

Niranjan Dolly K v Toh Laye Lan
[2002] SGHC 294

Case Number : DC Suit 1528/2002, RA 158/2002, RAS 36/2002
Decision Date : 10 December 2002
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Sarbjit Singh Chopra (Lim & Lim) for the plaintiff / respondent; Lim Tiang Yao (Winston Low & Partners) for the defendant / appellant
Parties : Niranjan Dolly K — Toh Laye Lan

Tort – Defamation – Absolute privilege – Defamation action based on solicitors' letter – Whether solicitors' letter written in the course of and for purpose of judicial proceedings

Judgment

GROUNDS OF DECISION

Introduction

1 This was an appeal by the defendant against the decision of the District Court which dismissed her appeal against the decision of the Deputy Registrar of the Subordinate Courts. In the result, she failed to strike out this action pursuant to Order 18 Rule 19 of the Rules of Court on the ground that the claim disclosed no reasonable cause of action. At the conclusion of the appeal, I allowed the appeal and struck out the action on the ground that the matters complained of in the statement of claim was protected by absolute privilege and the defamation action must fail in limine. I set aside all orders below and ordered the plaintiff to pay the defendant costs fixed at \$4,000. Though there are no further proceedings, I am setting out the grounds in deference to the thoughtful grounds of decision of the District Judge.

2 The plaintiff was a former client of the defendant's employer, Messrs R Rajandran, Joseph & Nayar, a law firm ("the Firm"). The defendant is a secretary of the Firm. Her employer is Mr Ignatius Joseph who is married to Ms Suja Susan Thomas. Ms Audrey Tan Hui Yee is a secretary of the Firm.

3 The defendant, Madam Toh Laye Lan (Zhuo Lilan) ("Madam Toh") had commenced another action against the plaintiff Madam Dolly Niranjan ("Madam Niranjan") in D C Suit No. 1151 of 2002/p on 15 March 2002. In that action, Madam Toh claimed against Madam Niranjan damages for publishing defamatory works that meant or were understood to mean that Madam Toh was having a sexual relationship and/or immoral relationship with Mr Joseph Ignatius. The alleged publications referred to were allegedly made on three separate occasions. Prior to the defamation action the solicitors of Madam Toh wrote a letter of demand dated 8 February 2002 to Madam Niranjan. The letter set out the defamatory words published of Madam Toh and demanded damages for the slander and an undertaking not to repeat them. As could be seen from the contents of the letter of demand, Madam Niranjan was aware of the identity of the witnesses who Madam Toh would call to prove her case.

4 A day after the writ was filed in the Subordinate Courts, i.e. on or about 16 March 2002 Madam Niranjan by telephone called the office of the Firm and spoke to Ms Audrey Tan Hui Yee on two occasions. In both conversations, she uttered words to the effect that Madam Toh was up to some dirty tricks, suggesting that Madam Toh in fact had no claim against her. According to Madam Toh, Madam Niranjan also attempted to talk to Mr Joseph Ignatius on his mobile phone on 15 March 2002, though she did not succeed. It should be pointed out this was denied by Madam Niranjan.

5 Correspondence followed these episodes over the telephone and it gave rise to the second action in DC 1525 of 2002 which was, this time round, commenced by Madam Niranjan against Madam Toh. On 18 March 2002 Madam Toh's solicitors wrote a letter to Madam Niranjan's solicitors. It was in these terms:

"Our clients (i.e. Madam Toh) instructs us that your client (i.e. Madam Niranjan)

had been repeatedly calling our client's witnesses and has been attempting to harass as well as intimidate them. It is our client's view that this amounts to tampering with and harassing the witnesses.

Kindly advise your client to cease and desist from such activities failing which our client would have no recourse but to make appropriate application to court as she may be advised."

The issue

6 The issue in this case is whether the letter of 18 March 2002 was made in the course of judicial proceedings and for the purpose of judicial proceedings. If the answer is in the affirmative in both respects in relation to judicial proceedings, it enjoys absolute privilege and the present defamation action based on the letter must be struck out.

The decision of the District Judge

7 The District Judge rightly set out the applicable law. He held that the letter could only enjoy privilege if it was made in the course of, and for the purpose of either of both sets of proceedings in the District Court, that is the earlier action in DC 1511 of 2002 or proceedings (contemplated or otherwise) in respect of the complained act of intimidation and tampering of witnesses. In relation to the question which was the relevant proceedings, the District Judge decided that it was the intended proceedings against Madam Niranjana for the complained acts of harassment and intimidation of witnesses, and not the earlier action in DC Suit 1511 of 2002. Since there was no proceedings (whether civil or criminal) taken out at the date of the hearing before the District Judge, nor was there any evidence before him that any such proceedings were contemplated, the letter in his view could not be said to be made in the course of proceedings: see paras 27 and 43 of his grounds of decision.

8 The District Judge further noted that the letter could be said to have been made in the course of the earlier proceedings in DC Suit 1511 of 2002, seeing that it was written after the commencement of the action. However, he was of the view that the letter, strictly speaking, was not made for the purpose of the earlier proceedings, because "the accusation that Madam Niranjana was harassing and intimidating Madam Toh's witnesses and tampering with their evidence was strictly speaking irrelevant to the issues in the earlier action for defamation": see para 48

My reasons

9 My analysis of the letter in question differed from that of the District Judge. In answering the question whether it was written "for the purpose of the proceedings" it had to be asked, it seemed to me, whether the letter was written by solicitors in an attempt to protect the client's interest in the proceedings and further whether it had the immediate link with the proceedings. In *Waple v Surrey Country Council* [1998] 1 All ER 624, Brooke LJ set out some instructive guidance on the modern rules about absolute privilege conferred on statements made in the course of judicial proceedings. First, he noted that for over 100 years the courts had been very slow to extend the scope of the privilege. The width of the absolute privilege depended on 'the requirement of public policy to ensure freedom of speech in a context in which it was essential that such freedom of speech should exist' which was accompanied by 'the knowledge that Courts of justice are presided over by those who from their high character are not likely to abuse the privilege, and who have the power and ought to have the will to check any abuse of it by those who appear before them', per Lopes LJ in *Royal Aquarium and Summer and Winter Garden Society Ltd v Parkinson* [1892] 1 QB 431, at 451.

10 It was further noted by Brookes LJ that in *Watson v M'Ewan, Watson v Jones* [1905] AC 480 the House of Lords extended the scope of the privilege to statements made by a witness to the client and solicitor in preparing a case for trial. The Earl of Halsbury LC pointed out that if this was not the case, witnesses would be very reluctant to give any such information for fear of a libel suit, and that it was very obvious that the public policy which rendered the protection of witnesses necessary for the administration of justice must as a necessary consequence involve that which is a step towards and is part of the administration of justice. The Lord Chancellor referred to the hardship which would arise if it were impossible to administer justice because people would be afraid to give their testimony. The harassment of witnesses has the potential of causing deleterious effect on the administration of justice, which depends on witnesses telling the truth without

fear.

11 I considered the letter in the context of the earlier defamation suit in the Subordinate Courts. Madam Toh, to the knowledge of Madam Niranjan, would clearly and demonstrably depend on the witnesses, both Audrey Tan and Mr Joseph Ignatius, to prove the defamatory slander uttered by Madam Niranjan. They should not be spoken to in any manner which could interfere with their willingness to tell the truth in the course of the trial of those proceedings. The letter required Madam Niranjan to refrain from any further harassment and tampering of witness or an application would be made. That application must refer to a complaint to the Subordinate Court in the earlier proceedings with a view to citing Madam Niranjan for contempt of court. Such harassment may be checked by the Subordinate Court under the earlier defamation suit taken out by Madam Toh. In those circumstances, I concluded that the letter was written in the course, and for the purposes, of those proceedings. Accordingly, the letter was written on an occasion of absolute privilege.

Sgd:

Lai Kew Chai

Judge