

**IN THE HIGH COURT OF FIJI AT SUVA**

**CIVIL JURISDICTION**

**Civil Action No. HBC 289 of 2015**

**BETWEEN**

**JAYANT PRATAP** of Koroqaqa, Businessman.

**PLAINTIFF**

**AND**

**NAIPOTE VERE** of Lot 2, Koroqaqa, Baulevu.

**DEFENDANT**

**Counsel** : Mr. Kumar S. for the Plaintiff

Defendant in Person

**Date of Hearing** : 28<sup>th</sup> June 2022

**Date of Judgment** : 04<sup>th</sup> August 2022

## JUDGMENT

- [1] The Plaintiff filed this Writ of Summons to sue the Defendant seeking General damages for the defamation of character, Exemplary damages, Aggravated damages, Interest on monetary award, and Costs of the action on indemnity basis.
- [2] The Plaintiff's case is that his public image and the standing in the society were disparaged by a letter written by the Defendant.
- [3] The Writ of summons and the Statement of Claim were filed on 24<sup>th</sup> August 2015. The Defendant filed his Statement of Defence on 08<sup>th</sup> September 2015 and the Reply to the Statement of Defence was filed by the Plaintiff on 10<sup>th</sup> September 2015.
- [4] On the Notice of Motion of the Plaintiff, filed on 25<sup>th</sup> September 2020 the Acting Master granted dispensation of Pre-trial conference. In any event Order 34 Rule 2 only applies to the cases where both parties represented by the solicitors. In the present case Defendant appears in person.
- [5] Pursuant to Order 34 Rule 1 of the High Court Rules 1988 filed on 12<sup>th</sup> November 2020 this matter was listed before this Court for the first time on 28<sup>th</sup> January 2021. Thereafter this matter has been fixed for trial on three different occasions. On the third occasion, 02<sup>nd</sup> March 2022 the Defendant sought time to get treatment for his hearing difficulty. However, the Court ordered Cost against the Defendant for this adjournment. Thereafter the trial dates were set to 28<sup>th</sup> and 29<sup>th</sup> of June 2022.
- [6] On 28<sup>th</sup> June 2022 there was no appearance made by the Defendant and the Court proceeded to hear the Plaintiff's case under Order 35 Rule 1 (2).
- [7] At the trial, Plaintiff and another witness gave evidence, and the case was closed for the Plaintiff. The Court allowed time for the Plaintiff to file written submissions on the issues relating to law.
- [8] At the trial the Plaintiff stated that he is a businessman and has been a well-known person in his locality as he has held several positions in the society. He stated that he has been the Managing Director of Koroqaqa and Vatuwaqa Carriers (Fiji) Ltd, Director and Company Secretary of Jansons Farm (Fiji) Ltd, Former Chairman of Naitasiri Advisory Council, former Advisory Counselor of Baulevu, Nausori, Former Board Member at Naitasiri Provincial Development Board, Trustee of Shree Sanatan

Dharam Pratinidhi Sabha of Fiji, Treasurer of Shree Sanatan Dharam Pratinidhi Sabha- Rewa Branch and the President of Baulevu Community Police Post. Further to that he has held the positions of Commissioner for Oaths and Justice of Peace before filing this action.

- [9] The Plaintiff did not know the Defendant personally. But he has moved into the same neighbourhood where Plaintiff lives in, several years ago. The Plaintiff has been subjected to a police investigation. However, he says police could not find any evidence against him. Thus, there were no charges filed.
- [10] That was the time the Defendant wrote a letter addressed to the Commissioner of Police. That letter has been the subject matter of this action. A copy of this letter dated 05<sup>th</sup> April 2015 has been marked in Court as Exhibit 2 during the Plaintiff's evidence.
- [11] The Plaintiff stated that he found out that this letter has been circulated among the members of the society. As a result, people started calling him as a member of a Mafia group. He states that this affected him in so many ways as he could not maintain the respectable living he had before. He has moved out from many social activities as he could not face the people of his society. He heard people calling him "Mafia guy". As a result, he lost most of his poultry business from where he resides. His family and the children too were affected due to this.
- [12] The Plaintiff sought one million dollars as damages from the Defendant.
- [13] Plaintiff called Shailendra Kumar Narayan as his witness. He is a retired civil servant. He stated that the Plaintiff is a renowned public figure in the area. The Defendant moved in as a tenant several years ago and started causing issues to the society. The witness identified Exhibit 2 and stated that the people tried to distribute this letter in the society. He stated that the Defendant has told him that the Plaintiff is a Mafia leader. Further he stated that during a meeting held at their community police post, the Defendant openly stated that the Plaintiff is a Mafia leader, and the witness was a ring leader.
- [14] As a result of this, the witness stated that he has seen people isolating the Plaintiff and talking adversely about him. The witness who also has been a preacher of Holy Ramayan stated that he understood the meaning of 'mafia' as someone related to terrorist activities. He further said that, what was stated by the Defendant about the Plaintiff, was not correct.

## **The Law**

- [15] In English Law there can be two separate civil actions in respect of the publication of defamatory matter. Action for libel and action for slander. Action for libel means publication of defamatory matter in writing or any other permanent form. On the other hand, slander concerned with the publication of defamatory matter by word of mouth.
- [16] Section 2 of the **Defamation Act 1971** also identifies Defamation by libel or slander. However, it is to be noted that precise dividing line between the two types of action is not yet settled.
- [17] In an action for defamation the Plaintiff must establish that the statement about which complaint is made has been defamatory of the Plaintiff's character. Therefore, it is important to consider the definition of the word defamatory. In **Skuse v Granada Television** [1996] EMLR 278 at 286 Sir Thomas Bingham MR stated that 'A statement should be taken to be defamatory if it would tend to lower [the Claimant] in the estimation of right thinking members of the society generally, or be likely to affect a person adversely in the estimation of reasonable people generally'. Lord Atkin in **Sim v Stretch** [1936] 2 AER 1237 at 1240 stated 'It would seem to be settled law that the question whether a statement is defamatory must be judged by reference to the standards of society generally, rather than a section of it'.
- [18] In Common Law action for defamation could be established even where the publication of the statement complained of was to a person or persons who did not believe it, provided always that, objectively regarded, it was defamatory according to one or more of the approved definitions of that word. **Morgan v Odhams Press Ltd** [1971] 2 AER 1156 and **Hough v London Express Newspaper Ltd** [1940] 2 KB 507.
- [19] Therefore, in summary, to find out whether a statement is defamatory or not, it should be considered that the publication made by the Defendant, in its ordinary meaning is to affect the Plaintiff adversely by substantially lowering the minds of right thinking members of the society or substantially affecting the attitude towards the Plaintiff by the others in the society.
- [20] Before considering the principles of construction of defamatory matter the Court would consider the rule of the 'Single or Right Meaning'. A statement made by the

Plaintiff may often consist of a single defamatory allegation. Sometimes a statement will be capable of a range of possible interpretations. In such cases, the single meaning rule has the effect of picking a single, right meaning from the statement.

[21] In **Chase v News Group Newspapers** [2002]. EWCA Civ 1772, [2003] EMLR 218 Brooke LJ considered shades of meaning in a statement where he said ‘the sting of a libel may be capable of meaning that the claimant has in fact committed some serious act, such as murder. Alternatively, it may be suggested that the words mean that there are reasonable grounds to suspect that he/she has committed such an act. A third possibility is that they may mean that there are grounds for investigating whether he/she has been responsible for such an act’.

[22] This rule in practice has achieved prominence in cases where a plaintiff has complained that the statement in question implicated in some wrongdoing and where the Court has to decide the actual level of allegation expressed. The levels of meaning set out by Brooke LJ are called as ‘Chase level 1 for an allegation of commission or guilt, Chase level 2 for an allegation that there are reasonable grounds for suspicion, or Chase level 3 for an allegation that there are grounds for investigation’.

[23] The natural and ordinary meaning of a statement is the meaning in which it would reasonably be understood by ordinary people, using their general knowledge and common sense. In this regard, the sense in which the statement was intended is treated as irrelevant. As the Supreme Court observed in **Stocker v Stocker** [2019] UKSC 17 primary role of the Court is to focus on how the ordinary reasonable reader would construe the words; the Court should step aside from a ‘lawyerly analysis’ and inhabit the world of the typical reader.

### **The Letter**

[24] The letter dated 05<sup>th</sup> April 2015 was marked as exhibit 2 by the Plaintiff. The letter is not an original copy, but a photocopy. This letter has five typed written pages. The first page carries on the letterhead of the Defendant addressed to the then Commissioner of Police. In the first two paragraphs Defendant provides his background as a retired police officer and a current legal practitioner. The letter does not have a signature page. It appears that the Defendant starts the letter to complain about some police officers in his area. While doing that the Defendant makes several remarks about the Plaintiff stating that he controls a group that is a

“Mafia” group and bribes senior police officers and directs them whom to charge and whom not to.

[25] In the Statement of Claim the Plaintiff quoted from the letter “Mr. Jayant Pratap and one will see when I go further on in my letter how many criminal activities these men have involved themselves with and escaped prosecution because I suspect they belong to the Mafia. Mr. Jayant Pratap had even called a meeting in Mr. Sanjesh Narayn’s home sometime in February 2015 and I saw that those who attended the meeting are those who ganged up with Mr. Jayant Pratap”.

[26] The Plaintiff states that this letter was widely read by the members of his society and was produced in two different legal actions.

[27] In order to establish a cause of action in defamation, the Plaintiff has to prove,

- (a) that the statement complained of referred to the Plaintiff;
- (b) that the statement was defamatory of the Plaintiff;
- (c) that the statement was published by the Defendant or in circumstances in which the Defendant is responsible for publication.

[28] There is a difference in spelling the name of the Plaintiff by the Defendant. As per the action filed in this Court, the Plaintiff’s name is ‘Jaywant Pratap’. However, in the letter dated 05<sup>th</sup> April 2015, the statement complained of, refers to him as ‘Jayant Pratap’. Having considered the evidence and after examining the exhibit wholly the Court is satisfied that the statement complained of referred to the Plaintiff of this action.

[29] Before going into the consideration on whether the statement was defamatory, I will address on the issue of whether the statement was published by the Defendant.

[30] As stated before the letter has been written on a letterhead of the Defendant. The initial paragraphs carry an introduction of himself. The letter has been addressed to a third party, then Police Commissioner. The Plaintiff and witness who testified before this Court confirmed that the contents of this letter had been widely discussed by the general public in their area.

[31] Though there is no mention in the Statement of Defence by the Defendant, the Court would like to discuss whether the Defendant intended the statement to be only read

by the Commissioner of Police. Therefore, whether the Plaintiff is liable for publishing it to the others.

[32] The Court could not find any material in the letter to categorise that it was to be only read by the Commissioner. Although the second paragraph starts “I write to you personally...” the writer intended to provide information on several matters concerning police duties. Therefore, it is reasonable to think that these types of correspondences will be considered as ‘general correspondence’ and circulated to various divisions within the police force. Therefore, it is not a mere possibility, the Defendant knew that it would be perused by others. In the cases of **Pullman v Hill** [1891] 1 QB 524 and **Theaker v Richerdson** [1962] 1 WLR 151 the Courts held in favour of the claimants where the publication was seen and read by others though they were addressed to someone else.

[33] In addition to the above, both Plaintiff and the witness stated that the contents of Defendant’s publication became aware to the community of their area. And as a result, people started calling the Plaintiff ‘Mafia guy’ which resulted loss of social respect accorded to him by his community before. This has been confirmed by the witness. Therefore, this Court decides that in the circumstances the Defendant had been responsible for publication of the statement complained of.

[34] Now the question is whether the statement was defamatory of the Plaintiff. The 5<sup>th</sup> of April 2015 letter refers several remarks about the Plaintiff. On page two of Defendant’s letter, he states “I will now outline hereunder cases against particular individuals who are members of this **Mafia** type or organisation [hereunder referred to as **Mafia**]. I refer to **Mafia** organisation because I found out from reliable evidence and information available to me that they have criminally control the operation of the police force in our area through corrupt practices”. Further on the second paragraph of the same page he states, “There are direct evidences of foods being offered to police officers who attended to false complaints lodged by peoples who belong to this **Mr. Jayan Pratap’s Mafia**”.

[35] Though the Plaintiff highlights in his Statement of Claim only one portion of the letter as defamatory, the Court looks at the entire exhibit to determine whether the publication was defamatory of the Plaintiff.

[36] The Court notes that whenever the Defendant refers to the Plaintiff, it was on bold letters and the word “Mafia” has been used in bold italics.

[37] The word “Mafia” in its ordinary meaning used to refer crime syndicates. The Court needs to consider how these words would convey to the ordinary reasonable people. It is not difficult to conclude that if a person refers someone belongs to a mafia, then it would mean that the person is corrupt, dishonest, and violent, who offers bribes law enforcement to get things done. The Court sees only a single meaning and no other meaning to the use of this language. The witness called by the Plaintiff testified that in his mind, he understood terrorist related activities within the meaning of ‘Mafia’.

[38] The Court is also of the view that even if the Defendant has stated that he obtained this information from reliable information suggesting that it was from a third party, he would not be successful in evading responsibility of the natural and ordinary meaning of the libel. In **Lewis v Daily Telegraph Ltd** [1964] AC 234 at 284 Lord Devlin stated, ‘for the purpose of the law of libel a hearsay statement is the same as a direct statement, and that is all there is to it’.

[39] Therefore having evaluated the evidence and legal principles discussed above, the Court is of the view that use of word ‘Mafia’ which is *ex facie* defamatory, degraded Plaintiff’s position in the society and exposed him to public hatred and ridicule.

#### **Defence**

[40] The Defendant did not present his case and was absent on the date of the trial. Thus there is no evidence conveyed to the Court by the Defendant.

[41] Nevertheless the Court will consider whether there are any possible defences which could have taken up by the Defendant.

[42] On the face of it, the letter dated 04<sup>th</sup> April 2015 appears to be a complaint made to the Commissioner of Police. In **Westcott v Westcott** [2008] EWCA Civ 818, [2009] QB 407 the Court of Appeal held that an initial complaint to police was protected by absolute privilege. Immunity was required for the first report of an alleged crime to police, since any inhibition on the freedom to complain will seriously erode the rigours of the criminal justice system and will be contrary to the public interest.

[43] However there was no evidence before this Court to take note that this was in fact a first complaint by the Defendant. Mere fact that it has been addressed to the then Commissioner of Police would not shift the burden of proving the same since the



Defendant is silent on the issue whether there has been any acknowledgement by the Commissioner if it has been considered as a first complaint. Therefore, the Court is of the view that there is no evidence provided by the Defendant to consider that the letter dated 04<sup>th</sup> April 2015 is covered by privilege.

[44] Though it cannot be considered as evidence, in paragraph 11 of the Statement of Defence, the Defendant states “THAT the Defendant in answer to paragraph 19 to 34 of the Plaintiff’s Statement of claim says that what the Plaintiff claimed therein are baseless and not defamatory because the Defendant has ample evidence that the Plaintiff is a person of that calibre. There are documentary evidences of the Mafia type of organisation that the Plaintiff has in our community. The Defendant claims that whoever attempts or controls the police to do criminal activities should be branded a Mafia boss and that is not defamatory if one can prove the truth of it and the Defendant has documentary proof of it including police statements”.

[45] The Court notes that the defamatory statements are covered by the defence of ‘Fair Comment’. Section 16 of the **Defamation Act 1971** provides the defence of fair comment in an action for defamation in respect of words consisting partly of allegations of fact and partly of expression of opinion. In **Abbas Ali v Thompson** [ABU 0029 of 2010] the Court set out five requisites required for establishing the defence of fair comment.

[46] Similarly the other common law defence available is ‘Justification’. The same included in the statute under section 15 of the **Defamation Act 1971**. In order to put forward a successful defence on ‘Justification’ the Defendant has to prove on the balance of probabilities that the statement defamatory was substantially true.

[47] Similar to the point discussed on absolute privilege the Defendant did not adduce evidence on the said defences in above paragraphs. The Court rules that the Defendant is liable of publishing a defamatory statement of the Plaintiff.

### **Damages**

[48] The basic common law rule is that in civil actions damages are awarded as compensation for injury and not as punishment for wrongdoing. Lord Wilberforce in **Cassell and Co Ltd v Broome** [1972] AC 1027 HL at 114 stated ‘it cannot lightly be taken for granted, even as a matter of theory, that the purpose of law of tort is compensation, still less that it ought to be, or that there is something inappropriate or illogical or anomalous, in including a punitive element in civil damages.

[49] Damages are mainly three types,

(a) General and aggravated damages;

(b) Special damages;

(c) Exemplary damages.

[50] In **John v MGN Ltd** [1997] QB 586 the Court set out three essential elements of general compensatory damages in defamation cases. 'The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. The sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused'.

[51] The Court would consider Plaintiff's integrity, reputation and the role he played in the society in making assessment to the damage to his reputation. It was stated that before the publication of this defamatory letter he has been involved in many social organisations and it is clear to the Court that he held a distinguish character in his locality. He held several positions in the school boards and religious organisations in the area. After the publication he has left many of these organisations due to the humiliation he suffered.

[52] It is also necessary to find out the extent of the publication of this letter. From the evidence led before this Court it is clear that, most of his community was aware of the allegations made against him and in fact people started calling him 'Mafia guy'. This is a clear example of that the publication has been widespread in their community. Court would also like to note that in a society that is not fully urbanised, such humiliations could have permanent damage to a person's life. Whilst giving evidence the Plaintiff stated that his children who are grownup asking him about the damage this publication caused to Plaintiff's family. It would have been a severe impact on his personality.

[53] It is also necessary for a successful Plaintiff to vindicate his reputation by an award of the Court. In this regard Court would like to consider that though the Defendant stated in his Statement of Defence that he would bring evidence to prove his allegation, he never did that. That leaves the Court to make an assessment on the

Defendant that he never took any effort to express his regret in the event if the statement he made in respect of the Plaintiff in fact factually incorrect. The Court would consider this in deciding of the damages in this case.

[54] In considering distress the Court notes that the Plaintiff had been an elderly person with a clear record of character until this incident. From his testimony the Court noted that he went through much mental distress as he had to live in the same community, meeting the villagers day to day and some calling him 'Mafia' on his back.

[55] Having considered the evidence and the damage caused, the Court thinks \$100,000 (Hundred thousand dollars) is proportionate as general damages to the Plaintiff.

[56] In common law there are two different circumstances in which the exemplary damages may be awarded.

(a) where the plaintiff has been injured by oppressive, arbitrary or unconstitutional action by servants of the government;

(b) where the defendant has deliberately committed a tort with the intention of gaining some advantage which they calculate will outweigh any sum which they will have to pay to the Plaintiff by way of compensation.

[57] According to the evidence of the Plaintiff, the Defendant was not known to him and didn't establish to the Court, what advantage Defendant intended to gain by publishing this letter. The exemplary damages are exceptional and only in rare cases they are awarded as stated by the Court of Appeal in **Borron v Fiji Broadcasting Commission and Newspapers of Fiji Ltd** [Civil Appeal 40/81]. Having considered the legal principles in relation to exemplary damages, the Court is of the view that the facts of this case do not warrant an award of exemplary damages.

[58] The Court will not consider any special damages as there was no evidence on the balance of probabilities that the Plaintiff had any material loss or pecuniary loss which can be estimated in money.

[59] For the reasons abovementioned the Court makes the following orders.

**ORDERS**

1. Judgment in favour of the Plaintiff with a sum of \$ 100,000 (Hundred Thousand Dollars) awarded as general damages payable to the Plaintiff by the Defendant.
2. Cost of \$ 1,500 (One thousand Five Hundred Dollars) payable by the Defendant within 14 days of the Judgment.



A handwritten signature in blue ink, appearing to read "Yohan Liyanage". The signature is stylized and fluid, with a large initial "Y" and "L".

Yohan Liyanage

**JUDGE**

04<sup>th</sup> August 2022