

**Raju Vs. Chacko**

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**Court :** Kerala

**Decided On :** Sep-05-2005

**Reported in :** 2005(4)KLT197

**Judge :** R. Basant, J.

**Acts :** [Press and Registration of Books Act, 1867](#) - Sections 2, 3, 5 and 12; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 499 and 500; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 199(1) and 482

**Appeal No. :** CrI. M.C. No. 4310 of 2001

**Appellant :** Raju

**Respondent :** Chacko

**Advocate for Def. :** M.N. Sukumaran Nayar, Sr. Adv. and; S. Vijayakumar, Adv.

**Advocate for Pet/Ap. :** N. Ashokkumar, Adv.

**Judgement :**

ORDER

**R. Basant, J.**

1. What is the sweep of the expression 'family or other near relatives' in Explanation-I of Section 499 IPC? In the absence of intention to be hurtful to the

feelings of 'family or other near relatives' is the mere knowledge that the defamatory publication would be hurtful to them sufficient to bring the conduct within the sweep of culpability under Section 499 IPC? Does Section 12 of the [Press and Registration of Books Act, 1867](#) (for short 'the Act') apply at all to a publisher? These interesting questions of importance, on which no binding precedents are shown to exist, arise for consideration in this case.

2. The petitioners are accused Nos. 3 to 14 in a prosecution initiated against them by the 1st respondent herein by filing a private complaint. Respondents 3 to 5 are the co-accused in the said crime. Altogether there are 15 accused. The accused persons face allegations of having committed the offences punishable under Sections 120B and 500 of the IPC and Sections 3 and 12 of the Press and Registration of Books Act.

3. Proceedings were initiated against the accused on the basis of a private complaint filed by the complainant/1st respondent. The crux of the allegations is that accused 1 to 14 got printed a book titled 'Brief History of St. Mary's Orthodox Church, Venmany'. The said book was printed by the 15th accused who runs a press. It is alleged that the said publication does not conform to the stipulations in Section 3 of the [Press and Registration of Books Act, 1867](#) in that, necessary details about the printer, publisher and the places of printing/publication are not printed in the said book. It is further alleged that there are certain imputations in page 8 of the said book which are defamatory to one Korula Chacko. The said publication, it is further alleged, is defamatory to the petitioner, his predecessors and successors. The learned Magistrate has already taken cognizance and it is, in these circumstances, that the petitioners have come before this Court to quash the proceedings.

4. The dictum in the decision reported K.M. Mathew v. State of Kerala, : 1992 CriLJ3779 is no more valid law in the light of the decision reported in Adalat Prasad v. Rooplal Jindal, : (2004)7SCC338 , and in these circumstances, the petitioners pray that the proceedings against them may be quashed by invoking the powers under Section 482 of the Cr.P.C.

5. What are the reasons? First of all, it is contended that, there is no imputation in page 8 of the publication in question which can be said to be defamatory to deceased Korula Chacko. It is further contended that, at any rate, the complainant is not even alleged to be a member of the family or other near relative of the said Korula Chacko. Publication is not intended to be hurtful to the feelings of the family or other near relatives of the said Korula Chacko. In these circumstances, the prosecution is liable to quashed, it is urged.

6. The learned Counsel for the petitioners then contends that the prosecution under the provisions of Section 3 read with Section 12 of the [Press and Registration of Books Act, 1867](#) is not maintainable on the averments made in the complaint, as Section 12 is not intended to make any publisher liable. Relying on the decision of a single Judge of the Allahabad High Court in Abdul Hakim v. State : AIR1960 All450 , it is contended that Section 3 read with Section 12 of the Act cannot attract culpability against any publisher.

7. I have heard the arguments of the learned Counsel for the petitioners and the counsel for the 1st respondent. I shall first consider the maintainability of the prosecution for defamation.

8. The precise allegations appear in page 8 of the publication in question. It reads as follows when translated:

'In these circumstances, the reformist thinkers became a majority and those who faithfully stuck to the faith of the Antioch became a minority. When obstruction resulted for service etc., of this minority of Jacobite believers, they joined together and contemplated further action. They purchased Kottalvaka Padinjare Nellipally property for establishment of the church. They raised requisite amounts and paid the same to Korula Chacko'.

9. It is the case of the 1st respondent/complainant that it was not a case of payment of sale consideration and purchase of the property where the church now stands. The property was actually gifted by Korula Chacko. To drive home this point, they rely on document No. 2, copy of the gift deed No. 740/1073 ME. What was not a sale has been described to be a sale. It is pictured that Korula Chacko

had taken money for assigning the property to the church. This is incorrect and is defamatory to deceased Korula Chacko. This, in short, is the contention.

10. As I read the relevant averments extracted above in para.8, an intention to defame (or knowledge that defamation would result) cannot be readily gathered. However, at the present stage it may not be proper to come to a definite conclusion that the inherent jurisdiction can or need be invoked on that short ground. The complainant must certainly be given an opportunity to substantiate his contention that the allegation/imputation does amount to defamation against the deceased.

11. The next contention is that Explanation-I can have no application and the 1st respondent cannot be permitted to sustain a criminal action for defamation against the petitioners for the reason that the 1st respondent is neither a member of the family or other near relative of the said Korula Chacko. It is further contended that when the allegation is that a deceased person is defamed it must be shown not only that he was defamed or even that the imputation hurts the family or near relatives. It must be further shown, that the imputation was intended to be hurtful to the members of the family. There are no averments to that effect, it is contended. An ancillary contention is further raised. The prosecution must be held to be bad under Section 199(1) of the Cr.P.C. as the prosecution is not at the instance of any 'person aggrieved' by the alleged offence, it is contended.

12. For the purpose of easy understanding and reference, I extract below Section 499 of the IPC and Explanation-I as also Section 199(1) of the Cr.P.C.:

'499. Defamation. -- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation I.- It may amount to defamation to impute 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 other near relatives.'

'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.'

(emphasis supplied)

13. To the principles first. Defamation is actionable both under the civil law and under the criminal law. The expression 'person' appearing in the body of Section 499 of the IPC would not normally cover a deceased person and that obviously is why Explanation-I has been added to the Section. A claim for compensation for defamation under the civil law may not be maintainable in respect of defamation of a deceased person on the principle that a personal right of action dies with the person. (*Actio personalis moritur cum persona*). But still the law makers felt that defamation of a deceased person can legitimately give rise to a criminal prosecution for the offence of defamation against a deceased person. It is easy to understand the rationale behind the law. Defamation is made punishable as a crime only because of the potential of such offence to endanger law and order. The criminal law endeavours to maintain peace, tranquility, law and order in society and anything which is likely to threaten them and result in breach of peace is made actionable under the criminal law. This rationale underlies Explanation-I of Section 499 IPC also. Any person may get triggered to commit offences and thus cause breach of the peace if a deceased member of his family or other near relative of his were defamed. Accepting this reality in life, Explanation-I has been added to Section 499 IPC to ensure that defamation of a deceased person is also culpable.

14. But the law is very careful. The offending publication should not only be defamatory to the deceased. It must also be intended to be hurtful to the feelings of his family or other near relative, it is stipulated. Every lineal descendant or every person interested in the deceased cannot complain of defamation against the deceased. Firstly, such complainant must be a member of the family of the deceased or must be a near relative of his. The words 'family or other near relative' significantly are not defined in Section 499 IPC. Such expressions are not defined in the Indian Penal Code. The expressions 'family' and 'other relative' are

expressions which can have different shades of meaning depending on the circumstances and the purpose which a statutory provision is intended to achieve. Any attempt to understand the sweep, width and amplitude of the expressions 'family or other near relative' must certainly be made conscious of the purpose which Section 499 IPC and Explanation-I thereto have got to achieve. Prevention of breach of peace is the signature tune underlying the law of crimes. It is the same when it concerns Section 499 and Explanation-I thereto. The members of the family are assumed to be near relatives going by the language in Explanation-I. It is, however, stipulated that there can be other near relatives also. It is not every one who can complain of the defamatory imputations made against the deceased. A smaller group or class of persons are specified. By nature of their relationship with the deceased or by their peculiar proximity to the deceased certain persons may be triggered to threaten law and order when a deceased person is defamed. The law assumes that members of the family may be so triggered. It is not every distant member of the family who can justify such improper triggering. They must be sufficiently close and proximate to the deceased. This is the statutory rationale underlying Section 499 of the IPC and Explanation-I. Therefore, according to me, the expressions 'family or other near relative' must receive a stricter and narrower construction. Judicial interpretation of the expressions 'family' or 'other near relative' in other statutes or in different contexts may not be of crucial assistance. The meaning that is to be assigned in the given context is important. One must hence remember the purpose - abating any threat or danger to peace and tranquility in the society on the apprehension that a person other than the deceased may be triggered to commit breach of the peace, in mind while ascertaining the sweep of the expressions.

15. The family in the Indian context, generally stated, may include a large number of persons. The understanding of the concept may also have to be in the background of the given social realities and norms prevailing in the society. Community of interests as members of the family may have to be taken into account. In these circumstances, I am satisfied that the expression 'family' can be understood to mean only the nuclear family namely, husband, wife and children. Any attempt to widen the scope of the expression 'family' would not be conducive to the purpose which Section 499 and Explanation-I are expected to serve. I find

no precedents on the point. The learned Counsel for the rival contestants are unable to place before me any binding or persuasive judicial thought on the subject. So, construing from first principles, I take the view that a limited narrow circumference has to be fixed for the expression 'family' and I reckon the expression 'family' to include only husband, wife and children.

16. The law was cautious. There may be other relatives who may be near to the deceased because of peculiar circumstances and the nature of their relationship. Such persons can also be brought in within the sweep of the expression near relative. Without intending to be exhaustive, it can certainly be held that an intimate son in law/daughter-in-law or a nephew who was living with the deceased may in a given case on the basis of the peculiar relationship, intimacy and proximity with the deceased come within the sweep of the expression 'other near relative'.

17. We then come to the question whether there are necessary averments in this complaint to bring the 1st respondent within the sweep of the expressions 'family or other near relative' used in Explanation-I.

18. I have read and reread the complaint. I had requested the learned Counsel for the complainant/1st respondent to point out to me the specific nature of the relationship between the 1st respondent and the deceased Korula Chacko. There is no averment in the complaint which can bring the 1st respondent/complainant within the sweep of these expressions. It is impossible to ascertain the precise relationship. There is no specific averment in the complaint that the 1st respondent comes within the narrow construction of the expression 'family' - i.e., 'husband, wife and children' in Explanation-I. There is nothing to show that he shared any special or peculiar relationship with the deceased or that he was a member of the family of the deceased even if those expressions were to be understood liberally. There is nothing in the complaint to show that the deceased was related to the 1st respondent. The only relevant averment is that the impugned defamatory imputations were published with the knowledge that it would cause hurt, hardship and mental agony to the complaint, his predecessors and successors. In these circumstances, I am persuaded to take the view that the vital ingredient of

Explanation-I that the complainant is a member of the family or any other near relative of the deceased is not satisfied at all.

19. Section 199(1) of the Cr.P.C. also shows that a complaint for defamation can be launched only by 'some aggrieved person'. This has certainly got to be read along with Explanation-I of Section 499 of the IPC. Except a member of the family or other near relative, no one can be said to be the aggrieved person when it comes to defamation of a deceased. In that view of the matter, the 1st respondent must be held not to satisfy the requirement of his being a person aggrieved by the alleged offence of defamation committed by the accused persons.

20. It cannot be lost sight of that even going by the case of the complainant, the deceased Korula Chacko had executed the document in 1073 ME (about 1898). The complaint was filed only in October, 2000 and in these circumstances, the burden was necessarily on the complainant to make necessary averments to bring himself within the sweep of the expression 'family or other near relative' of the deceased. That having not been done, I am satisfied that the complaint must fail for the reason that the threshold requirement that the complainant must be a member of the family or a near relative of the deceased and hence an aggrieved person, as insisted by Explanation-I to Section 499 and Section 199(1) of the Cr.P.C. have not been satisfied. As stated earlier, the complaint does not at all reveal the nature of the relationship between the deceased victim of defamation, and the present complainant. Document No. 2 produced reveals that the deceased was of advanced age on the date when the said document was executed i.e., 1898. The complainant has filed this complaint only in 2000. Though no averment regarding the relationship is available in the complaint, it is pointed out that it is specified in the notice of demand that the complainant is the great grandson of the said Korula Chacko. Even assuming that this averment is made in the complaint, the complainant cannot obviously fall within the sweep of the expression 'family or other near relative' in Explanation-I of Section 499 of the IPC.

21. Secondly, it must be noted that the contumacious state of mind prescribed for the offence under Section 499 of the IPC is that the offender must intend to harm the reputation of the victim or must do the culpable act with the contumacious

knowledge/ belief that such harm to reputation would result. But when it comes to Explanation-I, it is not enough if the offender has reason to believe that such imputation will harm the reputation of the deceased. He must positively further intend to be hurtful to the feelings of the family or other near relatives. Thus, under Explanation-I, the imputation must not only harm the reputation of the deceased, the offender must further intend to be hurtful to the feelings of his family or other near relative. I have gone through the complaint in detail. There is not a whisper of an allegation/assertion that the accused persons had any intention to be hurtful to the feelings of the complainant or that the petitioners had any reason to intend such hurt to the complainant. The further ingredient of the offence of defamation against the deceased person - that the offender must intend to be hurtful to the feelings of the family of the deceased or other near relative is also thus not satisfied - going by the averments in the complaint.

22. The prosecution for defamation, in these circumstances, certainly deserves to be quashed for the twin reasons - that there is nothing to show that the complainant is a member of the family of the deceased or any near relative of his and also that there is no specific averment or assertion that the accused had intended to be hurtful to the feelings of the complainant. The prosecution for defamation, in these circumstances, certainly deserves to be quashed.

23. The petitioners are prosecuted for the offence punishable under Section 3 read with Section 12 of the Act. The crux of the contention against them is that the publication referred above effected by them offends the rule under Section 3 of the said Act inasmuch as the name of the printer and publisher as also the place of printing and publication are not printed on such publication. That the petitioners are the persons who published the book in question is not seriously disputed. The counsel contends that culpability under Section 12 of the Act can never be attracted to the publisher. Culpability under Section 12 of the Act is attracted only to the printer, it is contended. In support of this contention reliance was placed on the decision reported in Abdul Hakim (cited supra).

24. It will be advantageous to extract Sections 3 and 12 of the Act below:

'3. Every book or paper printed within India shall have printed legibly on it the name of the printer and the place of printing, and if the book or paper be published the name of the publisher and the place of publication.'

'12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in Section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, or by simple imprisonment for a term not exceeding six months or by both.

(emphasis supplied)

25. On an analysis of the statutory provisions, it is evident that whoever prints or publishes any book or paper otherwise than in conformity with the rule contained in Section 3 shall be punishable under Section 12 of the Act and the rule contained in Section 3 is that every book printed and published within India must have on it legibly printed the name of the printer and the publisher along with the place of printing/publication. The Allahabad High Court interpreting Section 12 in the decision referred above held as follows:

'I come to the other applicant, viz, Aman Ullah. He is the publisher of the series Rahmat-e-Islam. He could be guilty under Section 12 only if he published it otherwise than in conformity with the provision of Section 3, but Section 3 does not govern the act of publishing at all. The act of printing is quite distinct from the act of publishing and Section 3 only regulates the act of printing; it requires certain matters to be printed in the book. Merely, because one of the matters to be printed in the book is the name of the publisher and the place of publishing, it cannot be said that it regulates the act of publishing. If the name of the publisher and the place of publication are not printed, it is only the printing that can be said to be not in conformity with the provision of Section 3 and not the act of publishing. When Section 3 does not deal with the act of publishing at all, it is difficult to understand how Section 12 deals with publishing otherwise than in conformity with the provision of Section 3. It is Section 5 that regulates the act of publishing; it reads as follows:

'No newspaper shall be published in the State, except in conformity with the rules hereinafter laid down.'

It may be that the defect in Section 12 consists of omission of a reference to Section 5; had the words 'or in Section 5' been added in Section 12 between the words 'in Section 3' and 'of this Act', the section would have made sense. As it is, the words 'or publish' in the section make no sense and must be ignored. Section 3 does not impose any obligation upon a publisher to see that his name and the place of publication are printed on the book and it is not open to a Court to interpret Section 12 as imposing it. If a Court has the power of amending Section 12, I see no justification for amending it by imposing the obligation upon the publisher and not by adding the reference to Section 5. Act No. 2 and 3 Vict. C.12, Section 2, reads as follows:

'Every person who shall print any book... and who shall not print upon... book,... in legible characters, his or her name... and every person who shall publish... any printed... book on which the name... of the person printing the same shall not be printed as aforesaid, shall for every copy ... so printed... forfeit a sum not more than five pounds.'

This was a clear provision punishing publisher of a printed book which did not contain the name of the printed. So in *Attorney General v. Beauchamp*, (1920) 1 KB 650, Beauchamp, who was the publisher but not the printer of a newspaper, was convicted for distributing copies of the newspaper on which was not printed the name of the printer. The question that arose in that case is different from the one that arises in the instant case. Section 12 of our Act does not punish the publication of a book not printed in conformity with the provision of Section 3. Instead it punishes the printing of a book not in conformity with the provision of Section 3, which does not impose any condition on the act of publication. In *Dattatrya Malhar v. Emperor*, AIR 1937 Bom. 28, a Division Bench took a contrary view but without any discussion. The learned Judge did not at all direct their minds to the question how an act of publication can be said to be otherwise than in conformity with the provisions of Section 3.'

26. With very great respect, I am unable to accept the reasoning of the learned single Judge of the Allahabad High Court. A plain reading of Section 3 of the Act makes it clear that it incorporates a rule and the rule is that every book or paper printed and published within India must have, on it legibly printed the names of the printer and the publisher and the place of printing and publishing. Every printed book published in India must comply with the rule under Sections 3. Section 12 which I have already extracted above very clearly stipulates that every printer/publisher who does not conform to the rule contained in Section 3 shall be punishable.

27. It is an axiom interpretation that the words must be reckoned to have their plain meaning in the statutory provision. The mischief which has to be prevented or curbed can be taken note of to understand the statutory provision. The law mandates that every book printed must have the name of the printer and the place of printing printed legibly on it. If the book is published, the name of the publisher and the place of publication must also be printed on such book. There can be no instance of any such book or paper being printed and published without the names of the printer and publisher and the place of printing/publication printed on it. This is definitely a stipulation in the interests of ensuring that printing and publishing of the printed book or paper are done by persons who own the same and declare their responsibility for such printing and publishing in the paper or book itself. Obviously, the stipulation is one to ascertain the source of the publication and to fix the responsibility for such publication. That rule has a salutary purpose to serve. Section 3 of the Act declares the requirement. It declares that every book or paper printed in India must bear the name of the printer and the place of printing printed in it. It further mandates that if the book or paper be published it must have the name of the publisher and the place of publishing also printed thereon. Section 12 of the Act mandates that whoever prints or publishes any book or paper must comply with the rule under Section 3. A publisher who publishes a printed work which does not have the name of the printer and place of publishing printed on it is guilty of publishing such book which does not conform to the mandate of Section 3. He is guilty of the same offence if he publishes the printed book/paper without the name of the publisher and place of publishing printed on the book. In these circumstances, I am respectfully unable to agree with the reasons and the

conclusions given by the Allahabad High Court in the decision referred above. Before choosing to ignore the words of a statute considerable care and caution has to be employed and the same cannot certainly be done lightly. The words 'or publish' in Section 12 of the Act cannot, in these circumstances, be ignored, according to me, as suggested by the learned single Judge of the Allahabad High Court in the decision referred above. A publisher who publishes the book/paper without conforming to the rule under Section 3 must certainly be held to be liable for publishing a book which does not conform to the rule under Section 3 that the name of the publisher must be legibly printed in such work.

28. In these circumstances, I am of the opinion that the prayer to quash the proceedings, under Section 12 of the Act cannot succeed.

29. No other contentions are urged before me. In response to a specific query by this Court, it is not disputed that no special procedure for initiating the prosecution is prescribed under the Act and therefore the accepted general rule that any person can initiate proceedings for the commission of a crime must be held to be applicable.

30. I am, in these circumstances, satisfied that this Crl.M.C. deserves to be allowed in part. This Crl.M.C. is accordingly allowed.

(a) The prosecution initiated against the petitioners and others for the offence punishable under Section 500 of the IPC in C.C.No. 20/01 shall stand quashed.

(b) The learned Magistrate shall proceed against all the accused in accordance with law for the offence punishable under Sections 3 read with Section 12 of the Press and Registration of Books Act.