

the defendants would be at liberty to move the Court for variation of the terms of the injunction, should the Court be satisfied that the working of the factory no longer constitutes an actionable nuisance. In the circumstances, the parties are left to bear their own costs of the appeal.

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### APPELLATE CRIMINAL

*Before Gurdev Singh and H. R. Khanna, JJ.*

DEVKI NANDAN,—Appellant

*versus*

K. NARINDER,—Respondent.

**Criminal Appeal No. 805 of 1961**

*Code of Criminal Procedure (V of 1898)—S. 198—Complaint for defamation—Whether can be filed by a person to whom it relates but whose name is not mentioned in the libel—“Person aggrieved”—meaning of.*

1962

Oct., 22nd

*Held*, that a person who suffers injury or is adversely affected by the act complained of is obviously the person aggrieved, though in some cases this expression may include a person who is not the direct target of attack as in the case of defamation of a married woman. The person defamed or the one against whom imputations adversely affecting his reputation or character are made, is the “person aggrieved” within the meaning of this expression as used in section 198 of the Criminal Procedure Code. A defamatory matter may not specifically name the person to whom it relates, yet the facts given therein may be such as to leave no doubt in the mind of the reader about the person to whom the imputations relate. Such a person is the ‘person aggrieved’ and has the right to file a complaint for defamation.

*Appeal from the order of Shri Aridalan Singh, Magistrate, 1st Class, Bhiwani, dated the 28th April, 1961: acquitting the respondent.*

TIRATH SINGH, ADVOCATE, for the Appellant.

D. N. AWASTHY, ADVOCATE, for the Respondent.

## JUDGMENT

Gurdev Singh, J. GURDEV SINGH.—This order will dispose of two criminal appeals Nos. 805 and 806 of 1961 in which the question arising for decision, is the same.

The appellant Devki Nandan is the son of Ram Chandar *Sunar*, of Bhiwani. He lost his wife on 29th May, 1960, as a result of burns sustained by her. This was reported in the two daily papers "Vir Arjan" and "Partap" published from New Delhi, of which the respondent Shri K. Narindar is admittedly the editor, printer and publisher. The report in both the papers, which is in identical terms, reads as follows:—

"*Bhiwani*.—A young woman burnt to death!  
(By our own correspondent).

Yesterday morning the daughter-in-law (son's wife) of Ram Chandar *Sunar*, (goldsmith) resident of local Lohar Bazar died in the Lady Heily Women Hospital. She had been admitted to the hospital after sustaining burns as her clothes caught fire. The dead body has been sent for post-mortem examination.

It is stated that her husband was addicted to gambling and had three or four days ago lost in gambling some ornaments belonging to his wife and that she being fed up with such bad habits of her husband, sprinkled (kerosene) oil upon her body and set fire to herself. She was rushed to the hospital in an injured condition."

Feeling aggrieved by this publication, Devki Nandan instituted two complaints under section 500

of the Indian Penal Code against the respondent, complaining that the account of the incident resulting in the death of his wife was false, and by intentionally concealing the true facts and making grave imputations regarding his character, the respondent had defamed him and lowered him in public esteem.

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In defending himself, the respondent pleaded that the news-items complained of were published without his knowledge, and subsequently when the true facts came to his notice, he published a contradiction of the same. After a full trial, in the course of which the respondent-accused examined a number of witnesses in his defence, the learned Magistrate, without going into the merits of the case, dismissed both the complaints on the ground that he could not take cognizance of the offence as the complaints had not been instituted by the person authorised under section 198 of the Criminal Procedure Code. In this connection, he observed:—

“In this case, Ram Chandar, whose name has been referred to in the news-item is, though the father of the complainant, still alive, and as such Devki Nandan, whose name has not been referred at all in the news-item is not an aggrieved person. In my opinion, the aggrieved person is the person, who is directly referred in the imputation made. If the name of the complainant is not there, he is not an aggrieved person.”

In assailing this order of the learned Magistrate, the appellant's learned counsel, Shri Tirath Singh, has contended that the imputations contained in the news-item complained of refer directly to the

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appellant, and as such, he is the person, who could complain of the offence under section 500 of the Indian Penal Code. A bare perusal of section 198 of the Criminal Procedure Code is enough to justify this contention, and leaves no doubt that the view taken by the learned Magistrate is clearly untenable. The relevant portion of section 198 of Criminal Procedure Code (after omitting the second proviso, which relates to a complaint under section 494 of the Indian Penal Code), reads as follows:—

“198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence:

“Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic or is from sickness or infirmity unable to make a complaint, some other person may with the leave of the Court, make a complaint on his or her behalf:

Provided further.....”

It is evident that except for the cases covered by the first proviso to section 198 of the Criminal Procedure Code, a complaint for defamation has to be brought by the person aggrieved. The object of this provision is to prevent busy bodies from intervening in, what may be called, offences of private or personal character specified therein,

and to limit the right to set the machinery of law in motion only to the person who has directly or indirectly suffered by the act complained of. The expression "person aggrieved", which is neither a technical term nor a term of art, is to be construed in its ordinary sense. According to the Webster's New International Dictionary, the word "Aggrieved" means:—

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"Troubled or distressed; having a grievance; adversely affected in respect of legal rights; suffering from an infringement or denial of legal rights".

A person who suffers injury or is adversely affected by the act complained of is obviously the person aggrieved, though in some cases this expression may include a person who is not the direct target of attack as in the case of defamation of a married woman, as held in *Dwijendra Nath Talukkar and another v. Makhon Lal Pramanik* (1), *Chhotalal Lallubhai v. Nathabhai Bechar* (2), *Gurdit Singh v. Emperor* (3) and various other decisions.

It is beyond dispute that the person defamed or the one against whom imputations adversely affecting his reputation or character are made, is the "person aggrieved" within the meaning of this expression as used in section 198 of the Criminal Procedure Code. To ascertain whether the complaint has been instituted by the proper person, we have to refer to the news-item complained of. A perusal of the same leaves no doubt that it refers to the appellant, who is the son of Ram Chandar, Sunar, of Bhiwani, and none else. In

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(1) A.I.R. 1943 Cal. 564.  
(2) I.L.R. 25 Bom. 151.  
(3) A.I.R. 1924 Lah. 559.

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holding that the appellant was not the person aggrieved the learned Magistrate has been influenced solely by the fact that he is not specifically named therein. This view is clearly contrary to the observations in *T. G. Goswami v. The State* (4), where Chopra J. observed:—

“The standard to be applied in proof that the defamatory matter refers to the complainant is, would a reasonable man so understand it. A complainant can often be able to make good this part of his case even though his name is not mentioned in the libel. If the readers of the publication can know well who is aimed at, the very same injury is inflicted if his name was clearly mentioned.”

We respectfully subscribe to this view of the matter. A defamatory matter may not specifically name the person to whom it relates, yet the facts given therein may be such as to leave no doubt in the mind of the reader about the person to whom the imputations relate. In the case before us, besides mention of the parentage and residence of the complainants, there are other facts which leave no doubt that the news-items complained of published in the respondent's papers refer to Devki Nandan, and it has never been the respondent's case that they were about some one else. We thus find that both the complaints were properly instituted, and the trial Court having validly taken cognizance of the same and proceeded with the trial was not justified in throwing out the same. We accordingly, accept both the appeals and, setting aside the order of the trial Court, remand both the cases to him for decision on merits. The parties'

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(4) A.I.R. 1952 Pepsu 165.

counsel have been directed to cause the appearance of their respective clients in the trial Court on 21st November, 1962. There is no question of re-trial as the entire trial had been completed. The learned Magistrate shall afford an opportunity to the parties for arguments and then dispose of the case in accordance with law.

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We cannot help observing that when the entire trial had concluded it would have been more proper for the Magistrate to give a finding on merits as well and not to get rid of the case by merely deciding the objection as to the competency of the complaint, which does not appear to have been raised at the proper stage.

H. R. KHANNA, J.—I agree.  
B.R.T.

Khanna, J.

FULL BENCH

Before S. S. Dulat, D. K. Mahajan and Gurdev Singh, JJ.

RAM CHANDER,—Petitioner

versus

THE STATE,—Respondent

Criminal Revision No. 831 of 1961

*Punjab Shops and Commercial Establishments Act (XV of 1958)—Ss. 2(iv), (viii) and (xxv)—Godown where tea is stored but no sales effected—Whether a shop or commercial establishment.*

1962

Oct., 29th

*Held*, that a godown wherein tea is stored but no buying or selling of tea takes place does not fall within the ambit of the Punjab Shops and Commercial Establishments Act, 1958, inasmuch as it is neither a shop nor a commercial establishment.

*Held*, that a shop is a premises where trade or business is carried on in the shape of buying and selling of goods at the spot. It is rather axiomatic that in all trades it is the buying or selling which is going on in one form or the other