

according to their own contention and the facts found, inconsistent and incapable of performance; and it is impossible for them to contend that the building which has been erected in compliance with the permission accorded, is in contravention thereof because it did not also conform to a direction utterly irreconcilable with that permission. Neither the law nor any direction purporting to be made under the law can compel any person to do what is impossible; and a permission which involves a condition absolutely inconsistent with its own terms could not come within the category of legal orders. The lower Courts, however, have concurred in finding that the permission given is, in reference to the facts established, susceptible of but one interpretation, and that the building erected by the plaintiff is not in contravention of the permission so interpreted. On these grounds the appeal must be rejected and the decrees of the lower Courts must be confirmed with costs.

FULTON, J. :—I concur.

Decrees confirmed.

FULL BENCH.

CRIMINAL REVISION.

Before Sir L. H. Jenkins, Chief Justice, Mr. Justice Ranade, Mr. Justice Fulton, Mr. Justice Crowe and Mr. Justice Batty.

CHHOTALAL LALLUBHAI (ORIGINAL COMPLAINANT), APPLICANT, *v.*
NATHABHAI BECHAR AND ANOTHER (ORIGINAL ACCUSED), OPPONENTS.*

Criminal Procedure Code (Act V of 1898), Sec. 4 (h), Chap. XV, Part B, Secs. 191, 195, 196, 198, 199, and Sec. 345—Penal Code (Act XLV of 1860), Sec. 499, Explanation I—Defamation of wife—Complaint by husband—Aggrieved party.

Held by the Full Bench (Ranade, J., dissenting) that under the provisions of the Criminal Procedure Code (Act V of 1898) a husband is entitled to be complainant where the alleged offence is defamation, imputing unchastity to his wife.

* Criminal Application for Revision, No. 70 of 1900.

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APPLICATION for revision under section 435 of the Criminal Procedure Code (Act V of 1898) against an order passed by F. X. DeSouza, Sessions Judge of Ahmedabad.

The complainant Chhotalal Lallubhai lodged a complaint in the Court of the City Magistrate of Ahmedabad against Nathabhai Bechar and Ambashankar Dalsukhram charging them with having defamed his (complainant's) wife by imputing unchastity to her.

The Magistrate on the authority of *Imperatrix v. Kustantin John de Souza* ⁽¹⁾ discharged the accused under section 253 of the Criminal Procedure Code (Act V of 1898). The following is an extract from his judgment :—

“If the husband of a woman can be considered to be aggrieved when her chastity be called in question, why should not her parents, brothers, sisters and children be considered, if not more at least as much, aggrieved as the husband himself? The reputation of the parents, I should think, suffers greater injury, and the reputation and the prospects of the brothers, sisters and children suffer greater harm from a social point of view as regards marriage and other caste matters, than the reputation and prospect of the husband. A woman married or a widow or a virgin may in some cases be living with her old decrepit father or mother, or a sickly brother, or sister or a son or daughter of tender years, and may be the sole person on whom such a relative could depend for his or her nursing and care. In the event of her being defamed, can the law permit such a relation to file a complaint on the grounds that his or her reputation has suffered injury, and that in the event of the woman being outcasted he or she would not be able to live with her, would not for some reason or other be able to secure the aid and care of another nurse in her place, would not be able to obtain protection from another relative, and would consequently suffer harm in body or mind or both? When once the boundary laid down by law is crossed, where should the limit be fixed and to what degree of relationship should the privilege of bringing a complaint be extended or restricted? I think it would not be proper according to law to allow any such relative to be complainant. Why should, then, the husband be allowed to claim a greater privilege?”

“The offence of defamation is compoundable: *vide* section 345, Criminal Procedure Code. The only person who can compound it is ‘the person defamed.’ Hundreds of cases may be conceived in which a husband may be quite anxious to run to Court for defamation of his wife, but the wife herself may be quite averse

(1) Criminal Rulings of the Bom. H. C. R., No. 14 of 1887—

Held (West and Birdwood, J.J.) that, in a case of defamation of a female, it is she herself, and not a male relative, who should make a complaint under section 193 of the Criminal Procedure Code (Act X of 1882).

to such a course. Who can, in the event of a complaint being filed, then compound the offence? The wife and not the husband. When, then, once the provisions of section 198, Criminal Procedure Code, are made elastic to suit the convenience of the husband, why should those of section 345, Criminal Procedure Code, not be made equally so? And would such a course be legal and proper? I am respectfully of opinion that it would not be."

The Sessions Court at Ahmedabad having confirmed the Magistrate's order of discharge, the complainant applied to the High Court in its extraordinary jurisdiction (section 435 of the Criminal Procedure Code, Act V of 1898) and obtained a rule *nisi* calling on the accused to show cause why the order of the Sessions Judge should not be set aside.

Lallubhai A. Shah appeared for the complainant in support of the rule.

There was no appearance for the opponents (accused).

The case was argued before a Division Bench composed of Fulton and Crowe, JJ., which referred it to a Full Bench. The following was the referring judgment:—

FULTON, J.:—We are inclined to agree with the decision of the Madras High Court in *Chellam Naidu v. Ramasami*⁽¹⁾ 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 the case under section 198 of the Criminal Procedure Code. It seems to us that such an imputation made by a third person concerning the wife causes a direct injury to the honour and reputation of the husband.

But we find that in Criminal Reference No. 14 of 1887 this Court came to a contrary decision, and as it seems impossible to distinguish that case from the present, we have decided to refer the question to a Full Bench.

The question being thus referred, it was argued before the Full Bench composed of Jenkins, C. J., Ranade, Fulton, Crowe and Batty, JJ.

Lallubhai A. Shah, for the complainant:—We say that a husband is a party 'aggrieved' within the meaning of section 198 of the Criminal Procedure Code. The use of the words "some person" in the section shows that the Legislature did not intend to

(1) (1891) 14 Mad., 379.

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limit the right only to the person actually defamed. The word 'aggrieved' also does not mean only the person against whom and in respect of whom the defamatory matter is published; it means any person who is in any way concerned in, and affected by, the publication. The general rule in criminal matters is that any person who has the knowledge of the facts constituting an offence can lodge a complaint—section 190 of the Criminal Procedure Code; *In Re Ganesh Narayan Sathe* ⁽¹⁾. The words in section 198 should be liberally construed. Criminal law regards the husband and wife as one person: see sections 216 and 216A of the Indian Penal Code. There are only two rulings on this point, namely, *Imperatrix v. Kustantin John de Souza* ⁽²⁾ and *Ohellam Naidu v. Ramasami* ⁽³⁾. In the first case there is no written judgment, and no reasons are given in support of the ruling. The second supports our contention. The ruling in *Brahmanna v. Ramakrishna* ⁽⁴⁾ does not touch the point.

[JENKINS, C. J.:—Does not the defamation of the wife in this case, that she is unchaste and adulterous, amount to defamation of the husband, inasmuch as it might affect his reputation and *status* in the caste?]

We submit that it would be defamation of the husband, and he would certainly be an 'aggrieved' party within the meaning of section 198 of the Criminal Procedure Code.

There was no appearance for the opponents (accused) to show cause against the rule.

The judgment of the Full Bench (Ranade, J., dissenting) was delivered by

JENKINS, C. J. (Fulton, Crowe and Batty, JJ., concurring):—The question arising on this reference is whether, under the provisions of the Code of Criminal Procedure, a husband is entitled to be complainant where the alleged offence is defamation imputing to his wife unchastity.

The solution of this question turns on the meaning to be ascribed to the expression in section 198 of the Code "by some

(1) (1889) 13 Bom., 600.

(2) (1891) 14 Mad., 379.

(3) (1887) Cr. Rul. No. 14.

(4) (1894) 18 Mad., 250.

person aggrieved by such offence." The referring Bench favoured the view that the husband could complain, but were pressed by an earlier unreported decision of this Court where the opposite view was taken ; hence this present reference.

Now it will be as well, in the first place, to examine the general scheme of the Code with reference to the initiation of proceedings by complaint. The nature of a complaint we learn from section 4 (h), which provides that "'complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence."

Part B of Chapter XV of the Code deals with the conditions requisite for the initiation of proceedings, and by section 190 it is enacted that "except as hereinafter provided, any Presidency Magistrate, District Magistrate, or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence upon receiving a complaint of facts which constitute such offence." So far there is no limitation as to the person who can complain. By sections 195, 196, 198 and 199 the capacity to complain in respect of certain specified offences is limited to the persons described in those sections. Thus we find that under section 198 the Court cannot take cognizance of the offence of defamation "except upon a complaint made by some person aggrieved by such offence." A consideration of the offences named in sections 198 and 199 makes clear what the motive for the restriction is. The offences named in section 198, *e. g.*, are (1) criminal breach of contracts of service, (2) defamation and (3) the offences relating to marriage except adultery and enticing or taking away or detaining with a criminal intent a married woman. The offences of adultery and enticing away, &c., a married woman require under section 199 that the complaint should be made by the husband, or, in his absence, by some one who had care of her on his behalf. All these offences are obviously of a private character, and hence the limit on the persons by whom initiation of proceedings is allowed ; for it would be eminently undesirable that any one should have it in his power to drag into a Court of justice offences of

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this sort, and that I take to be mischief against which it is sought to guard.

Now it does not appear to me that a husband complaining of an imputation of unchastity on his wife's part would *primd facie* come within the mischief; and I think one is entitled to approach the question in the light of this consideration, and to ask whether there is anything in the expression 'some person aggrieved by such offence' that excludes him from being a competent complainant. I am unable to find in the Code any limitation of the sense in which the word 'aggrieved' is used. Nor is there any indication of the kind of grievance which may qualify a man to complain. Still I think it must be conceded that any fanciful or sentimental grievance would not suffice: it must be such a grievance as the law can appreciate: it must be what has been termed a legal grievance and not a *stat, pro ratione voluntas* reason.

Is, then, an imputation of unchastity in his wife a legal grievance to a husband? It appears to me that *a priori* it clearly is, though there no doubt may be special circumstances under which it would not be. Whether or not such special circumstances exist, is a question for determination on the facts of each case as it arises. My reason for saying that such an imputation is *primd facie* a legal grievance to the husband is this; it is a grievance capable of recognition by a Court of justice; for it is one that will entitle him to recover such special damages as may have resulted to him from it; and as has been said, "the reputation of a husband is so intimately connected with that of his wife, that he has always been allowed to sue whenever he has received damage just as though the words had been spoken of himself." Moreover, common experience of life shows that a husband under ordinary circumstances suffers by the evil reputation of his wife. Obviously, then, the grievance to the husband cannot be described as merely sentimental.

It seems to me impossible to limit the scope of the expression "some person aggrieved" to those by whom an offence may under section 345 of the Code of Criminal Procedure be compounded. If that were the true view, then it is only the person defamed

who can complain. But in that case Explanation I to section 499 of the Indian Penal Code (Act XLV of 1860) becomes a dead letter. That explanation makes the defamation of a deceased person an offence; but if it is only the person defamed who can complain, it follows that there is no one who can initiate proceedings, and that I cannot suppose was ever intended, or can be the actual result of section 198.

The view, too, that the capacity to complain is not limited by section 345 finds, I think, some support in the form of the expression "some person aggrieved".

The conclusion, then, to which I come is, first, that the expression "some person aggrieved" is not necessarily limited to the person defamed, and secondly that *prima facie* a husband is a person aggrieved by an imputation of unchastity to his wife with whom he is living, and I would so answer the question referred.

I have not referred to the decided cases, for it appears to me that our office sitting here as a Full Bench is to ascertain the meaning of the Code. Still it will not be inappropriate to point out, as in some measure favouring the conclusion I have expressed, that the only reported case on the point prior to the recent re-enactment of the Criminal Procedure Code was that of *Chellam Naidu* ⁽¹⁾, in which a husband was held to be a person aggrieved by the imputation of unchastity to his wife. Yet with that decision before them the framers of the new Code deemed no amendment necessary, a fact which, so far as it goes, favours the conclusion at which I have arrived.

RANADE, J.:—The question referred to the Full Bench is whether the husband of a married woman, who is defamed by the imputation of unchastity, can be regarded as a "person aggrieved" within the meaning of section 198 of the Criminal Procedure Code, which provides that no Court shall take cognizance of an offence under Chapter XXI, Indian Penal Code, except upon a complaint made by some person aggrieved by such offence. The Judges of the Division Bench, who made the reference, were inclined to agree with the decision in *Chellam Naidu v. Ramasami* ⁽²⁾ in which it was held that when a married woman is

(1) (1891) 14 Mad., 379.

(2) (1891) 14 Mad., 379.

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defamed by the imputation of unchastity, her husband is a person aggrieved within the meaning of section 198 of the Criminal Procedure Code.

In a later case (*Brahmanna v. Ramakrishna*⁽¹⁾) which related to a civil suit brought by a person to recover damages caused by an imputation that his wife had committed adultery with a *Paria*, and that her children were born of that *Paria*, Justice Muttuswami Ayyer said that there was no occasion to depart from the rule that the person who is defamed or slandered ought to sue, and that as plaintiff's wife was *sui juris* no other person was permitted to sue. In so deciding this point, Justice Ayyer relied upon a previous decision (*Subbaiyar v. Kristnaiyar*⁽²⁾) which also related to a civil suit, and reference was made to *Daya v. Paramasukh*⁽³⁾ and *Luckumsey v. Hurbun*⁽⁴⁾, in the first of which cases a father was not allowed to sue for the defamation of his daughter, and in the second a *bhauband* of a deceased person was held not entitled to sue for the defamation of that person. These decisions in civil suits are of course not strictly applicable in the present case, which relates to a criminal proceeding, and the point in dispute is confined to the interpretation of the word "aggrieved" used in section 198 of the Criminal Procedure Code. These decisions, however, suggest the principle which ought to govern the relations of wife and husband in complaints of defamation. If the husband of the slandered person is not permitted to sue for the imputation on his wife's character, it cannot be assumed that, in the absence of special injury to himself, the husband would be permitted to make a complaint in respect of a slander of his wife. The force of the Madras decision in *Chellam Naidu v. Ramasami*⁽⁵⁾ is thus considerably shaken by the later decision.

In Bombay the understanding has always been that none other but the female defamed, and not her male relations, can bring the complaint. See *Imp. v. Kustantin John de Souza*⁽⁶⁾. The order passed in this last case is very brief and gives no reasons, but it may be safely gathered that the Judges, who disposed of the criminal reference, must have thought the person aggrieved in

(1) (1894) 18 Mad., 250.

(2) (1876) 1 Mad., 333.

(3) (1888) 11 All., 104.

(4) (1881) 5 Bom., 580.

(5) (1891) 14 Mad., 379.

(6) (1887) Cr. Rul. No. 14.

section 198, Criminal Procedure Code, was the person defamed. There is one decision in our Bombay Reports (*Queen-Empress v. Bai Ruksimoni*⁽¹⁾) which was passed expressly on section 198, Criminal Procedure Code, in connection with a prosecution under section 494, Indian Penal Code. There the wife of a lunatic was prosecuted for bigamy on the complaint of the lunatic's brother, and it was held that this brother was not a person aggrieved within the meaning of section 198, Criminal Procedure Code.

Explanation I to section 499, Indian Penal Code, permits that the near relations of a deceased person may complain of a defamation imputing anything to a deceased person if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or near relatives. It will appear from this that though generally the person defamed is the person aggrieved, yet, in the case of a deceased person, an exception is made which allows the relations to complain when the imputation harms the reputation of the deceased and also at the same time hurts the feelings of living persons. The word "aggrieved" is used in reference to three different complaints: 1st, in regard to complaints under Chapter XIX; 2nd, in complaints under defamation; and 3rdly, in offences against marriage—sections 493 to 496, Indian Penal Code. In cases of adultery—sections 497 and 498, Indian Penal Code—it is expressly provided by section 199, Criminal Procedure Code, that either the husband or in his absence some person who had care of the wife may complain. The person defamed is obviously not always the person aggrieved. In the case of a deceased person, the aggrieved complainant may be other than the person defamed, but the section lays down that such a living person may complain if the imputation was intended to be hurtful to the feelings of living persons besides being harmful to the deceased.

In the present case, Chhotalal does not, however, complain that his reputation has been injured. In his complaint he says it is his wife who is defamed, and his name is included as being the husband of so and so. Under these circumstances, he cannot be regarded as an aggrieved person under section 198, Criminal

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(1) (1886) 10 Bom., 340.

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Procedure Code, read along with section 345, Criminal Procedure Code, which expressly enacts that the person defamed is the only person who can compound. If, as in the cases quoted above, brother and father were held not entitled to bring civil or criminal complaints, there is no ground for distinguishing the husband from other near relations. It would be a serious anomaly to hold that though the husband may complain, the wife may undo its effect by compounding under section 345, Criminal Procedure Code.

The imputation about eating and drinking was clearly personal and confined to the wife. The imputation about the wife's having intercourse with men of low caste is of a similar character. The sting there is of an offence against caste and not an offence against the law or morals. No caste meeting was held charging Chhotalal for the fault of his wife, and there is nothing to show that anything was intended as against Chhotalal by the caste.

Under these circumstances the person aggrieved under section 198, Criminal Procedure Code, was the person who was defamed and who alone could compound. I would, therefore, reply to the reference made to us by saying that the Bombay decision was correctly decided and that the decision in *Chellam Naidu v. Ramasami*⁽¹⁾ must be regarded as overruled by the decision in *Brahmanna v. Ramarkishna*⁽²⁾. The person aggrieved may be other than the person defamed under special circumstances, but the complaint in this case does not disclose such circumstance, and, therefore, the general law must govern.

Order according to the decision of the Full Bench.

(1) 1891) 14 Mad., 379.

(2) (894) 18 Mad., 250.