

(1914) 12 MAD CK 0011
In the Madras High Court

Vengala Venkayya

APPELLANT

Vs

Thallam Venkataramiah

RESPONDENT

Date of Decision : 03-12-1914

Acts Referred:

Penal Code, 1860 (IPC) — Section 499

Citation : AIR 1915 Mad 908 : (1915) 2 LW 446 : (1915) 28 MLJ 58

Hon'ble Judges : Sadasiva Aiyar, J;Hannay, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—I need not repeat the facts which have been set out fully in the judgment just now pronounced by my learned brother.

So far as the case law is concerned. I do not wish to go further back than what has been laid down in *Coopoosami Chetti v. Doraisami Chetti* ILR

(1909) M. 67 : 19 M.L.J. 174 and in *Coopoosami Chetti v. Duraisami Chetti* (1912) M.W.N. 1220. On these caste questions, the law in my

humble opinion, ought to be made progressive. Social customs among Hindus have begun to change with quite appreciable rapidity and

conservative observations therefore which may be found in cases decided about 30 years ago (as in *The Queen v. Sankara*. ILR (1888) M. 381

and *Venkatachalapathi v. Subbaroyan* ILR (1887) M. 293), even though those observations were made by very learned and eminent Judges ought

not to be pushed now a days too far.

2. Even the highest Judicial minds like those of Lord Eldon, Lord Mansfield or Lord St. Leonards are affected to some extent by the spirit of

conservatism, or of liberalism as the case may be and the recognition of that fact by even lesser minds implies no disrespect to those great jurists. I

do not at all mean to question the soundness of the actual decisions in *The Queen v. Sankara* ILR (1883) M. 381 and *Venkatachala Pathi v.*

Subbaroyan ILR (1890) M. 293 but only to submit that all the incidental observations therein need not be strictly adhered to without the necessary qualifications at the present day.

3. Mr. Justice Chandavarkar said in *Natu v. Keshawji* ILR (1902) B. 174 Roughly speaking, a suit raising a caste question must fall within one of

three Chases: firstly : it may be a suit brought by a member of a caste complaining of his expulsion from it and asking for a declaration that the

expulsion is illegal, and that he is still a member of the caste and as such entitled to its social privileges: secondly, a member of a caste expelled

from it may sue for a declaration that the excommunication is illegal, and that he is entitled to certain rights of property or office as a member of the

caste: or, thirdly, it may be a suit brought by such member for damages on account of loss of caste or character : The decided cases, of which

there is a large number, show that a suit involving a caste question must fall under one or other of these heads.

4. The present suit belongs to the third class. As regards this third class, Mr. Justice Chandavarkar says "" Turning now to the third class, suits

claiming relief for loss of caste and character are in the nature of suits for libel and fall within the law applicable to the latter. The Bombay

Regulation expressly provides for them. As held by West J. in *Pragji Kalam v. Govind Gopal* ILR (1887) B 534 "" the Civil Courts may discuss

and deal with a caste question where the membership and the character of a member have been unjustly injured"".

5. I do not know whether it is not a matter for some regret that the legislature should have given so wide a definition of Defamation in the Penal

Code (See Section 499, Explanation 4) as to include caste questions within it where the questions do not involve imputations as to moral

character. I have heard of a thieving caste in which a man born in that caste loses ""character in respect of his caste"" if he is taunted with not having

had a theft to his credit before he attains the adult age. If the words ""character of that person in respect of his caste "" in Section 499, Explanation 4

of the Indian Penal Code be too liberally interpreted, it would lead to a person "taunted as above, bringing a suit for launching a criminal case in

respect of such an imputation.

6. In many cases, no doubt, a caste offence is committed by an act which implies a defect in the moral or intellectual character of the person as the

imputation of such an act is "defamation irrespective of the fact that it is also a caste offence. The giving up of the rules of caste by birth now-a-

days does not, however, always mean any defect in the moral character as is shown by the actions of the members belonging to the Brahmo

Samaj; the Arya Samaj and other liberal movements. That a person does not care for the rigidity of caste rules is given as a sign of moral strength

in many cases, though of course in other as numerous cases, it is a sign of moral weakness if the neglect of caste rules is due to the weakness of the

will in resisting temptations of the flesh. The mere fact that Hindus who believe in caste by birth alone are just now in the majority and look down

upon those Hindus who do not believe exclusively in it is, in my opinion, immaterial in the consideration of the question. It was decided in an

English case that to call a man a Homeopath when Homeopaths were actually looked down upon as quacks is not defamation. It follows that to

impute actions to a Hindu which show him to be a reformer is not defamation unless it also necessarily implies that he has ceased to belong to his

caste. However it seems to be now settled that, to tell a man who does not wish to be out of his caste that he has been excommunicated or is out

of caste is defamation and it seems not possible to unsettle that view for several years to come.

7. It is well known to every Hindu that while 30 years ago the fact that a South India Brahmin took even his ordinary meals in the presence of a

non-brahmin or on the same table with a non-brahmin might have entailed the penalty of Prayaschitham, such a risk is almost absolutely negligible

now-a-days, especially in towns like Madras or Kurnool, Again while dining with England--returned persons who had not undergone

Prayaschitham is even now a little risky, dining with those who have so dined is quite common and unnoticed now-a-days. Hence if a person

merely refuses to associate with another, giving out as his reason that he has associated in meals with a person who has contracted remarriage with

a widow or who has gone to and returned from England, such allegations do not impute to the persons about whom they are made an

unworthiness to call himself a member of the caste and are therefore not defamatory. Unless the words used in respect of a caste Hindu are

tantamount to saying "" you have become an outcaste or you have been excommunicated from your caste,"" the words are not defamatory. Such I

take to be the principles of the decisions for which Benson and Sankaran Nair JJ. are responsible in the cases of Kuppusami Chetty v. Dorasami

Chetty ILR (1909) M. 67 : 19 M.L.J. 719 and Kuppusami Chetty v. Dorasami Chetty (1912) M.W.N. 1220. It was held in those cases that even

if the rds imputed to the plaintiff a ceremonial impurity which equired an expiation by a prayaschitham provided that the prayaschitham to be

performed is not of the kind which is required to bring back an outcaste into the caste but only such minor ceremonies which are performed by

even those who remain within the caste and who have incurred only ceremonial impurities, the words are not defamatory and do not give rise to a

cause of action for libel. I might be permitted to say that the appeal decided in Kuppusami Chetty v. Dorasami (1912) M.W.N. 1220 was against

the decision of the City Civil Court presided over by Mr. Kumaraswami Sastri (now a judge of this Court and a profound Sanskrit scholar) and

that the appellate decision confirmed his veiws on this question.

8. It is rather curious that the plaintiff in this case who has in direct opposition to the opinion of the late Head of the Sringeri Mattam (a very

learned, respected and influential Matadhipathi) supported the Komatti Community in their claim as Vaisyas to study and pronounce the Vedas

and to perform Vedic Sandhyavandanam and other Vedokta cermomnies and who has thus definitely broken with the orthodox Brahmins should

consider himself libelled because he was said to have become liberalised a little further by countenancing the remarriage of widows, even to the

extent of dining at feasts given on the occasion of Brahmin widow marriage.

9. The words alleged to have been used by the defendant do not impute to the plaintiff that he has ceased to belong to the Brahmin caste but only

that the defendant does not wish to associate the plaintiff with the defendant's ultra--orthodox purohits in the performance of Sradhas in the

defendant's house. I am quite clear that to impute to a Brahmin's unfitness to officiate or be the guest at a Sradha is necessarily to defame his

character in respect of his caste"". "" As Manu says in the 3rd chapter ""to a

student who has not read the Vedas "" (now-a-days most of the caste Brahmins have not read the Vedas, though it is obligatory to read at least one of the Vedas thoroughly) ""let him never give food at the sacred obsequies. Physicians"" (many Brahmins are physicians) ""image-worshippers for gain must be shunned in obligations to progenitors. A public servant"" (many are public servants) "" a man with whitlows on his nails, or with black yellow teeth, a deserter of the sacred fire"" (very few Brahmins now keep up to sacred fire) ""one omitting to do the five great sacraments"" (same observations as above) "" a younger brother married before the elder, an elder brother not married before the younger, the son of a twice married woman, a man who has lost one eye, one who teaches the Veda for wages and one who gives wages for such a teacher, a man with elephantiasis, the husband of a younger sister married before the elder a father instructed in the Veda by his own son, a blind man, one who teaches the use of arms, one who subsists by astrology, the husband of a twice married woman, a Brahmin unlearned in holy writ, a sacrificer for the sudra, is considered unfit by many to officiate as priest at a Sraddha, "" Surely if a man refuses to allow any of the above persons to officiate at a Sraddha in his house, it cannot be held that that person is libelled or slandered in his character in respect of his caste.

10. I should like on the question of plaintiff's claim for damages to quote a few further passages from the judgment of Mr, Justice Chandavarkar in Nattu v. Keshawji ILR (1902) B. 174:

In the second place, so far as the plaintiffs claim for damages on account of loss of reputation, they have not proved that their reputation has suffered or that they have sustained any damages on that account. Their own evidence and the evidence they have led proves that about twenty of their caste people still hold social intercourse with them, and all that has occurred is that the other members of the caste do not invite them to dinner or give them water. Assuming that their reputation has suffered by reason of their exclusion from the social privileges by a majority of the caste, there is nothing to show that they have sustained any damage beyond the loss of some dinners, or how, if they have suffered in reputation, the damages are to be estimated. In fact, no specific issue was raised in the lower

Court, nor was any evidence led on the points. On this ground therefore, the claim for damages must fail.

11. In the present case also it is clear that even if the plaintiff has associated with Brahmins who had partaken meals at a widow marriage, he is still in very good company and there are very influential and good men in Kurnool who are remaining in the Brahmin caste notwithstanding their encouragement of the widow remarriage movement by dining at such remarriages and there is no evidence worth the name that he has sustained any damages. Three witnesses have been examined for the plaintiff including the plaintiff himself. Even his own statements do not prove that he has sustained any damages while neither of the other two witnesses gave evidence that any pecuniary damage has been sustained by the plaintiff.

12. I might be permitted to state that a person like the plaintiff who is himself a social reformer should not be too sensitive on account of its being stated that he is a reformer not only in the matter of allowing Vedoktha ceremonies to Komatties performing such ceremonies in Komatty house but also in considering that remarriage of widows is not prohibited by the shastras. It is even difficult to state in these changing times whether it is defamatory at all to call a person a social reformer or as one supporting reform. Unless words are used regarding a person which impute that that person is no longer a member of his caste, courts ought not to encourage suits for libel or defamation merely because some of his (plaintiff's,) castemen or even a majority of his castemen state that they will not associate with him in meals or ceremonies on the ground that he holds reformed views or has done actions which the extreme orthodox party disapprove of or that he has associated with reformers provided these latter have not been excommunicated. In the result, I agree that the second appeal and the memorandum of objections should be dismissed with costs.

Hannay, J.

13. The plaintiff sued for damages for slander claiming Rs 50 as the amount of damages. In the court of the District Munsif he succeeded in getting a decree for Rs. 20. On appeal to the District Court, however in respect of the amount disallowed, the plaintiff's suit was dismissed. The plaintiff now appeals.

14. The parties belong to Kurnool. The plaintiff is a Purohit Brahmin who appears

to have settled at that place about 5 years before suit. The defendant is a Komatti. The plaintiff appears to have gained the respect of the Komatti community since he settled at Kurnool for, the evidence shows that although he is not himself a family purohit of the Vaisya community there, he is allowed to officiate jointly with the family purohits of Komatties during family ceremonies and on one occasion he was selected by the Vaisya community to represent them at an assembly when the Vedoktha rights of Vaisyas came up for discussion (see Exhibit A). The defendant admits that the plaintiff officiated at his second marriage. This state of affairs continued for several years until a widow marriage was celebrated at Kurnool, which resulted in dissension in the Brahmin community at that place, some approving of the marriage while others condemning it as being contrary to the Shastras and the recognised custom among Brahmins. Those who approved of the marriage appear to have testified their approval either by directly dining with the re-married widow or by dining with those who had dined with her. This act of dining as well as other acts indicating approval are regarded by those who oppose widow marriage as a sin. The defendant's purohits Seshiah and Viriah are opposed to such marriages. The plaintiff, though he does not admit, he is in favour of widow marriages, says he is willing to dine with persons who are in favour of them. There can be little doubt that the plaintiff's attitude in that matter has given ground for the view that he supports the party in favour of widow marriage. It is found as a fact, however, that the plaintiff's did not go so far to take meals at the widow marriage at Kurnool.

15. It was after this marriage, that the incident occurred which, has given rise to this suit. It appears that on the 27th Nov. 1911 a ceremony called Aradhana was to take place at the defendant's house. Aradhana appears to be equivalent to an annual ceremony among Brahmans. The lower courts find that the defendant invited the plaintiff to attend at his house and to bring 4 or 5 other Brahmans with him in order to assist at the ceremony. The plaintiff as plaintiff's witness No. 1 states that the defendant asked him to bring the other Brahmans because he feared that his own family purohits might refuse to perform the ceremony along with the plaintiff. However that may be, when the plaintiff and the other Brahmans arrived at the defendant's house, it is found by the lower courts that Defendant

turned them away, saying, in effect that as they had messed and taken part in other things during widow marriages, his purohits Seshiah-and Viriah refused to attend, if they were present--what the exact words used were has not been found by either of the lower Courts, but I take it that the above, (which is reproduction from the plaint) contains the substance of what the defendant said. When the Lower Appellate Court sent back the case for findings upon certain points the plaintiff, who was then examined, as defendant's witness No. 2 stated that the words used were. ""As you have taken meals at a widow marriage, our purohits Seshia and Viriah refuse to come, so, you are not fit. Hence go-away."" The words ""so you are not fit"" do not appear in the plaint or in the original deposition made by the plaintiff as plaintiff's witness No. 1. These words are plainly an after thought on the part of the plaintiff and as the lower Courts do not find that the defendant used any such; words they must be left out of consideration.

16. The question is whether the defendant can be said in these circumstances to have slandered the plaintiff. For the plaintiff's reliance is placed upon the cases of Queen v. Sankara ILR (1883) M. 381 Venkatachalapathi v. Subbaroyudu ILR (1889) M. 293 Ccopoosamy Chetti v.Doraisdtrii Chetti ILR (1909) M. 67. In the first case it was held by Sir T. Muthusarni Aiyar that widow remarriage is contrary to the usage and custom of Brahmans and other regenerate classes in this Presidency and the case further shows that a person who attended at and advocated a widow marriage was then liable for excommunication at the hands of the spiritual head of his caste, not with standing that the legislature had legalised widow marriages, by Act XV of 1856. In the case the continuance of the general usage in a particular temple was held to be sufficient ground for excluding a Brahman, who had married a widow, from entering the temple. As regards the case in Coopoosami Chetty v. Dorasami Chetty ILR (1909) M. 67 reliance is placed on the observation at 69; ""words which are intended to bring about disastrous consequences resulting from loss of caste such as de-privation of religious and social communion, by imputing un worthiness to any person to continue a member of his caste are prima facie defamatory and give rise to a cause of action. They certainly lower him in the estimation of his own caste and other castes.

17. The decision of this case seems to me to turn upon the question whether at the present time attending or advocating widow marriages necessarily involves liability to excommunication and whether the defendant intended by his allegation to impute that the plaintiff was an outcaste or had lost caste status. The cases cited for the plaintiff no doubt shew that in 1883 attendance at a widow marriage, resulted in excommunication and that in 1890 in a particular institution a person who had married a widow was on that subjected to disability in that they had lost caste status in respect of that institution. There is however nothing in the evidence in the present case to show that the act attributed to the plaintiff, even if true, would in present conditions have rendered him liable to be outcasted or otherwise caused him to lose his caste status.. The plaintiff no doubt says he has lost hundreds of rupees through the defendant's accusation but he does not prove a single specific instance in which he has lost anything and he values his damages at Rs. 50. He admits he has not been excom-municated. It seems to The therefore that the Lower Appellate Court is right in holding that the defendant had not libelled the plaintiff inasmuch as he has not called him an outcaste and is not proved to have said anything which necessarily implies that he was an outcaste or had lost caste status. The case of Coopoosami Chetty v. Dorasami Chetty ILR (1909) M. 67 is, if anything, against the plaintiff, because the words there used "" Prayaschitham must be performed as Coopoosami Chetti attended the Karmanthiram"" were held not to imply that Coopoosami Chetti was an outcaste and that therefore there was no cause of action (See Coopoosami Chetti v. Doraisami Chetti ILR (1909) M. 67). On the whole, I think the Lower Appellate Court was right in taking the view that the words complained of in this case meant nothing more than that the defendant desired no longer to associate with the plaintiff or utilize his services on the ground that he was a sympathizer with the party in favour of widow marriage. I would, therefore, dismiss this second appeal with costs. The order of the Lower Appellate Court refusing defendant his costs seems to me to be right and I would therefore also dismiss the memorandum of objections with costs.