

The Delhi Motor
Truck Owners
Union and
others
v.
The State of
Punjab and
another
—
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that *badarpur* sand is carried not only by truck owners but by cart-men, tongas, tractor-trolleys and other transporters. Why should there be a tax on truck owners alone? Now, there can always be a reasonable classification. The tax has been imposed on the users of the road and it may have been thought that the truck owners caused the maximum wear and tear by the many trips made by them to Anangpur during the day. This point in any event was not specifically pleaded and on the face of it I cannot see that any case of discrimination has been made out.

In my opinion, there is no force in this petition which fails and is dismissed. In view of the decision on merits it is not necessary for me to deal with the preliminary objection raised on behalf of the respondents that the petition in its present form is not maintainable having been made by several aggrieved parties and based on the recent Bench decision of this Court in *Revenue Patwaris Union Punjab and others v. State of Punjab through the Chief Secretary, Chandigarh and others*, (4).

There would be no order as to costs

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APPELLATE CIVIL

Before Shamsher Bahadur, J.

CHOPRA WEAVING MILLS AND OTHERS.—Appellant

versus

PYARE LAL.—Respondent.

Regular Second Appeal No. 1162 of 1962.

Tort—Noise caused by a factory—Whether constitutes actionable nuisance—Injunction to restrict the working of the factory—Whether can be granted.

Held, that the noise caused by the working of a factory is an actionable nuisance if it causes disturbance to the

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(4) A.I.R. 1962 Punj. 55.

residents of the locality during the hours of sleep at night and an injunction can be granted against the working of the factory between the hours from 10 p.m. to 6 a.m. It is, however, open to the owner of the factory to abate the nuisance and the terms of the injunction can be varied if the Court is satisfied that the working of the factory no longer constitutes an actionable nuisance.

Second Appeal from the decree of the Court of Shri Kartar Singh, Senior Sub-Judge, with Enhanced Appellate Powers, Amritsar, dated the 18th day of August, 1962, affirming that of Miss S. Mehta, Sub-Judge, II Class, Amritsar, dated 28th February, 1962, granting the plaintiff a decree with costs for perpetual injunction to the effect that defendants 2 to 4 were restrained from working factory Defendant No. 1, Chopra Weaving Mills, Katra Khazana, Amritsar, from 9 p.m. to 7 a.m. (next morning) and were prohibited from employing any labour, servants, or agents for working the factory during these hours, i.e., 9 p.m. to 7 a.m. every day. The lower appellate Court left the parties to bear their own costs.

H. L. SIBAL, ADVOCATE, for the Appellants.

R. SACHAR, ADVOCATE, for the Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—The question for determination in this appeal is whether the noise caused by the Weaving Factory of the appellant in Gali Panjewali, Katra Khazana, District Amritsar, constitutes an actionable nuisance?

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Pyare Lal brought a suit against the proprietors of the Chopra Weaving Mills situated in a residential locality at Amritsar, namely, Katra Khazana, to restrain them from operating their power-loom weaving factory as it was a source of nuisance to the plaintiff and members of his family whose rest and repose were seriously interfered with. A large number of pleas were raised by the defendants and the substantial question on which

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the parties joined issue was whether the working of the factory amounted to an actionable nuisance. The learned trial Judge after examination of the evidence adduced on behalf of the parties and inspection of the spot reached the conclusion that the working of the factory was an actionable nuisance. In the view of the trial Court the factory in which the power-looms were worked was divided only by party-wall from the house of the plaintiff and vibrations and noise resulted in a nuisance which the plaintiff is justified in getting restrained or at least abated. Considering that the noise was most intolerable at night hours, the trial Court granted an injunction to the effect that the Chopra Weaving Mills would cease working between 9 p.m. and 7 a.m. The proprietors of the Chopra Weaving Mills feeling aggrieved preferred an appeal before the Senior Sub-Judge who affirming the finding of the trial Judge maintained the injunction granted by the first Court.

In appeal it has been urged by Mr. Hira Lal Sibal that the Court had no warrant to grant a total prohibition between specified hours. The counsel also submits that the plaintiff had actually acquiesced to the noise by coming to the house voluntarily and had to take things as he found them. Finally, Mr. Sibal submits that the factory works in three shifts of eight hours each and the hours of restriction could not have exceeded this limit which they do by two hours as the time of prohibition is between 9 p.m. and 7 a.m. Mr. Sibal relied on House of Lords decision in *Polsue and Alfieri, Limited v. Rushmer* (1), in which in similar situation injunction was sought against a neighbour for carrying on a noisy business and the relief was granted by restraining the appellants from so working their machinery and so carrying on their printing work

(1) 1907 A.C. 121.

as by reason of noise to cause a nuisance to the respondent or his family. Mr. Sibal contends that an injunction can only be granted to restrain the appellants on similar terms. In other words it should be left to the appellants to abate the nuisance in whatever manner they think fit. It is suggested by the counsel that the appellants might find it possible to prevent the noise from travelling beyond the precincts of the mills by the expensive process of insulation. A decision of the Division Bench of Sind Chief Court has been relied upon by the counsel in *F.O. Thakurdas Menghraj v. Bhawani & another* (2) in which it was held that an injunction should not be granted in such cases in unqualified terms, by directing the defendants to stop working the mills altogether during specified hours. In the words of Davis J.C. "we think they should be restrained from working their mills in the hours specified, that is to say, from 10 p.m. to 6 a.m., in such a manner as to cause nuisance or injury to the plaintiffs respondents or their family or other inmates or occupiers of the plaintiffs' said house. This injunction is in the usual form which can be found in Seton's judgments and orders. We think therefore that the order of the lower Court should be varied and the injunction should be modified as indicated above."

Mr. Sachar on behalf of the respondent on the other hand submits that if the plaintiff is given freedom to abate the noise in the manner he chooses it would lead to an unending litigation. He places reliance on a Division Bench decision of the Madras High Court in *Sadasiva Chetty v. Rangappa Rajoo* (3), where the owner of an oil mill close to a dwelling house was absolutely restrained and it was held that the owner of the house was entitled to ask for prohibition of the working of the mill where the nuisance cannot be abated. From the evidence and

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(2) A.I.R. 1937 Sind. 8.

(3) A.I.R. 1919 Mad. 1185.

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inspection note of the Court it appears that the nuisance in the present case is of a nature which cannot be moderated by mechanical contrivances. It seems to me that as the mill had been working for many years, no improvements can be expected if the matter is left to the will of the owners of the factory.

As stated in Clerk and Lindsell on Torts (11th edition at page 562) "an actionable nuisance can be created by making an unreasonable noise or vibrations and the Court can be asked for their abatement or removal. In such nuisances the principles of 'Give and take', 'Live and let live' are to be valued In determining the question whether nuisance has been caused, a just balance must be struck between the right of the defendant to use his property for his own lawful enjoyment and the right of plaintiff to the undisturbed enjoyment of his property."

I have carefully considered the arguments addressed by the learned counsel and I have reached the conclusion that the concurrent finding of fact of the Courts below that nuisance has been caused must be affirmed. This finding, however, does not settle the form which the relief should take. I am quite definite that the plaintiff-respondent and his family should be left undisturbed in their sleeping hours but I feel inclined to curtail the hours of restriction to eight instead of ten. The restricted hours would be from 10 p.m. to 6 a.m. During this time the defendants would be restrained from working the factory altogether. I would however like the defendant appellants to be afforded a chance of abating nuisance by mechanical contrivances if possible. The terms of the decree should provide for such a contingency also. In this view of the matter, I would modify the decree to the extent that the hours of restriction would be from 10 p.m. to 6 a.m. and not from 9 p.m. to 7 a.m. and further

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.

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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.