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20 / 1963

No. 45 of 1962

IN THE PRIVY COUNCIL

UNIVERSITY OF CEYLON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

19 JUN 1964

25 RUSSELL SQUARE  
LONDON, W.C.1.

B E T W E E N :-

74133

NARAHENPITAGE WALTER DE COSTA .. Appellant

- and -

1. THE TIMES OF CEYLON LIMITED and

2. D. B. DAHANPALA .. Respondents

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CASE FOR THE APPELLANT

Record

1. This is an appeal from a judgment - a majority decision of a Divisional Bench of three Judges - of the Supreme Court of Ceylon.

The Judgment of His Lordship the Chief Justice of Ceylon is in favour of the Plaintiff-Appellant (hereinafter called "the Appellant").

Their Lordships Justice Sinnatamby and Justice Pulle hold in favour of the Defendants-Respondents (hereinafter called "the Respondents") affirming the Judgment of the Learned Trial Judge.

pp.  
270-283

pp.  
283-297

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2. As stated in the Judgment of the Chief Justice the Appellant was a teacher and Principal of a Senior Secondary School in Ceylon.

The Respondents printed and published DEFAMATORY MATTER of and concerning the Appellant.

The passages mentioned in the plaint appear on pages 270 to 272 of the Record of Proceedings.

pp.  
270  
11.12-15

pp.  
270-272

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3. These passages are taken from large defamatory articles which are pleaded part and parcel of the plaint as P1 to P5. Pla to P5a are translations of these articles and they appear on pages 348, 354, 357 and 362 of the Record.

pp  
348, 354  
357, 362.

Record

pp.  
285  
11.21

4. The Respondents pleaded the defences of Justification, Fair Comment and Qualified Privilege; but at the trial restricted themselves to the defences of Justification and Fair Comment.

pp.  
277  
11.25  
etc.

5. His Lordship, the Chief Justice, has held in his Judgment that there is no evidence to prove the allegations and, therefore, that the defences have failed.

In the Majority Decision their Lordships state that they have no reason to interfere with the findings of the learned Trial Judge. 10

6. The Appellant respectfully submits that it is his great necessity that the evidence in the case be gone through. The vindication of his reputation and name is possible only if the allegations are proved to be untrue. To be successful in the appeal on principles of law alone, he wishes only as a secondary measure. 20

P1 to P3  
pp.348, 354  
P2 to P5  
pp.357, 362

7. The Appellant's claim is on two causes of action. The first cause of action relates to defamatory matter published while he was the Principal of the above mentioned school and the second cause of action relates to publications after his retirement from the post of Principal.

8. First Cause of Action.

As regards the first cause of action there is evidence for the following account:- 30

Ananda Sastralaya, Kotte, in which the Appellant was teacher and Principal was a school administered by a society called the Buddhist Theosophical Society. The Government paid the salaries of the teachers and met certain other expenses. No tuition fees were levied; but the Society was entitled by law to charge a limited fee called the 'facilities fee'.

The Manager of the schools of the Society was appointed yearly. 40

10 Mr. P. de S. Kularatna, the manager of the schools in the year 1954, appointed one Mr. Alagiyawanna as the Vice Principal of the School. For this appointment no applications were called and seniority qualifications of others in service under the society were ignored. Moreover, Mr. Alagiyawanna was paid a special allowance from the facilities fees. Many students and teachers resented this payment. Some of the students were reluctant to pay facilities fees; and some slogans against Mr. Alagiyawanna appeared on the walls of the school buildings.

In the year 1955, Dr. E. W. Adikaram was elected the manager of the schools. Applications were called for the post of Principal and the Society Appointments Board appointed the Appellant Principal of the school.

20 The date of the annual examinations approached and the Appellant delayed the issue of the admission cards to certain students who disobeyed the orders of the school pertaining to facilities fees. This was the opportunity for the publication of the said defamatory matter. There are other implications and the Appellant humbly begs that he be allowed to go into the details at the hearing of the appeal.

9. The Second Cause of action

30 As regards the second cause of action there is evidence for the following account:-

40 When the state language of Ceylon changed over from English to Swabhasa (the vernacular) the Government issued regulations permitting certain teachers to retire. These regulations appear in D44 on pages 378 of the record. The case is mainly concerned with the rules 6a, 6b, and 6c of these regulations. The Appellant applied for permission to retire once under the rule 6b and once under the rule 6c. He was permitted to retire under the rule 6c.

D44  
pp.378  
pp.283  
284

Respondents alleged that the Appellant was not entitled to retire under the rule 6c and obtained permission to retire through corrupt means.

Record

Appellant respectfully submits that these and other allegations in the second cause of action are untrue and unsupported by evidence.

10. The Appellant respectfully submits that the Judgment of the Supreme Court of Ceylon was wrong and ought to be reversed and this appeal ought to be allowed for the following (amongst other)

R E A S O N S

1. BECAUSE there are two variant judgments and the judgment of the Chief Justice is more in accordance with Law and facts relating to the case - except as regards damages. 10
2. BECAUSE the findings of the Learned Trial Judge and of Justice Sinnatamby are unsupported by evidence.
3. BECAUSE Justice Sinnatamby in his judgment has considered matter extraneous to the defamation complained of and appears to be influenced by such extraneous matter. 20
- pp.289 4. BECAUSE the way Justice Sinnatamby has enumerated the facts to be proved on the plea of Justification is obviously incorrect (page 289).
5. BECAUSE issues 15, 16a, 18i and 19 (pages 18 and 19 of record) have not been correctly answered.
- pp.20 6. BECAUSE issues 31, 32, 33 are incompatible according to law. 30

7. BECAUSE Justice Sinnatamby has not correctly distinguished between fact and comment. Record
8. BECAUSE in view of the acceptance of the evidence of Mr. M. D. H. Jayawardena the Learned Trial Judge and Justice Sinnatamby have erred in holding against the Appellant
9. BECAUSE in the Supreme Court Judgment express malice relevant to the defences is not taken into account. 10
10. BECAUSE some of the arguments of Justice Sinnatamby are contrary to law.

N. W. de Costa  
(Plaintiff-Appellant)  
(in person)

No. 45 of 1962

IN THE PRIVY COUNCIL

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CASE FOR THE APPELLANT

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in person,)  
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