

PRESIDENCY MAGISTRATE'S COURT

GEORGETOWN

Thursday, 8th, May, 1913

Before Khan Bahadur S. M. V. Oosman Sahib

Mrs. Besant's Defamation Cases

MRS. ANNIE BESANT - Plaintiff

VERSUS

HON. DR. NAIR, & DR. U. RAMA RAO,

Defendants.

PRESIDENCY MAGISTRATE'S COURT, GEORGETOWN

Thursday, 8th May, 1913

Before Khan Bahadur S.M.V. Oosman Sahib

MRS. BESANT'S DEFAMATION CASES

ALL CASES DISCHARGED

JUDGMENT

This afternoon at 3 o'clock his worship delivered the following Judgment in all of the ~three~ cases brought by Mrs. Besant against the Hon. Dr. Nair, and Dr. Rama Row, and by Mr. Schwarz against ~The Hindu.~

The Case Against Dr. Nair

1. The complainant in this is Mrs. Besant, President of the Theosophical Society, Adyar. She charges the accused, the Hon. Dr. Nair, with having defamed her and the members of her Society in an article referred to below.

THE ALLEGED LIBEL

2. The accused is the Editor of a monthly Journal styled ~The Antiseptic~. In the issue of the said Journal for February 1911, he wrote and published an article headed "Psychopathia Sexualis in a Mahatma - a Clinical Study." In the article he wrote ~interalia~ as follows:

"We do not contemplate with any feeling of satisfaction the establishment of a Temple of Onanism so close to Madras. And it is especially disquieting to be told that the advice to masturbate is not to be confined to the select few of the Theosophical Society, but is to be spread broadcast." "For we find that although Mrs. Besant at first condemned the practice and said in effect that in this respect Mr. Leadbeater was insane, yet subsequently she supported the Leadbeater practice of carefully selecting boys who were satisfactory subjects for receiving instruction in the practice of masturbation."

3. The accused denies the charge and says that the article in question deals with a question of public interest. It throughout expresses in good faith an opinion of the Editor of a Medical Journal on the conduct of Mr. Leadbeater touching the important question of self-abuse. In writing the article he has dealt principally about Mr. Leadbeater and

only incidentally referred to the complainant. In doing this also he has not gone beyond what was absolutely necessary for him to express about her conduct in the said matter. At the time he wrote the article, the matter was engaging the attention of the public and was being discussed in a number of leading Journals. There were also very serious and well-founded complaints against Mr. Leadbeater concerning the boy Krishnamurti, the particulars of whose initial ceremony and whose greatness as Lord Maitreya the complainant has published in the pages of the ~Theosophist~. The occasion for his writing the article is, therefore, justifiable and privileged.

4. The points for determination are :- whether the passages contained in para 2 ~supra~ are defamatory of the complainant and the Theosophical Society. and if so, whether the accused is punishable under Section 500 I. P. C.

THE CONSTRUCTION OF THE WORDS.

5. In order to decide the first point the article must be read as a whole and the context of the first passage in question should be construed with reference to what is stated before and after it. In the commencement of the article the accused says that he has nothing to do with Theosophy and that he discusses the subject more out of scientific interest. He gives his reasons for dealing with it, viz., that he learned recently of the existence of an individual by the name of Mr. Leadbeater who is connected with the Theosophical Society and who is alleged to have taught young boys given to his care habits of self-abuse.

He is one of the Theosophic worthies. The complainant herself had stated that - he was perhaps the most trusted of his Master's disciples on the threshold of Divinity (~vide~ Ex. 24). He is a fellow initiate. He is a great personage and an advice from such a man may give a spiritual sanction to the practice.

The accused had, therefore, ample justification in objecting to the presence of the individual in the Society as he taught young boys given to his care the practice of self-abuse and as he was a man of questionable character. What the accused states in the first instance of the first passage is the expression of a future contingent evil in a situation which, according to his personal experience as a medical man, was already bad, and which might become worse by the spiritual colouring given to the advice by Mr. Leadbeater and Dr. Van Hook. The preceding sentence makes this meaning clear as it says that the high priests of Onanism, which refers to Mr. Leadbeater and the astute Dr. Van Hook, may exercise a considerable amount of influence over the younger generation of students in Madras. The sentence that follows it is a figurative paraphrase of the apprehension conjecturing that if such influence is allowed to be exercised the result would be the establishment of a Temple of Onanism close to Madras, where a number of the younger generation of students reside and that such a feeling of contingency cannot be contemplated with any feeling of satisfaction by anybody. One of the meanings of the word ~contemplate~ given by Webster in his Dictionary is to look forward, etc. The use of the word also shows a future thing, and not a present existing one and is in keeping with the meaning that the whole thing applies to a future apprehension on the

part of the accused.

6. I do not think that the innuendo refers to the Headquarters of the Theosophical Society at Adyar as contended by the complainant as it was already an established institution, as admitted by the accused in the beginning of the article.

The beginning of the article is in commendation of the Society. When the writer praised the Society at the commencement, it is unlikely that he would have metaphorically attacked it later on. The person referred to is Mr. Leadbeater, and the place referred to is the place where he [Leadbeater] lives. Mr. Leadbeater is the person attacked and he has not come forward to vindicate his character.

7. The second sentence of the first passage is disconnected with the first sentence, and is connected with the sentence following it, and the person who says that the advice to masturbate is not to be confined to the select few of the Theosophical Society, but is to be spread broadcast is Dr. Van Hook, as appears from the next sentence. He also is a Theosophic worthy. (~vide~ Ex. 43).

8. Under the circumstances I am of opinion that the first passage refers to Mr. Leadbeater and not to the Theosophical Society.

THE CASE AS TO MRS. BESANT'S SUPPORT

9. It needs no saying that the second passage is defamatory of the complainant and it is ~prima facie~ defamatory to say that she supported the Leadbeater practice of carefully selecting boys who were satisfactory subjects for receiving instruction in the practice of

masturbation.

10. Now I come to the second point as to whether the case is punishable under Section 500 I.P.C., or whether the accused is protected under any of the exceptions to Section 499 I.P.C.

THE OCCASION PRIVILEGED

1. I first deal with the occasion that gave rise to the writing of the article. The circumstances which led the accused to write the article may be summed up as follows:

(1) A number of patients of the younger generation suffering from the mental disease caused by masturbationp. 128 of Ex.A)

(2) About the time the article was written, articles appeared in the ~Parsi, Hindu~, etc. about the Leadbeater practice and the subject was being discussed openly.

(3) Mr Leadbeater came to Adyar in 1909, but was readmitted as a member of the Theosophical Society in 1910, and the Leadbeater Chambers were completed about the time.

(4) The Chambers were named after him, in spite of nasty complaints against him by Narayaniah, father of the boy Krishnamurti, and Lakshman, a servant of the complainant.

(5) Petit's declaration (Ex 41) would have given valid occasion to write the article : and

(6) The accused ~bona fide~ thought that the accusations were true, as

communications addressed to the complainant in the matter and criticisms in magazines were not contradicted publicly nor action taken against them (Ex. 29, 3 [page 2, line 5] 4 [page 2] 40, 42, 43 and 70).

The occasion was therefore privileged.

MRS. BESANT'S SUPPORT OF LEADBEATER PRACTICE

12. I next deal with the question as to whether the complainant supported the Leadbeater practice, having condemned it once. Mr. Leadbeater has not been examined by the prosecution to deny that his practice was to carefully select boys who were satisfactory subjects for receiving instruction in the practice of masturbation. The complainant herself admits that he gave the advice. But the prosecution theory is that it was given in rare cases where it was necessary to give. Mr. Leadbeater himself contradicts this in Ex. 7 (1) saying that the cases in which he gave the advice were not rare cases, but of all cases where absolute abstinence was obviously not possible.

In Ex 7 (9), he says that ~both matrimony and prostitution must obviously be worse~, because in each case they involve action upon another person. In Ex. 7 (c) he does not deny the genuineness of the cipher letter which shows how he gave the advice (~vide~ also Ex 8. 9, and 58). In page, 9 of Ex. B, the complainant herself says : "Mr. Leadbeater says positively that he has never given the advice except in cases where certain symptoms had already shown themselves either on the physical plane or in the aura, even though in one or two instances this may have taken place before what is commonly called puberty."

13. Having stated this was the advice of Mr. Leadbeater, I now come to

consider the question as to how far the complainant supported the practice. Her support is evidenced by (1) her own public writings ; (2) her conduct towards Mr. Leadbeater, and his letters to her : (3) her letters to other persons ; (4) her supporting the books written by others defending Mr. Leadbeater and the practice.

14. Under the first head comes the complainant's letter to the Members of the Theosophical Society, (Ex. B.). From pages 5 and 12 of the letter, it appears that she supported the practice in the special cases dealt by Mr. Leadbeater. That this is its gist is apparent from Ex 55 (b) wherein she says:- "I have stated in my public letter to the Theosophical Society, that the advice given by Mr. Leadbeater, given only in a few special cases, was the only advice practicable in those cases." The complainant in her cross-examination first denied having said so, but afterwards admitted that the idea of those lines is in page 8 of Ex B. which is one of the pamphlets referred to by the accused.

MRS. BESANT'S CONDUCT TOWARD MR. LEADBEATER

15. Under the second head I first refer to [p. 16 of Ex 61]. The complainant having once condemned the advice says in her pledge :- "As regards his [Mr. Leadbeater's] readmission to the Society, I do not know that he wishes readmission. I shall continue to oppose it, as I have hitherto done, until he says publicly that the teaching is wrong, not only that he will refrain from it, as he promised to do, in February, 1906, and also before the Advisory Board in London." Though it does not appear that he publicly said that the teaching was wrong and that he would refrain from it, yet it seems~ from Ex. 60 [p. 33] and 61 [p. 32]

that she paved her way for readmitting him. Afterwards, from a letter to her from Mr. Leadbeater dated 30-6-06 [Ex. 7 b] it appears that she spoke of defending the advice, but Mr. Leadbeater himself stated that "she could not defend it, because she did not agree with it." This is in keeping with what she writes in the last para of p. 72 of Ex. 55 :- "I was told by H.P.B. [M. Blavatsky} last Spring when I went home, etc to the Master's Ashram one night, that a defence of Mr. Leadbeater must be made against the distortions and exaggerations continually poured out on him. I was also told that I was not to make it, but to take advantage of its being made, to speak on the whole question. I wrote to Dr. Van Hook that a defence would have to be made, and suggested certain lines. Meanwhile H.P.B. had herself taken the matter in hand, and a strong impulse set Dr. Van Hook to work." These coupled with the statement in her speech at the American Convention in September 1908 that she would stand or fall with Mr. Leadbeater, show that she was for defending Mr. Leadbeater and the advice.

MRS. BESANT NOT UNAWARE OF THE PRACTICE.

16. It appears that she was not unaware of the practice. She knew everything and had seen the evidence against him. After seeing this and after receiving letters from him for about a year, [Exhibit 7 series], she stated that she would not readmit him until he says publicly that the teaching is wrong. Having said so on 24-3-07, she wrote to him on 6-8-07 suggesting his defence (~vide~ Exhibit G.) In reply (Exhibit F) he did not say that the advice was wrong. Still he was readmitted without due enquiry. Her statement in a public speech that she would stand or fall with Mr. Leadbeater and his readmission without due

enquiry, are themselves sufficient to show her support.

17. Under the third head, first comes the letter to her by Mr. Khandalwola, Special Judge at Poona [Ex. 54]. The two sentences of hers as quoted in the letter [~a~ and ~b~] show what her opinion is about the Leadbeater practice. She adheres to the statements in her deposition before me. Next comes her letter to Chaukatrai Assumal [Ex 31] dated 4-9-06, and lastly she herself wrote to Dr. Van Hook that a defence of Mr. Leadbeater should be made and suggested certain lines of defence.

18. Under the fourth head, I refer to her admiration of Dr. Van Hook for his letters in defence of Mr. Leadbeater, viz. the Holbrook Budget (Ex. 39). She admires the position he took with reference to Mr. Leadbeater and stated that the gist of what, was said by Dr. Van Hook was said under ~high influence~. (Ex 55 C.)

19. Under these circumstances, I hold that there is sufficient evidence to show that the complainant supported the Leadbeater practice.

THE IMPUTATIONS PROTECTED

20. The accused has in good faith expressed incidentally his opinion about the complainant's conduct and character touching a public question, and the imputation was made for the public good. The case, therefore, falls under exceptions 3 and 9 to Section 429 I. P. C.

21. The article was published so far back as March, 1911. The long delay of a year and 9 months in lodging this complaint and the reason assigned by the complainant for lodging it viz., that it was lodged on account of a civil suit brought against her by Naryaniah [Ex. 62] go to show that

grievance was not the real cause for filing the complaint. Further, she admits that her attention was drawn to the first sentence of the article in question, viz., "we have nothing to do with Theosophy" in this Court for the first time during her cross-examination and not before. The admission speaks for itself and needs no comment.

The imputation is said to be contained in the passages quoted in para 2 referred to in that Judgment. For the reasons stated therein I find that the passages do not refer to the Theosophical Society. It refers to Mr. Leadbeater. I therefore hold that no case has been made out against the accused and he is discharged.

The Case Against Rama Rao

The following is the Judgment in this case :-

This case is connected with C.C. No. 1777 of 1913 which has been disposed of just now. Mrs. Annie Besant charges Mr. U. Rama Row, the proprietor and publisher of ~The Antiseptic~ with having defamed her and the members of the Society by publishing the article referred to in the case against Dr. Nair. The accused is further charged with having printed in pamphlet form the article in question and circulated them with the intention of harming the reputation of the complainant and the members of the Theosophical Society.

With reference to the finding in my Judgment in Dr. Nair's case, I hold that the accused's acts in publishing the article in ~The Antiseptic~ and in pamphlet form is not punishable under Section 500 I.P.C. He is therefore discharged.

The case against the "Hindu"

The following is the Judgment in the above case :-

This case is connected with C.C. Nos. 1777 and 1778 which has been disposed of just now. In this case Mr. Albert Schwarz, Treasurer of the Theosophical Society, Adyar, charges Messrs. S. Kasturiranga Iyengar and A. Rangasawmy Iyengar, the Editor and the printer and publisher of the ~Hindu~ with having defamed the Theosophists residing at the Headquarters of the Theosophical Society at Adyar of whom the complainant is one, by republishing the article referred to in my Judgment and in the case against Dr. Nair.

(2) The imputation is said to be contained in the first passage referred to in that Judgment. For the reasons stated therein I find that the passage does not refer to the Theosophical Society. It refers to Mr. Leadbeater. I therefore, hold that no case has been made out against the accused and they are discharged.

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