however, appears to us to be distinguishable. There the husband prosecuted the accused persons for defamation of himself though the imputation was said to have been made concerning his wife. The Chief Court held that the conviction could not be sustained because there was no imputation concerning the husband of the woman though there might be defamation of the woman herself.

(1) (1891) I. L. R. 14 Mad. 379.

(2) 22 P. R. (Cr.) 1834.

1924  
 GURDIT SINGH  
 v.  
 THE CROWN.

The learned Judges did not consider the meaning of the expression "person aggrieved" in section 198, Criminal Procedure Code. Its meaning was considered by a Division Bench of the Madras High Court in *Chellam Naidu v. Ramasami* (1) and it was held that when a married woman is defamed by the imputation of unchastity, her husband is a person aggrieved, upon whose complaint the Magistrate may take cognizance of a complaint under section 198, Criminal Procedure Code. This view was followed by a Full Bench of the Bombay High Court in *Chhotalal Lallubhai v. Nathabhai Bechar and another* (2), one Judge out of five dissenting. In *Anantha Goundan and another v. The King-Emperor* (3) the view taken in the earlier Madras case was followed. In *Thakar Das Sar v. Adhar Chandra Missri* (4) where the alleged offence was defamation imputing unchastity to a Hindu widow, it was held that her brother with whom she was residing at the time, was a "person aggrieved" within the terms of section 198, Criminal Procedure Code. The Judges considered the case reported as *Chhotalal Lallubhai v. Nathabhai Bechar* (2), and expressly disagreed from the view expressed by Ranade J., the dissenting Judge.

We fully agree with the view of the majority of the Full Bench in the case of *Chhotalal Lallubhai v. Nathabhai Bechar* (2) and of the Madras High Court in the case of *Anantha Goundan v. King-Emperor* (3) and hold that in the case of defamation of a married woman her husband is a person aggrieved within the meaning of section 198, Criminal Procedure Code.

We therefore see no reason to interfere with the order of the Magistrate convicting the petitioners and reject the application for revision.

C. H. O.

*Application rejected.*

(1) (1891) I. L. R. 14 Mad. 370.

(2) (1900) I. L. R. 25 Bom. 151 (F. B.).

(3) (1901) 15 Mad. L. J. 224.

(4) (1904) I L. R. 32 Cal. 428.