IN THE FIJI COURT OF APPEAL
Appellate Jurisdiction
Civil Appeal No. 72 of 1983

Between : KARAM CHAND RAMRAKHA

Appellant

- and -

VIJAYA PARMANANDAM

Respondent

Mr. Anand Singh and Mr. Hemant Patel for the Appellant
Mr. G. P. Lala and Mr. M. B. Patel for the Respondent

Date of Hearing : 16th July, 1984

Delivery of Judgment : 20th July, 1984

JUDGMENT OF THE COURT

Speight, V.P.

The appellant, Mr. Ramrakha, was the defendant in a libel action brought against him by Mr. Parmanandam, who was the plaintiff in the Supreme Court, and is the respondent in these proceedings. We propose to refer to the parties by their respective surnames. Both gentlemen are members of the Bar; they are also members of Parliament. The alleged defamatory article was a letter written by Mr. Ramrakha and published in the Fiji Times on the 12th of September, 1980.

In the Statement of Claim filed by Mr. Parmanandam the full text of the letter is not set out but a number of paragraphs are recited as follows :-

"3. IN the "Letters to the Editor" column of the issue of Friday the 12th September, 1980 of the Fiji Times under the heading "ATTACK ON DPP" the Defendant falsely and maliciously wrote a letter and printed and published same, or caused it to be written, printed and published of and concerning the Plaintiff the words following that is to say:-

(a) In the first paragraph thereof:-

"I note that Mr. Kulen Ratnessar, our Director of Public Prosecutions, was subjected to all manner of attacks by a lawyer Member of Parliament."

(b) In the second paragraph thereof:-

"Although the Speaker ruled this lawyer Member out of order, nevertheless, indefiance of the Chairman's ruling, this member made good his speech".

(c) In the fifth paragraph thereof:-

"I could not have said anything in Parliament, because the Speaker ruled this lawyer Member out of order repeatedly and the lawyer Member persisted in saying what he wanted to say".

(d) In the sixth and seventh paragraphs thereof:-

"...it seems quite clear that Mr. Parmanandam did not inform the Parliament that he had been counsel for Mr. Wazid Ali Khan, and that therefore he declared his interest (sic) in the matter".

"Further, Mr. Parmanandam did not disclose to the Parliament that Mr. Wazid Ali Khan has appealed against his conviction, and that the matter was subjudice".

AND (e) In the eighth paragraph thereof:-

"I propose to refer to the Fiji Law Society the ethics of whether a lawyer parliamentarian can project his own client's case in parliament,

in such immoderate and excessive terms, especially when the case is still before the Courts".

The letter was admitted to have been written by Mr. Ramrakha and it will be seen that, atleast in the paragraphs reproduced in the statement of claim, it alleges that Mr. Parmanandam, when speaking in Parliament, had behaved in a way which was less than proper by :

(a) attacking the conduct of the Director of Public Prosecutions;

(b) continuing to speak after having been ruled out of order by the Speaker;

(c) failing to disclose a professional relationship between himself and a Mr. Khan in respect of whom criminal proceedings were still on foot in the courts; and finally

(d) there was a statement by Mr. Ramrakha that he proposed to report Mr. Parmanandam to the Fiji Law Society, asking it to investigate the professional propriety of Mr. Parmanandam so conducting himself in Parliament and in particular of discussing in Parliament a case which was sub judice.

We shall discuss the pleadings in more detail later, for they were badly drawn, but the real issue was whether this letter, purporting to describe Mr. Parmanandam's conduct and Mr. Ramrakha's intentions was in whole or in part defamatory.

Kermode J.,in a reserved judgment held that it was and awarded damages of $250.00 to Mr. Parmanandam.

We turn to the issues which were placed before the Court and the Judge's decision thereon. We have already said that the pleadings filed by plaintiff and defendant were inept and

we add that we are surprised at the rather unusual course followed by the parties in the Supreme Court - neither side called evidence; submissions were made and the decision was given on the allegations in the plaintiff's pleadings and on the admissions, such as they were, in the Statement of Defence.

Paragraph 3 of the Statement of Claim already produced alleged that Mr. Ramrakha -

> " falsely and maliciously wrote a letter... and caused to be published of and concerning the plaintiff the words following...."

In paragraph 3 of the Statement of Claim the defendant

> " admits paragraph 3 of the Statement of Claim and will rely on the whole of the said letter when the same is produced in Court on the trial of this action".

Now that must have been a mistake by the draftsman of the Statement of Defence. It must be unheard of in a defamation action to admit not merely that the defendant wrote the document in question, but that it was false and malicious. We are sure this was not intended and indeed it does not seem to have been thereafter so treated. Subsequently in Court, Mr. Parmanandam, who appeared in person, withdrew a reply in which he had given particulars of express malice; he also agreed to delete the words "and maliciously" from the Statement of Claim".

However, that still left the allegation that the letter was "falsely written and published" and the apparent admission in the Statement of Defence. Yet in the same document, in a number of paragraphs dealing with the individual allegations of defamation Mr. Ramrakha pleaded that what he had written was "true in substance and in fact" - that is to say he raised the defence of justification. When this occurs in a defamation case tried by Judge alone, once it is shown that the published words are defamatory the onus of proving that what was said was

true is upon the defendant. In the context of this case a plea of justification obliged Mr. Ramrakha to prove that Mr. Parmanandam had, in Parliament, attacked the Director of Public Prosecutions; defied the Speaker's ruling that he was out of order; and made a submission concerning the case of Mr. Khan without advising Parliament that it was sub judice.

As has been stated neither party called any evidence. The very briefest of submissions were made inviting the Judge to give judgment solely on the pleadings (as amended). This of course is a most unusual procedure but it is not unheard of, nor improper - See Supreme Court Practice (1967) O.27 R.3 (Vol. 1 p.391). As already related judgment for $250 was entered.

Now the defendant had pleaded justification, but as we have already said he did not offer any evidence in support of that plea. So he failed to prove the truth of the allegations made in his letter that Mr. Parmanandam had conducted himself in the way alleged, except in so far as Mr. Parmanandam in paragraph 5 of his Statement of Claim acknowleuged, with some reservation, the truth of the allegations in the first paragraph of the letter. Paragraph 5 includes the following :

> " When the plaintiff was talking on Law and Order which concerned Mr. Ratnessar's office matters as a member of Parliament he was free to say within the Walls of Parliament subject to its Standing Orders whatever he thought was proper for that matter and so he aired his view."

Apart from that there was no evidence to show that Mr. Parmanandam had spoken in the way alleged although the counsel seem to have proceeded on the basis that he had. Accordingly Kermode J. perhaps understandably addressed himself to the defamation question on the assumption that Mr. Parmanandam's conduct and words had been as alleged; nobody seems to have approached the question on any basis other than :

" Was the learned trial Judge right in concluding that the passages cited in the Statement of Claim and admitted as published by the defendant were defamatory in whole or in substantial part?"

But it must not be forgotten that when the Defendant failed to adduce any evidence of the truth of his statements the matter fell to be determined solely on the basis that, if the allegations in the letter lowered the plaintiff's reputation in the eys of the public damages would follow.

Kermode J. held that in his view :

(a) paragraphs 1, 2 and 5 were not defamatory,

(b) paragraphs 6 and 7 contained critical material which would probably not be appreciated as damaging in the eyes of members of the general public involving as they did the rather arcane topic of sub judice comment but

(c) paragraph 8 was defamatory.

The first ground of appeal argued by Mr. Anand Singh was Ground 2 in the Notice of Appeal - namely that the Statement of Claim did not recite the article in whole, nor did the plaintiff produce the article as a whole, but merely excerpts therefrom and that accordingly the trial Judge erred in either receiving such evidence or admissions or alternatively in acting on that material. The basis for this submission is to be found in a passage from Gatley on Libel and Slander (8th Edition) at para. 1299:-

"1299. Libel read in context. The next step after proving publication is to put in the document containing the libel. The defendant has the right to have the whole of the document read to the jury as part of the plaintiff's case, as the context may correct, or materially

> qualify or mitigate the actionable character of the passages complained of. A portion of a libellous document upon which the action is founded is not receivable in evidence, for the other parts of the document might have altered the sense of the portion produced. If the libel appeared in a newspaper the defendant is entitled to have read as part of the plaintiff's case any other article or paragraph in the same issue which is referred to in the libel, or which is connected with the subject-matter of the libel, or, indeed, any article or paragraph in a different issue of the same newspaper which is connected with the subject matter of the libel.

The only authority cited by Gatley in relation to the inadmissibility of a portion of the document is White v. Metcalfe (1888) 6N.Z.L.R. 397. The brief report of that case shows that in proof of an alleged defamatory statement, portion of a letter, seemingly only one page, was produced to the Court. It was suggested that the balance of the letter had been destroyed. Gillies J. said :

> " I am clearly of opinion that when a libel is founded upon the document such as a letter it is not sufficient to produce a portion only of the document relied upon...other parts of the letter might have entirely altered the sense of the small portion produced. "

He non-suited the plaintiff.

We do not think that this pronouncement is of application to a case such as the present. It will be noted that there evidence was being offered and objection was taken to the admissibility of the plaintiff's witness producing only a page of the letter, and the rationale was that one could not conclude that the words were defamatory as they might have been modified elsewhere in the letter. Such words as were relied on as damaging were somewhat equivocal. The present case is different in that the defendant had admitted the publication of the words in issue

and an examination of those words particularly those in paragraph 8 leads us to the view that they were clearly damaging in a way which could not be gainsaid, as the Judge held.

While accepting the possibility that the words in one part of a document may be explained and modified by what appears to be elsewhere, we hold the view that where words are clearly defamatory in themselves there is no absolute bar to production of part only of a document, so long as the words complained of are clear and unequivocal. It is also noted that this point was not raised at the trial, where the Judge was asked solely whether the material admitted in evidence was or was not defamatory. Nor did the Defence, whose document it was, call for its production in whole. We see no validity in the point now raised for the first time.

The second argument advanced, based on the first Ground in the Notice of Appeal, was that the Judge misdirected himself in holding that the admitted statements were defamatory. In his judgment the learned Judge considered the meaning which members of the general public would take from the paragraphs under review. He held that the criticism by Mr. Parmanandam (assuming that he so spoke) of the Director of Public Prosecutions would not be understood by right thinking members of the general public to be more than what he as a vigorous politician, was entitled to say in Parliament. In similar vein he held that a member who refused to be silenced by the Speaker but who spoke out on views which he held, was a man of courage so that this conduct too would not be regarded by reasonable people as discreditable.

On the question of criticism of Mr. Parmanandam's supposed remarks when he discussed the case of Mr. Khan in the House, the allegation was that he was defamed because it was said of him that he had failed to reveal:-

(a) his alleged solicitor/client relationship with Mr. Khan and

(b) the fact that Mr. Khan's case was still the subject of court proceedings.

As the Judge pointed out, but few members of the general public would understand the law relating to sub judice matters and it was unlikely that many people would think ill of Mr. Parmanandam merely because some small numbers of people would know that, as a lawyer, he should have been expected not to discuss a proceeding case. On the basis of the recognized principle that to be defamatory something must reduce a man's reputation in the eyes of the general public the Judge held that this was not made out. The matter upon which the finding of defamation was based was in the eighth paragraph. Although the Judge had held that few people would have understood the complaint about paragraphs 6 and 7, he felt the matter would be clinched in their minds by the statement that Mr. Ramrakha proposed to refer Mr. Parmanandam's conduct to the Fiji law Society - obviously as a complaint by him that as a lawyer Mr. Parmanandam had behaved unethically in his speech in Parliament.

Counsel have made opposing submissions. On behalf of Mr. Ramrakha, Mr. Singh submitted that the relevant passage was merely a statement of fact, namely that because of the view he held, Mr. Ramrakha proposed to seek a ruling from the governing body of the parties' profession on the limits to which a member of that profession could go in a Parliamentary speech. In a contrary submission Mr. Lala for Mr. Parmanandam submitted that in a small community such as Suva, where the conduct of members in Parliament is much reported, and where lawyers play a very active part in public affairs, the words published would be taken by the general public as an assertion that Mr. Parmanandam had been guilty of wrong doing, and that he was likely to be disciplined by the Law Society.

Kermode J. accepted that the latter was the inference which would be taken by readers of the papers, as fair minded members of the general public, and that it was defamatory. We agree with this view. It is true that the learned Judge had been unimpressed with the allegations relating to the earlier passages quoted, but he did go on to say that the article was to be read as a whole or atleast such parts of it as were printed should be read together. We understand this to mean that although the earlier passages were innocuous when taken individually, their combined effect was to give a background of quarrelsome or troublesome behaviour by Mr. Parmanandam which would lend colour to the derogatory inference properly to be taken from the declared intention of reporting Mr. Parmanandam to the disciplinary body of his profession.

As a postcript we add that if it had been proved, as the defence plea of justification had claimed, that Mr. Parmanandam had said these things and behaved in this way, a different verdict might have been reached. It is true that Parliamentary privilege protects members absolutely from actions for defamation by aggrieved persons who feel they have been unjustly criticised in the House. But Parliamentary privilege has nothing to do with the question of proper behaviour by a lawyer, wherever he may be; nor with the legal principle that discussion of the merits of cases before the Court can amount to contempt of Court. The functions of the Privileges Committee of the House, and of the local Law Society are separate but parallel. The House disciplines its members for breaches of Standing orders and the like.

Under the Legal Practitioners Act (Cap 254) the Fiji Law Society may settle points of practice (section 33(f) and may investigate charges of professional misconduct. The Council of the Law Society may also lay a complaint against a practitioner which could be heard by the Disciplinary Committee under Part VIII of the Act.

It is just as improper from a professional standpoint to discuss a case, which is before the Court, in Parliament as in any other public place. The reason is obvious. No statement should be seen as seeking to influence the Courts which are constitutionally not subject to the legislative or executive arms of government. Standing Orders of the House may also deal with the same subject of sub judice comment but the restrictions which those Orders may impose do not affect the right of the professional body to scrutinise a member's conduct.

Had the Defendant proved that Mr. Parmanandam had argued the merits of a sub judice case in parliament, it would not be defamatory to say that this was a matter which the Law Society should consider - hence it would not be defamatory for another lawyer to say that he was reporting the matter to the Law Society for a ruling. But the fact was not so proved.

Accordingly, in view of the way the defence was conducted, we accept the validity of Mr. Lala's submission, and the correctness of the conclusion that the Judge reached. No argument was raised as to the quantum of damages awarded. Accordingly the appeal is dismissed with costs.

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Vice-President

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Judge of Appeal

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Judge of Appeal