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18/1963

IN THE PRIVY COUNCIL

No. 43 of 1962

ON APPEAL FROM

THE SUPREME COURT OF CEYLON

B E T W E E N

ASOKA KUMAR DAVID also known
as David Asoka Kumar of
Gardiner Theatre Kurunegala
Road, Puttalam

Appellant

- and -

M.A.M.M. ABDUL CADER of
'Haniffa Villa', Puttalam

Respondent

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
STUDIES

19 JUN 1964

25 RUSSELL SQUARE
LONDON, W.C.1.

74130

C A S E F O R T H E A P P E L L A N T

RECORD

1. This is an appeal from a judgment of the Supreme Court of Ceylon dated 24th March 1961 dismissing an appeal by the Appellant against a judgment of the District Court of Puttalam dated the 17th March 1960 whereby the Appellant's action for damages in a sum of Rs. 35,000/- and continuing damages at the rate of Rs. 7,000/- per month against the Respondent was dismissed. p.12, 1.1.
20 p.6, 1.10.

2. The issues which arise for determination on this appeal are:-

(a) Whether the District Court was right in deciding that the Appellant should have sued the Respondent as Chairman Urban Council Puttalam and not in his own name for damage caused to the Appellant by the mala fide exercise of the Respondent's powers as the licensing authority for the issue of licences under the provisions of the Public Performances Ordinance (Cap. 176 of vol: vi of the Revised Edition (1956) of the Legislative Enactments of Ceylon) and the rules made thereunder. 30

(b) Whether the Supreme Court was right in holding that no right had been infringed which enabled the Appellant to bring an action for damages.

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- p.1, 1.1 -
p.2, 1.5.
3. By his plaint dated the 5th June 1959 the Appellant alleged that he was the proprietor of a cinema; that the Respondent was the local authority responsible for the issue of licences under the Rules made under the Public Performances Ordinance; that the Appellant had duly applied for a licence; that the Appellant's cinema was in all respects a fit and proper building suitable for public performances, and that he had fulfilled all necessary and/or reasonable conditions entitling him to the issue of a licence; and that the Respondent had wrongfully and maliciously refused and neglected to issue the required licence, causing damage to the Appellant. 10
- p.2, 1.11 -
p.3, 1.16.
4. By his answer dated the 24th September 1959 the Respondent pleaded that the plaint disclosed no cause of action; admitted that he as Chairman of the Urban Council of Puttalam was ex-officio the local authority to whom application for a licence should be made; denied that the Appellant had fulfilled necessary conditions entitling him to the issue of a licence; and stated that a licence was issued to the Appellant which he refused to accept by reason of conditions lawfully inserted therein. 20
5. At the trial held on the 18th February 1960 the following issues were agreed:
- p.3, 1.31 -
p.4, 1.10.
- (i) Is and was the Appellant at all material times the proprietor of the Gardiner Theatre Puttalam? 30
- (ii) Did the Appellant by his letters dated 14-11-58 and 7-12-58 apply for a public performance licence for his cinema?
- (iii) Did the Respondent wrongfully and maliciously refuse and neglect to issue the licence?
- (iv) If issues 1, 2 and 3 are answered in the affirmative what damages is the Appellant entitled to? 40
- (v) Does the plaint disclose a cause of action against the Respondent?
- (vi) If not can the Appellant maintain this action?

6. At the request of Counsel for both parties the issues (v) and (vi) above were tried as preliminary issues of law. Accordingly no evidence was led, but it was indicated by Counsel for the Respondent in the course of his argument that there was one theatre which already had a licence and a condition was imposed in the licence granted to the Appellant to run the shows on alternate days.

p.4, 1.11.

p.4, 1.33.

10 7. The Public Performances Ordinance (C.176) S3 (1) (a) provides as follows:-

3. (1) The Minister may make rules for the regulation of public performances and in particular without prejudice to the generality of the power so granted, for the following purpose:-

20 (a) for the issue of licences for buildings or erections to be used for public performances or for any particular public performance and for withdrawal suspension, modification of the conditions of such licences.

8. The Rules made under the Public Performances Ordinance provide by Rule A4 that application must be made to the local authority specifying certain information.

Rule A5 provides:

30 A5. On the receipt of an application for a licence, the local authority, after such inquiry as he thinks fit, and after the payment of the fees mentioned in rule A3, may if he sees no objections, grant a licence, subject to the conditions as he may consider necessary in the interests of the safety and the comfort of the public. Such conditions may amongst other things prescribe the number and size of the passages, entrances, and exits, the manner in which the doors shall open, the maximum number of persons to be accommodated in the building, the nature of the seating accommodation, and
40 the number and width of the passage ways to seats, the method of lighting to be employed, the precautions to be taken

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with respect to inflammable and explosive substances, the provision of fire-extinguishing appliances, the restrictions to be put on smoking, the ventilation to be provided. Such licence shall be substantially in Form A annexed.

Rule A6 provides that:

A6. Any licence granted under rule A5 may at any time be withdrawn, suspended, or modified by the local authority at his discretion.

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p.8, 1.33. 9. The learned District Judge held that the decision of the local authority refusing to grant a licence could be made the subject of appropriate legal proceedings in a Court of law. However, he also said that the caption in the

p.8, 1.42. plaint referring to the Respondent's private address showed he was being sued in a private capacity, whereas the acts of the Respondent

p.9, 1.7. which were complained of were done in his public capacity. He held that the plaint did not

p.9, 1.16. disclose a cause of action against the Respondent in his private capacity and therefore dismissed the Appellant's action with costs.

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10. It is respectfully submitted that the decision of the learned District Judge is wrong since the Chairman of the Puttalam Urban Council is not a legal persona and the only way the Respondent could be such for his acts as Chairman was personally. The cause of action against the Respondent cannot be affected by the mention of his private address in the caption in the plaint.

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p.11, 1.4. 11. The Appellant appealed to the Supreme Court of Ceylon on the following grounds:-

(a) The said order is contrary to law and misconceived.

(b) The action could not have been instituted against the Chairman of the Urban Council Puttalam inasmuch as the Chairman is not a legal person.

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(c) The cause of action was the malicious exercise of his powers by the Respondent

and therefore he was liable to be sued
in his private capacity.

12. The Supreme Court dismissed the Appellant's appeal on grounds which differed from those given by the learned District Judge. Tambiah J who delivered the judgment of the Court, held that there was in the present case no licence coupled with a grant; that on the authority of Davis v. Bromley 1908 1 K.B. 170, no action for damages could lie for the malicious exercise of a discretion which the legislature had vested in the Respondent; and that the proper remedy, if any, would have been an action for mandamus. No right of the Appellant's had been infringed.

p.16, l.2.

p.16, l.4 -
p.17, l.30.

13. On the 11th April 1962 the Appellant obtained final leave to appeal to the Privy Council.

p.28, l.1.

14. It is respectfully submitted that the Supreme Court erred in their construction of the Public Performances Ordinance and the Rules made thereunder. Properly construed these provisions imposed a duty on the Respondent to issue a licence and conferred a right on the Appellant to receive a licence if the statutory requirements had been complied with. The decision in Davis v. Bromley (supra) was based on the statutory provisions there being considered, which are distinguishable from those applicable in the present case. It is submitted that if the Appellant suffered damages by reason of the wilful disregard of a statutory duty imposed on the Respondent for the Appellant's benefit the Appellant can maintain an action for damages under English law. In any event the question whether there was here a licence coupled with a grant is irrelevant to the present case.

15. It is further submitted that the English law of torts does not apply, but that the principles applicable are those of the Roman-Dutch law of delicts. On the basis that the Respondent maliciously and wilfully refused to grant to the Appellant the licence asked for (which facts must be accepted for the purposes of this appeal) an action will lie against the Respondent on the grounds that he wilfully invaded the Appellant's statutory rights or that in breach of his statutory duty he wilfully caused

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the Appellant pecuniary loss, or misused his statutory power in contempt of the Appellant.

16. The Appellant submits that the Judgments and Orders of the Supreme Court and the District Court were wrong and should be reversed and the action be remitted to the District Court for trial and that this appeal should be allowed with costs for the following amongst other

R E A S O N S

1. BECAUSE the Respondent could be properly sued in his own name. 10
2. BECAUSE the Respondent's breach of his statutory duty gave the Appellant a cause of action for damages in tort if English law applied.
3. BECAUSE the case was governed by Roman-Dutch law and the Appellant had a right of action under the Roman-Dutch law of delicts.

E. F. N. GRATIAEN

DICK TAVERNE

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- v -

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CASE FOR THE APPELLANT

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