

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No.: HBC 32 of 2014**

**BETWEEN** : **KEWAL CHAND** of Navua, Businessman.

**PLAINTIFF**

**AND** : **MAIKA BOLATIKI** of Suva, Editor.

**1<sup>st</sup> DEFENDANT**

**AND** : **PETER LOMAS** of Suva, Publication

**2<sup>nd</sup> DEFENDANT**

**AND** : **SUN (FIJI) NEWS LIMITED** a limited liability company having its  
registered office at Lot 12 Amra Street, Walu Bay, Suva.

**3<sup>rd</sup> DEFENDANT**

**Counsel** : **Plaintiff:** **Mr. G. O'Driscoll**

: **Defendants:** **Mr. E. Narayan**

**Date of Judgment** : **5<sup>th</sup> June, 2019**

**JUDGMENT**

**INTRODUCTION**

1. Plaintiff sued the Defendants for defamation relating to four newspaper articles published. The news related to Plaintiff being arrested of a complaint of criminal intimidation, and discovery of certain items found in the premises of the Plaintiff. The Plaintiff was charged for having possession of ammunitions and also for 'obliteration of fire arm'. All four news items contained incorrect facts relating to Plaintiff and he was named in those articles. The Defendants admitted the publication of four news articles but claimed fair comment and reporting accurate based on the information it received. The Defendants also, claimed freedom of speech.

## FACTS

2. Plaintiff is a businessman and he was doing business relating to water pumps. There was a family dispute between Plaintiff and his brother, which had resulted a complaint to the police regarding criminal intimidation.
3. The complaint was regarding using a cane-knife to intimidate his brother and Police in the process of discovering the item alleged to have been used for the crime had discovered a gun, ammunitions, telescopic devices used for guns to improve aiming to a target.
4. Plaintiff had a licence to hold a gun. He was charged for having possession of certain type of ammunitions that he was not authorized and also 'obliteration of fire arms' which related to use of telescopic device for licenced rifle.
5. Police had also taken in to possession certain items such as water meters for which there was no complaint made and had also made false statement that Plaintiff was investigated for water theft, without even a complaint.
6. At the pre trial conference it was admitted, third defendant as the owner of newspaper Fiji Sun, and publication of four news articles alleged in the statement of claim on 11.4.2008, 12.4.2008, 14.4.2008 and 22.4.2005.
7. Plaintiff, Satendra Prakash, Virend Prasad, Rajesh Lai, Leone Seveti, Ravindra Singh, Niranjana Singh, Police Constable Emorica Dunovoso, and Detective Constable Nacani Bulubu gave evidence, for Plaintiff.
8. For Defendants Ronal Kumar, Wme Bautolu and Corporal Josaia Weicavu gave evidence.
9. The Plaintiff is claiming general damages and also punitive and or exemplary damages. Defendant is claiming defence of fair comment, public interest, and also freedom of expression.
10. Both parties have filed written submissions and Plaintiff had also submitted local authorities and had urged that those should be considered for award of damages.

## ANALYSIS

11. Both 1<sup>st</sup> and 2<sup>nd</sup> Defendants liability is denied and they were not Editor and Publisher of Fiji Sun at the time material for this action. This is admitted in the reply to the statement of defence. Third Defendant is the owner of newspaper Fiji Sun.
12. Plaintiff is a businessman and he had a reputation in the society as a businessman. This was proved through evidence of Ravindra Singh, Niranjana Singh, Leone Seveti, and Rajesh Lal. All of them said their favourable view towards Plaintiff changed after publication of alleged news items.

13. Plaintiff had a dispute with his brother who complained of him having intimidated using a cane knife. Police visited the premises where Plaintiff lived and discovered some items such as telescopic devices for rifle, and certain ammunitions such as flares and some water meters.
14. The four news items were related to this arrest and discovery of certain items that were in possession of Plaintiff. First news item appeared on 11.4.2008 as the headline in front page of newspaper under heading "Gun, bullets found in home" under said heading inter alia following terms

*"Police are questioning a businessman over the discovery of a sniper rifle and live ammunition at his home.*

*Also found in the bedroom of 36 year old Navua businessman Kewal Chand were three telescopic-sights of the rifles. Two rackets flares and four hand flares".*

15. Above article refer to Plaintiff by his name and stated that the Police had discovered 'sniper rifle' and according to evidence there was no discovery of such an item. There was a licenced rifle which was revealed in the news item. Taken as whole the news items creates a suspicion about the activities of Plaintiff who did not need a long range sniper rifle.
16. According to the statement of claim said words meant that Plaintiff was a person unfit for business and dangerous criminal. Though it fell short of that, news item it was defamatory.
17. If the pleaded words are considered in isolation there is only one incorrect fact and that is classification of his rifle as 'Sniper Rifle'. This is a long range fire arm that is not usually issued to a civilian in Fiji in terms of evidence presented. So that incorrect classification would raise suspicion as to the purpose of such a long range fire arm in possession of Plaintiff and defamatory considering the circumstances.
18. Second article was published on the following day in page 3 of new paper under the heading **"Arms suspect accused of water theft"**. Plaintiff was referred in the said article by his name and it also referred to earlier headline on the previous day. It stated inter alia ,

*"A Navua man who polie found a rifle in his possessin is also believed to have been stealing whater from the water and sewerage Department.*

*Police investigating offence, Sergeant Josefa Naimasi said they were questioning Kewal Cand a businessman in Navua"*

19. There is no evidence of investigation relating to stealing water and there was no complaint against Plaintiff relating to such an offence. So this news item is false and raising suspicion about such an offence against Plaintiff. So Plaintiff was wrongly accused of a theft in the newspaper. This is defamatory statement when there was no evidence of such an investigation or even a complaint.

20. Few days after the above two consecutive news items again on page 3 of the said newspaper dated 14th April 2008 under the heading **“Military to interrogate named businessman”** it was reported:

*“The 36 year old Navua businessman Kewal Chand was found with one rifle with telescopic sights, two rocket flares and four hand held flares.*

*“It’s also interesting to know where he got all those items that was found in the room. Whether it was stolen or it had been sold to him ”*

21. There was no evidence of Military interrogating Plaintiff, and again it is false. This is a serious allegation considering the circumstances in Fiji at that time. Considering that there were already two news items about Plaintiff which contained facts which are wrong and defamatory, this article further tarnished Plaintiff.

22. Again on page 9 of the issue of the said newspaper dated 22nd April 2008 under the headline **“Arms suspect out on bail”** it was pleaded;

*“The Navua businessman on his whom police found a sniper rifle and ammunition early this month was granted bail on strict conditions last week.*

*Kewal Chand , 36 appeared in the Navua Magistrates Court for criminal intimidation and is now being scrutinised by the Water and Sewerage Department for alleged water theft.*

*Policemen who went to Mr Kewals’s place to retrieve a cane knife which he allegedly used to threaten two brothers after a heated argument found the arms cache.*

*Items also discovered by police at Mr Chand’s house included colour copiers, water meter, water pumps, water blasters, batter charges (sic) and steel pumps. ”*

23. Plaintiff was accused of having possession of ‘Sniper rifle’ which was not correct, was repeated, in the fourth article. In the said news item again stated that Plaintiff was ‘scrutinised by water and Sewerage Department ‘and there is no evidence of such fact. So, again it was false and defamatory.

24. In Jeynes v News Magazines Ltd [2008] EWCA Civ 130 at [14], Sir Anthony Clarke MR<sup>1</sup> set out the test for deciding what is capable of being defamatory. 'The legal principles relevant to meaning ... may be summarised in this way:

*(1) The governing principle is reasonableness.*

*(2) The hypothetical reasonable [person] is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-[pejorative] meanings are available.*

---

<sup>1</sup>Trimingham v Associated Newspapers Ltd [2012] 4 All ER 717 at 737-8

(3) *Over-elaborate analysis is best avoided ...*

(5) *The article must be read as a whole ...*

25. In my judgment all four news items contained factually incorrect statements that were defamatory. There was no public interest in Plaintiff being investigated for stealing water, which in fact was false. There is no reasonable explanation to give such prominence to this incident that needed four news items within 10 days of the incident.

26. In **Sadgrove v Hole** (1901) 2 K.B. at p.4 <sup>2</sup>:

*“The plaintiff in order to succeed in the action must prove a publication of and concerning him of the libellous matter, and if he does not satisfy the onus of proof which is on him in this respect, there is no cause of action.”*

27. All four news items included defamatory facts which were not correct. Plaintiff had proved on balanced of probability that such false reporting had lowered his standing in society.

28. In **Lewis v Daily Telegraph Ltd** [1964] A.C. 234 at 258-260 as follows:<sup>3</sup>

*“There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs... What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But the expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning... Generally the controversy is whether the words are capable of having a libellous meaning at all, and undoubtedly it is the judge’s duty to rule on that.”*

29. The Defendant had admitted the publication of all the four news items and claimed that they are claiming defence of fair comment.

30. In **Joseph and others v Spiller and another** [2011] 1 All ER 947 at 951-952 dealt with the defence of fair comment as follow;

*“What are currently the elements of the defence of fair comment?”*

---

<sup>2</sup> High Court decision **Rabuka v Fiji Daily Post Company Ltd** [2005] FJHC 174; HBC0511j.2000s (decided on 8 .7. 2005)

<sup>3</sup> *ibid*

[3] *Sitting in the Court of Final Appeal of Hong Kong in Cheng Albert v Tse Wai Chun Paul* (2000) 10 BHRC 525 , [2001] EMLR 777 Lord Nicholls of Birkenhead was concerned with the ingredients of malice that can defeat the defence of fair comment. Before considering that question he set out (2000) 10 BHRC 525 at 529 , [2001] EMLR 777 (paras 16–21) under the heading

**Fair Comment:** *The Objective Limits'* what he optimistically described as five 'non-controversial matters', which were 'well established' in relation to the defence of **fair comment**:

*'First, the comment must be on a matter of public interest. Public interest is not to be confined within narrow limits today: see Lord Denning in London Artists Ltd v Littler [1969] 2 All ER 193 at 198 , [1969] 2 QB 375 at 391 ]*.

*Second, the comment must be recognisable as comment, as distinct from an imputation of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere, for example, justification or privilege. Much learning has grown up around the distinction between fact and comment. For present purposes it is sufficient to note that a statement may be one or the other, depending on the context. Ferguson J gave a simple example in the New South Wales case of Myerson v Smith's Weekly (1923) 24 SR (NSW) 20 at 26:*

*"To say that a man's conduct was dishonourable is not comment, it is a statement of fact. To say that he did certain specific things and that his conduct was dishonourable is a statement of fact coupled with a comment."*

*Third, the comment must be based on facts which are true or protected by privilege: see, for instance, London Artists Ltd v Littler [1969] 2 All ER 193 at 201 , [1969] 2 QB 375 at 395 . If the facts on which the comment purports to be founded are not proved to be true or published on a privilege occasion, the defence of fair comment is not available.*

*Next, the comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded.*

*Finally, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views: see Lord Porter in Turner v Metro-Goldwyn-Mayer Pictures Ltd [1950] 1 All ER 449 at 461 , commenting on an observation of Lord Esher MR in Merivale v Carson (1888) 20 QBD 275 at 281 . It must be germane to the subject matter criticised. Dislike of an artist's style would not justify an attack upon his morals or manners. But a critic need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism: see Jordan CJ in Gardiner v Fairfax (1942) 42 SR (NSW) 171 at 174.*

*These are the outer limits of the defence. The burden of establishing that a comment falls within these limits, and hence within the scope of the defence, lies upon the defendant who wishes to rely upon the defence.'*

*[4] These five propositions relate to elements of the defence of fair comment in respect of which the burden of proof is on the defendant. Cheng's case was primarily concerned with a sixth element—absence of malice. A defendant is not entitled to rely on the defence of fair comment if the comment was made maliciously. The onus of proving malice lies on the claimant."*

31. Defendants had failed to establish above five 'established' grounds. First, there was no public interest about family dispute that resulted Police investigation. Next, Plaintiff had a licence for the rifle hence there was no public interest on discovery of fire arm. Only suspicious items were telescopic devices and some ammunitions, yet these were matters to be left for the Police to investigate fully, and reporting such incidents without further verification, may harm public interest.
32. All four articles contained incorrect facts as stated earlier. There was no public interest regarding whether Plaintiff was involved in water stealing, which again was a false allegation. At the same time incorrect statement that Plaintiff was going to be interrogated by Military was also not a public interest matter and in any event it was again false.
33. Defendants cannot report in a newspaper any news item it received without verification when there was serious consequences, as in this case. Freedom of expression and freedom of speech and publication is not a blank cheque in the hands of reporters. They need to act ethically and responsibly as one incorrect statement about a person may damage that person irreversibly. No amount of damage can rectify that. The retrieval of defamatory statement is very difficult even with a correction and, or with an apology. Here even that had not happened.
34. Defendant called a photographer Ronald Kumar, Wame Bautolu and Josia Weicavu and in totality their evidence could not justify the false statements made in the four news articles.
35. Considering that all four news items pleaded were published during a short period of time and all had referred to Plaintiff by his name and all had also included incorrect facts when taken together they are defamatory to Plaintiff.
36. Plaintiff had not claimed for special damages and claimed only for general damages and exemplary and or punitive damages.
37. Plaintiff admitted that there were other news reports about him in other newspapers and also in radio news broadcastings.
38. What those news items were and how damaging they were to his reputation is not clear. All the witnesses who were called identified news items published in Fiji Sun. So it is proved impact from four news items in Fiji Sun had lasting effect.
39. The Plaintiff submitted Fiji High Court and Court of Appeal judgments regarding defamation. In Fiji Court of Appeal case **Shandil v Air Fiji Ltd** [2005] FJCA 25; ABU0046.2004S (decided

on 15 .7.2005). It was defamation to a company and special damages were pleaded in that case. Court of Appeal had reduced special damages to \$80,000.

40. Plaintiff did not plead special damages in the statement of claim and only be entitled to general damage. So he cannot rely on above Court of Appeal case for his claim based on general damage.
41. **Rabuka v Fiji Daily Post Company Ltd** [2005] FJHC 174; HBC0511j.2000s (8 .7. 2005) is a High Court decision where a very senior civil servant and ex – diplomat of Fiji to New York , who held the position of Secretary to Ministry of Justice and his wife who also worked as Dental Therapist in CWM hospital were defamed. They were granted \$40,000 and \$38.000 respectively. This award was upheld in Court of Appeal decision of **Fiji Daily Post Company Ltd v Rabuka** [2006] FJCA 47; ABU0061J.2005 (28 .7. 2006).
42. Considering that those awards were made about 13 years ago such amounts should be adjusted. There was no correction or apology published by Defendants. This is a factor that I took in to consideration.
43. I also took in to consideration that Plaintiff was subsequently charged for two charges in the Magistrate’s Court and they were later withdrawn. It is hard to separate impact of a person who was charged for having possession of offences related to fire arm and ammunition and false facts contained in the four news items. It is invariable that people would have reservation about a person who was charged , but false reporting went beyond reporting truth.
44. In **Windeyer J in Uren v John Fairfax & Sons Pty Ltd** [1967] 117 CLR at 150:<sup>4</sup> held,

*“It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways – as vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.”*

*“This is why it is not necessarily fair to compare awards of damages in this field with damages for personal injuries. Quite obviously, the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matters complained of, or the malice of the defendant. The bad conduct of the plaintiff himself may also enter into the matter, where he has provoked the libel, or where perhaps he has libelled the defendant in reply. What is awarded is thus a figure which cannot be arrived at by any purely objective computation. This is what is meant when the damages in defamation are described as being “at large.”*

---

<sup>4</sup> Quoted in High Court decision **Rabuka v Fiji Daily Post Company Ltd** [2005] FJHC 174; HBC0511j.2000s (decided on 8 .7. 2005)



45. The general damages that is granted for defamation is not the actual compensation for damage, but a consolation in recognition of loss of his reputation which is hard to regain fully. So this should not be mistaken for actual loss which is hard or impossible to calculate in most instances, including this case. As I said earlier, Plaintiff was charged for two charges relating to fire arms and ammunitions. These were later withdrawn, but the fact he was charged was sufficient for damage to reputation. This damage was not due to Defendants' four news articles, so it is hard to separate any damage to Plaintiff only from the false facts stated in the news articles.

46. Plaintiff had pleaded exemplary and or punitive damages. In **Rookes v Barnard and Others** 1964 AC 1129 at 1221-1231<sup>5</sup>

*I refer to the salient features of the exemplary principles as stated by Lord Devlin. He said (at 1221):*

*"Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter....."(emphasis added)*

*It was held in Rookes (supra) at 1131:*

*"that exemplary damages could be awarded in cases (i) of **oppressive, arbitrary or unconstitutional acts by government servants**; (ii) where the **defendant's conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the plaintiff**; (iii) where expressly authorised by statute (post, pp. 1226 1227); that in a case in which exemplary damages were appropriate a jury should be directed that only if the sum which they had in mind to award as compensation (which might of course be aggravated by the defendant's behaviour to the plaintiff) was inadequate to punish and deter him, could it award some larger sum (post, p.1228); that the facts disclosed in the summing-up showed no case for exemplary damages and possibly none for aggravated damages (post, pp. 1232, 1233); however, the plaintiff could, without any departure from the compensatory principle, invite the jury to look at all the surrounding circumstances and award a round sum based on the pecuniary loss proved (post, pp. 1221, 1233)."*

47. **Manson v Associated Newspapers Ltd.** [1965] 1 W.L.R. 1038 where Widgery J held that mere fact that newspapers are engaged in a business should not be considered as default position for grant of exemplary damages.

48. Considering the circumstances of this case I do not wish to award a separate damage for punitive and or exemplary damages.

---

<sup>5</sup> ibid

49. Considering the circumstances of this case Plaintiff is awarded a sum of \$60,000 as general damages. I have considered the nature of the false statements and not publishing a correction or apology when notified in the said assessment of damages.

## **CONCLUSION**

50. 3<sup>rd</sup> Defendant's newspaper Fiji Sun had published four news items that referred to the Plaintiff by name. All four news articles included incorrect facts. First article was published on 11.4.2008 as the headline of the newspaper and it stated Plaintiff had in his possession 'sniper rifle' which was not correct. On the following day on page 3, Plaintiff was wrongly implicated in water theft for which there was no complaint and there was no investigation. On 14.4.2008 again on page 3 there was a news item that Plaintiff was going to be interrogated by Military and there was no evidence of Military involved in the arrest and subsequent charges relating to Plaintiff. On 22.4.2008 on page 9 again reported Plaintiff was having possession of sniper rifle. These four news items individually as well as collectively defamatory to Plaintiff. Plaintiff is awarded a sum of \$60,000 as damages. Cost of this action is summarily assessed at \$2,000.

## **FINAL ORDERS**

- a. Plaintiff is granted a sum of \$60,000 as general damages to be paid by 3<sup>rd</sup> Defendant.
- b. Cost of this action is summarily assessed at \$2,000 to be paid by 3<sup>rd</sup> Defendant.

**Dated at Suva this 5<sup>th</sup> day of June, 2019.**

.....  
**Justice Deepthi Amaratunga**  
**High Court, Suva**