

because the assessors' opinion in respect of that charge was taken. The conviction and sentence of the appellant must accordingly be set aside and there must be a retrial of the appellant in respect of all the charges for which he was previously placed on trial before the Sessions Judge.

CIVIL MISCELLANEOUS

*Before Kapur, J.*

M/s. BANWARI LAL-SHAM LAL,—Petitioners

*versus*

REGISTRAR OF TRADE MARKS, BOMBAY AND AN-  
OTHER,—Respondents

Civil Miscellaneous No. 683 of 1952

*Trade Marks Act (V of 1940)—Section 46—Aggrieved person—Meaning of—Section 6—“Geographical name”—Meaning of—Whether registrable as a distinctive word—“Distinctive” and “Adapted to distinguish”—Meaning of—Section 46—Discretion exercised by Registrar—Interference by Court—Principles stated.*

1953

Dec. 28th

A. C. and Sons were the registered owners of trade mark “Landra” in respect of their chaff-cutting machines. The petitioner made an application to the Registrar of Trade Marks for registering the trade mark “Nanra” in respect of his chaff-cutting machines. A. C. and Sons opposed the application and the Registrar refused the registration. The petitioner made an application in the High Court for rectification and correction of the Register under section 46 of the Trade Marks Act, 1940, against the Registrar of Trade Marks and A. C. and Sons. The issues tried in the case were :—

- (1) Is the petitioner an aggrieved person within the meaning of section 46 of the Indian Trade Marks Act of 1940?
- (2) Is not “Landra” a geographical name and, therefore, not registrable?
- (3) Is the trade mark “Landra” distinctive of the goods of respondent No. 2 ?

*Held* (1) That the petitioner is an “aggrieved person” within the meaning of section 46 of the Trade Marks Act, 1940, as he is in the same trade as respondent No. 2 and his application for registration of the trade mark “Nanra” had been opposed by respondent No. 2 and refused by the Registrar which has put a restraint on his legal rights.

(2) That a word is not debarred from registration as a distinctive word merely because it is geographical. If a word is geographical name, it cannot be registered under paragraph (d) of section 6, but it can, nevertheless, be registrable under paragraph (e).

(3) The words “geographical name” are not equivalent to the “name of any place” and a word does not become a

geographical name simply because some place upon the earth's surface has been called by it.

(4) That the word "distinctive" means distinguishing a particular person's goods from somebody else's—Not a quality attributed to the particular article, but that it is a manufacture of a particular manufacturer as distinguished from somebody else's or being adapted to distinguish the goods of one manufacturer from that of other persons, or being adapted to distinguish the goods from those of other traders which is not necessarily an innate quality of the word. The test is whether the registration of the trade mark will cause substantial difficulty or confusion in view of the rights of user by other traders. If the answer is in the affirmative the mark will not be registered, and if in the negative, either because of the nature of the word or because of its past user the registration will be granted.

(5) That "adapted to distinguish" imports the wider field of interest of strangers and of the public and between names which are rare and those which are very common there is a vast field, the former being distinctive and the latter too general to be distinctive.

(6) That the discretion exercised by the Registrar under section 46 of the Trade Marks Act, 1940, cannot be lightly interfered with by the Court unless it has been shown that the Registrar has misdirected himself or has acted on wrong principles.

*Powell's case* (1); *In re Apollinaris Company's case* (2); *Holt's T. M.* (3); *Magnolia case* (4); *Leonard and Ellis' case* (5); *Wood v. Lambert and Butler* (6); *Perry-Davis v. Harbord* (7); *Montgomery v. Thompson* (8); *Oswego case—National Starch Company* (9); *California Fig Syrup Company case* (10); *In re R. J. Lea* (11); *Registrar of Trade Marks v. W. & G. Du Cros* (12); *Re the application of the Societe Des Usines Chimiques Rhone-Poulenc* (13); *Glastonbury's case* (14); *relied on. In the matter of India Electric Works, Limited* (15). *distinguished and relied on.*

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- (1) 1894 A.C. 8 at p. 10  
 (2) (1891), 2 Ch. 186 at pp. 224-5  
 (3) (1896) 1 Ch. 711  
 (4) (1897) 2 Ch. 371  
 (5) 26 Ch. D. 288 at p. 304  
 (6) 32 Ch. D. 247  
 (7) 15 A.C. 320  
 (8) 1891 A.C. 217 at p. 227  
 (9) (1908) 2 Ch. 698  
 (10) (1910) 1 Ch. 130  
 (11) (1913) 1 Ch. 446  
 (12) (1913) A.C. 624  
 (13) (1937) 4 A.E.R. 23  
 (14) (1938) 2 A.E.R. 337  
 (15) 49 C.W.N. 425

*Petition under section 46 of the Indian Trade Marks Act of 1940, praying that respondent No. 1 be ordered to rectify the Register by removing the entry, dated the 18th September 1946, relating to the registration of the word 'Landra' as a trade mark for chaff-cutting machine in contravention of section 6 of the Indian Trade Marks Act of 1940.*

[*Editor's Note: An appeal against this judgment was dismissed in limine by a Division Bench consisting of Hon'ble C.J. and Falshaw J. on the 6th April 1954*]

P. C. PANDIT and D. N. AWASTHY, for—Petitioners.

K. L. GOSAIN and K. S. THAPAR, for—Respondents.

#### JUDGMENT

KAPUR, J. This is an application made by Messrs Banwari Lal-Sham Lal for rectification and correction of the Register under section 46 of the Trade Marks Act of 1940. Kapur, J.

Messrs Amin Chand and Sons, respondent No. 2, are manufacturers of chaff-cutting machines and have been manufacturing these machines for a long period of time. They plead that they have been using the mark "Landra" since 1918 and it was registered as their property in the year 1935 and it was thus entitled to special protection under proviso to section 6 of the Trade Marks Act. According to exhibit R. 1, which is dated the 25th day of October 1953, a declaration was made by Probodh Kumar Das Gupta, a Pleader, for and on behalf of Amin Chand and Sons of Landra in regard to the ownership of the trade marks, *inter alia*, of "Landra Shai" which is at No. (5). There it was said that these were his special marks put on chaff-cutting machines and other machinery which he had been using on those machines, boxes, tins, etc., throughout the whole of India and abroad from the 1st of September 1935, and he claimed to be the owner and sole proprietor of the said trade marks and names. This exhibit R. 1, is a copy taken from the Calcutta Registry Office.

On the 18th September 1946, Amin Chand and Sons of Village Landra made an application to the

M/s. Banwari Registrar of Trade Marks for the registration of Lal-Sham Lal their mark "Landra" in respect of agricultural implements of the larger kind. Opposition was filed by Balmukand on behalf of Dina Nath-Trade Marks, Balmukand, in which it was stated that the Bombay opponent had been using the trade mark "Landra and another Special" in respect of chaff-cutting machines for the past twenty-four years and it had become distinctive of the goods manufactured and sold by them and that it was associated in the mind of the public with the opponent and their chaff-cutters and had come to connote and denote their products, that the mark "Landra" was calculated to deceive or enable the applicant's goods to be mistaken for the goods of the opponent.

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It appears that Dina Nath-Balmukand had on the 23rd December 1948, made an application for registration of the mark "Landra Special" as their mark, alleging that they had started manufacturing it on the 1st January 1927, at Lyallpur. Opposition was filed against this application by Shiv Dayal on the 22nd day of April 1950. The Registrar called upon the parties to adduce evidence. First Balmukand entered the box and then Mr. Pal for Shiv Dayal stated that his client, Shiv Dayal, had been using the mark since 1918 and that it had attained distinctiveness. Then Shiv Dayal went into the box and stated that his firm had used this mark since 1918 and he denied that Dina Nath-Balmukand were manufacturing any such instruments or that they were manufacturing chaff-cutting machines under the mark "Landra". After the parties i.e., Balmukand and Shiv Dayal, had been examined Balmukand withdrew his opposition to the registration of "Landra" as the mark of Amin Chand and Sons and Balmukand also withdrew his application for the registration of the mark "Landra Special". On the 10th July 1951, certificate of registration was granted to Amin Chand and Sons in regard to the trade mark "Landra".

I may here state that on the 9th February 1949, a firm F. L. Jacobs Co., of Detroit, U.S.A., made an application for the registration of the mark.

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March 1951, by Shiv Dayal, but this application was  
abandoned and the application for registration was, therefore, dismissed with costs.

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In this application under section 46 of the Trade Marks Act, 1940, the petitioners Banwari Lal-Sham Lal allege that they are selling chaff-cutting machines of their make under the name and design of “Nanra” and have been carrying on business for seven years, that although, the respondents, Amin Chand and Sons, had got the trade mark “Landra” registered, the registration was bad because Landra is the name of a village and a number of other villages bear this or similar names, that it was not distinctive of the goods of the respondents and the registration was a contravention of section 6 of Trade Marks Act, specially when the goods were clearly shown as “Made in Landra” and not “Landra”. They further stated that the respondent had brought a criminal complaint against them in the Court of a Magistrate at Jullundur in order to harass the petitioners and thus to force them to give up the name “Nanra”.

The first respondent, the Registrar of Trade Marks, filed his written statement on the 6th day of March 1953, in which he pleaded that the petitioners had made an application for the registration of their mark “Nanra” to which on the 27th May 1952 Amin Chand and Sons had filed a notice of opposition which was still pending, that “Landra” was not being used by any other manufacturer excepting Amin Chand and Sons in respect of agricultural implements, that there were no other manufacturers of agricultural implements in the Village Landra, and the mere fact that Landra is the name of a village of respondent No. 2, i.e. Amin Chand and Sons, or there are other villages having closely similar names is no ground for cancellation of the mark “Landra”. He also pleaded that the mere fact that Landra was the name of a village would not disentitle the registration of the mark and that under section 6(1)(e) of the Act

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geographical names are registrable on evidence of distinctiveness and that such evidence had been produced to prove that "Landra", had become distinctive of Amin Chand and Sons' goods, and it was on consideration of this evidence that "Landra" was accepted for registration. Along with the written statement respondent No. 1 filed a copy of the affidavit of Shiv Dayal which was filed before the Registrar on the 13th May 1949, giving reasons for asking for registration of the trade mark "Landra".

Shiv Dayal for and on behalf of Amin Chand and Sons made his reply in this Court on the 18th March 1953, saying that he had prosecuted the petitioner Banwari Lal where after every conceivable tactic had been employed to prolong the proceedings, Banwari Lal and his co-accused Harbans Singh were charge-sheeted, that in order to delay that case he had made applications for transfer, making every kind of allegation against the Magistrate, that the application under section 46 of the Trade Marks Act was made by giving materially false particulars, that the mark "Landra" had acquired "a great name and popularity in the market", and in paragraph 10 he stated the extent of the sale of goods with this mark. He also pleaded that the trade mark "Landra" had been in use since 1918 and had been registered as the property of the respondents in 1935, that Landra was a small hamlet with about a hundred families and the total extent of the area of the land attached to the village was 1,000 *kham bighas*, that only in 1949 was a Post Office started and that as a village it has "no significance" nor has it any significance as a geographical name, and that "Landra" had acquired distinctiveness as a mark of the goods of Amin Chand and Sons and they had spent since 1949 as much as Rs. 20,000 on advertisement alone.

A replication was put in by Banwari Lal reiterating the facts alleged by him in his application. He denied that "Landra" was in use by respondent No. 2 since 1918 or even 1935, or that

respondent No. 2 had acquired any property in the M/s. Banwari name "Landra". There is nothing of any materiality which need be added.

The parties agreed to have the following three issues tried:—

- (1) Is the petitioner an aggrieved person within the meaning of section 46 of the Indian Trade Marks Act of 1940?
- (2) Is not "Landra" a geographical name and, therefore, not registrable?
- (3) Is the trade mark "Landra" distinctive of the goods of respondent No. 2?

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Evidence was given on interrogatories and the parties called such witnesses of the other party for cross-examination as they thought necessary. Besides the affidavits a large number of documents were filed by respondent No. 2, Amin Chand and Sons. Shiv Dayal as proprietor of the firm Amin Chand and Sons filed an affidavit which was sworn on the 10th August 1953. In paragraph 13 he stated that the letters and post-cards produced by him were genuine and were written by the persons who purport to have written them and that the English translation of these documents was correct. I was not quite satisfied with this affidavit in regard to the proof of documents and a detailed affidavit was filed on the 25th November 1953, just when arguments were going on. No objection was taken to this mode of proof and all that the petitioners objected was that by this method the contents of the documents could not be said to have been proved. In paragraphs 1 and 2 of this affidavit the deponent particularised each document and stated that the documents were received by his firm during the ordinary course of business and they were written and signed by the persons who purport to have written and signed them.

The first question which is to be decided is whether the petitioners are "persons aggrieved"

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within the meaning of the words as used in section 46 of the Act. The petitioners are in the same trade. They made an application before the Registrar for registration of the mark "Nanra" and the other side entered opposition to it. It is admitted that the petitioners have applied for registration of their mark "Nanra" to which objection has been filed by and on behalf of Amin Chand and Sons. Thirdly, proceedings of a criminal nature have been taken against the petitioners in the Jullundur Court, and this, in my opinion, is sufficient to bring the petitioners within the words "person aggrieved". In *Powell's case* (1), Lord Herschell, L. C., said:—

"Wherever it can be shown, as here, that the applicant is in the same trade as the person who has registered the trade-mark, and wherever the trade-mark if remaining on the register would or might limit the legal rights of the applicant so that by reason of the existence of the entry upon the register he could not lawfully do that which but for the appearance of the mark upon the register he could lawfully do, it appears to me that he has a *locus standi* to be heard as a person aggrieved."

and Lord Watson in the same case observed:—

"In my opinion, any trader is, in the sense of the statute, 'aggrieved' whenever the registration of a particular trade-mark operates in restraint of what would otherwise have been his legal rights. Whatever benefit is gained by registration must entail a corresponding disadvantage upon a trader who might possibly have had occasion to use the mark in the course of his business."

The petitioners also relied on *In re Apollinaris Company's case* (2). In Venkateswaran's book at

(1) 1894 A.C. 8 at p. 10

(2) (1891) 2 Ch. 186 at pp. 224-5



p. 626 a person whose application is opposed has been stated to be a "person aggrieved" and in the 1953 Supplement of this book the same is again stated with a certain amount of clarity. I do not think that it can be said with any degree of seriousness that the petitioners are not "persons aggrieved" and I, therefore, hold them to be competent to bring this application under section 46 of the Act.

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The second question is whether Landra is a geographical name. In a sense it is. The evidence shows that it is a small village which is not connected by rail or even by road and its sole importance seems to be the manufactures of Amin Chand and Sons. It did not even have a Post Office till 1949, and, therefore, all that can be said in regard to this village is that it is marked on the map of Jullundur District, but it is a most insignificant place, to say the least.

The real question which is for decision is the third one, whether the trade mark "Landra" is distinctive of the goods of respondent No. 2. A mass of evidence has been led on this point which consists of affidavits and oral testimony of the deponents in cross-examination and documents.

I shall first refer to the affidavit of Shiv Dayal, the proprietor of the firm of respondent No. 2. He has stated that he has been using this mark since 1918. There is no other factory of this name or any name in Landra. "Landra" has become distinctive of the goods manufactured by them. In paragraph 7 he stated that the goods were intimately connected with the word "Landra" and are sold in the market as such. In paragraph 8 he stated that a large number of dealers all over the Punjab, PEPSU, Uttar Pradesh, Bihar, Madhya Bharat and other States were selling goods manufactured by his firm with the trade mark "Landra" on them. In support there are affidavits of several persons whose names are mentioned in paragraph 8 of this affidavit and whose affidavits are on the file. In paragraph 9 are given the names of consumers who purchased these goods. He attached Annexure 'A' giving the names of persons who had

M/s. Banwari infringed the trade mark of the deponent and Lal-Sham Lal criminal cases were successfully brought against them and the accused persons had to give up the Registrar of use of the respondent's trade mark. In paragraph Trade Marks, 12 he has referred to extent of his business, a Bombay certificate with regard to which has been given by and another a Chartered Accountant, B. D. Bansal, whose affidavit is also on the file. He has produced Kapur, J. several letters, bills and photographic copies of bills showing since when this trade mark was being used. He was cross-examined at some length and nothing was brought out in cross-examination which would show any reason why his statement should not be accepted. He stated that they started manufacturing these chaff-cutting machines in 1918. They manufactured them under other marks also like "Sohan Batala Shahi" and "Landra Shahi". The first mark that they used on their chaff-cutting machines was "Landra Toka" and in answer to the question "when did you first manufacture a chaff-cutting machine with the mark "Landra", the witness stated "In about 1918". At that time they had no other mark. This matter became clearer when the following questions were put and answers given:—

"Q. I suggest it to you that you started your business of manufacturing chaff-cutting machines in 1935, and not before?

A. Before this we were using the mark 'Landra Toka'.

Q. From 1918 to 1935 was 'Landra' the only chaff-cutting machine manufactured by you?

A. Yes.

Q. Was this 'Landra Toka' quite successful in the market?

A. Yes."

When it was suggested to him that he started the use of the word "Shahi" after "Landra" in order to counteract the use of "Landra Special" by Dina

Nath-Balmukand of Lyallpur, he said it was absolutely wrong. Questions put to this witness seem to show that the suggestion was that Dina Nath-Balmukand started manufacturing "Landra Special" in 1927 and that it was to counteract this that the respondent No. 2 started the use of the word "Shahi" after "Landra", the suggestion was denied, but it shows that the case of the petitioners was that "Landra" was being used before but it was in order to meet the use of the mark "Landra Special" that the word "Shahi" was used. This witness also denied that the goods of Dina Nath-Balmukand had any popularity or that they ever manufactured any such chaff-cutting machines, in Lyallpur. The witness admitted that on their spare parts they used the words "Made in Landra". In re-examination this witness clearly stated that he did not even know that Dina Nath-Balmukand existed in 1927.

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I shall now refer to the affidavits of other manufacturers. They are Nos. 1 to 6 and were not called for cross-examination. The first among them is Naranjan Das, M.L.A. He stated that the mark "Landra Toka" is the registered trade mark of respondent No. 2 and that it has acquired a great deal of popularity in the market and the word "Landra" had acquired a secondary significance and was distinctive of the goods of Amin Chand & Sons. It was not associated with the Village Landra but with the goods of respondent No. 2 and few, if any, know that there is a village of the name of Landra. A similar affidavit has been filed by Kishan Chand who is proprietor of Messrs. Dhiman Iron & Steel Company, Phillaur, and owns a big factory for the manufacture of chaff-cutting machines and blades. The third affidavit is of Ram Saran who is also a manufacturer at Phillaur. The next is of Amar Nath who is proprietor of Messrs. Amar Nath Kalsi & Sons of Banga, Tehsil Nawanshahr. The fifth is Hussan Lal, proprietor of Messrs. Gurditta Mal & Sons of Chak Bilgan in Tehsil Nawanshahr. They had

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been in the manufacturing trade for about thirty years. Shankar Das, the next deponent, is owner of Messrs. Ram Kishan & Sons of Chak Bilgan, Tehsil Nawanshahr. Their statements are the same as those of Naranjan Das, M.L.A.

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Deponent No. 7 is Dhani Ram of Meerut who was a partner in Messrs. Gupta Iron Foundry, Chaff Cutter Manufacturers, Meerut, and is now the Manager of Messrs. Jiva Nand & Sons, Khair Nagar, Meerut. His firm had been purchasing from Amin Chand & Sons "Landra" machines every year, i.e., from 1940 to 1947. "Landra" mark, according to this witness, has acquired a great popularity in the market. He had been to the factory of Amin Chand & Sons at Landra which was a small village unconnected by rail or *pucca* road. "Landra" had acquired a secondary significance and distinctiveness of the goods of Amin Chand & Sons. The next deponent is Aman Singh of a village in Meerut District. He was called but was not cross-examined by the petitioners. He stated in his affidavit that he had been using "Landra" trade-mark machines of Amin Chand & Sons since 1938, that machines with this mark had attained popularity in his village and that the villagers were using "Landra" machines for cutting fodder and are prepared to spend more money on that machine than on others. Deponent No. 9 Chhote Ram, who is of another village in Meerut District, stated that "Landra" trade mark chaff-cutters are the most durable and that he always recommended to his co-villagers to purchase these chaff-cutting machines. Deponent No. 10 Ram Kishan is of Gurgaon District. He purchased a "Landra" machine in 1949 and had been recommending the other users to do the same, but this witness is not of much assistance as he does not show any connection between the manufacturers and the goods. Khilari Ram, deponent No. 11 also belongs to Meerut District. He purchased a "Landra" chaff-cutting machine 15 or 16 years ago and he speaks of the popularity of this make of machines which are very popular in the Meerut

District. He was cross-examined as R.W. 15 and stated that "Landra" machines were better than others and he purchased a machine because of its name "Landra", but he does not show that the word "Landra" has connection either with a village or with the manufacturers Amin Chand & Sons. All that his statement shows is that the goods marked "Landra" have a certain amount of popularity in the area where he lives.

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Laxmi Chand, deponent No. 17, was cross-examined as R.W. 10. He is a dealer in chaff-cutting machines since 1938 and has been buying "Landra" machines since that date. He has produced a copy of the Cash Book, dated the 20th October 1938, and states that "Landra" trade mark chaff-cutters of Amin Chand & Sons are most popular. The entry in his book reads as under :—

"Rs. 190-14-0 cash paid for V.P. for Landra Tokas of Amin Chand & Sons, Rs. 24-12-0 Railway freight, and Rs. 2-4-0 Railway expenses."

It is dated the 26th October 1938.

Deponent No. 18 is Bhalla Ram and he was called as R.W. 17. He purchased one machine in 1932 and produced a copy of a cash memo, dated the 15th September 1932. This is a receipt from Amin Chand & Sons for one "Landra Shahi" machine. Dhanpat Rai, deponent No. 19, belongs to Hissar District and he is a dealer in chaff-cutting machines for the last 20 years. He states that he has been regularly selling "Landra" trade mark chaff-cutters of Amin Chand & Sons since 1932 and that "Landra" machines were being sold at a premium. He has produced a Cash Book, dated the 27th December 1949. When cross-examined as R.W. 8 he could not say how many machines he had sold from 1932 to 1938, but as far as he could remember "Landra" tokas were being manufactured from the very beginning and on the machine the words "Landra Toka" were embossed. Bashe-shar Das, deponent No. 20, belongs to PEPSU and has been selling "Landra" tokas for nine years.

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He produced a bill, exhibit R.W. 9/A, of the year 1950. He was cross-examined as R.W. 9 and he stated that "Landra" is embossed on every part of the machine and customers see the mark before they purchase it. Deponent No. 21 is Kishan Lal of Rohtak District. He stated that "Landra" chaff-cutting machines were manufactured by Amin Chand & Sons of Landra and were most popular. He produced his account book of the year 1936 in which it is given that "Landra" machines were purchased at Rs 13-1-0 each. Nothing was brought out in his cross-examination which could help the petitioners. Ghansham Das is deponent No. 22 and belongs to Rewari. He stated that "Landra" *tokas* of Amin Chand & Sons are in great demand in his area and he had purchased in the years 1949, 1950 and 1951 a large number of machines of considerable value. He was cross-examined as R.W. 14. Bal Mukand of Morena (Madhya Bharat) is deponent No. 23. He started buying chaff-cutting machines in 1949. He stated that "Landra" had acquired a secondary significance and was distinctive of the goods of Amin Chand & Sons and the word was not associated with the village "Landra". Deponent No. 24 is Sundar Singh. He has known "Landra" machines since 1944. He was not cross-examined and according to him the manufacturers of "Landra" machines are Amin Chand & Sons and the word "Landra" was distinctive of the machines of respondent No. 2. Pritam Singh, deponent No. 25 is from Etawah in Uttar Pradesh. He started purchasing "Landra" machines of Amin Chand and Sons in 1950 and states that they are in great demand.

Ram Kishan, deponent No. 26, has been dealing with these machines for the last ten years. According to him the word "Landra" is not associated with the Village Landra but with the goods of Amin Chand & Sons and hardly any person knows that "Landra" is the name of a village. He was cross-examined as R.W. 12. Deponent No. 27 is Raje Ram of District Saharanpur. He pur-

chased a "Landra" machine for the first time in 1934-35 and he stated that the word "Landra" was distinctive of the goods of Amin Chand & Sons. Deponent No. 28 is from Bihar (Arrah District). He has been dealing with these machines for the last four years. Ram Nath, deponent No. 29, is of Kanpur District. According to him "Landra" is the distinctive mark of the machines of respondent No. 2. Nammi Chand, deponent No. 30, belongs to Agra and he started dealing in these goods in 1949 and according to him "Landra" machines are in great demand. Girdhari Lal Deponent No. 31, belongs to District Meerut and business has been carried on by his firm since 1932-33 and they had been dealing since 1953 in the chaff-cutting machines of Amin Chand & Sons and Anant Ram & Sons, "Landra" being the trade mark of the former. He produced a book of the year 1936. In this it is stated under *Mitti Bhadon Shudi Chaudas 1993*,—

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"20 *pehle aivi Landra kay* (First 20 came of "Landra"). On the credit side it is given:—

"Machine nag ek Ram Saroop *dawai pher kay Landrewali ley giya* machine. (Machine one—Ram Saroop took machine of Landra).

There is another similar entry under *Mitti Asuj Shudi 15*. Girdhari Lal was cross-examined as R.W. 20 and he stated that they dealt in "Landra" *toka* machines. He himself could not read anything because he was only a wrestler. Deponent No. 32 is Tara Chand of Rohtak District. He started dealing in "Landra" brand machines in 1949. He produced his books which showed that "Landra" is a distinctive trade mark. He was examined as R.W. 5. In cross-examination he stated:—

"I have only purchased "Landra" mark machines of respondent No. 2. \* \* \* I started buying their "Landra" mark machines in 1949."

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Deponent No. 33 is Kishan Lal of Rohtak District. He has been selling "Landra" machines of Amin Chand & Sons and he was not cross-examined.

Deponent No. 35 is Raghu Nath Das of Jalaun in Uttar Pradesh. He is a dealer in "Landra" chaff-cutting machines and stated that "Landra" tokas are very popular. He gave the figures for the year 1950 onwards. Deponent No. 34 is Mr. B. D. Bansal, a Chartered Accountant, who gave the sale-proceeds of "Landra" machines manufactured by Amin Chand & Sons from the year 1950 to the year 1953, the total of which comes to something like about Rs 19,80,000 odd.

Deponent No. 12 is Basant Singh. He is an agriculturist of Landra. He stated that he had purchased a "Landra" chaff-cutter in 1920 from Amin Chand & Sons of Landra. The word "Landra" was embossed on it. Tara Singh, deponent No. 13, is also of Landra. He states that the factory of Amin Chand & Sons is working since 1920 and that he had been using chaff-cutters with the word "Landra" embossed on them. Both of them state that Landra is a small and insignificant place.

Deponent No. 14 is Kartar Singh, a Sarpanch in Meerut District. All that he stated was that "Landra" was very popular in the area of which he was the Sarpanch. Dharam Singh, deponent No. 15, is also of Meerut District and his statement is similar, so also of Hukam Chand, Deponent No. 16.

I have given an analysis of the whole evidence given on affidavits and what was stated before me in Court. Besides this there are a number of documents produced by the respondents beginning with 1939 coming right up to 1951 which show that "Landra" was the name which was used for the chaff-cutting machines of Amin Chand and Sons. Some of them are letters addressed to Amin Chand and Sons and refer to "Landra" brand, "your 'Landra' toka," and so on.



As opposed to this the petitioners have produced eight affidavits, but I do not think they are of much use. Banwari Lal was examined as P.W. 1. It appears that he is not a manufacturer but gets his machines manufactured from other people and then sells them. He did not produce any accounts. His explanation for adopting the trade mark "Nanra" was that it meant small and as the chaff-cutter cuts the fodder into small pieces he has named his chaff-cutter "Nanra". He denied that he had adopted the word "Nanra" because "Landra" had achieved a certain amount of distinctiveness and popularity. Even in 1949 which is proved by a question at page 97 he had purchased machines from respondent No. 2 and they have now stopped selling them to him in his own name. P.Ws. 2 to 4 when cross-examined did not prove very much and I was not satisfied with their testimony. It appeared to me that they were not prepared to tell the truth and their demeanour was most unsatisfactory.

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A review of the evidence shows that Landra is an unknown place and there are no other manufacturers of any article other than Amin Chand & Sons who manufacture chaff-cutting machines, and in my opinion the word "Landra" is associated with the goods of Amin Chand & Sons and the word "Landra" has come to be known even as far as Bihar and Madhya Bharat with the goods of Amin Chand & Sons and has no signification other than the goods of Amin Chand & Sons.

The requisites for the registration of a trade mark are given in section 6 of the Trade Marks Act which provides:—

"6 (1) A trade mark shall not be registered unless it contains or consists of at least one of the following essential particulars, namely :—

- |     |   |   |   |   |
|-----|---|---|---|---|
| (a) | * | * | * | * |
| (b) | * | * | * | * |
| (c) | * | * | * | * |

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- (d) one or more words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname or the name of a sect, caste or tribe in India;
- (e) any other distinctive mark, provided that a name, signature, or any word, other than such as fall within the descriptions in the above clauses, shall not be registrable except upon evidence of its distinctiveness.
- (2) For the purposes of this section, the expression 'distinctive' means adapted, in relation to the goods in respect of which a trade mark is proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either, generally or, where the trade mark is proposed to be registered subject to limitations, in relation to use within the extent of the registration.
- (3) In determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which :—
- (a) the trade mark is inherently so adapted to distinguish, and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact so adapted

to distinguish :—

Provided that in the case of a trade mark which has been continuously used (either by the applicant for registration or by some predecessor in his business, and either in its original form or with additions or alterations not substantially affecting its identity) in relation to the same goods as those in relation to which registration is applied for, during a period from a date prior to the 25th day of February 1937, to the date of application for registration, the Registrar shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid, and may accept evidence of acquired distinctiveness as entitling the trade mark to registration.”

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The petitioner submits that Landra is a geographical name and, therefore, it cannot be registered except upon evidence of distinctiveness and this word 'distinctiveness' means adapted to distinguish the goods with which the proprietor of the mark is or may be connected in the course of trade from goods in the case of which no such connection subsists generally \* \* \*. Sub-clause (3) gives the conditions under which a mark is adapted to distinguish and respondent No. 2 relies on the proviso and contends that if the trade mark has been in continuous use during a period from a date prior to the 25th of February 1937, then the Registrar is not entitled to refuse registration merely by reason of the fact that the trade mark is not adapted to distinguish as aforesaid and he may accept evidence of acquired distinctiveness. These are all highly technical phrases and a large amount of literature has grown up around them. According to Kerly's Law of Trade Marks, Seventh Edition, page 158, a word is not debarred from registration as a distinctive word merely because it is geographical. If a word is a geographical name it cannot be registered under paragraph (d), but

M/s. Banwari it can, nevertheless, be registrable under paragraph (e): See *Holt's T.M.* (1). At page 134 of this book it is stated:—

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“The words ‘geographical name’ are not equivalent to the ‘name of any place’, and a word does not become a geographical name simply because some place upon the earth’s surface has been called by it.”

In *Magnolia* case (2), which was decided under the English Act of 1888, it appeared that in the United States from where the metal had been imported, there were several places known by the name ‘Magnolia’, but it did not appear that the goods had any connection with any of these places. Rigby, L.J., said:—

“It is, no doubt, shown by the evidence that there are places in the United States called by the name ‘Magnolia’, and if ‘geographical name’ in section 64 (e) were equivalent to the name of any place, ‘Magnolia’ as the name of places mentioned in the evidence, would fall within the exception. But in our judgment, the phrase ‘geographical name’ in section 64 (e) ought not, in general, to receive so wide an interpretation. It must, we think, in the absence of special circumstances, be interpreted so as to be in accordance, in some degree, with the general and popular meaning of the words, and a word does not become a geographical name simply because some place upon the earth’s surface has been called by it.”

In *Leonard & Ellis's* case (3), by the word ‘distinctive’ Fry, L.J. understood as distinguishing the mark of one from the manufacture of all others.

(1) (1896) 1 Ch. 711

(2) (1897) 2 Ch. 371

(3) 26 Ch. D. 288 at p. 304

The learned Lord Justice said :—

“I am inclined to think that the words ‘special and distinctive’ import the specializing of the make and manufacture of a particular maker from all other manufacturers and distinguishing the manufacture of one person from the manufacture of all others.”

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In *Wood v. Lambert & Butler* (1), a case dealing with ‘Eton’ cigarettes, Lindley, L.J., was of the opinion that distinctive trade mark must mean some mark which distinguishes the goods to which it is attached as the goods of a particular manufacturer. And Fry, L.J., repeated his definition from the earlier case.

In *Perry-Davis v. Harbord* (2), Lord Halsbury defined the word in similar language to that of Fry, L.J., ‘distinctive’, he said, “means distinguishing a particular person’s goods from somebody else’s—not a quality attributed to the particular article, but distinctive in that respect that it means that it is a manufacture of his distinguished from somebody else’s”, and he held that the word ‘Pain-killer’ as applied to a patent medicine was neither special nor distinctive.

‘Stone Ale’ was discussed in *Montgomery v. Thompson* (3). Lord Hannan said that goods of the respondent had by long usage acquired the name of ‘Stone Ale’, and ‘Stone Ales’, and that name does not merely convey the idea that the beer was manufactured at Stone, but that it was ale of the respondent’s manufacture. The oppositionist in that case who was the appellant before their Lordships was held entitled to brew ale at Stone to indicate that it was manufactured there without using the name which had become the designation of the respondent’s ale.

(1) 32 Ch. D. 247

(2) 15 A.C. 320

(3) 1891 A.C. 217 at p. 227

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The next case to which reference may be made is the *Oswego case*—*National Starch Company* (1) which was the case of corn flour sold in England as Oswego Flour. There was no other flour known as 'Oswego', Oswego being in U.S.A. In England the name 'Oswego' was known through its association with the goods of the manufacturers rather than as a geographical name, and the evidence showed that the name was associated with the corn flour of the applicants. It was held to be sufficient to make it distinctive if it was used to distinguish that corn from the corn of the others. At page 704 Warrington, J., said :—

“... the word 'Oswego' is a distinctive mark and, as such, adapted to distinguish the corn flour of the applicants from the corn flour of other persons.”

And again the learned Judge said :—

“... a word which has hitherto distinguished 'the goods of the applicants—which has not only distinguished them, but has been distinctive of them, so that goods with that name on them are known to be the applicants' and nobody else's—is adapted to distinguish the applicants' goods from those of other persons.”

In the *California Fig Syrup Company* case (2) an application was made to the Registrar to register “California Syrup Figs” as trade mark. Applicants were an American company with agents in England. Evidence showed that about 12 or 13 years before the application the applicants introduced their goods into England and that since that time they had continuously sold them there. A name was on the bottle and was also used in the advertisements which had been extensively issued. These words did distinguish the applicants' preparations from preparations of a similar name made and sold in England by other manufacturers. Warrington, J., held that the words were

(1) (1908) 2 Ch. 698

(2) (1910) 1 Ch. 130

not adapted to distinguish the applicants' goods M/s. Banwari and therefore he refused the application. It was Lal-Sham Lal argued by counsel that 'adapted to distinguish' v. does not mean capable of distinguishing but Registrar of suitable to distinguish and evidence of user is the Trade Marks, test of suitability and he distinguished the Bombay Oswego case (1) on the ground that Oswego was and another known to very few people and would not be so Kapur, J. likely to cause confusion. Referring to subsection (5) of section 9 of the English Act, Fletcher Moulton, L.J., held:—

“To my mind this provision can bear but one interpretation. It recognizes that distinctiveness, i.e. being adapted to distinguish the goods from those of other traders, is not necessarily an innate quality of the word. It may be acquired.”

He also held that if the Tribunal is of the opinion that the nature of the word is such that it is adapted to distinguish those particular goods of the trader from those of other persons, it will be its duty to allow registration and that the applicant is not confined to arguments drawn from the word itself. He may support his application by showing that by user the mark has in fact become more or less completely identified with the goods. At page 148 Fletcher Moulton, L.J., laid down the test in the following words:—

“Will the registration of the trade mark cause substantial difficulty or confusion in view of these rights of user by other traders? If the answer is in the affirmative, the Court will probably hesitate to allow the word to be registered. But if the answer be in the negative either by reason of the nature of the words, or because past user has limited the possibility of other traders safely or honestly using the words, the

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Court may well grant the desired permission."

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The words "adapted to distinguish" were again interpreted *in re R. J. Lea*, (1), which was the case of Boardman's Mixture. This was a case of a surname. It was held that the name is not distinctive and evidence fell short of distinctiveness and there was no proof showing what people who sold this mixture or the people who bought it understood by the term 'Boardman's Mixture'. The definition is given at page 463 in the following words:—

"Further the Act says "adapted to distinguish; the mere proof or admission that a mark does in fact distinguish does not *ipso facto* compel the judge to deem that mark to be distinctive. It must be further 'adapted to distinguish' which brings within the purview of his discretion the wider field of the interests of strangers and of the public."

At page 464 Hamilton, L.J., said :—

"Between names which few bear or would care to claim, and names which are borne by multitudes, there is a vast field. The former class of names may be effectively distinctive; the latter too notoriously general to be distinctive at all."

*Registrar of Trade Marks v. W. & G Du Cros* (2), was then referred to by counsel. At page 637 distinctiveness was held not to be conclusive and the extent to which the tribunal will be influenced by it was held to depend on all the circumstances including the area within which and the period during which such distinctiveness in fact can be predicated of the mark in question. In this case the letters "W & G" were held to be not distinc-

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(1) (1913) 1 Ch. 446

(2) 1913 A.C. 624



tive within the meaning of section 9 of the English Act and were, therefore, not registrable.

The trade mark "Livron" was the subject-matter of decision *in re the application of the Societe Des Usines Chimiques Rhone-Poulenc* (1). There the appellants were the owners of a registered trade mark "Livron" which was made up of two words "liver" and "iron", but at the date of registration there was a town in France called "Livron" with four thousand inhabitants where the respondents had a factory and they carried on a business similar to that of the appellants. It was held that the Registrar ought to have refused registration because the mark was calculated to deceive. It was not adapted to distinguish the goods of the proprietor and the word "Livron" was a geographical word and could not, therefore, be an invented word. Romer, L.J., however, was of the opinion that this word could not be a geographical word to an Englishman and that there was nothing to prevent its being an invented word. Sir Wilfred Greene, M. R., said at page 28 :—

"In my opinion, that is not so. It seems to me that, if the Registrar had had before him all the matter which is before this Court, he would have been wrong if he had granted registration of this mark because, the mark being, as I say, *ex-hypothesi*, the name of a place, and the name of a place where medicines of a similar character are manufactured, and it appearing that the business in medicines is of an international character, or the names of medicines, I think the evidence says, are international. I cannot see myself how the Registrar could with any propriety at all have held that the mark was distinctive."

Romer, L.J. said at page 32 :—

"The truth of the matter is that the Court has to conduct these enquiries, enquiries, really, of a very nebulous nature,

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(1) 1937 (4) A.E.R. 23

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but it must be remembered, as has been pointed out so often, that, when a case is on the borderline, the registrar has, as of course he has in every case, a discretion and, in cases on the borderline, the registrar will usually refuse to exercise his discretion in favour of registration."

Another case which I am referred to is the *Glastonbury's case* (1). The respondents in this case traded in Glastonbury slippers made of sheepskin and registered the word "Glastonbury" as a trade mark. The appellants dealt in similar goods in the same town and applied for expunging this mark on the ground that it was a geographical name not adapted to distinguish the goods of the respondents and was calculated to lead to deception. It was held that the evidence was insufficient to show that the mark was adapted to distinguish the goods of the respondents. Lord Maugham, L. C. said at page 380 :—

"One of the questions to be determined on this second branch of the case is whether the registration of the trade mark would be likely to cause substantial difficulty or confusion, in view of the rights of other traders to use the name of the place where they do, or may in the future, manufacture similar goods \* \* \*

\* \* \* \* \*

It is, I think, very difficult in such a case to establish that the place where the goods are manufactured has come to indicate, not a geographical fact, but the goods of the manufacturer."

Lord Russel of Killowen said at page 384 :—

"The authorities show, however, as will appear later, that it by no means follows that, if the necessary evidence of

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(1) 1938 (2) A.E.R. 337 (H.L.)

distinctiveness is forthcoming, the mark must, or ought to, be registered."

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At page 386 the learned Lord said :—

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"They and any future manufacturers of slippers in Glastonbury, and their respective retail customers, ought not to be hampered or restricted, by the presence of this mark upon the register, in selecting the particular form or words by which they desire to describe their goods as being products of a town which enjoys a reputation in connection with the manufacture of sheepskin slippers."

A review of these cases shows that as far as English cases are concerned the word "distinctive" means distinguishing a particular person's goods from somebody else's—not a quality attributed to the particular article, but that it is a manufacture of a particular manufacturer as distinguished from somebody else's [*Perry-Davis case* (1)] or being adapted to distinguish the goods of one manufacturer from that of other persons [*Oswego's case* (2)] or as Fletcher Moulton, L.J., said in *California Fig Syrup Company's case* (3), being adapted to distinguish the goods from those of other traders which is not necessarily an innate quality of the word. The test laid down by Fletcher Moulton, L.J., was : would the registration of the trade mark cause substantial difficulty or confusion in view of the rights of user by other traders? If the answer is in the affirmative, the mark will not be registered, and if in the negative, either because of the nature of the word or because of its past user, the registration will be granted.

Adapted to distinguish imports the wider field of interest of strangers and of the public, and

(1) 15 A.C. 320

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 as Hamilton, L.J., has said at p. 464 *in re R. J. Leo* (1), between names which are rare and those which are very common there is a vast field, the former being distinctive and the latter too general to be distinctive.

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In India the only case where the interpretation of section 6 came up for decision is *In the matter of India Electric Works, Limited* (2). There the Registrar of Trade Marks had refused to register the trade mark "India" on the ground that it was not adapted to distinguish even though the mark may have been used from a date prior to the 25th February 1937, and the learned Judge was of the opinion that the proviso to section 6 (3) did not mean that the evidence of mere user of an old mark would entitle the mark being registered and that his discretion ought not to be lightly interfered with by Courts unless he has misdirected himself or acted on a wrong principle. As I have said, the mark to be registered there was "India" and the learned Judge was of the opinion that this word would never acquire distinctiveness and the word "India" was held to belong to that class of word marks which are by their nature incapable of becoming distinctive, and reliance was placed on *W. & G. Du Cros's case* (3), and on the *Liverpool case* (4). I do not think that that case will have any application to the facts of the present case. The word "India", as was held by the Registrar, entails embarrassment or confusion as India is a big country and it is incapable of distinguishing the goods of the manufacturer and of becoming distinctive of his goods. The learned Judge said at page 427 :—

"It is admitted that the word "India" means of Indian origin, and that it must include the adjective 'Indian'. It is in its ordinary signification a geographical name, and every Indian manufacturer of

(1) (1913) 1 Ch. 446

(2) 49 C.W.N. 425

(3) 1913 A.C. 624

(4) 46 R.P.C. 99

fans and regulators, of whom there are several, would be interested in using the word which would have an undoubted sales value among all Indians desirous of supporting home industries. The Registrar if he permits registration creates a monopoly and to that extent limits the right of traders to carry on their trade. Any Indian manufacturer of fans can, *prima facie*, call his goods India or Indian fans, and the applicant has stated that he would object to their exercising this right because it would cause confusion."

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The present case is wholly different. The place "Landra" is a small insignificant village where the only persons manufacturing chaff-cutting machines are the respondents Amin Chand & Sons and as was said in *Magnolia's case* (1), Landra does not become a geographical name simply because some place upon the earth's surface has been called by it. By the registration of this mark no confusion or embarrassment is likely to be caused. The evidence shows that it is not even known to many people as being a village and excepting some of those who were importing it into their respective towns the name was associated with the goods of the manufacturers, i.e. Amin Chand & Sons, and not with the place of its manufacture, and it cannot be said that it is not distinctive of the goods of respondent No. 2 or that it is not adapted to distinguish.

Mr. Gosain invited my opinion to the meaning to be attached to the proviso to subsection 6 (3) where it is said that if a trade mark has been in continuous use from a date prior to the 25th February 1937, the Registrar shall not refuse registration only by reason of the fact that it is not adapted to distinguish and may accept evidence of acquired disinctiveness. To the facts of the present case, and I express no opinion as to the

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*Indian Fans case*, this proviso will be applicable, and even though Landra is taken to be a geographical name, evidence of acquired distinctiveness, which the Registrar had accepted and had discretion to accept, is sufficient to support the registration of the mark.

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It is not a case of a mere dispute between the petitioner and respondent No. 2, the Registrar is also a party and I am asked to interfere with the discretion used by the Registrar which according to the case relied upon by the petitioner, the *Indian Electric Works Limited case* (1), cannot be lightly interfered with by the Court unless it has been shown that the Registrar has misdirected himself or has acted on wrong principles which has not been shown in the present case.

I would, therefore, dismiss this petition but in the circumstances of this case parties will bear their own costs.

I may here express my appreciation of the help that I got from counsel for the parties appearing in the case.

FULL BENCH  
CRIMINAL ORIGINAL

Before Bhandari, C.J., Harnam Singh and Falshaw, JJ.,

SHRI SHIV RAM DASS UDASI CHAKARVARTI,—  
Petitioner

versus

THE PUNJAB STATE,—Respondent

Criminal Original No. 35 of 1952

1954

*Indian Penal Code (Act XLV of 1860)—Section 295-A—Essentials of—Defence to charge under—Propriety of.*

April 5th

Held, that in order to bring the case within section 295-A of the Indian Penal Code it is not so much the matter of discourse as the manner of it. The words used should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feelings of any class of citizens of India.

(1) 49 C. W. N. 425.