

KANWAL LAL

1962

September, 28.

v.

STATE OF PUNJAB

(S. J. IMAM, N. RAJAGOPALA AYYANGAR and
J. R. MUDHOLKAR, JJ.)

Defamation—Accusing a person to be a prostitute—Statement made in complaint to Panchayat Officer—Whether protected—Panchayat Officer, if had authority to take cognizance of offence—Whether statement made in the interest of the maker—Punjab Gram Panchayat Act, 1952 (4 of 1953), ss. 38 and 42—Indian Penal Code, 1860 (Act XLV of 1860), s. 500 exceptions 8, 9.

The appellant a public servant, addressed a communication to the Panchayat Officer alleging that the complainant was a prostitute and that she should be removed from the house in which she was living. He was prosecuted and convicted of the offence of defamation under s. 500 Penal Code. The appellant contended that he was protected by exceptions 8 and 9 to s. 500.

Held, that exceptions 8 and 9 to s. 500 were not applicable to the case and that the appellant was rightly convicted. Exception 8 was applicable only in cases where the defamatory statement was contained in a complaint to a person who had lawful authority over the person concerned in respect of the subject matter of the accusation. Prostitution was not an offence of which cognizance could be taken under the Punjab Gram Panchayat Act, 1952. Besides s. 42 barred the Gram Panchayats from taking cognizance of any offence in which either the complainant or the accused was a public servant.

Exception 9 applied to cases where the imputation was made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good. Even assuming good faith, exception 9 was not applicable merely on account of the imputation having been made in the interest of the appellant. It was further necessary that the person to whom the communication was made must have an interest in protecting the person making it. Besides the *bonafides* of the person making the imputation, the person to whom the imputation is conveyed must have a common interest with the person making it which is served by the communication.

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Harrison v. Bush, (1855) 5 E. & B. 344 : 119 E.R. 509,
 referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal
 Appeal No. 106 of 1961.

Appeal by special leave from the judgment and
 order dated May 11, 1961, of the Punjab High Court
 in Cr. R. No. 580 of 1961.

Naunit Lal, for the appellant.

Gopal Singh and *P. D. Menon*, for the respondent.

1962. September 28. The Judgment of the
 Court was delivered by

Ayyangar, J.

AYYANGAR, J.—This is an appeal by special leave against the judgment of the High Court of Punjab by which a Criminal Revision filed against an appellate order of the Additional Sessions Judge, Ludhiana confirming the appellant's conviction and sentence was dismissed *in limine*.

The facts giving rise to the appeal lie in a very narrow compass. The appellant was prosecuted on a complaint filed by Mst. Ram Rakhi of the offence of defamation under s. 500, I.P.C. The appellant and Mst. Ram Rakhi were neighbours. The defamatory matter was contained in a communication addressed by the appellant who is a member of the police force to the District Panchayat Officer, Ludhiana. In this "application" the appellant alleged that the complainant was a woman of loose character who was having illicit connection with goondas, her paramours coming to her frequently at nights and that her immoral activities reflected badly on the locality in which the appellant lived. There is no doubt that this was grossly defamatory of the complainant. The defence of the appellant substantially was that in substance the allegations were true and that he was entitled to make this application

to the Panchayat in order to seek the assistance of that body for getting the complainant out of the locality and for this purpose he relied upon the last paragraphs of the application which ran :

"Petty problems like this can be easily solved by the village Panchayat instead of referring the case to the Court. It is therefore requested that the Panchayat of village Sanghol (P. O. Sanghol) District Ludhiana may kindly be asked to take suitable action to end this prostitution add after getting the house in which Shadi (father of the complainant) is residing at present, vacated from him."

The learned Magistrate considered a large volume of evidence that was led as regards the plea of justification as well as of the qualified privilege within exceptions 8 and 9 of s. 499, I.P.C., and rejecting the defence, convicted the appellant of the offence charged and sentenced him to undergo rigorous imprisonment for six months. The appellant filed an appeal which was dismissed by the Additional Sessions Judge and he recorded :

"I come to the conclusion that accused Kanwal Lal was rightly convicted and sentenced by the Trial Court. The offence against him is fully established. He deserves no mercy. He was employed in the office of the Inspector General Police, Punjab Chandigarh and he tried to use his office which he was holding simply to over-awe the poor complainant and her parents, just to get the possession of his house from them. The quantum of sentence passed against the accused appears to be correct in view of his first offence and youthful age."

It was the revision filed against this judgment that was dismissed *in limine* by the High Court.

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There being no dispute about the publication or of the published matter being defamatory being of a character falling within s. 499, I.P.C., the only argument that was addressed before us was based upon the case falling within Exceptions 8 and 9 to s. 499, I.P.C. Exception 8 runs in these terms :

‘It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

In order to establish a defence under this exception the accused would have to prove that the person to whom the complaint was made had lawful authority over the person complained against, in respect of the subject-matter of the accusation. If the District Panchayat Officer or the Panchayat had such lawful authority, the last paragraph of the offending communication would have justified such a plea. But there is no basis at all for this argument in view of the clear provisions of the Punjab Gram Panchayat Act, 1952, under which statute alone Panchayats have jurisdiction. Chapter IV of that Act deals with the Criminal Jurisdiction of the Panchayat. Section 38 with which that Chapter opens enacts:

“The criminal jurisdiction of a Gram Panchayat shall be confined to the trial of offences specified in Schedule 1A.”

Prostitution is not an offence under the Indian Penal Code and the keeping of a disorderly or bawdy house is not an offence within Schedule 1A to which offences alone the criminal jurisdiction of Panchayats extends. If this were not sufficient to negative any defence based upon Exception 8, reference may be made to s. 42 of the Gram Panchayat Act which by its 1st sub-section enacts:

“Subject to the provisions of sub-s. (3) no panchayat shall take cognizance of any offence under the Indian Penal Code, 1860 in which either the complainant or the accused is a public servant.”

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So even if the complaint should be taken to be a complaint of a public nuisance it was doubly excluded from the jurisdiction of the Panchayat since the appellant was a public servant. The defence based on Exception 8 must therefore fail.

Nor is there more substance in the invocation of the 9th exception. That exception runs:

“It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or of the public good.”

Even if good faith be taken to have been established, the imputation has to be made for the protection of the interest of the person making it. Learned Counsel suggested that the terms of the provision were satisfied since the appellant made the accusation to protect his own interest. That is certainly not the meaning of the exception. It posits that the person to whom the communication is made has an interest in protecting the person making the accusation. In other words, besides the bona fides of the person making the imputation, the person to whom the imputation is conveyed must have a common interest with the person making it which is served by the communication. This exception merely reproduces the principle laid down by Lord Campbell, C. J., in *Harrison v. Bush* (1).

“A communication made bona fide upon any subject matter in which the party communicating

(1) (1855) 5 E. & B., 344, 348; 119 E. R. 569.

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has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contains criminalatory matter which, without this privilege, would be slanderous and actionable.”

The point of difference between exceptions 8 and 9 is that whereas in the former the person to whom the complaint is made must have lawful authority to deal with the subject matter of the complaint and take proceedings against that person, there is no such requirement in exception 9 where it is sufficient if a communication is made to a person for the protection of one's own interest in which the other also has an interest. This is clearly brought out by the illustrations to the exception.

It cannot be seriously suggested that the communication now in question satisfies this test.

The appellant was therefore properly convicted of the offence and nothing was said about the sentence. The appeal fails and is dismissed.

Appeal dismissed.