

IN THE SUPREME COURT OF SEYCHELLES

Lise Meme
of Mont Fleuri, Mahe

Plaintiff

Vs

1. Seychelles National Party, herein
Represented by it Secretary
Mr. Roger Mancienne
2. Regar Publications (Proprietary) Ltd, herein
Represented by it Secretary
Mr. Roger Mancienne
3. X-Press Printing, herein
Represented by
Mr. Roger Mancienne of
Regar Publications (Pty) Ltd
(All of Arpent Vert, Mahe)

Defendants

Civil Side No: 73 of 2002

Mr. J. Renaud for the plaintiff
Mr. B. Georges for the defendants

D. Karunakaran, J.

JUDGMENT

This is an action for defamation. The plaintiff in this action is a young woman. She is 35. She started her career as a police constable in September 1990, with the Seychelles Police Force. Over the period of her career, she has attended a number academic and training Courses intended for her career development in the police force. In late 1990s, she attended a two-year Cadet Officers Course at the Seychelles Police Academy. In January 1999, she completed the Course. She was promoted to the post of Sub-Inspector of Police along with eleven of her batch mates including one Mr. Antoine Durup (DW1), who also had completed the same course with the plaintiff. Following the promotion, the plaintiff continued to serve the Force as Sub-Inspector for about two

years. On 16th of November 2001, she was promoted to the post of Inspector of Police. After this promotion, in early 2002- when she was serving as Inspector of Police- she encountered a domestic altercation with her boyfriend, a foreigner, who had lodged a complaint against the plaintiff at the Anse Etoile Police Station. Admittedly, the said complaint involved an alleged incident of domestic violence, wherein her boyfriend had accused the plaintiff of having unlawfully wounded him. Two weeks later, an article appeared in a Newsletter circulated for the public. According to the plaintiff, the statements contained in the said article were defamatory of the plaintiff, and the defendants were the ones, who had printed and published them, which allegedly injured her credit, character and reputation. Hence, the plaintiff claims damages in the sum of R50, 000.00 from the defendants in this action.

The first defendant Seychelles National Party, hereinafter referred to as the "SNP" is a registered Political Party in the Republic of Seychelles. Apart from political activities, it also edits and publishes its party Newsletter called "Nouvo Vizyon". The second defendant Regar Publications (Proprietary) Limited is the publisher of the "Regar", a weekly newspaper, which has allowed the "SNP" to edit and publish the said Newsletter under its licence. The third defendant X-press Printing is the printer, who prints and issues the said Newsletter of the SNP. This Newsletter admittedly, has a circulation of over 2000 copies within the Republic of Seychelles. Be that as it may.

It is not in dispute that the SNP and the Seychelles People's Progressive Front, hereinafter referred to as the "SPPF" are the two main political parties vying for political power in the Third Republic. Admittedly, the Creole term "Golan" is a political slogan, a nominative expression of Seychellois Public, which term in the popular socio-political context and sense means and refers to the supporters of the SPPF, whereas the term "Karyan" means and refers to the supporters of the SNP. Both parties contested in the Presidential Elections held in September 2001. The SPPF won the election and its candidate was elected to the office of the President of the Republic.

After the said election, on 13th of March 2002 the first defendant wrote, printed and published or caused to be written, printed and published an article in Creole, in its newsletter "Nouvo Vizyon" Volume 11 No: 9 entitled "VYOLANS DAN LA POLIS" containing the following statements:

- (i) Manm lafors lapolis pe espere pou war ki pou arive avek en zofisye madanm ki'n pwanyard son imsyen anviron 2 semenn pase dan en ka vyolans domestic.
- (ii) I resanble ki malgre ki sa ka in ganny raporte kordgard Anse Etoile keksoz touf-toufe;
- (iii) Serten i dir ki posib i napa nanryen ki pou arive aköz sa madanm i en golan e letan i ti ganny promosyon tou dernyema i ti dir byen for : "Mon'n ganny mon promosyon aköz mon'n byen vote"

Admittedly, the English translation of the above statements means the following:

- (i) Members of the police force are waiting to see what would happen to a woman officer who assaulted her husband about two weeks ago in a case of domestic violence.
- (ii) It looks like the matter, which was reported at the Anse Etoile police station is being covered up.
- (iii) Certain people are saying that nothing would happen because the lady is a "Golan" (an SPPF supporter). When she received her promotion lately, she shouted aloud "I got my promotion because I have voted well".

The plaintiff produced in evidence a copy of the said "Nouvo Vizyon", which carried the article in question. Here, it should be mentioned that PW3, Mr. Achilles Commetant, a sworn interpreter of the Supreme Court of Seychelles testified as to the accuracy and correctness of the English translation of the Creole version of the statements supra. Moreover, he translated the Creole version of the entire article in question- in exhibit P1- into English for the benefit of the Court. Be that as it may.

It is the case of the plaintiff that the said statements contained in the article, in their natural and ordinary meaning or by innuendo refer and are understood to refer to the plaintiff. The people, who read the statements could easily understand and identify that the person referred to, in the said article was the plaintiff. According to the plaintiff, such identification emerged from the special facts attributed to the person in that, the plaintiff was a woman police officer. She was the one, who at the material time had received the promotion to a higher post in the police force. She was the one, who had the domestic altercation with her boyfriend, a foreigner. She was the one, who had been accused of domestic violence, reported at the Anse Etoile police station. From the combination of all these special facts, the plaintiff concluded that the statements in the article clearly referred to the plaintiff.

On the question of defamation, according to the plaintiff the statements complained of, in their natural and ordinary meaning and by innuendo meant or understood to mean that the plaintiff was promoted to a higher rank in the Seychelles Police Force, because she was a supporter of SPPF, the political party presently in power. She was not promoted on the merits. She acknowledged this fact, when she confirmed that she had cast her vote in the last Presidential Election, in favour of the candidate who represented the SPPF. The said statements and the innuendo meaning understood therefrom, according to the plaintiff, are false and malicious and constitute a grave libel on her. Moreover, the plaintiff stated in cross-examination that she got promotion to the post of Inspector not

because of her overt support for the party in power, nor of her overt friendship with the Commissioner of Police as portrayed by the defendants, but because of her own merits based on her qualifications and experience. Further, she testified that she never shouted loudly or otherwise "I have been promoted because I have voted well". This imputation, according to her, is a fabricated lie.

In consequence of the publication of the said defamatory statements and innuendo, the plaintiff testified that she has been severely injured in her credit, character and reputation. She has been brought into ridicule, hatred and contempt generally by the public, her friends and those of her inferior who aspire to become police officers and see her as a role model. Therefore, the plaintiff claimed that she suffered prejudice in her capacity as a Police Inspector and as a private person. The plaintiff testified in this respect as follows:

"I have lost respect of my subordinates. Even from people from outside the Force, I did not have any confidence. Because they always referred to this article, believing that this is true, that I was promoted because I am a "Golan"...and my promotion was a fake. So, they did not have respect for me. That is why I had to leave the Force"

Miss. Rurestina Rose-PW2- a Woman Police Officer in service, testified that soon after the said article appeared in the Newsletter, the news spread in the police circle that the police officer referred to, in that article was the plaintiff. Moreover, this witness testified that she herself on reading that article, understood that it clearly referred to the plaintiff. She too, believed that the innuendo meanings she understood from the statements were true. This made her to change her opinion about the plaintiff and her promotion. In fact, before reading the said article, this witness had thought that the plaintiff got promotion because of her ability and experience as a police officer. However, after reading that article, she thought that the plaintiff got promotion not because she was meritorious but because she was a supporter of SPPF. Thus, PW2 corroborated the testimony of the

plaintiff on material facts as to the identity of the person, the defamatory nature of the statements by innuendo and its publication.

In view of all the above, the plaintiff estimates her prejudice suffered in the sum of R50, 000.00, which sum the plaintiff claims that the defendants are liable to make good. Moreover, it is the case of the plaintiff that the second defendant is responsible for the veracity of the contents of each issue of the Newsletter Nouvo Vizyon, which being published and printed under its license. Therefore, the plaintiff prays the Court to enter judgment for the plaintiff and against all three defendants jointly and severally in the sum of R50, 000.00 with interest and costs.

On the other side, the defendants in their statement of defence have denied the entire claim of the plaintiff in this matter. Although the defendants admit that the statements appeared in the article were published in the Newsletter in question, they have denied that it referred to the plaintiff. According to the defendants, the statements complained of, and the meaning it bore by innuendo were true in substance and in fact. They were not false or malicious. The defendants have also denied that the statements complained of, bore or were understood to bear or were capable of bearing or being understood to bear any of the meanings defamatory of the plaintiff. Further, the defendants have averred in their defence that the plaintiff was at all material times a supporter of SPPF and was close to the Commissioner of Police. Thus, she got promotion because of her political affiliations with the party in power rather than on her merits.

Mr. Antoine Durup-DW1- a former police officer testified that he was serving the Seychelles Police Force during the same period the plaintiff was in service. He was one among the eleven batch mates of the plaintiff, who attended the Cadet Officers Course in late 1990s. Although the plaintiff came out 12th rank in the Cadet Officers Course, she was the only one, who later received promotion as an Inspector of Police and none else in that batch. Further, he stated that the plaintiff was a "Golan" as he had once seen her wearing an SPPF badge, while she was in police uniform. Moreover, he testified in his examination-in-chief that on a particular day, while he was standing outside the Central

Police Station at the car park, the plaintiff came out and said, "I have voted well that is why I have been promoted". However, in cross-examination, he changed his previous version and stated that he heard the plaintiff saying those words while he was in his office. Moreover, in cross-examination he contradicted his evidence in chief and admitted that another batch mate of the plaintiff, one Mr. Wirtz, who attended the same Course, also got promotion as Inspector of Police, not only the plaintiff. Having thus testified, he frankly admitted that one of the reasons for him to leave the police force was that they promoted the plaintiff and not him.

Mr. Allen Jonathan, DW2, an estranged boyfriend of the plaintiff, admittedly a supporter of the SNP, and a very close friend of the SNP leader testified that he had an affair with the plaintiff in the past and so he knew her very well. According to this witness, the plaintiff was a supporter of the SPPF as he had seen SPPF tokens like mugs, clocks and T-shirts at her house. Moreover, this witness testified that it was his hobby to go to "Barrel Bar" Discotheque every night, park his pickup opposite to the "Barrel Bar", play music inside his vehicle, and watch the movements of the people around. He testified that on two such occasions, he had seen the plaintiff getting into the car of the "Commissioner of Police". Hence, he presumed that the plaintiff had an affair with the Commissioner of Police.

In view of all the above, the learned counsel for the defendants contended that the statements complained of, and the innuendo meaning understood therefrom were true in substance and in fact. According to the counsel, the defence of justification has been made out on a balance of probabilities in this matter. Hence, he urged the Court to dismiss this action.

I meticulously perused the entire evidence adduced by the parties in this matter. I gave careful thought to the submission made on behalf of the defendants. First, on the question of credibility of the witnesses, I find that the plaintiff and PW2 Miss. Rose were truthful in their testimony. Their evidence is cogent, consistent, reliable and corroborative on material points. Hence, I accept their evidence in toto. On the other hand, DW1 Mr.

Durup, who appeared to have a grudge against the plaintiff over her promotion, did not appear to be a reliable witness for obvious reasons. His demeanour and deportment did not appeal to me in the least. I cannot attach any credibility to his inconsistent and contradictory evidence. I reject particularly, his conflicting evidence that he heard the plaintiff saying, "I have voted well that is why I have been promoted".

I will now proceed to examine the evidence in the light of the law applicable in this matter. Although it is trite, I should state that by virtue of article 1383 of the Civil Code, the law applicable herein is the English law of defamation. Obviously, there is no dispute that the said Newsletter carried the article containing those statements in question. It is also not in dispute that the said Newsletter was printed and published by the defendants as alleged by the plaintiff. In the circumstances, to my mind the following are the only issues or questions before the Court for determination:-

1. Would reasonable people, reading the statements complained of, understand them to refer to the plaintiff?
2. If so, "Are those statements defamatory of the plaintiff by innuendo?"
3. If so, "Is the innuendo-meaning true in substance and justified in the circumstances?"
4. If defamatory, "Did the plaintiff suffer any damage in consequence thereof?" and
5. If so, "What is the quantum of damages the plaintiff entitled to?"

As regards the first question, obviously, the evidential burden lies on the plaintiff to prove that reasonable people reading those statements would understand them to refer to the plaintiff. The test herein is the "understanding of the reasonable persons" and not the "intention or non-intention" of the publisher, vide *E. Holton & Co. V. Jones* [1910] A. C 20.

As I see it, in determining this issue the Court must take into consideration all the special facts and circumstances surrounding the description of the person referred to, in the article. It is evident that the plaintiff was a woman police officer. She was the one, who had promotion at the material time to a higher post in the police force. She was the one, who had the domestic altercation with her boyfriend, who was a foreigner. She was the one, who had been implicated in the matter that was reported at the Anse Etoile police station. All these attributive or descriptive facts on evidence unequivocally referred or understood to refer to the plaintiff. Hence, the plaintiff has squarely discharged her evidential burden in this respect. Accordingly, I find that reasonable people, to whom those statements were published, would understand them to refer to the plaintiff, as has obviously happened in the case of DW2, Miss. Rose.

As regards the second question, a statement to be defamatory, an imputation must tend to lower the plaintiff in the estimation of right-thinking members of society generally. What imputation is conveyed by any particular statement is to be determined on an objective test, that is, by the meaning in which the ordinary reasonable man would understand them. "The test according to the authorities is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libelous sense. See, *Gatley on Libel and Slander* 8th Edition, at page 89. As I proceed to examine the nature of the alleged statements, I note that in *Wytt v. Corgate SLR* (1964) the Court has made the following observations:-

- (1) Where the words are alleged by innuendo or otherwise to have an extended or secondary meaning, the manner of their publication, the person to whom they are published, and all the circumstances affecting their meaning in the particular case, must be taken into consideration in determining whether the words are defamatory or not. The burden of proof is on the party who alleges that the words were understood in a meaning other than their natural and ordinary meaning, and in that meaning were either defamatory or non-defamatory as the case may be.

- (2) The meaning in which the defendant intended the words to be understood is immaterial in determining whether the words are or are not defamatory; it is what meaning in the circumstances of the particular case the words conveyed to the reader or hearer.
- (3) The words or the statements in question must be construed as a whole.
- (4) If there is a controversy as to whether the words used are defamatory or not it is for the Court to determine whether they are defamatory meaning.

In the light of the above observations, I analyse the case on hand. As I see it, any ordinary reasonable man, who reads the said statements would understand and conclude that the plaintiff was incompetent and unfit to hold the office of the Inspector of Police. She did not deserve such promotion. She got promotion not on her merits but on her political affiliation. Such an imputation on the competence of a person, who holds an office, is obviously defamatory of him, as it injures his reputation and disparages him in his office. See, paragraph 168, *Gatley (Supra)*. In the circumstances, I find that the statements complained of, are clearly defamatory by innuendo and libelous of the plaintiff.

I will now move on to the third question. Where justification is pleaded I note, the standard of proof incumbent on the defendant is not proof beyond reasonable doubt, but proof on a high degree of probability vide *Moulinié V, de Comarmond SLR 1972 No. 24*. In the present case, there is no evidence at all on record to show that the plaintiff was indeed, incompetent and unfit to hold the office of the Inspector of Police but was promoted just because of her affiliation to SPPF. There is not even a scintilla of evidence to show that she did not deserve such promotion or to show that the plaintiff had no merits, qualifications and experience to be promoted to the post of Inspector of Police. Therefore, I find that the defendants have failed to discharge their burden to prove the defence of justification in this matter. In any event, even if we assume for a moment that the plaintiff was a supporter of SPPF and was seen in the car with the Commissioner of police, these facts are not evidence to prove justification. Justification must be based on truth not on

conjecture, guesswork or surmise. A defendant should never place a plea of justification on record unless he has clear and sufficient evidence of the truth of the imputation, for failure to establish this defence at the trial may properly be taken in aggravation of damages. It is said that a plea of justification in this respect is "like a charge of fraud" per Lord Denning M. R in *Associated Leisure V. Associated Newspaper* [1970] 2 Q. B 450 at p.456. In the circumstances, I find and conclude that the statements complained of, and the innuendo meaning they conveyed to the readers is not true in substance and in fact. They are defamatory of the plaintiff by innuendo. Hence, I hold that there is no justification in the circumstances, for publishing such defamatory statements in the Newsletter.

As regards the fourth question as to damages, 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, her 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 her credit, character and reputation and has been brought into ridicule, hatred and contempt generally by the public, her friends and those of her inferior who aspire to become police officers. Evidently, the plaintiff has suffered prejudice in her capacity as a Police Inspector and as a private person and so, I find. Above all, the plaintiff who had been serving the police force for over ten years, had to leave the job in consequence of such defamatory imputation.

In dealing with the quantum of damages, I consider the basic principles that under pin the assessment of damages and the relevant authorities including *Seychelles Broad Casting Corporation and Another v Bernadette Barroda* 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 *Barroda* 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 connection 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* [1962] 3 W. L. R 50”

The plaintiff in the instant case has been holding undisputedly, a high position in the Seychelles Police Force that is, the office of the Inspector of Police at the time of the libelous attack on her. Consequently, the plaintiff had to leave her job. Although the plaintiff has not pleaded special damages for loss of job *à mon avis*, the Court ought to consider this fact as an aggravating factor in the assessment of damages. 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 that are peculiar to the case on hand, I award the plaintiff damages in the sum of R30, 000/-. Accordingly, I enter judgment for the plaintiff and against the defendants jointly and severally, with costs.

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D. Karunakaran
Judge

Dated this 28th day of January 2004

