MAHADEVI NADCHATIRAM

v.

THIRUCHELVASEGARAM MANICKAVASEGAR

FEDERAL COURT, KUALA LUMPUR
STEVE SHIM CJ (SABAH & SARAWAK)
ABDUL MALEK AHMAD FCJ
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: 02-22-2001 (W)]
3 SEPTEMBER 2003

CIVIL PROCEDURE: *Appeal - Grounds of appeal - Whether issue on which appeal grounded not pleaded in lower courts - Whether appeal ought to be dismissed*

TORT: *Defamation - Slander - Defences - Absolute or qualified privilege - Whether defamatory statement made in court room when court not in session covered by absolute or qualified privilege*

TORT: *Defamation - Libel - Defences - Absolute privilege - Defamatory words written on copy of writ - Whether covered by defence of privileged publication - Whether other defences applicable*

This was an appeal by the appellant against the Court of Appeal's decision allowing the High Court's ruling that the appellant had committed defamation against the respondent. This appeal concerned the third defamation which was a scandalous utterance by the appellant about the respondent in the High Court courthouse when the court was not in session, and the seventh defamation dealing with the defamatory words written by the appellant on the back of the last page of the serving copy of a writ. In relation to the third defamation, the first question requiring consideration was whether a statement made by one counsel to another in the court's premises when the court is not in session: (a) in respect and related to matters concerning the court proceedings; and (b) which statement was based on information given to the counsel by a witness to the said court proceedings; was covered by absolute or qualified privilege. The second question, pertaining to the seventh defamation, was whether defamatory words written by a party on the acknowledgement copy of a writ or in other court documents whilst accepting service, which were part of the court documents in pending court proceedings, were covered by absolute privilege. At the outset of proceedings, the respondent raised two preliminary

objections and a motion against the leave granted to hear the first question on the ground that the defences of absolute or qualified privilege were never pleaded in the lower courts.

Held:
Abdul Malek Ahmad FCJ

[1] On the facts, having considered the arguments in this case and the findings of this court in previous cases, the preliminary objections raised by the respondent ought to be overruled and the respondent's motion dismissed except for the first question, which was to be amended by deleting the above-stated para. (b), since it became apparent to this court after further consideration that this was not actually supported by the evidence. (pp 27 g-h & 28 a)

[2] With regard to the first question, the High Court held, and the Court of Appeal agreed, that absolute privilege could not be relied upon by the appellant in respect of a defamatory statement made by counsel outside the court room with reference to the proceedings, and that this proposition must also include a situation where, as in this case, the defamation was made in a court room when no proceedings were in session. The statement uttered by the appellant was really an outburst to defame the respondent, and the appellant, therefore, could not rely on qualified or absolute privilege. (p 31 b & f)

[3] In respect of the second question, the Court of Appeal accepted the High Court's finding that the publication therein was not only made to the respondent's staff, but also extended to the judges, registrars and staff of the High Court since that copy of the writ would be exhibited in the affidavit of service as proof of service. Hence, the defence of privileged publication did not extend to the appellant. Furthermore, the defences of justification, fair comment and public interest also did not cover the appellant's liability to the respondent for the libel. (p 13 c)

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Ini adalah rayuan oleh perayu terhadap keputusan Mahkamah Rayuan yang membenarkan keputusan Mahkamah Tinggi bahawa perayu telah melakukan fitnah terhadap responden. Rayuan ini adalah berkenaan dengan fitnah ketiga yang mana adalah suatu pengucapan melampau oleh perayu mengenai responden di persekitaran Mahkamah Tinggi ketika mahkamah tidak bersidang, dan fitnah ketujuh yang berkaitan dengan perkataan-perkataan bersifat memfitnah yang telah ditulis oleh perayu pada bahagian belakang muka surat akhir akan salinan satu writ penyampaian. Berhubung fitnah yang ketiga, soalan pertama yang memerlukan pertimbangan adalah sama ada sesuatu kenyataan yang dibuat oleh seorang peguam kepada yang lain di perkarangan mahkamah ketika mahkamah tidak bersidang: (a) berhubung dan berkaitan dengan perkara-perkara yang berkaitan dengan prosiding mahkamah tersebut; dan (b) kenyataan yang mana adalah berdasarkan maklumat yang diberikan kepada peguam oleh seorang saksi kepada prosiding mahkamah tersebut; adalah dilindungi oleh perlindungan mutlak atau perlindungan bersyarat. Soalan yang kedua, berhubung dengan fitnah yang ketujuh, adalah sama ada perkataan-perkataan memfitnah yang ditulis oleh sesuatu pihak pada salinan akuan terima sesuatu writ atau pada dokumen-dokumen mahkamah yang lain ketika menerima penyampaian, yang mana adalah sebahagian daripada dokumen-dokumen mahkamah dalam prosiding-prosiding mahkamah yang sedang menanti penyelesaian, dilindungi oleh perlindungan mutlak. Pada mula prosiding tersebut, defendan telah membangkitkan dua bantahan awal dan satu usul terhadap kebenaran yang diberikan untuk mendengar soalan pertama tersebut atas alasan bahawa pembelaan perlindungan mutlak dan bersyarat tidak pernah diplidkan dalam mahkamah rendah.

Diputuskan:
Abdul Malek Ahmad HMP

[1] Berdasarkan fakta-fakta, setelah mempertimbangkan hujahan-hujahan di dalam kes ini dan keputusan-keputusan mahkamah ini dalam kes-kes yang terdahulu, bantahan awal yang dibangkitkan oleh responden haruslah ditolak dan usul responden ditolak kecuali bagi soalan pertama, yang mana haruslah dipinda dengan memotong perenggan (b) yang dinyatakan di atas, oleh sebab ia menjadi nyata kepada kami selepas pertimbangan selanjutnya bahawa ini telah sebenarnya tidak disokong oleh keterangan.

[2] Berhubung soalan pertama, Mahkamah Tinggi telah memutuskan, dan Mahkamah Rayuan telah bersetuju, bahawa perlindungan mutlak tidak boleh diharapkan oleh perayu berhubung dengan kenyataan memfitnah yang dibuat oleh peguam di luar persekitaran mahkamah dengan merujuk kepada prosiding tersebut, dan proposisi ini semestinya juga termasuk situasi di mana, seperti mana dalam kes ini, fitnah tersebut telah dibuat dalam sebuah bilik mahkamah ketika prosiding tidak bersidang. Kenyataan yang disebut oleh perayu adalah sesungguhnya suatu yang spontan untuk memfitnah responden, dan perayu, dengan itu, tidak boleh bergantung pada perlindungan bersyarat atau perlindungan mutlak.

[3] Berhubung soalan kedua, Mahkamah Rayuan telah menerima keputusan Mahkamah Tinggi bahawa penerbitan di situ bukan sahaja dibuat kepada kakitangan responden, tetapi juga dilanjutkan kepada hakim-hakim, pendaftar-pendaftar dan kakitangan Mahkamah Tinggi oleh sebab salinan itu daripada writ tersebut akan diekshibitkan di dalam afidavit penyampaian sebagai bukti penyampaian. Oleh itu, pembelaan penerbitan bersyarat tidak berlanjutan kepada perayu. Lagi pun, pembelaan-pembelaan justifikasi, ulasan yang adil dan kepentingan awam juga tidak melindungi tanggungan perayu kepada responden untuk libel tersebut.

Rayuan ditolak.]

Case(s) referred to:

Auto Dunia Sdn Bhd v. Wong Sai Fatt & Ors [1995] 3 CLJ 485 FC

Capital Insurance Bhd v. Asiah Abdul Manap & Anor [2000] 4 CLJ 1 FC

Lam Kong Co Ltd v. Thong Guan Co Pte Ltd [2000] 3 CLJ 769 FC

Mahadevi Nadchatiram v. Thiruchelvasegaram Manickavasegar [2001] 3 CLJ 65 CA

Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd [2002] 1 CLJ 645 FC

Raphael Pura v. Insas Bhd & Anor [2003] 1 CLJ 61 FC

The Minister for Human Resources v. Thong Chin Yoong & Anor [2001] 3 CLJ 933 FC

Thiruchelvasegaram Manickavasegar v. Mahadevi Nadchatiram [2001] 3 CLJ 967 HC

Thiruchelvasegaram Manickavasegar v. Mahadevi Nadchatiram [2000] 5 CLJ 435 HC

For the appellant - KS Narayanan (Rishan Kumar); M/s Mahadevi Nadchatiram & Partners

For the respondent - Malik Imtiaz Sarwar; M/s Syarikat M Segaram

[Appeal from High Court, Kuala Lumpur; Civil Suit Nos: S5-23-08-97 & S2(S5)-23-04-97]

Reported by Suresh Nathan

JUDGMENT

Abdul Malek Ahmad FCJ:

On 27 November 2001, this court (Steve Shim Lip Kiong, CJ Sabah and Sarawak, Abdul Malek Ahmad and Mohtar Abdullah, FCJJ) heard the motions for leave to appeal for this case and another related matter namely Federal Court Civil Appeal 02-21-2001(W). Leave to appeal had been granted in both cases and the other appeal had actually been heard by the same panel as the leave panel on 24 July 2002. Judgment had been reserved to a date to be fixed. Due to time constraints, this appeal was adjourned. On 5 August 2002, our learned brother Mohtar Abdullah FCJ was hospitalised and so, when we heard this appeal on 24 and 26 March 2003, his place has been taken by Mokhtar Sidin JCA.

Leave had been granted by this court in this case on the following questions:

(1) whether a statement made by one counsel to the opposing counsel in Court premises when the Court is not in session:

(a) in respect and related to matters concerning the Court proceedings; and

(b) which statement is based on information given to the counsel by a witness to the said Court proceedings;

is covered by absolute or qualified privilege.

(2) whether defamatory words written by a party on the acknowledgement copy of a Writ or in other Court documents whilst accepting service, which are part of the Court documents in a pending Court proceedings, covered by absolute privilege in the light of, *inter alia*, the Court of Appeal decision of *Lincoln v. Daniels* [1962] 1 QB 237.

At the outset of the proceedings before us, we were faced with two motions and two preliminary objections. The first motion was by the appellant to amend the memorandum of appeal dated 17 January 2002 which, however, learned counsel for the appellant withdrew during the course of arguments by learned counsel for the respondent on the respondent's motion that the leave granted to the appellant on the first issue on 27 November 2001 be revoked. The respondent's motion had specifically asked that:

(1) leave granted to the appellant on the 27/11/2001 on issue 1, namely:

Whether a statement made by one counsel to the opposing counsel in Court premises when the Court is not in session:

(a) in respect and related to matters concerning the Court proceedings; and

(b) which statement is based on information given to the Counsel by a witness to the said Court proceedings;

is covered by absolute or qualified privilege.

be revoked.

(2) the grounds set out in paragraphs 1 to 18 in the Memorandum of Appeal filed by the appellant on the 17/01/2002 be struck off.

(3) the Supplementary Record of Appeal known as "Rekod Rayuan (Jilid 13)" to be filed in the connected appeal in Federal Court Civil Appeal No. 02-21-2001(W) brought by the respondent against the appellant be also form as part of the Record of Appeal in Federal Court Civil Appeal No. 02-22-2001(W).

(4) the costs of and incidental to this application shall be paid by the appellant to the respondent.

(5) other reliefs as the Honourable Court shall think just to grant.

Prayer (3) was, however, withdrawn in the course of submissions.

The first notice of preliminary objection by the respondent dated 3 January 2002 was that at the hearing of the appeal, the respondent shall apply that the appeal and the leave to appeal granted on issue 1 namely:

Whether a statement made by one counsel to the opposing counsel in Court premises when the Court is not in session:

(a) in respect and related to matters concerning the Court proceedings; and

(b) which statement is based on information given to the counsel by a witness to the said Court proceedings;

is covered by absolute or qualified privilege be dismissed on the following grounds:

the factual situation/purported facts upon which the issue No. 1 are based or deemed to be based, are non-existent, and contrary to the pleadings, evidence, submissions of the appellant in the High Court and finding of the trial Judge and the Court of Appeal, in that:

(i) the appellant by her defence pleaded that she did not utter the slander, 3rd defamation but contended in her defence that the 3rd defamation was fabricated by the respondent to extort money from the appellant. There was no alternative plea. The appellant did not plead absolute or qualified privilege for the slander, 3rd defamation upon which the above issue was framed;

(ii) privileges absolute or qualified was not an issue before the High Court, and in any event, amendments sought to plead absolute or qualified privilege were refused by the trial Judge and appeals against amendments withdrawn;

(iii) the appellant in her evidence repeatedly maintained she did not utter the slander, 3rd defamation but contended the slander was published by DW1 whilst the Court was in session in open Court. The appellant never claimed the slander, 3rd defamation was uttered by her in the course of conversation between the appellant and Satharuban;

(iv) the appellant in her submission before the trial Judge contended she did not utter the slander, 3rd defamation and that the Court should find that it was not uttered by her;

(v) the finding of the trial Judge as well as the Court of Appeal was that the slander, 3rd defamation was not published in the course of conversation between the appellant and Satharuban, the Counsel but that the slander, 3rd defamation was an outburst uttered by the appellant in the presence of lawyers and public.

On 26 January 2002, the following grounds were added:

1. The Notice of Appeal dated 7th December 2001 filed by the appellant is not in order and did not comply and/or limited to the issues allowed and therefore the Notice of Appeal is not good.

2. Paragraphs 1 to 5, 8 and 10 to 18 of the Memorandum of Appeal are beyond the scope and not limited to the issues and questions for which leave had been given and had contravened Rule 47(4) of the Rules of The Federal Court 1995 and therefore the said relevant paragraphs cannot be used and should be taken out.

The second notice of preliminary objection by the respondent dated 5 March 2003 urged the court to consider the following matters or issues:

(a) the question/issue for which leave granted **on issue 1 and 2** is not a matter/issue that arose or was decided by the High Court in the exercise of its original jurisdiction and/or by the Court of Appeal;

(b) consequently, the Federal Court did not have jurisdiction to grant leave on **issue 1 and 2**. Accordingly, the leave granted on **issue 1 and 2** should be withdrawn/set aside and/or the aforesaid appeal ought to be dismissed;

(c) the question for which leave was granted on **issue 1 and 2** is hypothetical and/or academic question; and

(d) consequently, the Federal Court should decline to answer the question on **issue 1 and 2** and the aforesaid appeal ought to be dismissed.

(e) in respect of **issue 1**, the defences or absolute and/or qualified privilege and the facts constituting such privileges were never pleaded.

(f) in respect of **issue 1**, there was in any event no evidence before the Court to support the issue as framed rendering it impossible for this Court to come to any conclusion as regards the issue save for one of an academic nature.

(g) consequently, the Federal Court should decline to answer the question on **issue 1** and the aforesaid appeal ought to be dismissed.

It would appear that there was a substantial amount of overlapping in the preliminary objections and the respondent's motion. In fact, learned counsel for the respondent conceded this in his submissions.

We, however, despite the repetitive averments of the applications which had the effect of asking us to rehear the leave application once more, decided to hear the motion and preliminary objections first before hearing the appeal.

Having heard the arguments, and having dutifully considered the findings of this court in *Capital Insurance Berhad v. Asiah binti Abdul Manap & Anor* [2000] 4 CLJ 1, *Raphael Pura v. Insas Berhad & Anor* [2003] 1 CLJ 61; *Lam Kong Co. Ltd. v. Thong Guan Co. Pte. Ltd.* [2000] 3 CLJ 769; *Auto Dunia Sdn. Bhd. v. Wong Sai Fatt & Ors.* [1995] 3 CLJ 485; *Megat Najmuddin bin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Berhad* [2002] 1 CLJ 645 and *The Minister for Human Resources v. Thong Chin Yoong & Anor* [2001] 3 CLJ 933, we unanimously held that the preliminary objections ought to be overruled and the respondent's motion

dismissed except that the first question is to be amended by deleting para. (b) thereof since it became apparent to us after further consideration that this was not actually supported by the evidence.

Learned counsel for the respondent referred to extracts from the notes of evidence and the grounds of judgment of the learned trial judge as to the third and seventh defamation and argued that the second question is academic or hypothetical and it is only proper if the question of absolute privilege is limited to publication to judges and court officials as there is no question of privilege in respect of publication to persons outside that category.

Learned counsel for the appellant submitted that two of the judges in this panel were actually on the leave panel as well and the issue here is whether this court has jurisdiction to hear the appeal. If it has, how the leave panel frames the questions is not a jurisdictional issue.

He added that this court had ultimate and unlimited jurisdiction but it must act according to its powers. He submitted that the first issue is whether the third defamation is in the nature of the question framed academic, has no facts to support it, does not emanate from the judgment and does not remedy the manner in which the matter was dealt with in the court below.

As he said, the third defamation is based on para. 10.0 of the further reamended statement of claim which states:

> 10.0 On the 12th October 1993 at the court-house of the High Court at Seremban in the presence of several advocates and solicitors and members of the public, the defendant falsely and maliciously published concerning the plaintiff and of him in relation to his behaviour and conduct and in the way of his profession, the following words:
>
> > The several actions were brought by Vishi's husband to cover-up the incest committed by Segaram with Shanti.

This is of course denied in para. (6) of the reamended statement of defence which is reproduced below:

> (6) The Defendant denies paragraph 10.0 of the Re-Amended Statement of Claim and puts the Plaintiff to strictly prove the claim in the said paragraph. The Defendant states that there is no truth in the allegations that the Defendant uttered any of these words. This is concocted and fabricated by the Plaintiff to extort money from the Defendant.

At para. (8)(c) thereafter, the defendant, who is the appellant here, pleads:

> (8)(c) The Defendant pleads absolute and or qualified privilege or in the alternative pleads justification based on the particulars listed out in paragraph 5(c) above under the heading of justification and the Defendant adopts and repeats the averments stated therein for all the submission which the Plaintiff is claiming are defamatory of him especially in paragraphs 10.0 to 10.8 of the Re-Amended Statement of Claim.

At para 2.1 of the further re-re-amended reply to the further reamended defence, the plaintiff, who is the respondent, says:

> 2.1. The plaintiff denies each and every allegations in paragraphs 7, 8(a), 8(b), 8(c), 10, 11 (a), 12 and 13 of the Further Re-Amended Statement of Defence and in reply thereof the plaintiff states that the defendant who was and is carrying on her legal practice as a sole-proprietor under the name and style of Messrs. Mahadevi Nadchatiram. & partners and who was also one of the defendants in the Seremban High Court Civil Suit No: 22-61-93 wrongfully and in breach of law and rules acted as an advocate and solicitor for herself and for the other defendants in the above action and therefore, in the circumstances, neither absolute privilege not *(sic)* qualified privilege apply and cannot be claimed by the defendant. In further reply to paragraphs 8 (a) and 11 (a) of the Further Re-Amended Statement of Defence, copies of the defendant's written submissions were also served on Messrs. Satha & Subra, Adovacates & Solicitors amd the defendant's contentions therein are misconceived amd devoid of any merits.

In his affidavit in reply dated 20 June 2001, the respondent states at para. 6 as follows:

> 6. I contend that the Applicant/Appellant is not entitled for leave for the following reasons:
>
> (a) the Applicant/Appellant is seeking leave to appeal against the liability in respect of the 3rd and 7th defamations on the part of the Applicant/Appellant;
>
> (b) these are concurrent findings of facts by the High Court and the Court of Appeal in respect of the 3rd and 7th defamations and both Courts held both on facts that the Applicant/Appellant liable;
>
> (c) in the circumstances, any issues in respect of the 3rd and 7th defamations cannot be raised again and leave ought not to be granted;

At para. 8.2 of the second affidavit in reply dated either 3 August or 3 September 2001 (as both months appear on the signature page), the respondent had this to say:

> 8.2. In respect of the 3rd defamation the Applicant/Appellant in her defence denied totally that she uttered the slander. She claimed the claim was concocted and fabricated by me to extort money from her. Further by paragraph 8(c) (page 477 A/M) the Applicant/Appellant relied on absolute and/or qualified privilege. She also pleaded justification. The Applicant/Appellant did not in the alternative plead that such slander was uttered in the course of proceedings to the Counsel.

As for the first question, it relates to the third defamation. As regards this, the learned trial judge had this to say:

> On the 3rd alleged defamation, which is an utterance in the courthouse when the court was not in session, I find it scandalous. Firstly, it is based on my finding that there is no truth in the allegation of incest by the plaintiff. Secondly, I believe that this remark was actually uttered by the defendant. The evidence of the plaintiff and Satha to what took place on that day are convincing as compared to those advanced by the defence. Thirdly, absolute privilege does not apply to any statement made not in the course of legal proceedings. At the material time when it was uttered, the learned Judge was in his chambers conducting chamber proceedings. Though there be occasions where the Judge deals with chamber matters in open court (as claimed by the defendant) but such occasions are normally recorded in the Judge's notebook. It is upon the defendant to prove this but no such evidence was tendered. Further Galley's 9th edition on *Libel and Slander* at paragraph 13.3 has cited two American cases – *Demopolis v. Peoples National Bank* 796 p 2nd 426 (Wash 1990) and *Dashtgard v. Blair* [1990] C.C.L.T. (2nd) 284 to support a proposition that a defamatory statement made by counsel outside the courtroom, with reference to the proceedings, is not entitled to absolute privilege. I am not only in full agreement with this proposition, but wish to add that it must also include the situation where the defamation is made in a courtroom when no proceeding is in session.

The Court of Appeal agreed with the finding of the learned trial judge when it said:

The learned Judge, in our view, is the best person to evaluate the evidence of both parties before him and we are in no position to disagree or quarrel with his evaluation. *(Fusing Construction Sdn Bhd v. Eon Finance Berhad & 2 Ors. (and Another Appeal) Supra.*

The learned Judge further held that absolute privilege could not be relied on by the appellant in respect of a defamatory statement made by counsel outside the court room with reference to the proceedings. He relied on the proposition at paragraph 13.3 of *Gatley's* 9th Edition on *Libel and Slander* which cited two American cases – *Demopolis v. Peoples National Bank* 769 p/ 2nd 426 (Wash. 1990) and *Dashtgard v. Blair* [1990] C.C.L.T. (2nd) 284. The learned Judge further was of the view that the proposition must include situation where the defamation is made in a court room when no proceedings is in session which is the case here. We agree.

Appellant apparently relied on the third category of privilege referred to by Devlin LJ in *Lincoln v. Daniels* [1962] 1 QBD 237 and then went on to paraphrase the words of Earl of Halsbury LC in *Watson v. M'Ewan* [1905] AC 480 at page 487. We have examined those words at page 487 and with respect, the paraphrasing was made out of context – those words refer to statements by witnesses to a solicitor. This is what Earl of Halsbury said at page 487:

> It is very obvious that the public policy which renders the protection of witnesses necessary for the administration of justice must as a necessary consequence involve that which is a step forward and is part of the administration of justice – namely, the preliminary examination of witnesses to find out what they can prove. It may be that to some extent it seems to impose a hardship, but after all the hardship is not to be compared with that which would arise if it were impossible to administer justice, because people would be afraid to give their testimony.

The statement uttered by the appellant was really an outburst to defame the respondent and the appellant could not rely on qualified privilege or absolute privilege for the reasons stated. ...

For the reasons stated, we find no grounds to disagree with the learned Judge's finding on this 3rd defamation.

The second question posed deals with the seventh defamation for which the relevant passage in the High Court judgment is as follows:

The 7th allegation of defamation is the writing on the back of the last page of the serving copy of the writ for Suit 04. Firstly, I cannot accept the defendant's contention that there is no publication. The defendant's reliance, once again, on her assertion that the statement was written in her private office and thereafter placed it in a sealed envelope marked "private and confidential" is just not probable. As an advocate and solicitor the defendant would be aware of the rules and procedures that require such an acknowledgement copy of a serving writ to be exhibited to an affidavit of service. With such a practice she would have known that there could be no confidentiality for this document. So it is most unlikely that she did what she claims. The account of PW5 is more probable and I accept it as the truth.

The defendant then contends that the words do not mean what the plaintiff implies. I am, however, of a different impression. The mere reading of this statement is sufficient for me to agree with the plaintiffs version of what it means.

On the defence of justification I find that though there seems to be some truth of what had happened at the Holiday Inn Complex where the defendant's four car tyres were punctured and her car's windscreen smashed, it is my opinion that this was due to the frustration of the plaintiff in not being able to gain control of his daughter, not because of any infatuation for the defendant. And for the incident that happened in London, even if it is true, it took place too long ago to be of any relevance and effect.

On the defendant's claim of fair comment for these statements I am puzzled over the existence of the element of public interest. This matter certainly attracts no interest to the public; it is entirely a private family squabble.

For these reasons I find the defendant liable to the plaintiff for this libel.

The Court of Appeal in turn said this:

As a result of the events under the 5th and 6th defamation, the respondent proceeded to file suit 04. After the sealed copy of the writ was extracted PW5 served it on the appellant on 22.2.1997. Instead of the normal practice of affixing her signature at the rear of the serving copy, the appellant, according to PW5, wrote and while writing, read out aloud to her staff present the following:

> Segaram,
>
> I am not your enemy but your friend. I have not read your summons, it is most unfair for you to chase and harass me continuously since London days in 1960's – that time you wrote to complain about me going out with white boys to my parents and now you keep chasing me.

According to the respondent, those words give the impression that he is a womanizer, lustful, immoral and mean; that he is a busy-body, a trouble maker and unfit to be an advocate and solicitor.

Besides claiming the defamatory publication to the respondent's staff and PW5 the respondent avers that such remarks will be read by the Honorable Judges, Registrars and staff of the High Court since this copy of the writ will be exhibited in the affidavit of service as proof of service.

We accept the learned Judge's finding of fact and the evidence of PW5 on this aspect. We accept the learned Judge's finding that the publication therein is not only made to the staff of the respondent but extends to the Judges etc for the reasons stated by him. In our view, therefore the defence of privileged publication does riot extend to the appellant under this 7th defamation. For the reasons stated by the learned Judge, we agree that the defenses of justification, fair comment and public interest does not cover the appellant's liability to the respondent for the libel. These words have nothing to do with the writ served on her.

We have carefully considered the findings of the High Court and the Court of Appeal on the third and seventh defamation in the light of the authorities and are of the unanimous view that both the questions ought to be answered in the negative. In the event, the appeal is dismissed with costs and the deposit is to go to the respondent to the account of taxed costs.