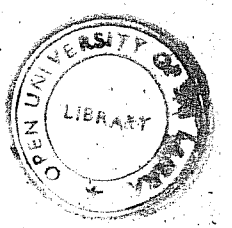
3. *"Involve"*

The word 'involve' implies a considerable degree of necessity. The mere circumstance that a question of law is raised in a case would not justify the inference that the proposed appeal involves a substantial question of law, unless it is necessary to decide the question of law for a proper decision of the case. The test is not merely the importance of the question but its importance to the case itself. If the decision of the case depended upon a consideration of that point it would be deemed to be "involved." If on the other hand there is only a remote contingency of it being taken into consideration, it will not answer the test.

Determination sent to Court of Appeal.

INDEPENDENT NEWSPAPERS OF CEYLON LTD.
v.
WICKREMASINGHE



COURT OF APPEAL
ABDUL CADER, J., AND L. H. DE ALWIS, J.
C.A. S.C. 252/73.
D.C. COLOMBO 67718/M.
MAY 6 AND 10, 1982.

Delict – Defamation – Publication of report of biased committee – Privilege – Public interest

The defendant who was the owner of a national daily published a report of a Sub-Committee appointed by the Weudawila M.P.C.S. Union to probe into irregularities of their predecessors. Wickremasinghe filed action against the newspaper alleging that the report was defamatory of him. It was found at the trial that the report was made by a biased body and that the Chairman was ignorant of the fundamentals of a proper inquiry and the rules governing the administration of the Union. It was also found that the alleged offenders were either not invited to participate or to give evidence at the inquiry and that it was this Committee which charged the plaintiff with corruption and malpractice. The plaintiff filed action for defamation. The District Judge held in favour of the plaintiff and awarded damages. The defendant appealed to the Court of Appeal.

Held –

(1) That the report prepared by the Sub-Committee was not a matter of public interest to afford its publication the plea of privilege.
(2) That the defendant acted recklessly and failed to satisfy itself that the various requisites of a fair inquiry had been followed and that the inquiry had been held by a competent impartial body on whose judgement reliance could be placed.

Cases referred to:

(1) *M.G. Perera v. A.V. Peiris (1948) 50 N.L.R. 145.*

(2) *David v. Bell et al (1913) 16 N.L.R. 318.*

APPEAL from judgment of the District Court of Colombo.

H.L. de Silva, S.A., with *Ben Eliyathamby* and *S.L. Gunasekera* for the defendant-appellant.

Nimal Senanayake, S.A., with *Miss. S.M. Senaratne* and *Arunatilake de Silva* for plaintiff-respondent.

Cur.adv.vult

June 29, 1982

ABDUL CADER, J.

The plaintiff was the President of the Executive Committee of the Weudawila Multi-Purpose Co-operative Society Union, Kurunegala, from 17th February, 1964 till 2nd March, 1965 (Plaint). This Committee was voted out of office and a new Committee took over which belonged to a rival political group and the Committee appointed a Sub-Committee "to probe into the irregularities committed by the Executive Committee which held office during the period 27.2.64 to 22.5.65" (D2). This Sub-Committee inquired into the alleged irregularities and produced its report. To this inquiry, the plaintiff was not invited to participate or to give evidence. The defendant published the report of the Sub-Committee. The plaintiff filed action for defamation against the defendant and the defendant put forward several defences:

(1) Defendant denied that the plaintiff was the person referred to in the publication;
(2) Defendant denied the accuracy of the translation of the news article set out in the plaint;
(3) The words in the said article were statements of fact and true in substance and that they were a fair comment upon matters of public interest;
(4) It was published on a privileged occasion.

Issues were framed on all these aspects after the defendant admitted the publication of the said article. The newspaper itself which contained the article was produced marked "P1" without objection. The learned District Judge after trial held in favour of the plaintiff and awarded damages in a sum of Rs.15,000/-.

Before us, Counsel for the appellant made the following submissions:

(1) If the publication was privileged, it would be a sufficient defence if the defendant reproduced the report accurately;
(2) The plaintiff pleaded in the plaint the translation in English and not the Sinhala publication complained against;
(3) The translation was not proved, though it was challenged;
(4) Though the plaintiff stated that various friends questioned him as regards the article, he did not call any witness to support his contention that he was the person referred to in this article, especially Ekanayake and Abeyratne whom the plaintiff referred to as his witnesses;

Counsel conceded that the learned District Judge was right when he held that the defendant was not entitled to the defence of fair comment, but submitted that the Judge was wrong in deciding, because the defendant failed to prove the truth, that a privilege did not exist. He agreed that if public interest is not proved, the plea of privilege fails, but contended that since this Co-operative served the public, the Union owed a duty to the public to be above corruption and nepotism and, therefore, the publication of the report referring to corruption and nepotism was a matter of public interest. While Counsel for appellant conceded that the answer to issue No.7 is correct, he submitted that the answer to issue No.8 was wrong inasmuch as the plea of privilege should prevail.

I shall now consider the various submissions made by Counsel for the appellant. As regards 2, it was a translation that was filed and not the original publication itself, but no issue was raised in respect of this contention, the only issue raised being issue No.6 in respect of the correctness of the translation. There is issue No.5 which reads as follows:

"Does the said article refer to the plaint?"

which has been answered by the learned District Judge in the affirmative which I take it to mean "Does the said article refer to the plaintiff?" Counsel for the plaintiff contended that if this objection had been raised at the trial, he would have had an opportunity to amend the plaint. As I have stated earlier, before the issues were framed, the newspaper in which the offending article appears has been produced marked "P1" without protest.

There was no evidence that the Hon. Minister of Justice had directed that Sinhala shall be used for pleadings filed of record in

this Court. (Language of the Courts Act, No.3 of 1961). I do not think that the appellant can raise this issue at this stage.

As regards the unsatisfactory translation, no prejudice has been caused to the appellant as the learned District Judge himself, having commented on the unsatisfactory nature of the translation, followed the original Sinhala text to make his order.

As regards the question whether the plaintiff has been properly identified as the person referred to in this article, there is the plaintiff's evidence that he was the President of this particular M.P.C.S.Union from February, 1964 to March, 1965; that it had its headquarters at Kurunegala; that he ceased to be the President in March, 1965, after the new elections; that the article in question referred to him; that the article referred to a Committee headed by the former Member of Parliament of the former Coalition Government; that there were 3 members for this area, of them the M.P. for Dodangaslanda and M.P. for Kurunegala were not members of this Union and that he was the only Member of Parliament who was a member of this Committee from 1964 to 1965. He has submitted, therefore, that all these details were sufficient to identify him as the head of this Committee which was subject to corruption and nepotism.

Counsel for the appellant particularly referred to the fact that there is no evidence of any other person to identify the plaintiff as the person referred to in this article, but I am of the view that such further corroborative evidence would not be necessary when on the material contained in the article the learned District Judge had no difficulty in identifying the plaintiff as the person referred to. In any event, if it was the defendant's contention that the person referred to therein is someone other than the plaintiff, it was open to the defendant to have led evidence of that fact. On the other hand, it was not even put to the plaintiff that that reference could well apply to someone else. I should not be misunderstood to mean that I am casting by these remarks a burden on the defendant. All that I wish to say is that when there was ample evidence for the identification of the plaintiff as the person concerned, the learned District Judge was justified in holding in favour of the plaintiff.

Getting on to the publication itself, paragraph 2 of "P1" is to the effect that the previous committee had acted in contravention of the rules, regulations and conditions of the society, went on private trips with the funds of the society, recruited non-essential persons as employees and took away goods from sales establishments without

paying for them. (I am quoting from a translation supplied to me by Counsel for the defendant at my request.) The report concludes as follows:

> "The new Committee has provided facts about those responsible for all losses, damages, irregular payments and acts of corruption that have occurred to date."

I do not need to state that if these statements are not true, they are obviously defamatory unless they are privileged.

Counsel has admitted that the plea of fair comment has failed as truth has not been proved. He has only depended on the plea of privilege. The question when the plea of privilege would lie has been discussed in the case of *M.G. Perera* v. *A.V. Peiris.* (1) Lord Uthwatt, at page 158, states as follows:

> "Where the words used are defamatory of the complainant, the burden of negativing animus injuriandi rests upon the defendant. Their Lordships' attention has not been drawn to any case under the Roman Dutch Law or the common law which exactly covers the point at issue. Both systems accord privilege to fair reports of judicial proceedings and of proceedings in the nature of judicial proceedings and to fair reports of parliamentary proceedings,"

He stated that their Lordships did not wish to consider whether proceedings before the Commissioner fell within one or other of these categories, but that they would relate their conclusions to the wide general principle which underlies the defence of privilege. He went on to state that in the case of reports of Judicial and Parliamentary proceedings, the basis of the privilege is that it is in the public interest that all such proceedings should be fairly reported. He went on to hold that the reports of some bodies which were neither judicial nor parliamentary in character stand in a class apart by reason that the nature of their activities is treated as conclusively establishing that the public interest is forwarded by publication of reports of their proceedings. As regards reports of other bodies, the status of those taken alone is not conclusive and it is necessary to consider the subject matter dealt with which the Court is concerned. If it appears that it was to the public interest that the particular report should be published privilege will attach.

Adopting these principles, I am not in a position to hold that the publication would fall within the ambit of these principles so as

to attach to it a privilege. The sub-committee which held the inquiry and made the report in this case was obviously a biased body. At the trial, it was disclosed that the Chairman did not even know the fundamentals of a proper inquiry and the rules governing the administration of a union. There are statutory provisions for co-operative officials to hold such inquiries to which recourse was not had, but instead some unofficial members of a committee held an inquiry to which the alleged offenders were not invited either to participate or to give evidence or to examine the witnesses who made allegations against them. It was such a committee which came to such far-reaching conclusions, charging the plaintiff and others with various acts of corruption and malpractices referred to above by me.

In the case of *David* v. *Bell et al* (2), Pereira, J. stated as follows:-

> "Now, malice, in modern English law, signifies practically no more than the absence of a just cause or excuse; and, as observed by Morice in his work on English and Roman-Dutch Law, just as malice, in the English law of defamation, has lost its definite meaning, so animus injuriandi seems, in its practical application, to be reduced to something far short of the intention or desire to injure. It has been found to be impossible to make the mental state of the defendant the practical test in a case of defamation; and in such a case reckless or careless statements are therefore taken as proof of the animus injuriandi."

He went on to hold that malice can only be refuted by showing that the occasion was privileged, or that the words used are no more than honest and fair expressions of opinion on matters of public interest and general concern.

I am of the view that a report prepared by a sub-committee of this nature I have referred to is not a matter of public interest to afford that publication the plea of privilege.. I also take the view that when the defendant published the document, the defendant acted recklessly and failed to satisfy itself that the various requisites of a fair inquiry had been followed and that the inquiry had been held by a competent, impartial body on whose judgment reliance could be placed. I have, therefore, come to the conclusion that the learned District Judge was justified in awarding damages to the plaintiff.

As regards the quantum of damages, the plaintiff has stated that the defendant's paper "Dawasa" is widely read in the Mawathagama area which has not been challenged or contradicted. Under the

circumstances, damages ordered by the learned District Judge are not, in my opinion, excessive.

I dismiss the appeal with costs.

L.H. DE ALWIS, J. — I agree.

Appeal dismissed.

SANGAPALA THERO
v.
TELWATTA NAGITHA THERO

COURT OF APPEAL
ABDUL CADER, J., AND L.H. DE ALWIS, J.
C.A. NO. 633/96.
D.C. COLOMBO NO. 13788/L.
MAY 3 AND 4, 1982

Buddhist Ecclesiastical Law – Pupillary succession to Viharadhipathy – Act of appointment – Is informal writing sufficient?

Rev. Piyaratne Thero was the Viharadhipathy of Gothami Vihare and of two other Viharas, namely Mangala Ramaya and Sila Saila Bimba Ramaya. Reverend Piyaratne and his co-pupil Rev. Saralankara robed Telwatte Ariyawansa and Telwatta Amarawansa. Reverends Ariyawansa and Amarawansa robed Buddhapriya Sangapala (appellant) and Seelawimala.

On Reverend Piyaratne's death in 1907 Rev. Ariyawansa succeeded to the Viharadhipathyship in accordance with Sisyanu Sisya Paramparawa. But though Rev. Ariyawansa was de jure Viharadhipathy he resided at Mangala Ramaya while Rev. Amarawansa managed affairs at Gothami Vihare as de facto Viharadhipathy. On Rev. Ariyawansa's death Rev. Seelawimala succeeded him as Viharadhipathy of Gothami Vihare by virtue of Deed No. 432 of 18.1.51.

On Rev. Seelawimala's death in 1972 the respondent a senior pupil should have succeeded as Viharadhipathy of Gothami Vihare. On the other hand appellant claimed that on the death of Rev. Piyaratne Rev. Amarawansa succeeded as Viharadhipathy by virtue of an appointment dated 15.1.1907 which was recorded on an ola leaf. The appellant states that on Rev. Amarawansa's death in 1949 Rev. Buddhapriya succeeded to the Viharadhipathyship and on Rev. Buddhapriya's death in 1955 the appellant as senior pupil succeeded him.

The District Judge held that the ola leaf writing of 15.1.1907 was not a permanent or proper act of appointment but only an expression of a wish by Rev. Piyaratne.

On appeal to Court of Appeal,

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