IN THE SUPREME COURT OF SEYCHELLES

Nicholas Prea
of La Misere, Mahe

Plaintiff

Vs

1. **Seychelles People Progressive Front of**

Maison du People, Victoria

2. **Printec Press Holdings Ltd**

Represented by its Director Mr. Louis Gopal

Of Mont Fleuri, Mahe
Defendants

Civil Side No: 7 of 2004

Mr. B. Georges for the plaintiff

Mr. F. Bonte for the 1st defendant

Mr. J. Renaud for the 2nd defendant

D. Karunakaran, J

JUDGMENT

The plaintiff in this action claims the sum of SR500, 000/- from both defendants - jointly and severally - for damages, which the plaintiff allegedly suffered as a result of the defamatory publications made by the defendants in two newspapers. In fact, the plaintiff is a politician and a sitting Member of the National Assembly (MNA). The first defendant is a political party, which is the publisher and distributor of newspapers by the name of **'Lespwar'**, which is distributed free of charge to the residents of the Electoral District of English River, and **'Zabitan',** another newspaper, which is also distributed free of charge to the residents of the Electoral District of Belombre. The second defendant is admittedly, the printer of both newspapers.

The undisputed facts of the case are these:

At all material times, the plaintiff was and is the elected member of the National Assembly for Belombre Electoral District. He is 41. He has a family with four children. He has been the member of the National Assembly since December 2002. He started his career as a Telecommunication technician. Later, he moved to managerial positions, worked in different companies and then jumped into the ocean of politics presumably, taking the risks of being a public figure that is always bound to be within the focus of public scrutiny, attack and criticism.

Indeed, he is a religious person, a born Roman Catholic, baptized at the Belombre Church. He was an altar boy and from his childhood he has been very much associated with Belombre Roman Catholic Church and its Parish. He is an active member of the congregation every weekend and engaged in religious activities for the church and charity besides, his social work as a politician in the district. In his own words, the plaintiff is a good fundraiser for the Church. Whenever the Parish needed funds for the maintenance or renovation of the Church, they organized fundraising activities and collected contributions of whatever nature either cash or in kind from the parishioners. The plaintiff as a good Christian and a member of the Parish Council used to help the Parish. Whenever, they organized fundraising activities, the Parish priest and the Council always approached the plaintiff for assistance.

In the middle of 2003, the plaintiff was an elected member of the National Assembly representing the people of the Belombre Electoral District. That time, the Belombre Church required some renovation work. The Parish priest and the Council were engaged in different activities to raise funds for the renovation. As usual, they approached the plaintiff for assistance. In fact, the Belombre Parish Priest requested the plaintiff to collect some ducks from one of the parishioners, who had promised to contribute them as his share in kind for renovation fund. The plaintiff as requested by the priest, approached that parishioner, collected 30 ducks from him and delivered them all to the church to be sold at the Parish fair. According to the plaintiff, the good community service, which he rendered in this respect, was twisted with falsity and bad publicity by the alleged defamatory acts of the defendants that injured his credit, character and reputation in the estimate of the right-thinking people of the society. Hence, the plaintiff has come before this Court by a plaint dated 15th December 2003 claiming damages from the defendants for defamation.

The plaintiff has averred in his plaint that in an article entitled *“Oli sa bann*

Kannar” in its edition ‘Lespwar’ of September 2003, the defendants falsely and maliciously wrote, printed and published of, and concerning, the plaintiff, whose picture was printed in the article, the following:

> “Granmounm i toultan dir ki tande ek trouve i de. Sa zistwar enkwayab sorti Belombre I montre nou ki kailte dimoun I annan dan SNP. Per parwas ti apros en tre bon kretyen dan distrik pou fer en kontribisyon dan fon renovasyon *legliz St. Rock. Sa msye tre relizye ti dir ki, vi ki I sonny bokou kannnar, I a kapab donn Iegllz plis ki en santenn pou zot vann den fennsifer son dimans swivan. Per ti dakor e i ti promet ki i ava anvoy en dimoun pou vin pran sa bann kannnar.*

Lekel ki ti pase son lannmen? Sete pa lot ki msye Nichola Prea. MNA distrik, ki osi en manm lo komite paiwasyal distrik. Msye ti vin dan son pti loto rouz avek de bwat kartron pou pran sa 100 kannar. Me dezorme ti napa ase *plas e i ti pran selman trant Parmi ti annan bann kannar manni, kannar patouyar, kannar local e kannar peken. Sa myse ti met tousala dan son loto* e *I ti ale an vites. Son Dimans apre, dan fennsifer, travayer se msye ki tin donn kannar ti al vey zaksyon konbyen kannar pe van, me gran sirpriz kot “stall’ msye Prea ti napa okenn kannar. Ler sa madanm ti demann li oli kannar, i ti senpleman reponn ki li pa pou zanmen les tonbe. Kestyon ki zabitan Belombre pe demande se oli sa bann kannar. Ki reprezantan SNP in fer avek zot? Eski* sa *lensidan i annan okenn keksoz pou fer ek sa ta plim kannar kin ganny vwar pros ek en lakaz Lanmiser? Msye Prea, rann kont lepep. Fer tande ‘kwak kwak’ sa bann kannnar.”*

This is translated to mean:

> “Our old people always say that hearing and seeing are two different things. This incredible story from Belombre shows *us what kind of people there are in the SNP. The parish priest approached a good Christian in the district for a contribution to the St. Rock (sic) Church Renovation Fund. This*

very religious man said that since he rears many ducks he could give the church over a hundred for sale in the fancy fair the following Sunday. The priest agreed and promised him he would send a person to collect the ducks. Who came the next day? It was none other than Mr. Nichola (sic) Prea, district MNA, who is also a member of the parish council. The gentleman came in his little red car with two cardboard boxes to collect the hundred ducks. But there was not enough room and he took only 30. Amongst them were "manni", "patouyar", local and perking ducks. This gentleman put all of them in his car and he left in a hurry. The following Sunday, in the fancy fair, an employee of the person who had given the ducks went to see *how much the ducks were being sold for but she was surprised to see that at the stall of Mr. Prea there were no ducks. When the lady asked him where the ducks were he answered that he would never give up. The question being asked by Belombre residents is where the ducks are. What* has *the SNP representative done with them? Does this incident have anything to do with this large pile of duck feathers found near a house at La Misere? Mr. Prea, give an account to the people. Let them hear the quack quack of those ducks."*

It is also the case of the plaintiff that in a further article entitled *"Kwak! Kwak! Ki'n arrive avek Kannar?'* in its edition of **'Zabitan'** of October 2003, the defendants falsely and maliciously wrote, printed and published of, and concerning, the Plaintiff, the following:

"Zafer kannar pe vin pli enteresan de-zour-an-zour. Menm dimoun anvil pe koz lo la. Parey nou konnen nou legllz Bel Ombre i bezwen fer renovasyon lo la e laparwas i akey kontribisyon sorti kot

parwasyen et lezot dimoun. Koman son kontribisyon en parwasyen ti pare pour donn en santenn kannar pour vann dan fennsifer. Lekel ki ou a krwar ti vin rod kannar? Pa lot ki Onorab Nicholas Prea, nou MNA Belombre e en manm Komite Parwasyal Belombre. Wi dan son pti loto rouz. Ti annan plas zis pour en trantenn kannar. Me kannar pa ti zanmen ariv dan fennsifer. I paret ki ler en dimoun ti demande si pa ti sipoze annan kannar pour vann, larepons ki i ti gannyen sete 'Nou pa pou les tonbe" Me alor kote kannar in ale? Oswa kote kannar i ete? Sakenn pe donn son versyon. I annan ki dir kannar in touye. I annan ki dir ki kannar pe sonnyen. I annan ki dir ki zot in vwar plim. Belombre i byen koni pour lasas trezor. La i paret ki i annan ki oule fer lasas kannar. Responsiblilte kannar I kapab enn lour, sirtour akoz ti en kontribisyon pour ganny larzan pour Legliz. Osi akoz tit ek pozisyon sa ki ti al rod kannar kot son met. Solisyon pour sa zafer kannar I tre senp. Avan demann Seivis Veteriner oswa Sosyete ki konsernen avek Zannimo oswa Lapolis pour mele, Onorab i kapab dir nou ki'n arrive avek sa bann kannar. Koumsa tou keksoz i a kier."

This *is translated to mean:*

"The issue of the ducks is becoming more interesting from day to day. Even people in town are speaking about it. As we know Belombre Church needs to be repaired and the parish welcomes contributions from parishioners and others. As his contribution a parishioner was prepared to give about 100 ducks to sell in the fancy fair. Who do you think came to fetch the ducks? No other than Honourable Nicholas Prea, our Belombre MNA and a member of the parish committee of Belombre. Yes in his little red car. There was room for only about 30 ducks. But the ducks never arrived at the fancy fair. It appears that when somebody asked if there were not meant to be ducks for sale the answer the person got was *"We will never give up" So, where have the*

ducks gone? Each person gives a different answer. Some say the ducks have been killed. Others say they are being reared. Some say they have seen feathers. Belombre is well-known for treasure hunts. Now it appears that some want to hunt for ducks. The responsibility for ducks can be heavy especially since it was a contribution to get money for the Church. Also because of the title and the position of the person who went to fetch the ducks from their owner. The solution for this affair is very simple. Before asking the veterinary service or the association concerned with animals or the police to get involved the Honourable can tell us what has happened to those ducks. That way everything will be clear."

The said newspapers containing the above articles were distributed in the districts of English River and Bel Ombre respectively and nationally to the public. According to the plaintiff the statements contained in the said articles complained of in their natural and ordinary meaning, or by innuendo, refer and are understood to refer to the Plaintiff and are understood to mean that the Plaintiff, on behalf of the parish church of St. Roch, Belombre, collected thirty ducks donated to the said parish for sale the following Sunday in an activity to raise funds for the renovation of the said parish church and, instead of bringing them to sell, appropriated them to his own use.

It is the case of the plaintiff that the said statements are false and malicious and constitute a grave libel on the Plaintiff.

Further, the plaintiff on the 19th September 2006 testified that his then current term of office as MNA of Belombre was going to end in November 2007 and he had the intention to run again as a candidate of the Seychelles National Party in the next Assembly election. He further testified that since

the alleged defamatory articles published in those newspapers brought a negative public opinion about his character, it adversely affected the chances of winning next election in his constituency. Moreover, he testified that although he was doing a good work in his capacity as a sitting MNA in his electoral district of Belombre, the said defamatory remarks and the innuendo affected his work as and when he met people in the district. In his role as a member of the International Affairs Committee and also the Friendship Committee with India and China, he was called upon to meet foreign diplomats regularly and report back to the Speaker of the National Assembly. This work was also affected by the defamatory publications. As regards its impact on his family life he stated thus:

> "Ever since the publication came out, the relationship in the family has not been the same. I live with a woman, who believes that if I am going to do some good work for my constituency and my name is dragged in the mud like this, it is no use. My daughter is 15 years old, she goes to Mont Fleuri School, she has been teased for the last three years by somebody in her class with regard to this article, "Vole Kannar" and she has come home every now and then crying because of this. I am still being called "Vole Kannar" wherever I drive by"

The plaintiff also produced in evidence copies of the said newspapers the *"**Lespwar"**,* and the **'Zabitan',** which carried the articles in question. By reason of the writing, printing, publication and distribution of the said statements in the said articles, the plaintiff has been severely injured in his credit, character and reputation and has been brought into odium, ridicule and contempt in the estimate of the right-thinking members of the society. In view of all the above, the plaintiff claimed that he suffered prejudice in his capacity as an MNA, as a family man, as a member of the Belombre Roman Catholic Parish and as a private person. The Plaintiff in this respect estimated the damage to his character and reputation at Rs.500, 000.00. Therefore, he prays this Court to be pleased to give judgment jointly and severally against both defendants and in his favour in the sum of Rs.500, 000.O0, with interest and costs.

The defendants on the other hand, did not deny liability but only disputed the quantum of damages claimed by the plaintiff in this matter. Hence, the defendants did not file any statement of defence. No evidence was adduced by the defendants in mitigation of damages either. However, they requested the court to treat the notice of the offer of amends dated 17th May 2005, which they issued on the plaintiff as their written statement of defence in this matter. The said Notice of Offer of Amends reads thus:

NOTICE OF OFFER OF AMENDS

In the MATTER of Section 4 of the Defamation A ct 1952

AND in the MATTER of a Complaint by Nicholas PREA, of Bel Ombre, Mahe, against:

(i) Seychelles People Progressive Front of Maison du Peuple, Victoria

(ii) Printec Press Holding of Mont Fleuri, Mahe.

TAKE NOTICE that the defendants hereby make an offer of amends under and for the purposes of Section 4 of the Defamation Act 1952 in respect of the allegations which the defendants made against the Plaintiff and which are the subject of the above mentioned suit.

The facts relied upon by the defendants are that the veracity of the statements published in September 2003 in the "LESPWAR"

Magazine under the title of "Oh sa bann Kannar?" and "ZABITAN" Magazine of October 2003 under the title "Kwak! Kwak! Ki'n arrive avek Kannar?" were not intended to mean that the Plaintiff collected thirty ducks donated to the St. Rock Parish for sale and appropriated them.

This offer of amends shall be understood to mean that the defendants, severally and solido, offer to make suitable apology to the Plaintiff in respect thereof before the Supreme Court and in the following manner:

"The defendant unreservedly apologize to the plaintiff for any injury to his reputation which the said statement may have caused him, and agree

(i) *not to repeat any further libel or publish any slander against the Plaintiff in any circumstances; and*

to publish a suitable apology, as approved by the Plaintiff, on the next issue of the "LESP WAR" and "ZABITAN" Magazines.

The above Notice of Offer made by the 1st and the 2nd defendant are respectively dated the 17th day of May and the 21st day of July 2005.

The plaintiff did not accept the above offer. In the circumstances, both parties invited the court to determine the quantum of damages, which the plaintiff is entitled to obtain from the defendants having regard to the entire circumstances of the case including the offer of apology

made by the defendants after the commencement of the suit.

I meticulously went through the pleadings and the evidence on record including the copies of the publications in question. I gave a diligent thought to the submissions made by counsel on both sides. I perused the relevant provisions of law applicable to the case on hand. Firstly, I should begin by saying although it is trite, that by virtue of article 1383 of the Civil Code, the law applicable in the Seychelles today is English law of defamation. When I say "English law", one has to inevitably, qualify this term with reference to a timeframe - a cutoff date - in view of Article 1383 (3) of the Civil Code that came into force on 1st January 1976. This Article reads thus:

> "The provisions of this article and of article 1382 of this Code shall not apply to the civil law of defamation, which shall be governed by English law"

Obviously, English law of defamation is not stagnant. It has grown and is still growing, like any other branch of law and has been in a constant growth ever since the enactment of Lord Campbell's Libel Act in 1843 by the British Parliament and of our Civil Code in 1976 by the Queen's Most Excellent Majesty by the advice and consent of the then House of Assembly of Seychelles. From time to time, the source namely, English law of Defamation has been amended, modified and changed by several legislations and case laws in the country of its origin to meet the changing needs of time and society. Now, therefore, the question arises: *"Should we then apply the stagnant old English law of defamation as it stood on 1st January 1976, the date our Civil Code came into force? Or should we import and apply mutatis mutandis the growing Modern English law of Defamation with all its developmental changes as it has evolved and stands today in England and Wales?"*

Before answering this fundamental question, one should firstly, find out, what was the intention of the makers of the Civil Code in incorporating the provision under article

1383 (3), for the importation of English law of defamation? To my mind, their intention should have been to make it a temporary or transitional measure in order to govern our law of defamation, until we enact our own legislation to replace it. Undoubtedly, they must have intended to do so, in the hope that one day in future we would replace the foreign law with our indigenous one and make it a permanent source or feature in the body of our civil law jurisprudence. The said intention of the makers of the Civil Code is evident from article 4 thereof, which reads thus:

> "The source of the civil law shall be the Civil Code of Seychelles and ***other laws from time to time enacted*** *" (underline mine)*

The cutoff date thus set by the commencement the Civil Code has obviously, stagnated our law on defamation and the old English law as it stood on the1st January 1976 continues to rule us from the archives.

Have we done anything so far, about it? It seems to me that the time has not yet come, for us to enact probably, a Defamation Act of our own to replace the said temporary or transitional governance structured in article 1383(3) supra. Consistency of decisions, speed of resolution and advancement of law with the rest of the world should be the cornerstone of any civil system of justice. Our civil law of defamation is not an exception to it. Our law of defamation, as presently constituted, fails on those counts leading to uncertainty in the area of defamation law and practice and inconsistency of judicial thoughts, approaches and decisions in ascertaining the liability and in the assessment of quantum of damages.

Having said that, I note, the last legislative reform on law of defamation was over thirty two years ago in 1975, when the Civil Code of the French was repealed and replaced by the present Civil Code of Seychelles. This Code was, in fact, tailored to suit the indigenous conditions that prevailed then in Seychelles before Independence. This was an age before the advent of internet, television, mobile phones, constitutionalism and free speech. The law of defamation must meet the challenge of the multi-media knowledge-based global society and the changing needs of

time and jurisprudence. It does not do so at the moment. For instance, the approach taken by the Court of appeal in the recent case of ***Regar Publications (Pty) Ltd and others Vs. Maurice Lousteau-Lalanne*** **SCA No: 25 of 2006** is innovative. In the said case, the appellate court in paragraph 16 at page 18 of its judgment in essence, held that if there had been an element of *public interest* involved in the subject-matter, then it singly constitutes on its own a valid defence in law to an alleged act of defamation. However, English law of defamation in S. 7 (3) of the Defamation Act 1952 - which is the law applicable in Seychelles by virtue of article 1383(3) supra - requires two elements, namely. (i) the subject-matter must be of public interest and (ii) the publication must be for the public benefit. Both elements in combination constitute the defence of privilege under the old English law. Now, one may ask where the law of defamation stands now. Which law is applicable? “the stagnant old English law of defamation” as it stood in the colonial era or the growing modern law of defamation as it stands today? In passing, I should mention here that as law reform appears to be long overdue this court hopes that Honorable Attorney General would be pleased to consider what he deems necessary in the circumstances for revising and enacting our law of defamation to advance with the rest of the world so as to improve the certainty of law, uniformity of judicial thinking and consistency of judicial decisions in matters of defamation suits. This exercise is important since there is a fundamental tension in defamation law between preserving press freedom and protecting reputation of individuals and institutions. Because rights and freedoms are not absolute, courts must strike the proper balance between them. There cannot be rights without corresponding duties or freedoms without reasonable restrictions. They are both sides of the same coin.

Having said that, with due respect to the views of His Lordship I. K Abban, the Chief Justice (as he then was) expressed in ***Confait Vs Ally***

[1990] SLR p 287, and to those who subscribe to the same school of thought, it seems to me that, to a **"strict constructionist"**, shortsighted by stagnancy, the term "English law" used in article 1383 (3) appears to mean and include the **"English law of defamation as it stood on 1st January 1976"**; but, to an **"intention seeker"** foresighted by growth, the same term appears to mean and include the "**English law of Defamation with all its developmental changes as it stands today**". Obviously, "growth" in any system for that matter, is a sign of life; whereas "stagnancy" is a sign of doubt or morbidity. I prefer the former to the later as it embraces modernity and accords with nature, reasoning and justice. Hence, in my considered view, we *should import and apply the growing Modern English law of Defamation substantive as well as procedural mutatis mutandis, with all its developmental changes as it has evolved and stands today in England, not the stagnant old English law of defamation as it stood on 1st January 1976, the date our Civil Code came into force.* For these reasons, I venture to apply in the instant case the modern English law of Defamation as it stands today. If one intends to steer the existing law of defamation towards the administration justice, this approach I believe, should continue until we revise, reform and modernize our law of defamation. Be that as it may.

Before I proceed to assess the quantum of damages, since the parties have joined issue as to the legal effect of the "Offer of Amends" quoted supra, it is necessary for the Court to give its finding on this issue. Indeed, the alleged defamatory publication was undisputedly made in October 2003, whereas the "Offer of Amends" was made by the defendants to the plaintiff in the middle of 2005 after the commencement of the present suit. But the plaintiff refused to accept the **offer of apologies** stating that it was not made as soon as practicable and too late to be accepted.

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Indeed, as per English law *the offer of amends* required in cases of unintentional defamation must be made as soon as practicable, be expressed to be made for the purposes of the Defamation Act l952, S.4, and be accompanied by an affidavit specifying the facts relied on by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved. The offer should contain an offer to publish a suitable correction of the words complained of and a sufficient apology, and, where appropriate, to take such steps as are reasonably practicable for notifying persons to whom copies of a document or record containing the said words have been distributed, that the words are alleged to be defamatory of the party aggrieved. Once the offer is accepted, the parties should seek to agree on the steps to be taken in fulfillment of the offer. Once such agreement is concluded and the terms have been duly performed, then no proceedings for libel or slander shall be taken or continued by the party aggrieved against the person making the offer in respect of the publication in question. In ***Ross Vs. Hopkinson -*** The Times, October 17, 1956 -, an offer made after seven weeks, was held not to have been made as soon as practicable. In the instant case, after two years the defendants have made an offer of apology that is not accepted by the plaintiff. Moreover, the defendants have also not published so far any apology in the same newspapers, which carried the defamatory statements. After the commencement of the suit, despite some attempts, no settlement or any agreement has been reached by the parties. Therefore, it is evident that the *offer of apology* made by the defendant in this matter cannot constitute a defence to the liability for the defamatory publication.

Although an unaccepted apology is no defence to an action for libel, it shall be lawful for the defendant to raise it in mitigation of damages. The apology could have been made or offered to the plaintiff for such defamation either before the commencement of the action or as soon afterwards as he had an opportunity of doing so in case the action had been commenced. Moreover, quite apart from this position under English law of defamation, a defendant may show in mitigation of damages that he has published or made a retraction of, or apology for the defamation complained of, or, has *offered* to make such a retraction or apology,' even though he did not publish, make, or offer to make, such retraction or apology until after the commencement of the action. Where in an action for libel contained in a newspaper the defendant relies on the defence under section 2 of Lord Campbell's Libel Act 1843," but fails to prove that the libel was inserted without malice or without gross negligence, the court is

entitled to take the apology into consideration in mitigation of damages vide **Gatley on Libel and Slander** *Eighth Edition P1441*. In the circumstances, although the **offer of apology** made by the defendants after the commencement of the present action, does not constitute a defence in law, although it does not prove that the libel was inserted without malice or without gross negligence, and even though it was not published, still it is an effective mitigating factor in law that should be considered by the Court in the assessment of quantum of damages in this matter and so I find.

I will now proceed to examine the evidence only for the purpose of assessing the quantum of damages payable to the plaintiff in the light of the law applicable in this action. Obviously, there is no dispute that the said Newspapers carried the articles containing those defamatory statements in question. It is also not in dispute that the said newspapers were printed and published by the defendants.

As regards damages in matters of this nature, it is hackneyed to say that in all cases of libel- actionable per se- the law assumes that the plaintiff has suffered damage and no special damage need be alleged or proved. Damages depended on all the circumstances of the case including the conduct of the plaintiff, his position and standing, the nature of the defamation, the mode and extent of the publication, the absence or refusal of any retraction or apology and the whole conduct of the defendant. **See, *Derjacques v. Louise SLR* (1982**). As a result of the said defamatory statements, I find that the plaintiff has been severely injured in his credit, character and reputation and has been brought into ridicule, hatred and contempt generally by the public, his friends and the residents of the electoral districts of Belombre and English River. Evidently, the plaintiff has suffered prejudice in his capacity as an elected Member of the National Assembly, as a member of the Belombre Roman Catholic Parish, as a private person and as father of his school-going children and so I find. Above all, the plaintiff who had been serving the Church for a good cause has been portrayed by the publication as a dishonest person in the estimate of the right thinking members of the society.

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In an action of libel "the assessment of damages does not depend on any legal rule ***per Lord Watson in Bray v. Ford [1896] A. C at p. 50***. In dealing with the quantum of damages, I consider the basic principles that underpin the assessment of damages and the relevant authorities including ***Seychelles Broad Casting Corporation and Another v Bernadette Barrado .C.A* Nos. *9 and 10 of 1994 (SCA), Patrick Pillay V. Regar C. A 3 of 1997* (SCA), *Dingle. V. Associated Newspaper Ltd [1961] 2QB 162***. In the case of *Pillay* (supra) the plaintiff was the Minister for Education and Culture, the Court of Appeal reduced the award from R450, 000/- to R175, 000/-. In the *Barrado case* (supra), the plaintiff was the personal assistant of the President of the Republic, the Court of Appeal reduced the award from R550, 000/- to R100, 000/-in this regard the Court of Appeal made the following observation (*per **Ayoola, J. A**.) at 16 and 17*:

> "The learned judge could not have discussed the *circumstances of the libel without adverting to the office held by the respondent and the motive of the scurrilous attack on her. Also, it was perfectly legitimate for the judge to have taken into consideration the status of the plaintiff in the assessment of damages. The higher the plaintiff's position, heavier the damages (see, for instance, Yusouff V Metro-Goldwyn- Meyers Pictures Ltd [1934] 50 T. L. R 581*; *Dingle V. Associated Newspaper, supra; Lewis v. Daily Telegraph 1 [1962] 3 W. L. R 50"*

The plaintiff in the instant case has been holding relatively a higher position in the State hierarchy as an elected member of the National Assembly, the State legislature representing one of the electoral districts. It is truism that in the assessment as to quantum of damages, the principle, namely, *"the higher the plaintiff's position the heavier the damages"* generally applies to all, who fall under different categories of position at different levels of the social ladder whether he or she is educated or uneducated, professional or non-professional, rich or poor, celebrity or a commoner, politician or a non-politician. However, this principle should not be indiscriminately applied, especially when the person

is a public figure vide ***Barrado*** supra, and ***Regar Publications (Pty) Ltd and others Vs. Maurice Lousteau-Lalanne*** **SCA No: 25 of 2006**. In fact, when a person takes up a career, profession, job or occupation of his/her choice, which involves an element of public interest or public concern or public duty then, that person by virtue of the very public nature of the position he or she holds, is bound to be within the focus of public scrutiny, attack and criticism by all concerned including the Fourth Estate. In actual fact, damages in the case of such public figures are assessed at a conservative rate on account of law's preoccupation to render them accountable in the exercise of their public duties: see ***Lousteau-Lalanne supra, Affair Lingens c. Autriche, Arrêt du 8 juillet 1986 série A no. 103; p404, Vincent Berger, Jurisprudence de la Cour Européenne des Droit de l'Homme, 5eme édn***

Coming back to the present case, although the defamatory publication conveys an imputation by innuendo that there are reasonable grounds for suspicion of dishonest dealing implicating the plaintiff, it does not convey any imputation of being guilty of a crime involving dishonesty such as theft or misappropriation of church funds. It would therefore, be wrong to equate an **"allegation of suspicion"** to an **"allegation of guilt"**. In any event, the plaintiff has been holding the office of the Honorable Member of the Legislature at the time of the libelous attack on him. The honour attached to that office cannot and should not be downplayed in the assessment of quantum. Although the plaintiff did not suffer any special damage or pecuniary loss, he is still entitled to general damages for the injury to his reputation. At the same time, I remind myself of the measure of caution the Court of Appeal has indicated in the case of *Pillay* (supra) that great care should always be exercised in an effort to arrive at a fair assessment of damages.

Having taken all the relevant factors into account, which are peculiar to the case on hand, I award the plaintiff damages in the sum of R70, 000/- which amount in my assessment is appropriate, reasonable and proportionate to the degree of gravity of the libel and the resultant injury. I therefore, enter judgment for the plaintiff and against the defendants jointly and severally in the sum of R70, 000/- with costs.

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D. Karunakaran

Judge

Dated this 28th day of September 2007