

**(1962) 07 KL CK 0020**  
**In the High Court Of Kerala**

Raman Namboodiri, Chumaramkandathu Mana

APPELLANT

Vs

Govindan Nair

RESPONDENT

**Date of Decision :** 05-07-1962

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 417  
Penal Code, 1860 (IPC) — Section 500

**Citation :** (1963) CriLJ 535

**Hon'ble Judges :** P. Govinda Menon, J

**Bench :** Single Bench

## Judgement

P. Govinda Menon, J.—This is an appeal filed against the order of the Munsift Magistrate of Pattambi acquitting the accused who had been prosecuted for an offence of defamation u/s 500 IPC. The case of the prosecution is that in the issue of the Malayalam daily "Deshabhimani" dated 12-8-1961 the accused published a false imputation against the appellant with intent to defame him and harm his reputation. Ext. P1 is the offending publication in the paper. The original has been proved by Pw. 3 the printer and publisher of the paper and Pw. 4 a teacher in the school in which the accused is employed has proved that it is in the handwriting of the accused. The accused when questioned has admitted that it was he who had written the article and got it published. His case is that the publication does not refer to the appellant that it was against the appellant's son who was the Adhikari during the relevant period and that every word of what is stated is true. He sought to prove this by the evidence of Dw. 1 the amson Menon. The learned Magistrate found that the publication did not refer to the appellant and acquitted the accused. Aggrieved with this order, this appeal has been filed by obtaining special leave u/s 417(3) CrI.P.C.

2. What is stated in Ext. P-I is that on 4-8-61 some mufti constables came to make enquiries and the Adhikari who is an important jenmi has given the names of some teachers and officials who had filed petitions before the Land Tribunal, as being Communists or Communist sympathisers. It is admitted that the appellant even though he is the permanent Adhikari of the amsom has been on leave for 7

or 8 month prior to 4-8-61 on which date the police came for enquiries, and the appellant's son was the acting Adhikari all these months. It is also conceded by Pw. 1 that his son is also a Jenmi having a number of tenants and that they had also filed petitions before the Land Tribunal.

3. The description could, therefore, well fit in with the appellant's son and the accused has proved through Dw. 1 that it was the appellant's son who was questioned by the Police on 4-8-61. It is unnecessary to decide whether the case of the accused sought to be proved through Dw. 1 is true or not. If the words complained of contain no reflection on a particular individual or individuals, but may equally apply to others belonging to the same class an action for defamation will not lie. The defamatory matter to be actionable must be such that it contains an imputation concerning some particular person or persons whose identity can be established. It is unnecessary that the person whose conduct is called in question should be described by name. It is sufficient if on the evidence it can be shown that the imputation was directed towards a particular person or persons who can be identified. In this case the imputation complained of was directed against the Adhikari and it is impossible in my opinion, upon the facts disclosed to ascertain with any degree of certitude who that Adhikari is, whether it is the appellant or whether it is his son.

4. Authority for this position may be, had in the decision in Govt. Advocate v. Gopabandhu Das ILR Pat 414 : AIR 1922 Pat 101. The headnote reads:

Where the accused published in the paper of which he was the publisher and printer an account of an outrage on a woman alleged to have been perpetrated by two constables within the jurisdiction of the Begunia Thana, in which four constables were stationed, held that in the absence of proof that it was intended to charge any particular and identifiable constables with the alleged offence, the accused could not be convicted u/s 500 of the Penal Code.

In the course of the Judgment the learned Chief Justice has referred to two English cases. In Sir John Bourn's case 78 ER 747 where a party in a cause said to three men who had just given evidence against him "one of you three is a perjurer", it was held that no action lay. In James v. Putlech (1599) 4 Rep. 117, it was said if the defendant said to a master "one of the servants hath robbed me", in the absence of special circumstances no one could sue, for it is not apparent who is the person slandered.

5. To the same effect are the decisions in Ankaraju Subbaraya Vs. Batuk Prasad and Pratap Chandra Guha Roy Vs. Emperor, . I am in respectful agreement with the view taken in these cases and I hold that the appellant cannot maintain a prosecution for defamation.

6. The order of acquittal is therefore, confirmed and the appeal is dismissed.