

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
ACTION NO. 304 OF 1983.

Between:

MOHAMMED HASSAN s/o Ibrahim

PLAINTIFF

- and -

FIJI TIMES & HERALD LIMITED

DEFENDANT

Mr. Anand Singh for the plaintiff.
Mr. B.N. Sweetman for the defendant.

J U D G M E N T

The plaintiff's claim is for damages for libel in respect of two articles published in the defendant company's issues of the Fiji Times on the 27th January and 9th March, 1982.

The words about which the plaintiff complains are as follows :

(a) In the issue of 27th January, 1982:

"\$1500 JAIL BRIBE CLAIM

A Senior Prison Officer is alleged to have offered \$1500 in bribes to protect his name following the bashing of yet another prisoner at Korovou Jail last week.

A Fiji Times team learned that the officer who is said to have ordered the bashing offered another prison warder \$500 to keep his name out of it and offered the prisoner, Jone Mateyawa \$1000 to say nothing about the incident."

(b) In the issue of 9th March, 1982:

"\$1500 TO BE SILENT

"A top ranking prison officer offered bribes totalling \$1500 to cover up the bashing of a prisoner at Korovou Jail Suva Court heard yesterday.

The Court was told yesterday that Mohammed Hassan of Nasinu Eight Miles, offered another prison officer Sefanaia, \$500 if he could convince Mateyawa to say nothing about the assault.

We said a senior prison officer had ordered the bashing, then offered bribes totalling \$1500 to hush up the affair when it learned the victim was related to a high-ranking Government Officer.

Yesterday, Hassan was charged with attempting to pervert the course of justice for his role in the affair."

In respect of the first article the defendant pleaded that the statements are statements of fact and true in substance and fact and in so far as they consist of statements of opinion they are fair comment on a matter of public interest.

As regards the second article the defendant pleaded that the statements consist of a fair and accurate report of proceedings publicly heard before the Magistrate's Court in Suva and are accordingly absolutely privileged.

The defendant did not offer any evidence but at the hearing amended its defence to claim qualified privilege as regards the second article.

The plaintiff gave evidence himself but called no witnesses. He was at all material times a prison officer. On the 27th January, 1982, he was acting Superintendent of Prisons and Commandant of Staff Training Centre. Those positions would come within the description of the words "senior prison officer" in the first article published.

The plaintiff is not named in this article. There is merely the statement "a senior prison officer" with nothing else to establish that the senior prison officer was the plaintiff.

The plaintiff called no witnesses who had read the article and understood it to refer to him. Nor did he

give any evidence himself as to how many senior prison officers were in the prison service.

In the second article published it is apparent that the defendant was in the first article referring to the plaintiff. The second article was published 42 days after the first article and cannot be relied on to establish the identity of the "senior prison officer" in the first article.

There is no doubt that the first article was defamatory of the "senior prison officer" but as Abbott C.J. said as long ago as 1826 in Bourke v. Warren (1826) 2 C. & P. at p.20.

"The question is whether the libel designates the plaintiff in such a way as to let those who knew him understand that he was the person meant. It is not necessary that all the world should understand the libel; it is sufficient if those who know the plaintiff can make out that he is the person meant."

As Lord Reid said in Morgan v. Odhams Press Ltd. (1972) 1 W.L.R. 1239 and p. 1242 :

"It must often happen that a defamatory statement published at large does not identify any particular person and that an ordinary member of the public who reads it in its context cannot tell who is referred to. But readers with special knowledge can and do read it as referring to a particular person."

The article did identify a prisoner Jone Mateyawa at Korovou Gaol and even an ordinary reader would assume "the senior prison officer" was stationed at that Gaol but he would not know how many senior officers were stationed there.

I would have expected that there were persons, albeit a small circle who, knowing about the alleged assault

on the prisoner, read the article as referring to the plaintiff. The plaintiff however called no witnesses.

It was for the plaintiff to establish that the first article at the time it was published was understood to refer to him but he failed to do so.

As regards the second article it is clearly defamatory of the plaintiff who is named therein.

The defendant pleads absolute and qualified privilege in respect of the second article, defences which are available to it under the Defamation Act. Section 13 of the Act provides as follows :

"13. A fair and accurate report in any newspaper or broadcast of proceedings publicly heard before any court or other judicial proceeding shall, if published contemporaneously with such proceedings, be absolutely privileged:

Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter."

Section 14(1) of the Act deals with qualified privilege of newspapers as follows :

"14. (1) Subject to the provisions of this section, the publication in a newspaper or the broadcasting of any such report or other matter as is mentioned in the Schedule shall be privileged unless the publication is proved to be made with malice."

The schedule referred to in subsection (1) of section 14 of the Act does not refer to reports on court proceedings in Fiji but in any event all reports covered by the schedule must be "fair and accurate" to qualify for the protection given by the Act.

The second article is not a fair and accurate report.

The plaintiff has stated what happened in Court on the 8th March, 1982, and the Magistrate's Court Record, which was prepared for an appeal, has been tendered in evidence. The Record confirms the plaintiff's story. No statements of the nature alleged to have been made in court were made.

The plaintiff produced the summons served on him on 5th March, 1982. The summons commanded him to appear at the Magistrate's Court Suva at 9.00 a.m. on the 8th March, 1982, to answer a charge of "Attempt to Pervert Course of Justice" contrary to section 131(d) of the Penal Code Cap. 17.

The particulars of the offence in the Summons were defective and merely stated :

"Mohammed Hassan s/o Ibrahim, on the 10th day of November, 1981, at Suva in the Central Division, attempted to pervert the course of justice."

The plaintiff went to the Court before 9 a.m. on the 8th March and checked the cause list and found his case was not listed. Enquiries from the prosecuting officer and prosecution office were not productive so he returned to the prison.

He was called to go to the Court at 3.30 p.m. on that day by Senior Superintendent of Police Leqeti to whom the plaintiff gave his copy of the summons and was informed that there was an error in the summons and he would receive another one.

The plaintiff appeared in court that afternoon before the Chief Magistrate. No charge was put to him and the case was adjourned to the 22nd March, 1982. The Record shows that the plaintiff with another accused appeared on the 8th March, 1982, before the Chief Magistrate. Inspector of Police M. Driver appeared for the prosecution.

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The Magistrate has recorded the Prosecutor as reporting :

"Accused 1 (i.e. the plaintiff) came and showed me a summons and I sent him away."

The Chief Magistrate adjourned the case to 22nd March, 1982, for mention only.

There is no record of any plea being taken on that day. That is confirmed by The Fiji Times Report which reported in the second article published the next day :

"No plea was taken and the case was adjourned until March 22."

That appears to be the only accurate statement in the newspaper report.

The Reporter who wrote the report could not have been present in court when the plaintiff was in court and he obviously had little knowledge of court procedure. The probability is that he later perused the court file and with some prior knowledge of the case wrote a report of court proceedings that did not occur.

Where a plea is not taken in a criminal case, the Magistrate would not have been told the story that The Fiji Times falsely stated the court was told.

The Reporter in the second paragraph of the second article purported to report statements made to the court alleging that a top ranking prison officer, whom readers of the article would identify as the plaintiff, had offered bribes totalling \$1500 to cover up "the bashing of a prisoner".

Another paragraph falsely reported that the court was told that the plaintiff who is named, had "offered another prison officer, Sefanaia \$500 if he could convince Mateyawa to say nothing about the assault."

I am satisfied no such statements were made in court and the defendant's defence of privilege fails.

The most serious aspect of the report was to repeat alleged facts stated by the newspaper in the first article which was not a statement made in court and for which no privilege can be claimed and which was clearly defamatory of the plaintiff:

"We said a senior prison officer had ordered the bashing, then offered bribes totalling \$1500 to hush up the affair when it learned the victim was related to a high-ranking Government Officer."

This statement was not an imputation of suspicion of commission of a crime but a categorical statement before the hearing of the charge against the plaintiff that :

- (1) He was guilty of a serious assault in which a prisoner was said to have received a broken arm and other unspecified injuries.

The plaintiff was not charged with any offence arising out of the alleged assault.

- (2) He had offered bribes totalling \$1,500 to "hush up" commission of an assault.

It was in respect of this alleged offer that the plaintiff was charged with an offence, later tried and acquitted.

The plaintiff pleaded the words were false and untrue and were understood to mean that he was a dishonest person and had ordered the beating of a prison officer and

had been derelict in his duties. Except that it was a prisoner who was said to have been assaulted and not a prison officer the words do convey that alleged meaning.

I hold that the second article is defamatory of the plaintiff and he is entitled to damages.

The plaintiff claims damages and costs for the injury done to his character, credit and reputation. He alleges he has been brought into hatred, contempt and ridicule.

The second article did not ridicule the plaintiff but it certainly must have seriously injured his character and reputation and standing in the community.

Mr. Anand Singh has asked for aggravated or exemplary damages because the later article aggravated the first libel.

I have held however that the plaintiff did not establish that anyone at the time the first article was published had read it and understood it referred to the plaintiff. It was only later that the plaintiff was identified when the defamatory statements were repeated. Mr. Singh might have been on firmer ground had he pointed out the conduct of the defendant. As regards the first publication, the defendant's defence was to maintain that the facts therein stated were true. That was a stand it maintained throughout although it must have been aware that the plaintiff had been acquitted by the Magistrate's Court. It was never in a position to prove the allegations and made no effort to do so.

It never tendered an apology or offered to print a correction.

As regards punitive damages that may have been granted had it been established that the defendant's article

had been published "with guilty knowledge, for the motive that the chances of economic advantage outweigh the chances of economic, or perhaps physical penalty" (per Lord Hailsham of Marylebone L.C. in Broome v. Cassell (1972) A.C. at p.1079).

I did not reject Mr. Singh's request outright but did consider whether there were grounds for awarding such damages. It was a serious deliberate libel but I was not persuaded that punitive damages should be imposed in the instant case.

Cave J. in Scott v. Sampson (1882) 8 Q.B.D. at p. 503 said : "The law recognises in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit".

In the instant case the defendant chose to ignore that right in its desire to sensationalise a story which the defendant claimed it "broke" on 27th January, 1982. Both articles were boldly featured on the front pages of the two issues of The Fiji Times with very black prominent captions "\$1500 jail bribe claim" '\$1500 TO BE SILENT'. In the first article The Fiji Times stated :

"The Fiji Times cannot reveal names because it might prejudice a court hearing".

A more prejudicial report than the second article it would be difficult to imagine. The Fiji Times judged the plaintiff guilty and made his guilt known to the public before the plaintiff was even called upon to answer any charge or plead to it.

The plaintiff has not claimed special damages.

He did not at any time write to the Fiji Times demanding an apology and it was more than a year after the

appearance of the second article that he commenced this action.

The Fiji Times reported the plaintiff's trial on the 8th July, 1982, when the Magistrate reserved judgment. It is not known when judgment was delivered but it would appear that there is some excuse for delay as the plaintiff was defending a charge until early July and judgment may have been given some weeks later.

I am well aware that in England, Australia or New Zealand a libel as serious as the one in this case would have resulted in very substantial damages being awarded against a national newspaper. Such serious libels have been rare in Fiji and damages awarded have not been high.

Another disturbing feature is that this case is the second case I have heard where a reporter employed by the defendant company has reported on proceedings in Court which he did not attend. The other case was Irene Terese Tagilala v. Dallas Swinstead and Others, C.A. 243 of 1976 where a senior reporter published an account of a hearing which he did not attend. He ran a risk but he got away with it. The Fiji Times succeeded in its defence against a libel claim in that action because the report was accepted by the trial court and two of the three appellate judges as being a reasonably accurate report of court proceedings. To the plaintiff the attack on his reputation was a very serious one and he no doubt suffered considerable mental anguish and pain. He was acquitted by the Magistrate's court but he could have been convicted and lost his employment as a result of the Fiji Times apparent deliberate attempt to besmirch his name before he was tried. The Fiji Times has a wide circulation in Fiji but no evidence was led as to the size of that circulation.

National newspapers overseas have a very wide publication and this has some bearing on the high damages

that juries overseas award. Those national dailies make profits out of circulating a sensational libel which juries consider justify very substantial awards.

I have rejected the request for aggravated or punitive damages but consider that my award should reflect the serious nature of the libel and compensate the plaintiff for the mental torment and distress he must have suffered.

I award the plaintiff \$5,000 damages and costs.

R. G. Kermode

(R.G. KERMODE)

J U D G E

S U V A,

MAY, 1984.