

(1993) 10 AHC CK 0046

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 8478 of 1981

Vishwa Nath

APPELLANT

Vs

Shambhu Nath Pandeya deceased by L.R. and Another

RESPONDENT

Date of Decision : 13-10-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 198, 199, 199(1), 199(2), 2
Penal Code, 1860 (IPC) — Section 417, 493, 496, 499, 500

Citation : (1995) CriLJ 277

Hon'ble Judges : J.P. Semwal, J

Bench : Single Bench

Advocate : Tapan Ghosh, for the Appellant; A.G.A. and D.S. Tewari, for the Respondent

Final Decision : Allowed

Judgement

J.P. Semwal, J.—This is an application u/s 482, Cr PC with a prayer to quash the complaint (Annexure No.I) filed by one Shambhu Nath Pandeya against the present petitioner and one Shrish Chandra u/s 500,1PC and to"stay further proceedings in Criminal Case No.58/IX, of 1981, u/s 500, IPC, pending in the Court of the IInd Addl. Munsif Magistrate, Mathura. "

2. The facts giving rise to the present proceeding are that the applicant is the editor, printer and publisher of a string of multilingual magazines. "Bhu-Bharti" is one of such magazines which is published fortnightly in Hindi. The applicant published in the second number of November, 1980 in Bhu-Bharti an article written by Shrish Chand Mishra, who is the co-accused in the aforesaid complaint. This article is titled "Mathura Sati Kand-Kya Hardei Ki Hatya Ki Gai." This article was printed on pages 13 to 18 of the said magazine in the said number. On page 13 in the end of the third column of this article the following matter was printed :

Paramparagat Brahman Unhen Bramhan Nahi Mante Lekin Ahi wasi Apne Apko Adigaur Brahman Aur Sauram Rishi Ke Putra Mante Hain. Hardei Bhi Brahman

Adiwasi Thi. Ahiwastyon Ke Niwas Sambandhi Riti-Riwaj Am Logon Se Alag Hain Aur Yaun Sambandhon Ke Mamie Men To We Kabhi Udar Hain. In Logon Me Najdiki Riston Me Shadi Ho Jati Hai Aur Ghar Ki Aurat Par Pariwar Ke Sabhi Mard Apni Adhikar Mante Hain Jin Logon Me Charitra No Ho Unke Ghar Ki Bahu Kahi Sati Ho Sakti Hain.

3. In para 8 of the complaint (Annexure-I) this portion of the article has been set out, which is alleged to be defamatory to the whole community of Ahiwasi Brahmins. It is alleged that the same has been written to lower down the dignity and reputation of Ahiwasi Brahmins. The complainant Shambhu Nath Pandeya was one of the members of Ahiwasi Brahmin community. Aggrieved by the aforesaid publication of the aforementioned portion of the article in Bhu-Bharti, second number of November, 1980 the complainant filed the said complaint against the petitioner as well as Shrish Chand alleging the same as defamatory statement against Ahiwasi Brahmins. The learned Magistrate taking cognizance of the case recorded the statement of complainant Shambhu Nath Pandeya u/s 200, Cr PC and of Kanhaiya Lal Pandey u/s 202, Cr PC. and he being of the opinion that there was sufficient ground for proceeding against the petitioner-applicant and Shrish Chand Misra u/s 500, IPC issued process against them for appearing in his court on 26-3-1981, (vide copy of the order dated 13-2-81). The applicant-petitioner appeared personally in the court on 6-6-81 and thereafter his personal attendance was exempted. Thereafter complainant Shambhu Nath Pandeya died. Sri M. P. Pandey, Advocate, who was appearing as a counsel for the said Shambhu Nath Pandeya, moved an application u/s 256, Cr PC before the learned Magistrate concerned stating that the complainant Shambhu Nath Pandeya has died and the personal attendance of the complainant be dispensed with and the case may be proceeded with (Copy of the application, Annexure-III). In the said application, it has also been stated that the case relates to serious offence containing highly defamatory allegations against the Ahiwasi Brahmin community as a whole to which the complainant and the major portion of the witnesses of the list belong.

4. The said application (Annexure-III) was allowed by the learned Magistrate on 4-9-198] and the case was allowed to proceed through counsel Sri M. P. Pandey (vide copy of the order, Annexure IV). It is alleged by the applicant that the said application (Annexure-III) was moved behind his back and when he came to know about the said application and order passed on the said application (Annexures III and IV respectively), he moved an application on 4-9-1991 (Annexure V) stating that the complaint is to abate on the death of the complainant and that arguments be heard on legal points before the case proceeds further. This application of the applicant was rejected by the learned Magistrate after hearing arguments on 16-10-81 (vide copy of the order, Annexure VI). The learned Magistrate accepted the arguments on behalf of the prosecution that Shri M. P. Pandey, Advocate, belongs to the community alleged to have been defamed, hence he can legally prosecute the prosecution case. Learned Magistrate mentioned in his order that Sri M. P. Pandey, Advocate, has

been authorised to prosecute the case on 4-9-1981 and that he does not find any ground to interfere with that order. In the result, the application of the accused applicant was rejected.

5. In the present proceeding, the complaint as well as the entire proceedings in the case have been challenged. It is stated that the date and place of death of Shambhu Nath Pandey a was not disclosed, nor the application was accompanied by any affidavit or death certificate. It is also alleged that Bhu-Bharti magazine is modern and progressive in its views and while upholding the glories of the past has been advocating change and reform and the article in question is in confirmation with the said policy. It is also stated that the article in question which starts OH page 13 has not been correctly reproduced in paragraph 8 of the complaint. In fact, the impugned paragraph is a quotation from a resident of village Palson, which fact has been deliberately concealed in the complaint.

6. Sri M. P. Pandeya, Advocate, has admitted paras 1 to 9, 14, 18, 19 of the affidavit filed on behalf of the applicant in his counter-affidavit and has stated that there was no need of any death certificate inasmuch as death of Shambhu Nath Pandeya was admitted and was never challenged and the counsel for the applicant was present and he argued the case when the order was passed. It is further stated that there was no question of any substitution of the complainant's name as alleged and when no heir or person related to him (Shambhu Nath Pandeya, deceased) has been brought on record, which could be substituted u/s 256, Cr PC. It is asserted that when the complainant is dead the counsel for the complainant can get the proceedings continued after getting the exemption of the complainant. It is also stated that the article in question was defamatory to the whole community of Ahiwasi Brahmins and even the deponent of the counter-affidavit (Sri. M. P. Pandey, Advocate) is an Ahiwasi Brahmin. It is denied that the impugned paragraph of the article was a quotation from village Palson.

7. In the rejoinder affidavit of Hari Narayan Takkar, who is the legal adviser and pairakar of the applicant, the death of Shambhu Nath Pandeya has been denied and challenged. It is also asserted that application (Annexure III) was moved behind the back of the applicant without giving any notice to him.

8. This case came up for hearing before my predecessors, but could not be concluded for one reason or the other.

9. I have heard Sri Tapan Ghosh, Senior Counsel appearing for the applicant and also Sri D. S. Tiwari, appearing for the respondent No. 1.

10. As regards the death of Shambhu Nath Pandey, complainant, it may be mentioned that from para 13 of the affidavit filed by Hari Narayan Takkar on behalf of the applicant, it transpires that some time after 6-6-81 the complainant Shambhu Nath Pandeya died a natural death and during his life-time Sri M. P. Pandey, Advocate, appeared as his counsel in the case. In view of this averments and the fact that the application dated 4-9-1981 (Annexure V) was moved on

behalf of the applicant for abatement of the complaint, the controversy regarding the death of Shambhu Nath Pandeya complainant came to an end. Hence, it is not necessary to dwell on this point.

11. The next question that arises for consideration is, whether on the death of the complainant-Shambhu Nath Pandeya, his counsel Sri M. P. Pandey, Advocate could be allowed to prosecute the case.

12. Learned counsel for the petitioner-applicant has advanced two-fold arguments referring to Sections 199 and 256 of the Cr PC. Firstly, it was argued that Shambhu Nath Pandeya was not an aggrieved person within the purview of Section 199(i), of the Cr PC. Secondly, it was argued that on the death of the complainant, the accused-applicant should have been acquitted for non-appearance of the complainant irrespective of the subject matter of the article in question being or not being defamatory.

13. I will examine both these contentions in seriatim. The word "complaint" is defined in Section 2(d) of the Cr PC. Sri Shambhu Nath Pandeya had filed complaint making allegations and disclosing that the offence u/s 500, IPC has been committed against him, he being an Ahiwasi Brahmin. The alleged offence u/s 500, IPC in the present case is punishable for simple imprisonment up to two years or fine or both. It is a summon's case within the meaning of Section 2(w) of the Cr PC. The word "case" means ordinarily a proceeding for the prosecution of a person alleged to have committed an offence. The general rule is that complaint can be filed by anybody whether he is an aggrieved person or not. Section 199, of the Cr PC lays down an exception to the said rule. u/s 199 Cr PC only an aggrieved person can move a Magistrate in case of defamation. Section 199(1) reads as under :

199. Prosecution for defamation? (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence.

This is subject to two exceptions mentioned in the proviso to Sub-sections (1) and (2) of Section 199, Cr. PC. However, the said two exceptions do not come into play in the present case.

14. Section 199, Cr PC is mandatory, so that if a Magistrate was to take cognizance of offence of defamation on a complaint filed by one who is not an aggrieved person, the trial and conviction of an accused in such a case by the Magistrate could be void and illegal See G. Narasimhan, G. Kasturi and K. Gopalan Ors. Vs. T.V. Chokkappa, : Section 199, creates a bar which has to be removed before cognizance can be taken. The learned counsel for the applicant argued that Shambhu Nath Pandeya-complainant, did not claim to be related to Hardei, whose name is mentioned in the article in question. It was argued that complainant Shambhu Nath Pandeya claimed that he was a Pujari in Sri Thakur Dauji Maharaj Birajman, Kasba Baldeo, district Mathura and was also a teacher in Sri Gomari Madhyamik Vidyalay village Khaira, Police Station Chhata, district

Mathura. The article in question, it was argued, does not relate to the aforementioned two institutions where the complainant was employed. The complainant has made the said complaint on the allegation that he is a member of Ahiwasi Brahmin Community. This community, according to para 2 of the complaint, was originally inhabited in Mathura, Dauji and nearby villages and with the passage of time this community has spread over in the country and abroad. It was argued by the learned counsel for the applicant that Ahiwasi Brahmin community on the showing of the complainant himself is unidentifiable, indefinite and indeterminate body of persons and that no specific imputation has been made to the complainant individually or even as a member of the Ahiwasi Brahmins community.

15. The argument of the learned counsel for the respondent is that Explanation 2 to Section 499, IPC makes it clear that the defamation may take place in respect of a Company or an Association or collection of persons as such. It was then argued that the complainant Shambhu Nath Pandeya being one of the members of the Ahi wasi Brahmin community could make a complaint on behalf of the Ahiwasi Brahmin community as a whole. Learned counsel for the petitioner argued that in any view of the matter the Ahiwasi Brahmin community is not identifiable, definite and determinate body and, therefore, Explanation 2 of Section 499, IPC could not come into play in the present case. He cited in support of this contention the case of Sukamal Kanti Ghosh Vs. Shoulmari Ashram and Another, : Smt. Aruna Asaf Ali and Others Vs. Purna Narayan Sinha, , Narottamdas L. Shah Vs. Patel Maganbhai Revabhai and Another, .In the case of Sukamal Kanti Ghosh Vs. Shoulmari Ashram and Another, the complaint was filed by a member and worker of Shoulmari Ashram against the Editor, Printer and publisher of Bengali Daily "Jugantar". The newspaper had published as news item under the sub-heading "shoulmari Sadhu", the english translation whereof was "The foreign Minister stated that Sadhu of Shoulmari who calls himself to be Subhaschandra Bose is not Netaji and the government has no least doubt about this fact that he is not. The grievance of the complainant was that the said offending publication contained harmful and defamatory imputations concerning the Ashram and, therefore, the complainant as a member thereof on his own behalf and on behalf of the Ashram was "the person aggrieved" and as such he is a competent person to file the complaint. The Calcutta High Court held that the action was not maintainable as Ashram is an indeterminate body.

16. In the case of Smt. Aruna Asaf Ali and Others Vs. Purna Narayan Sinha, , a complaint was filed by the opposite party regarding two articles published in the annual number of "Link News Magazine" dated 15-8-1982 under the captions "Improving the Body Politic" and "Case of an Enchained Eagle" respectively. The first article contained a group of photograph and below it description was "Assam Agitationists. Threat to National Security from inside" and the second article Contained objectionable statement the entire north eastern region is seething with discontent. Assam and other States have become the hotbed of secessionist movement nourished and helped by U. S. imperialists.."The case of the

complainant was that he is one of the agitationists and the impugned articles have been published for defaming and lowering the Assam agitationists in the eyes and estimation of the world public. The Gauhati High Court held that the group of body of persons indicated by the term "agitationists" does not connote a definite or identifiable body. It was, therefore, held that the complainant was not an aggrieved person with regard to the publications made in the aforesaid two articles. It was further observed that the agitationists whose photographs appear in the aforesaid articles might be the aggrieved persons, provided the statement "Threat to National Security inside" be taken as an objectionable and defamatory one.

17. in the case of Narottamdas L. Shah Vs. Patel Maganbhai Revabhai and Another, , lawyers in Gujarat were protesting against the interference of the Govt. in judiciary regarding the appointment and transfer of Chief Justices of High Courts. On account of the agitation, the lawyers ceased to participate in court proceedings and resorted to "satyagraha". The applicant printed an editorial as to whether it behoves to the lawyers as a "Dispute Brokers" (Kazia-Dalals), in the issue of "Jai Hind" Daily dated Oct. 22, 1983. This editorial was in Gujarati. The lawyers were inter alia described as "Kazia Dalals" i. e. Dispute Brokers in the editorial. On complaint filed for defamation by lawyers against the editor, it was held by the Gujarat High Court that the word "Kazia-dalal" used in relation to the lawyers as a class could not be referred to a determinate or identifiable section/class of lawyers, namely the lawyers who were participating in the agitation. It was observed that the alleged defamation could and should be referred to a determinate or identifiable section/class of lawyers as distinguished from the rest of the members of lawyers" fraternity.

18. Learned counsel for the respondent urged that the Ahiwasi Brahmin community is a collection of persons within the meaning of Explanation 2 to Section 499, IPC. He argued that in para 2 of the complaint it is specifically mentioned that the complainant is a member of Ahiwasi Brahmin community.

19. The main question for determination is whether the Ahiwasi Brahmin community is a collection of persons identifiable, definite and determinate in relation to imputations or not. The allegations made in the complaint in the present case go to show that the Ahiwasi Brahmin community originally inhabited in Mathura Dauji and nearby villages and they are not spread over inside and outside the country. The imputations made in the article in question do not relate to any definite and identifiable body of Ahiwasi Brahmin community, who were originally inhabitants of Mathura, Dauji, and nearby villages and are now spread over in the country and abroad. It is not a case in which a class has been defamed. The complainant has not alleged any specific injury to himself. In case of defamation "person aggrieved" is to be treated as equivalent to the expression "person injured". The object of Section 199, appears to limit the right of the com-plainant/person who suffered injury. Ordinarily, it is a person aggrieved who is directly affected and injured. The question whether the

complainant is legally aggrieved has to be determined by the nature of the offence and specific circumstances in each case. No doubt, when collection of persons which is identifiable, definite and determinate in relation to imputation has been defamed, any member thereof may make complaint u/s 199(1) , Cr PC.

20. Learned counsel for the respondent argued that once proceedings are allowed to proceed, the bar created by Section 199, Cr PC is removed and once this bar is removed by filing of the complaint by a proper person Section 199, works itself out. Learned counsel for the respondent cited the case of Ashwin Nanubhai Vyas Vs. State of Maharashtra and Another, : wherein the complainant had died and her mother then applied to the court for substitution as a fit and proper complainant in the case. The complaint was in respect of offence under Sections 417, 499 and 496, of the IPC and the applicant resisted on the ground that offences under Sections 493 and 496, IPC were covered u/s 198, Cr PC and only the aggrieved person could be the complainant and on the complainant's death the complaint must be treated as abated. The Supreme Court held that the mother of the complainant could be allowed to conduct the prosecution. The facts of the present ; case are distinguishable as it did not relate to defamation and it related to committal enquiry of the accused-applicant, who was charged under aforementioned sections. This point will also be discussed when I will deal regarding the abatement of the complaint.

21. We have already discussed the case law i relied upon by the learned counsel for the ac-cused applicant. No doubt, any member of an association, or a collection of persons may file a complaint for defamation, but this collection or association of persons means identifiable and determinate body. In the present case Ahiwasi Brahmin community cannot be said to be identifiable, definite and determinate on the allegations contained in the complaint itself without alleging any individual injury to the complainant. The aforesaid rulings go to show that the advocates as a class are incapable to being defamed where imputation was made only in respect of lawyers class as a whole as "Kazia-dalals", nor the term agitationists used in the article in question connote to a definite and identifiable body. A scene in the movie objected to, depicted some orthodox section of Brahmin community uttering contemptuous words against Bhangi community in general. It. was held that it would not amount to act of defamation against Bhangi community as it was not directed against any individual or a particular group of individuals who could be identified or particularised. (See Raj Kapoor v. Narendra Naranabhai Nagardas; (1974) 15 Guj LR 125). If a person wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point out to the particular individual. (See Eastwood v. Holmes (1858) 1 F & F 347).

22 Sri D. S. Tiwari, learned counsel for the respondent No. 1, has vehemently argued that the respondent No. 1 is an aggrieved person within the meaning of Section 199(1) Cr PC and that respondent No. 1 namely Shambhu Nath Pandey as well as Sri M. P. Pandey, Advocate, come within the purview of "aggrieved

persons" as they are members of Ahiwasi Brahmin community. He has made reference to Section 499, Explanation 2, IPC which provides that it may amount "Defamation" to make an imputation concerning a company or an association or collection of persons as such. In order to buttress his submission, he has cited two rulings, namely M.P. Narayana Pillai and Others Vs. M.P. Chacko and Another, , and K.M. Mathew and Others Vs. T.V. Balan, . Referring to these two rulings Sri D. S. Tiwari canvassed that when defamatory statements are imputed to some of the leaders, it is not definite but when it refers to all leaders it is definite. Sri Tiwari also urged that a defamatory statement affecting each member of a community is definite and, therefore, the respondent No. 1, Sri Shambhu Nath Pandey a as well as Sri M. P. Pandey, Advocate, are aggrieved party and the prosecution of the applicant on the complaint is legal and maintainable.

23. I have given my anxious and careful consideration to the submissions made by Sri D. S. Tiwari and have perused the aforecited two rulings but I am unable to accede to his contentions. In the case of M.P. Narayana Pillai and Others Vs. M.P. Chacko and Another, it has been held by Kerala High Court that when imputations against Syrian Christian Community, which is not a determinable body are made the imputations do not amount to defamation. In that case an article written by the Ist petitioner was published in two parts under the caption "Syrian Christians and National integrity". The scandalous imputations in the complaint were :

- (1) Some Syrian Christian girls working abroad are engaged in prostitution for livelihood;
- (2) Syrian Christian ladies are being sent to nunneries on account of financial incapacity of their parents to give them away in marriage; and
- (3) Mother Theresa who is considered to be a living Saint of Christian community is alleged to be doing missionary work for publicity alone. The Kerala High Court held as follows :

...What Explanation 2 to S. 499, IPC speaks is an association or collection of people as such capable of being defamed. Such persons must be a definite and determinable body. Then only the imputations could be said to relate to its individual members or components. If only there is some definite body of persons capable of being identified, it could be said that the defamatory matter applies to all of them. Only if there is a definite association or collection of persons capable of being identified it could be said that the imputation affects all of them and any member of the class could say that as a member of that class the imputation is against him also personally. When an indefinite and unascertainable body of people is defamed it may not be possible to single out individuals and say that they are also defamed. Imputations should be capable of being located as aimed at particular individuals or collection of individuals capable of being ascertained. The imputations must relate to all of them also.

There cannot be defamation against a community as such. Community as such may not have reputation, but the reputation will only be of individual members. When the defamatory matter affects each and every member of an ascertainable class or group each of them or all of them could set the law in motion. If actually a collection or class of people is ascertainable with definiteness it could be said that the specific group of persons as distinguished from the rest of the community was defamed. Identity of the collection of the people will, have to be established in relation to the defamatory imputations....

24. It was observed by the Kerala High Court that imputations are alleged to be against Syrian Christian community as a whole and the complaint was filed by the 1st respondent only in his capacity as a member of that community and not as a person who was individually affected by the imputations. In this ruling *K.M. Mathew and Others Vs. T.V. Balan, and Raj Kapoor* (1974 (15) Guj LR 125) (supra) have been referred to. In the former case, the imputation was against some leaders of the teachers who were on strike and it was held that all the leaders will not suffer, their reputations and a member of a unidentifiable group was not entitled to maintain an action. In the latter case, the imputations were against the Bhingi community in general and it was held that the imputations would not amount to defamation because they were not directed against any particular group or members of that community which could be identified.

25. The rulings cited by the learned counsel for the respondent No. 1 thus are of no assistance to him in support of his contention. Both the rulings hold that u/s 499, Explanation- 2, IPC only a definite and determinable body would amount to "Collection of persons."

26. Applying the aforementioned principles, let us consider as to whether the case in hand satisfied the test of Explanation 2 to Section 499, IPC. As already discussed, the impugned article refers to Ahiwasi Brahmin community as a whole relating to Hardei incident. Ahiwasi Brahmin community is spread over in India and abroad as already mentioned above and it is a fluctuating body and is indefinite and unascertainable body of people and it is not possible to single out individuals of such community and say that they are also defamed. The imputation in the alleged article does not relate to all the individuals of said community. As held in the aforementioned rulings of *M.P. Narayana Pillai and Others Vs. M.P. Chacko and Another, and Raj Kumar* 1974 (15) Guj LR 125) (supra) there cannot be defamation against a community as such. The imputation in the impugned article published in "Bhu-Bharti" is not directed against any particular group of Ahiwasi Brahmin community which could be identified. Both respondent No. 1 Sri Shambhu Nath Pandeya as well as Sri M. P. Pandey, Advocate, claim prosecution of the applicant on the basis of the complaint filed by the respondent No. 1 only in his capacity as a member of Ahiwasi Brahmin community and not as a person who was individually affected by the imputation.

27. On consideration of factual and legal matrix, I am of the opinion that Ahiwasi

Brahmin community cannot be said to be a collection of persons, which is identifiable, definite, determinate in relation to the imputations made in the article. In view of this Sri Shambhu Nath Pandeya, who has not alleged any individual injury to himself, nor claims to be a relation of Hardei is not an aggrieved person within the meaning of Section 199, Cr PC. The provisions of Section 199, Cr. PC. are mandatory and non-compliance thereof vitiates the cognizance of the complaint taken by the Magistrate and the entire criminal proceedings. The judicial act of taking cognizance in violation of the power itself will be an abuse of process of the Code.

28 The next point to be considered is, whether on the death of the complainant Shambhu Nath Pandeya, his counsel Sri M. P. Pandey, Advocate could be substituted or allowed to conduct the prosecution or the case should have abated on the death of the complainant.

29. Learned counsel for the respondent No. 1 vehemently argued that the complainant Shambhu Nath Pandeya was represented by his counsel Sri M. P. Pandey and u/s 302(2) Cr PC Sri M. P. Pandey, Advocate, can be allowed to conduct the case on the death of complainant Shambhu Nath Pandeya. In support of this contention, he relied on the case of Ashwin Nanubhai Vyas Vs. State of Maharashtra and Another, wherein the question involved was, whether the mother, who was substituted for the original complainant being her daughter could be allowed to conduct the prosecution of the death of the complainant. The Supreme Court observed that though the Court cannot substitute a new complainant it has power under Sec. 495, Cr PC (Old) to authorise to conduct the prosecution by any person. It was also observed that the Code of Criminal Procedure provides only for the death of an accused or an appellant but does not expressly provide for the death of a complainant. The argument in support of the abatement of the case was based on the analogy of provision u/s 431, Cr PC (Old) under which the appeal abates and Sections 247, and 259, Cr PC (Old) under which on the complainant remaining absent the Court can acquit or discharge the accused. This argument was not accepted by the Supreme Court as this could happen only in a trial of summons cases. It was thus held that not being the trial of the summons case but. a committal enquiry, Section 247, Cr PC (Old) neither applies, nor can it apply under valid analogy. That case was for the offence under Sections 417, 493 and 496, IPC as the applicant went through a sham marriage with the complainant Kusum, before a person who posed as an Officer from the office of the Registrar for Marriages. Subsequently, applicant abandoned her and married another. The Supreme Court observed that though the Magistrate has used the word "substitution" of a new complainant but that is not the effect of the order, what the Presidency Magistrate has done was to allow the mother to act as complainant to conduct the prosecution, which power he possesses u/s 495 of the Code. It was also observed that Section 198, Cr PC itself contemplates that a complaint may be made by a person other than the person aggrieved and there seems no valid reason in such a serious case to hold that the death of the complainant puts an end to the prosecution. In my opinion

the said ruling does not go to help the respondent as the facts of the present case are entirely different. In the present case, the complaint is for the offence u/s 500, IPC and Section 199, Cr PC contains mandatory provision for the Court not to take cognizance of an offence except upon a complaint made by some person aggrieved by the offence. Section 256, Cr PC applies where the complainant does not appear in a summons case, where three courses are open to the Magistrate when the complainant is absent on the date of hearing, either acquit the accused; or to adjourn the case for a future date or to dispense with the attendance of the complainant and proceed with the case. Sub-section (2) has been added to Section 256, Cr PC to make a legal provision that "death" and "absence" of the complainant stand on the same footing in the matter of ending or proceeding (the case. Subsection (2) of Section 256, Cr PC has widened the scope of sub-Section (1) of Section 256, Cr PC so as to empower the Magistrate prosecution to be conducted by a proper person in place of the complainant.

30. Learned counsel for the applicant argued that in view of the provisions of Section 256, Cr PC the criminal case should have come to an end on the death of complainant Shambhu Nath Pandeya. Learned Counsel for the applicant cited the case of Subbanna Hegde and Others Vs. Dyavappa Gowda, wherein it has been held that when summon is issued on the complainant and on the day appointed for the appearance of the accused the complainant does not appear notwithstanding what is contained in the Code of Criminal Procedure, the Magistrate shall acquit the accused unless he thinks proper for reasons to be recorded to adjourn the hearing of the case to any another date though the provisions do not empower the Magistrate to make an order of acquittal on the absence of the complainant but to make adjournment of the case to any future date where it is possible for the complainant to appear on another date, it was further observed that where the complainant has died, there being no such question of his appearing on the future date the adjournment of the case for any future date does not arise. Provisions also make it clear that the Magistrate can either adjourn the case or acquit the accused on the very date on which the complainant is absent. It has also been observed that the complainant referred to in Section 256, has to be understood as the one whose sworn statement was recorded u/s 200 Cr. PC. On the death of the complainant, no other person can be deemed to be a complainant however interested he may be in the case. This view finds support from the decision in Nanilal Samanta Vs. Rabin Ghosh, :

31. In the Old Cr PC there was no provision regarding non-appearance on the death of the complainant in a summons case but now Sub-section (2) lays down that the provisions of" Sub-section(1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death. As already stated, the aforesaid three courses are open to the Magistrate on the non-appearance of the complainant on the date the accused is summoned. It is quite clear that the appearance of the complainant who has died cannot be ensured either by adjourning the case or by dispensing with his attendance. Thus, the only course open to the Magistrate could be in a case of death of the complainant

in summons case to acquit him. It may further be mentioned that u/s 256(2), Cr PC which indicates that this Sub-section does not require the accused necessarily to be acquitted on the death of the complainant and it would depend upon the facts and circumstances of each case by inserting the present Sub-section (2). "Death" and "absence" even being on the same footing. It is thus clear from the foregoing discussion that in the present case which was instituted on the complaint of Shambhu Nath Pandeya for defamation and the imputations in the article in question not being related to him and Ahi wasi Brahmin community not being a definite, particularised, identifiable collection of persons and the said complainant having died, learned Magistrate was in error in proceeding with the case on the aforesaid complaint on the death of the complainant by allowing his counsel Sri M. P. Pandey to conduct the prosecution.

32. In the result, the present application u/s 482, Cr PC is allowed and the impugned complaint as well as the entire proceedings in Case No. 58/IX of 1981, u/S. 500, IPC are hereby quashed.