

IN THE SUPREME COURT OF FIJI  
 Civil Jurisdiction  
 ACTION NO. 269 OF 1981

Between:

SHIRI RAJ SINGH  
 s/o Parthi Raj Singh

PLAINTIFF

- and -

NEWSPAPERS OF FIJI LIMITED  
AMBIKA PRASAD MAHARAJ  
 s/o Budhu Maharaj  
SUKH LAL s/o Ram Adhin

1ST DEFENDANT

2ND DEFENDANT

3RD DEFENDANT

Mr. A. Ali for the plaintiff.

Mr. P.I. Knight for the 1st defendant.

Mr. B.N. Sweetman for the 2nd  
 and 3rd defendants.

J U D G M E N T

The plaintiff's claim against the defendants is for damages for an alleged libel in respect of statements which appeared in the issue of the "Fiji Sun" of the 4th April, 1981.

The statements were as follows :

"In a joint statement both men accused the spokesman for the residents, Mr. Shiri Singh of being a bad loser.

They said Mr. Singh had lost in Advisory Council elections held in the area and was now trying to get back by making out that those councillors who were properly elected are not working."

The first defendant is the publisher of Fiji Sun newspaper and it is not in dispute that it published the issue of the Fiji Sun in which the statements appeared.

The defendants are alleged by the plaintiff to have falsely and maliciously written and published or caused to be written, printed and published the words contained in the statement.

The evidence establishes that it was Mr. S.P. Shandil the Chief Reporter who wrote the article in which the words appear. He was called as the first witness for the plaintiff.

Mr. Shandil had earlier written an article which was published in the April 2 1981 issue of the Fiji Sun boldly headed "NASINU RESIDENTS JOIN TOGETHER IN LAND FIGHT".

In that article the plaintiff was referred to as the spokesman for the residents in the area. He is quoted as stating (inter alia) that two Advisory Councillors had misled the residents. The article was critical of the efforts of those Councillors, who were not named in the article, but who were the second and third defendants.

There is a dispute as to what actually happened after the article of the 2nd April appeared.

Mr. Shandil stated that the source of the offending article of the 4th April was a written statement brought to the Fiji Sun newsroom by the second defendant, Mr. A.P. Maharaj, and an interview he conducted with Mr. Maharaj on the spot. He said the third defendant was also present. He stated that the written and verbal statements were the joint statements of the second and third defendants. Mr. Shandil did not in his evidence in chief state that the second and third defendants made the offending statements or requested that they be published.

In cross examination, however, Mr. Shandil did allege, while professing not to remember what was said at the time, that Mr. Maharaj had told him the plaintiff had stood for election.

Mr. Shandil was unable to produce the written statement brought in by Mr. Maharaj on the 3rd April, 1981, or his notes of the interview.

Mr. Shandil was shown a copy of a written statement which he admitted was similar to the one brought in by Mr. Maharaj. He said he read it but paid little attention to it because he had the opportunity of personally interviewing the writer of the statement.

The second and third defendants both gave evidence. The third defendant said he did not go to the Fiji Sun Office as alleged by Mr. Shandil and this was confirmed by the second defendant.

The second defendant said that he and the third defendant prepared a written statement after the article of the 2nd April appeared which he personally took to the Fiji Sun Office. He identified the copy of the statement shown to Mr. Shandil in cross examination as being a copy of the statement handed by him to Mr. Shandil (Exhibit B). Mr. Maharaj said he told Mr. Shandil he was very upset about the earlier article. He handed over the joint statement and left. He denied making the statements that the plaintiff was a bad loser or that the plaintiff had stood for Advisory Council elections.

There is nothing in the statement Exhibit B, which is the only joint statement issued by the second and third defendants which confirms that they made the statements Mr. Shandil alleges they made.

I prefer the evidence given by the second and third defendants and find as a fact that they did not jointly

or even individually accuse the plaintiff of being a bad loser. Nor did they allege that the plaintiff had lost in Advisory Council elections and was trying to get back by making out that the properly elected Councillors were not working. I am satisfied that the third defendant did not go to the Sun Office as alleged by Mr. Shandil.

It follows from those findings that the plaintiff has not established his case against either the second or third defendants.

The plaintiff's claim against the second and third defendants is dismissed with costs to be taxed if not agreed.

The first defendant published the offending statement which was written by its Chief Reporter. I accept the plaintiff's evidence that he has never stood for Advisory Council elections. The allegation printed by the Fiji Sun that he had lost in such elections appears to have been invented by Mr. Shandil. He appears also to have invented the allegation that the two defendants in a joint statement accused the plaintiff of being a bad loser. It is possible that Mr. Shandil in following up the story was given false information by someone else and in writing his story made a mistake in stating it was the second and third defendants who made the accusation. The fact remains that the allegation was not true and the accusation based on that allegation had no basis.

The only issues to consider are whether the words are defamatory of the plaintiff and if so whether he is entitled to damages.

There is nothing defamatory in a statement incorrectly stating that a person had lost in an election but it is defamatory to falsely accuse a man of "trying to get back" (into Council) by attacking properly elected Councillors to achieve that object and to comment on such conduct by accusing him of being a bad loser.

The statements do not reflect on the plaintiff in his "profession as an accounts auditor" as he alleges but they do in my opinion have the tendency to lower the plaintiff in the estimation of others.

Gatley on Libel and Slander 7th Edition at page 37 states:

"Any imputation is defamatory if it tends to lower a person in the estimation of others or to affect any aspect of his reputation."

To falsely say of a man that he is a bad loser is a defamatory imputation.

Gatley at page 49 quotes a number of words that have been held to be defamatory. The following words published of a man have been held to be defamatory :

"'indiscreet', 'wanting in gratitude', 'guilty of oppressive, intolerant, insulting or unbrotherly conduct'."

All those descriptions have a tendency to lower a person in the estimation of others just as the accusation of being "a poor loser" does.

The libel however is not a serious one. The residents in the area in which he lived who read the article would be well aware that the plaintiff did not stand for the Council elections but people outside that area who knew him would not know that the accusations were not true.

The defendant did on the 8th April, 1981, publish a statement headed "Nasinu Man Never Stood". The statement ended with the remark "The Fiji Sun regrets any inconvenience caused to Mr. Singh". The sting in the prior article, however, was the accusation that the plaintiff was a bad loser to which no reference was made in the expression of

regret.

I do not consider the article of the 8th April can be considered to be an adequate apology. The Fiji Sun should have recognised and clearly stated that there was no basis for accusing the plaintiff of being a bad loser and making it clear that the article was intended as an apology and not what it appears to be namely another news item.

Nevertheless the final article corrected a misstatement and would have mitigated the injury to some extent. The libel was the result of an attack by the plaintiff on the second and third defendants which appears to have been unjustified. Furthermore I was not entirely satisfied with the plaintiff's story. Contrary to what he alleged, he was in my view very much involved in politics. He invited a retaliatory attack from the two defendants whom he attacked.

The libel was not a serious one and the damage the plaintiff suffered was more to his feelings than his reputation. Nevertheless he is entitled to more than nominal damages.

I award the plaintiff \$100 damages against the first defendant with costs.



(R.G. KERMODE)

J U D G E

S U V A,

19 APRIL, 1984.