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REPORTS

OF MALAYSIAN, SINGAPORE AND BRUNEI CASES DETERMINED IN THE HIGH COURTS, THE SUPREME COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

PRIVY COUNCIL REPORT

Joshua Benjamin Jeyaretnam v Goh Chok Tong

PRIVY COUNCIL (ON APPEAL FROM SINGAPORE) – PRIVY COUNCIL APPEAL NO 27 OF 1987
LORD BRIDGE OF HARWICH, LORD ACKNER, LORD GOFF OF CHIEVELEY, LORD JAUNCEY OF TULLICHETTLE AND LORD LOWRY
25 JULY 1989

Defamation – Whether words defamatory – Whether calculated to disparage person in his office – Defence of fair comment – Facts on which comment was based – Judge's findings on facts not totally accurate – Whether finding affected by this – Whether speaker motivated by malice – Test of the fair-minded speaker – Whether trial judge justified in his conclusions – Defamation Act (Cap 32, 1985 Ed), ss 5 & 9

Civil Procedure – Appeal from trial judge's findings in defamation suit – Whether trial judge justified in conclusions

The Singapore Democratic Party ('SDP') an opposition political party, held its inaugural meeting at which the appellant, the leader of another opposition political party, was invited to as the main speaker. After his speech, the appellant left the meeting, as did a large number of the spectators. Later, the respondent, who was at all material times the Minister for Defence and Second Minister for Health and organizing secretary of the People's Action Party ('PAP') held a press conference where he spoke about the events that had occurred at the SDP's inaugural meeting, and went on to say that the mass exodus of spectators leaving after the appellant had spoken was contrived by the appellant to show the SDP that the appellant was the leader of the opposition, and the secretary-general of the SDP 'cannot take that trick lightly.' The appellant issued a writ claiming damages for slander and in his statement of claim alleged that the words of the respondent at the press conference ('the statement') were both defamatory and calculated to injure him in his office as leader of a political party. In his defence, the respondent denied both that the words were defamatory and that they were calculated to disparage the appellant in his office as leader of another opposition party. The responded also claimed the defence of fair comment and that the words were subject to qualified privilege.

The trial judge found that the statement had words that were defamatory in their natural and ordinary meaning. The defence of qualified privilege was also rejected. The suit was however dismissed because it was found that the statement was not calculated to disparage the appellant in his office as it did not impute any want of integrity or corrupt or dishonest conduct or any other misconduct in the discharge of that office. The appellant also did not prove any special damage. The respondent was also able to establish his defence of fair comment. The Court of Appeal dismissed the appellant's appeal from the judgment of the trial judge and confirmed the trial judge's findings. The appellant then appealed to the present court.

Held, dismissing the appeal:

(1) A comment is a statement of opinion on facts. If a statement is capable of being a comment, whether or not it is a comment or a statement of fact, must be a matter for a judge, properly directing himself, to decide.

(2) The respondent's repetition of the events that had occurred at the SDP meeting were clearly statements of fact. It was clearly open to the trial judge to take the view that the observations that followed (the statement) were expressions of opinion or conclusions or inferences drawn from those facts and therefore capable of being comment.

(3) It is well established that a writer may not suggest or invent facts and then comment upon them on the assumption that they are true. Since the respondent was not present at the SDP meeting, he relied on persons who were present to establish the facts.

(4) Although the trial judge was not totally accurate in his findings regarding the events that occurred at the SDP meeting, the pith and substance of the matter was that after the appellant had spoken, he left the meeting and was followed by a substantial number of the audience. By virtue of s 9 of the Defamation Act, there could be no valid complaint of the judgment.

(5) The judge decided that the statement was one that a fair-minded person on the sense used by Diplock J (as he then was) in *Silkin* v *Beaverbrook Newspapers Ltd*[2] could have arrived at. The judge had properly directed himself on the law and there was clearly material which could justify the decision. It would be wrong of the appellant court to interfere.

(6) The appellant sought to establish that the respondent in making the statement was actuated by malice. The judge had the advantage of hearing the prolonged cross-examination of the respondent and came to the conclusion that there was no ground for believing that the respondent had an honest belief in his statement.

(7) The judge had properly directed himself as to the legal principles which he had to apply, and there was material which could justify his decision. For these reasons, the judge was also entitled to find that the defence of fair comment had been fully established. This was a complete defence to the appellant's claim of damages for slander. The appellant's appeal was therefore dismissed.

Cases referred to

1 *London Artists Ltd* v *Littler* [1969] 2 QB 375 (folld)
2 *Silkin* v *Beaverbrook Newspapers* [1958] 1 WLR 743 (folld)

Legislation referred to
Defamation Act (Cap 32, 1985 Ed) ss 5, 9

Lord Hooson QC and *Robert Britton* for the appellant.
Lord Alexander of Weedon QC, *John Previte* QC and *G Pannirselvam* for the respondents.

Cur Adv Vult

Lord Ackner (delivering the judgment of the court): This appeal is from a judgment of the Court of Appeal of Singapore (Wee Chong Jin CJ, Lai Kew Chai and Chua JJ) dated 19 August 1986 reported at [1987] 1 MLJ 176 dismissing an appeal from a judgment of Thean J which dismissed the appellant's claim against the respondent for damages for slander. That claim arose out of certain events which took place in 1981. At 6.30pm on 21 September 1981 the Singapore Democratic Party ('the SDP'), a registered political party in Singapore held its inauguration meeting at the Singapore Conference Hall auditorium. At that time the appellant was the secretary-general of the Workers' Party ('the WP') which was another registered political party in Singapore. The secretary-general of the SDP, Chiam See Tong, accorded to the appellant, in the words of Thean J, the 'unusually high honour' of being invited to this ceremony as the first main speaker and the only guest speaker, taking precedence over the speeches of all the leaders of the SDP. Such an honour was a clear indication that at the material time the relations between these two political parties were friendly.

On receipt of the invitation, the appellant had informed the secretary-general of the SDP that he would have to leave after his speech due to a dinner engagement on the same evening as the inauguration. This was acceptable to the SDP. From the reports of the meeting and according to the evidence of representatives of the press, who were present, the appellant was the most popular man that evening, receiving rounds of applause even before he spoke, as well as during his speech. After his speech he left the meeting, as did a large proportion of the 300-strong audience.

The respondent, who was the defendant in the action, was at all material times Minister for Defence and Second Minister for Health in the government of Singapore and organizing secretary of the People's Action Party, the party in government in Singapore. On 26 October 1981, the respondent held a press conference at Blair Plain at which representatives of the media were present. At that conference he said, inter alia:

> SDP had their inaugural earlier this month. Mr Jeyaretnam attended. After Mr Jeyaretnam had spoken, he left the hall, and when he left the hall, 200 participants left with him. I believe the exodus was engineered. I don't think it was a spontaneous exodus. If it were, it did not speak well for the SDP. It shows that the crowd, the limited crowd still looks towards Mr Jeyaretnam, for the time being, as a leader of the opposition. But I am inclined to believe that the exodus was contrived by the leader of the Workers' Party to show who is boss at this stage. And surely Mr Chiam cannot take that trick lightly.

On 23 November 1981 the appellant issued his writ claiming damages for slander and in his statement of claim delivered on 10 February 1982 he alleged that the words set out above were both defamatory and calculated to injure him in his office as leader of a political party. In his defence the respondent denied that the words which he had used were defamatory of the appellant and he denied that they were calculated to disparage the appellant in his office as the secretary-general of the WP. He raised two further defences, namely, that the words were fair comment spoken without malice upon a matter of public interest, namely, the conduct of leaders of the opposition parties including the appellant, and further or alternatively that the occasion on which the words were uttered was one of qualified privilege.

The decision of the trial judge

The judge held that the words complained of in their natural and ordinary meaning were defamatory of the appellant. He said this:

> The crucial point in this issue is this: did the words complained of in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or lack of integrity on his part? If they did, then inescapably they were defamatory of the plaintiff. It seems to me that in considering this issue, one must bear in mind the following salient facts. First, the event to which the words made reference was the inauguration of the SDP – undoubtedly a great and important event to the SDP. Secondly, at the inauguration the plaintiff in his position as the secretary-general of the WP was accorded an unusually high honour in being invited to speak. He was the only guest speaker and the first main speaker taking precedence over the speeches of all the leaders of the SDP. From the reports and according to representatives of the press media, who were present at the meeting, the plaintiff was the most popular man that evening, receiving rounds and rounds of applause even before he spoke and during his speech. Lastly, though much has been sought to be made out by the defendant and his counsel that the WP and SDP were rival political parties, which was not borne out by evidence, at the material time at any rate the relations between the two political parties were friendly. In those circumstances the words, in my opinion, were capable of a defamatory meaning and were defamatory of the plaintiff. The sting lay in the suggestion or implication that the plaintiff took advantage of a gesture of goodwill from the SDP – a party with which the WP had good relations – on the occasion of the SDP's inauguration for a purely selfish and self-serving purpose and engineered or contrived an exodus of a large section of the audience at the inauguration so as to project himself as the 'boss' and leader of the opposition parties to the party in power. The words imputed to the plaintiff dishonourable or discreditable conduct or motive or a lack of integrity and such an imputation in my opinion was defamatory of the plaintiff.

The judge rejected the defence of qualified privilege and neither in the Court of Appeal nor before their Lordships

was this decision or his decision that the words were defamatory, in the sense he particularized, criticized.

However the action was dismissed because the judge held:

(1) That the words although defamatory of the appellant were not calculated to disparage him in his office as the secretary-general of the WP. He said, 'They did not impute any want of integrity or corrupt or dishonest conduct or any other misconduct in the discharge of that office'. Accordingly the appellant was unable to take advantage of s 5 of the Defamation Act 1960 (Cap 32) and claim damages for the slander, without the necessity of proving special damage. The appellant did not assert, let alone prove, any special damage.
(2) The respondent had established his defence of fair comment.

The Court of Appeal in dismissing the appellant's appeal, confirmed the judgment on both the grounds set out above.

When Lord Hooson QC, on behalf of the appellant, opened this appeal, their Lordships invited him first to address them on the second ground of the judge's decision, and to develop his submissions as to why the judge was in error in the conclusions which he had reached. Their Lordships adopted this course because it appeared to them that the fair comment defence, in the circumstances of this case, presented the appellant with his greatest difficulties. If the judge had reached a correct decision in allowing this defence, which on its own would be fatal to the success of the appeal, then the more difficult questions raised by s 5 of the Defamation Act would not arise.

Lord Hooson did not criticize the judge in his statement of the four elements which the respondent had to establish, in order to succeed in his defence of fair comment. These he stated as follows:

(i) the words complained of are comment, although they may consist or include inferences of fact;
(ii) the comment is on a matter of public interest;
(iii) the comment is based on facts; and
(iv) the comment is one which a fair-minded person can honestly make on the facts proved.

As regards (ii) above, it was not contested that the comment, if it was a comment and not an assertion of fact, was on a matter of public interest. Their Lordships accordingly deal seriatim with elements (i), (iii) and (iv).

(i) *Were the words complained of comment?*

Lord Hooson did not dissent from the following statement to be found in para 697 of the current (8th Ed) of *Gatley on Libel and Slander*:

> Comment is a statement of opinion on facts. It is comment to say that a certain act which a man has done is disgraceful or dishonourable; it is an allegation of fact to say he did the act so criticized ... while a comment is usually a statement of opinion as to merits or demerits of conduct, an inference of fact may also be a comment. There are, in the cases, no clear definitions of what is comment. If a statement appears to be one of opinion or conclusion, it is capable of being comment.

Of course, if a statement is capable of being comment, whether or not it is a comment or a statement of fact, must be a matter for the jury properly directed or, in this case where trial was by judge alone, for the judge, properly directing himself, to decide.

At the press conference, after stating that the appellant had spoken at the inaugural, the respondent said that the appellant 'left the hall, and when he left the hall 200 participants left with him'. These were clearly statements of fact. He then said:

> I *believe* the exodus was engineered. I *don't think* it was a spontaneous exodus. *If* it was, it did not speak well for the SDP. It shows that the crowd, the limited crowd still looks toward Mr Jeyaretnam, for the time being as a leader of the opposition. *But I am inclined to believe* that the exodus was contrived by the leader of the Workers' Party to show who is boss at this stage. And surely Mr Chiam cannot take that trick lightly. (Emphasis added).

In their Lordships' judgment it was clearly open to the judge to take the view that the observations following the statement of facts were expressions of opinion or conclusions or inferences drawn from those facts and therefore capable of being comment. This being so, he was fully entitled to decide that these observations were 'a comment and not a bare or naked statement of facts. It contained the defendant's belief for his conclusions based on or drawn from certain facts'.

(iii) *Was the comment based upon facts which the respondent established to be true?*

It is of course well established that a writer may not suggest or invent facts and then comment upon them, on the assumption that they are true. If the facts upon which the comment purports to be made do not exist, the defence of fair comment must fail. The commentator must get his basic facts right.

> The basic facts are those which go the pith and substance of the matter: see *Cunningham-Howie* v *Dimbleby* [1951] 1 KB 360, 364. They are the facts on which the comments are based or from which the inferences are drawn – as distinct from the comments or inferences themselves. The commentator need not set out in his original article all the basic facts: see *Kemsley* v *Foot* [1952] AC 345; but he must get them right and be ready to prove them to be true;

(per Lord Denning MR in *London Artists Ltd* v *Littler.*[1])

At the outset of this judgment, certain basic and agreed facts have been set out, such as the date and place

of the inauguration, the invitation to the appellant, the honour conferred upon him, that there were 300 participants at the inauguration, his popularity on the occasion and the applause which he received and that immediately after his speech he left the hall. It is also common ground that the appellant's departure was wholly unexplained. In his judgment, the trial judge held that the respondent had proved the following facts:

> At that time [ie when he left the hall] or immediately thereafter there was a large section of the audience – some 200 people – who also left the meeting. At the end of the meeting there were about 100 people remaining in the hall.

The respondent was not present at the meeting and therefore, in order to establish the truth of the facts upon which he relied, he was obliged to call evidence from persons who were present. The above findings of the judge were clearly based upon his acceptance of the evidence of Mr Leslie Fong Yim Leong, a journalist who attended the inaugural meeting and was the author of a report in the Straits Times of that meeting. He said:

> Almost immediately after JBJ left the hall people from all parts of the hall stood up and made their way out. I heard rustles of people getting up and the people leaving took no extra care to do so quietly. My estimate is that about 150 people left. There was a steady trickle of people leaving the hall. I looked around again frequently. Twenty minutes after he left I estimated that there were about 100–120 people left inside the hall.

Lord Hooson made basically two criticisms of the judge's finding quoted above:

(1) The judge had inflated Mr Leslie Fong's estimate of 'about 150 people' to 'some 200 people', the number which the respondent had referred to at the press conference.

(2) Mr Leslie Fong's evidence was that 'almost immediately after JBJ left' and not 'at that time or immediately thereafter', as stated in his judgment. Indeed Lord Hooson repeated the point (unsuccessfully made in the Court of Appeal, and described by that court as a 'pedantic quibble'), that the words used by the respondent at the press conference were 'left with him'.

While Lord Hooson's complaints are strictly justified, in their Lordships' view the pith or substance of the matter was that after the appellant had spoken he left the hall, without any explanation being given for his departure, and that he was then followed by a very substantial number of the audience. It matters not whether he was followed immediately or almost immediately after he left, or that the proportion of the audience which immediately or almost immediately followed him was a half or two-thirds of the total number of the participants. By virtue of s 9 of the Defamation Act 1960:

> In an action for ... slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

In their Lordships' opinion no valid complaint can be made of the judgment under this heading.

(iv) *Was the comment one which a fair-minded person could honestly make on the facts proved?*

The trial judge quoted very aptly from the direction given to the jury by Diplock J (as he then was) in *Silkin* v *Beaverbrook Newspapers Ltd*[2] at p 749:

> The matter which you have to decide and I emphasize this again, because it is so important, is not whether you, any of you, agree with that comment. You may all of you disagree with it, feel that it is comment that is not correct. But that is not the test. I will remind you of the test once more. Could a fair-minded man, holding a strong view, holding perhaps an obstinate view, holding perhaps a prejudiced view – could a fair-minded man have been capable of writing this? That is a totally different question from the question: Do you agree with what he said?

The judge decided that a fair-minded person, in the sense used by Diplock J, could have honestly arrived at the conclusion which the respondent reached. He said:

> It is significant that the defendant in arriving at this conclusion did consider the alternative conclusion, ie that the exodus from the SDP's inauguration was spontaneous but in such a case it did not reflect too well on the SDP, and he ruled out this alternative. Now the conclusion which the defendant arrived at may not be impartial; obviously it cannot be so. That conclusion may be biased, may be prejudiced, may be grossly exaggerated or may even be wrong; it may be a conclusion I cannot and do not agree. But it is one which falls within the allowed limit of fair comment: it is a conclusion which a fair-minded person on the basis of those facts could have honestly arrived at.

The judge had properly directed himself on the law and there was clearly material which could justify his decision. In those circumstances it would be quite wrong for a court of appeal to interfere.

At the trial the appellant sought to establish that in uttering the words complained of, the respondent was actuated by malice, that is by ill-will, spite or improper motive. The trial judge had the advantage of hearing a prolonged cross-examination of the respondent. He observed:

> Nothing has emerged therefrom or been elicited from him which cast any doubt or suspicion on the bona fides of his belief that the conclusion he came to was true. I find no ground for disbelieving him that the belief he entertained was a genuine and honest one.

Once again it is apparent from the judgment that the judge properly directed himself as to the legal principles which he had to apply, and there was material, namely, his assessment of the credibility of the respondent, which

could justify his reaching the decision which he made. Although in the appellant's written case the judge's rejection of the allegation of malice was attacked, Lord Hooson, with characteristic realism, did not embark upon arguing what would have been hopeless point.

For the reasons set out above their Lordships are satisfied that the judge was entitled to find that the defence of fair comment had been fully established by the respondent. This is, as stated above, a complete defence to the appellant's claim for damages for slander and this conclusion is sufficient to dispose of this appeal.

Their Lordships had the benefit of submissions made by Lord Hooson QC and Lord Alexander QC of Weedon, on behalf of the respondent, as to whether, if the defence of fair comment had failed, the judge and the Court of Appeal were in error in deciding that the appellant could not take advantage of s 5 of the Defamation Act 1960 and recover general damages for the slander, notwithstanding the absence of special damage. However, in the light of their conclusion that the judge was justified in accepting the defence of fair comment, their Lordships see no virtue, in the special and unusual circumstances of this case, in burdening this judgment with what, for all practical purposes, would be a lengthy disquisition which would be of little but academic interest.

Accordingly their Lordships dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Penningtons Ward Bowie*; *Linklaters and Paines*.

Reported by *Terence Tan Bian Chye*

SINGAPORE REPORTS

Anthony s/o Savarimiuthu v Soh Chuan Tin

HIGH COURT (SINGAPORE) – ORIGINATING MOTION NO 152 OF 1988
LAI KEW CHAI J
18 MAY 1989

Civil Procedure – Appeal from damages award of magistrate – Amount of damages below statutory amount – Leave to appeal sought – Circumstances for granting leave – Material departure from statement of claim alleged – Omission to mention fact in statement of claim – Whether appellant misled – Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 21

The plaintiff was involved in an accident between his taxi and the defendant's lorry. The plaintiff was awarded $1,660 as damages by a magistrate in his suit against the defendant. The defendant sought leave to appeal under s 21 of the Supreme Court of Judicature Act against the magistrate's order. He sought to argue that the plaintiff had materially departed from his statement of claim and from his police report as regards the part of his taxi that had collided with the defendant's vehicle.

Held, dismissing the application:

(1) Examining the evidence, there was no departure in the plaintiff's case at all from beginning to end. The defendant knew or ought to have known from the pleadings, the police report and the photographs what the plaintiff's case was. The plaintiff made some omissions but these did not mislead the defendant.

(2) For the defendant to obtain leave to appeal where the amount of damages is below the statutory amount in s 21 of the Supreme Court of Judicature Act, he had to show that a serious and important issue of law is involved.

(3) The cases on this area show that leave would be granted when the applicant for leave is able to demonstrate a prima facie case of error or if the question is one of general principle upon which further argument and a decision of a higher tribunal would be a public advantage. These cases are however not exhaustive but are examples which have a common thread: to deny leave may conceivably result in a miscarriage of justice.

(4) This case was merely a dispute on facts for which leave should be granted. The trial magistrate had evidence of two versions and he was perfectly entitled to accept either version.

Cases referred to
1 *Wong Yin & Ors* v *Wong Mook* [1948] MLJ 164 (refd)
2 *Pang Hon Chin* v *Nahar Singh* [1986] 2 MLJ 145 (refd)

Legislation referred to
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 21

Mahendra Prasad Rai for the applicant/appellant.
Colin Caines for the respondent/plaintiff.

Cur Adv Vult

Lai Kew Chai J: This is an application for leave to appeal under s 21 of the Supreme Court of Judicature Act against the judgment of a magistrate who awarded $1,660 damages to the plaintiff arising out of a collision between