

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Appeal under Section 754
(1) of the Civil Procedure Code.

Chief Electronic Engineer
Airport and Aviation Services Ltd
Sri Lanka Colombo Airport
Ratmalana.

And

Walauwa,
No. 353, Galle Road Nalluruwa,
Panadura.

DEFENDANT – APPELLANT

C.A. Application No. 652/97F

D.C. Mt. Lavinia Case No. 21/91/M

Vs

G.M.De Silva
No. 48, Mallikarama Road
Ratmalana.

PLAINTIFF-RESPONDENT

BEFORE

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

COUNSEL

: S. Balapatabendi D.S.G. for the

Appellant

D.M.G. Dissanayake with

B.C. Balasuriya for the Respondent

ARGUED ON

: 08th December, 2015

DECIDED ON

: 24th June, 2016

Deepali Wijesundera J.

The plaintiff respondent had instituted an action against the defendant appellant seeking damages in a sum of One Million Rupees for defamation. The appellant had filed answer denying liability and stated that he acted within his official duties and that he was not in a position to issue a “no claims certificate” to the respondent since the respondent had not returned all items in his possession when he retired. After trial the learned District Judge had delivered judgment in favour of the respondent and being agreed by the said judgment, the appellant had filed this application against the said judgment dated 10/07/1997.

The learned counsel for the appellant argued that the District Judge failed to consider the issues raised by them at the trial regarding the lack of territorial jurisdiction by the District Court of Mt. Lavinia and cited the judgment in **Warnakula vs Ramani Jayawardena (1990) 1 SLR 206**. The appellant stated under *Sec. 187 of the Civil Procedure Code* this issue should have been dealt with and the decision should have been given in favour of the appellant. The learned counsel for the respondent in answer to this argument stated that the summons served by court on the appellants were served through the Fiscal officer of the District Court Mt. Lavinia which shows that the area in which the appellant resided was situated within the District Court of Mt. Lavinia.

The appellants argued that the District Judge failed to appreciate the material evidence given by the appellant and his witness regarding the documents marked **D1 and D2** which were not signed by the appellant and that when you peruse those two documents it is evident that they were not defamatory or produced with malicious intent. The counsel for the respondent argued that the Trial Judge exhaustively analysed the oral evidence and documentary evidence led at the trial with regard to handing over of the items and also with regard to the decision taken by the Chairman of the Airport and Aviation Services releasing the respondent from the charges instituted by the appellant and had decided that the allegation was not only false but also one made with malice.

The appellant argued that he did not act negligently and disclose information of the respondent in a qualified privileged occasion and that he acted in his official capacity as recognized by court in **Sirisena vs Ginige (1992) 1 SLR 320**.

The counsel for the appellant further stated that the law applicable to Sri Lanka is the Roman Dutch Law and a mere prima facie examination and application of a very broad area of Law relating to defamation will not result in a successful establishment of such action. They further stated that the appellant was not impregnated with a direct or indirect intention to injure the respondent.

The learned counsel for the appellant citing the judgment in **Independent Newspapers Ltd vs Nissanka Parakrama Wijeratne (1995) 2 SLR 253** stated that the guidelines set out in the said judgment it is clear that there was no intention whatsoever on the part of the appellant and that the learned trial judge misdirected himself in awarding damages.

The learned counsel for the respondent submitted that the defence of "Qualified Privilege" raised by the appellant has been discussed and settled in the cases of **Perera vs Peiris 50 NLR 145** and **De Costa vs The Times of Ceylon Limited 62 NLR 265**, and that it is a well settled principle that

when words used are defamatory of the complainant the burden of negating "*Animus Injuriandi*" rests upon the defendant.

The respondent further stated citing the judgment in **Whitelaw vs Concannon 48 NLR 265** that in an action for defamation the meaning which the writer intends to convey is immaterial, therefore it was the burden cast on the appellant to exonerate him from the "*Animas Injuriandi*" in the light of the false and the defamatory statement he made against the respondent.

In the instant application this court has to decide on two main issues. Did the trial Judge consider the issue on jurisdiction under section 187 of the Civil Procedure Code. As stated by the respondent the summons in the District Court case were served by the Fiscal officer of the District Court of Mt. Lavinia to the appellant to the given address which shows that the appellant was in the jurisdiction of the District Court of Mt. Lavinia and not Moratuwa as stated by the appellant.

Did the learned District Judge consider the evidence placed before him? It is a well established principle that the trial Judge is the best person to decide on the facts placed before court. The oral and documentary evidence led at the trial has been exhaustively analysed with regard to the said allegation leveled against the respondent by the appellant by the trial

Judge. The handing over of the items mentioned and also the decision taken by the Chairman of the Airport and Aviation Services Ltd releasing the respondent from the charge initiated by the appellant had been considered by the District Judge.

For the afore stated reasons I see no reason to set aside a well considered judgment by the District Court. The judgment dated 10/07/1987 is affirmed. Appeal is dismissed with costs fixed at Rs. 50,000/=.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree.

JUDGE OF THE COURT OF APPEAL