

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Civil Action No. 383 of 1979

Between:

PRAN GOPAL CHANDA Plaintiff
s/o Nishi Kanta Chanda

- and -

1. VIJENDRA KUMAR Defendants
2. DALLAS SWINSTEAD
3. FIJI TIMES AND HERALD
LIMITED

Mr. K.C. Ramrakha for the Plaintiff

Mr. B.N. Sweetman for the Defendants

JUDGMENT

The plaintiff's claim against the defendants is for damages for an alleged libel of the plaintiff in an article published in the Fiji Times on the 23rd August 1979.

The article is in the following terms :-

" GOVT FIRES TWO TOP CONSULTANTS

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The Ministry of Commerce and Industry has terminated the employment of a consultant who was the main prosecution witness in the trial of Flour Mills of Fiji and its managing director, Sharda Nand.

Mr. Pran Gopal Chanda, a former secretary of Flour Mills, and now employed as a special accounts consultant with the ministry has been informed by letter that his employment will be terminated from the end of September, the Secretary for Commerce, Mr. Lasenia Qarase, said yesterday.

Another consultant with the ministry, Mrs. Sujatha Ratneser, wife of the Director of Public Prosecutions, Mr. Kulen Ratneser, had her term of employment terminated at the end of last month, Mr. Qarase said.

Last year an opposition parliamentarian, Mr. Vijaya Parmanandan, criticised the ministry for employing the two consultant at "very high salaries".

A government MP, Mr. Prabhudass Bhindi, later rejected Mr. Parmanandan's claims saying that Mrs. Ratneser was employed for only two hours a day at \$9.58 an hour.

He said Mr. Chanda was employed at \$16,800 plus a housing allowance of \$250 a month, which was low compared with what an accountant for a company would get.

Mr. Qarase said yesterday both people had been employed on a temporary basis.

"They cannot be employed as consultants on a permanent basis. On the basis of that, I had to terminate their employment," he said.

Mrs. Ratneser yesterday confirmed that she had been given a week's notice last month by Mr. Qarase.

She said it was "really wrong" that her employment should be terminated. "My letter of termination said my employment was contrary to the Public Service Act," she said. "The legal opinion given just after the incident in Parliament was that my appointment was legal."

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"I was not occupying a PSC post. There is no such post in the PSC as a marketing consultant".

She said there are a number of other people in other government departments who worked in the same position as she did.

"Was I becoming a thorn in the flesh of some people?" She asked.

Reliable sources yesterday told the Fiji Times that the legal opinion given by the previous Solicitor General, Mr. Harold Picton-Smith, was recalled after Mr. Picton-Smith left office. It is believed that his opinion, describing the appointment of the two consultants as legal was then reversed in early July, by an officer in the Crown Law Office.

The PSC then instructed the commerce ministry to dismiss the two consultants on the basis of that new opinion.

The Fiji Times learned that the Minister for Commerce and Industry, Mr. Mohammed Ramzan, made strong representations to the PSC and then to the Acting Prime Minister, Ratu Sir Ganilau, to persuade them to retain Mr. Chanda.

Ratu Sir Penaia wrote to the PSC asking for information and then agreed with the decision to dispense with Mr. Chanda's services.

Mrs. Ratneser said she was sorry to leave since she had left several jobs undone. "

The defendants admit publication of the article on the day in question and they admit that the first defendant is the editor, the second defendant is the publisher and the third defendant is the owner and printer of the Fiji Times a daily newspaper which has a large circulation throughout Fiji and elsewhere. There is also no dispute that the article refers to the plaintiff and that he is one of the two top consultants to which the caption to the article refers.

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The whole of the article is incorporated in the Statement of Claim. The plaintiff contends that the words in the article in their natural and ordinary meaning contain two imputations each of which is defamatory of the plaintiff. The imputations pleaded are :

- "(1) That the plaintiff had been fired, or dismissed as wanting in his employment by the Government of Fiji, which was his employer.
- (2) That the plaintiff had been guilty of dishonesty as a servant, or had been guilty of conduct unbecoming that/a /of servant in consequence whereof he had been summarily dismissed. "

The defendants in their Defence deny that the words in their natural and ordinary meaning bear or were understood to bear any of the meanings alleged by the plaintiff or that they were defamatory of the plaintiff. They further allege that in so far as the words in the article consist of statements of fact the said words in their natural and ordinary meaning are true in substance and fact and in so far as such words consist of expressions of opinion they are fair comment on such facts which are a matter of public interest.

The plaintiff when giving evidence complained about two portions of the article namely the caption "GOVT FIRES TWO TOP CONSULTANTS" and a reference in the article to dismissal. He admitted under cross-examination that the first two paragraphs, which referred solely to him, were

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factual. His real and only complaint was the caption to the article which conveyed that he had been "fired" by Government whereas in fact his employment was being terminated for the reasons stated in the article.

The article does state as follows:-

"The PSC then instructed the Commerce Ministry to dismiss the two consultants on the basis of that new opinion. "

I do not consider there is anything defamatory in that statement. "Dismiss" in that context is synonymous with termination of employment and the article makes it abundantly clear that the dismissal of the consultants was for legal reasons.

The bold caption some 25 millimetres high however is in a different category. In isolation it conveys the clear meaning that Government had "fired" two top consultants. "Fire" was originally United States slang meaning "dismiss peremptorily" (See Shorter Oxford English Dictionary). It is a word which is now commonly used in every day speech. A person who has been "fired" has had his employment summarily terminated. It is common knowledge that an employee cannot be summarily dismissed except for proper cause. When the public is informed that the Government of Fiji has fired two top consultants the impression is clearly given that the consultants were summarily dismissed for a reason which warranted such dismissal.

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The caption purports to be a factual statement but so far as the plaintiff is concerned his employment had not been peremptorily terminated. The factual position was that prior to the 23rd August 1979 he had received notice that his employment would be terminated at the end of September 1979 a fact which is stated in the second paragraph of the article.

To falsely state that a person had been "fired" is in my view defamatory of that person. In its natural and ordinary meaning it conveys to readers the imputation first pleaded by the plaintiff namely that the plaintiff was wanting in his employment and deserving of instant dismissal.

The whole article must however be considered to see whether the context corrects or materially qualifies or mitigates the defamatory statement. The text of the article makes it clear why Government had to terminate the employment of the two consultants. They could not legally be employed as consultants on a permanent basis. Nothing in the context appears in any way to support the statement that the plaintiff had been "fired" by Government.

Does the context of the article correct the apparent defamatory statement in the caption? I do not consider it does but I do consider it mitigates it. Not all Fiji readers of the Fiji Times would read the whole article and not all those who did would have dispelled from their minds the alleged fact that the plaintiff had been "fired".

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The Fiji Times in the caption intended to convey to its readers that the two consultants had been summarily dismissed. The article highlighted the fact that the plaintiff was the main prosecution witness in the trial of Flour Mills of Fiji and its managing director, Shardanand, and that the plaintiff was the former secretary of Flour Mills of Fiji. That trial was one which was given considerable publicity and the plaintiff's part in it was public knowledge.

Following on that trial the Fiji Times informs the public that Government has fired the plaintiff and then sets out the reasons why Government proposed to terminate his employment. Readers of the article may have gained the impression from the caption that the reasons given by the Ministry for termination of the plaintiff's employment was not the sole reason and that he was in fact "fired" as the Fiji Times so prominently stated.

While the context does not correct the defamatory statement it does in my view go a long way towards mitigating it.

I find as a fact that the caption to the article is defamatory of the plaintiff and he is entitled to damages.

As to the quantum of damages the context of the article does, as I have stated, go a long way towards mitigating the defamatory statement.

While it is not necessary to write and ask a newspaper to publish a correction it is usual to do so. In this instance the plaintiff issued a writ of summons the day after the libel was published without giving the defendants any opportunity of correcting the article. Having heard the plaintiff and read the correspondence with the Ministry which he put in evidence I am left in no doubt that the plaintiff was more interested in seeking damages than in having the defendants apologise and publish a correction. On the other hand the defendants have published no correction and have maintained their stand that the article is factual. While the plaintiff says he was upset by the article I do not consider that he has been seriously injured in his character, credit and reputation and in the way of his profession and brought into public scandal, odium and contempt as he has alleged. The plaintiff while admitting he was planning to leave Fiji did state he would be prepared to work in Fiji if his services were required. It is unlikely in my view that the Fiji Authorities would grant a permit to an accountant who had been involved in the Flour Mills of Fiji case and had been granted immunity from prosecution for the part he had played in the affairs of that company. The damage done to the plaintiff's reputation as an accountant by the defamatory statement that he had been "fired" is in my view slight and he can be fully compensated by an award of moderate damages and costs.

I assess damages at \$200 to be paid by the defendants to the plaintiff. The plaintiff is to have the costs of this action.

(R.G. Kermodé)
JUDGE.

Suva,
17th January, 1980.