FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Hamis hamsa (5) ta' Ottubru 2017

Rikors Numru 27/16 FDP

Gillian Camenzuli Kerr
(ID 114383M)

vs

Emil Calleja Bayliss (ID 283789M) u
Marc Calleja Bayliss (ID 16093M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fil-11 ta' Frar 2016 fejn ir-rikorrenti talbet lill-Qorti tiddikjara illi kummenti illi tqieghdu fuq is-*social network* Facebook mill-intimati f'Dicembru 2015 jikkontjenu allegazzjonijiet foloz u malafamanti u li ghandhom, bhala skop, dak li jnaqqsu jew itellfu r-reputazzjoni tar-rikorrenti. Ir-rikorrenti ghalhekk talbet lill-Qorti tillikwida d-danni minnha sofferti a tenur tal-Artikolu 28 tal-Kap 248 u tikkundanna lill-intimati jhallsua dawk id-danni hekk stabbiliti mill-Qorti.

Ra id-dokumentazzjoni esebita mir-rikorrenti flimkien mar-rikors promotur.

Rat ir-risposta tal-konvenuti ppresentata fit 2 ta' Marzu 2016 fejn qalu illi t-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjez peress illi huma infondati fil-fatt u fid-dritt filwaqt illi stqarrew ukoll illi fil-kaz in ezami ma jissustistux l-elementi rikjesti a tenur tal-Kap 248 tal-Ligijiet ta' Malta.

Semghet ix-xhieda tar-rikorrenti **Gillian Camenzuli Kerr** moghtija fis 16 ta' Gunju 2016.

Rat l-affidavit ta' **Debbie Mizzi**, ippresentat mir-rikorrenti fl-24 ta' Novembru 2016.

Rat illi fit 3 ta' April 2017, wara illi ghat-tieni darba ir-rikorrent la dehret u wisq anqas ressqet il-provi, il-Qorti ddikjarat l-istadji tal-gbir tal-provi tar-rikorrenti bhala maghluqa.

Semghet ix-xhieda ta’ **Emil Calleja Bayliss** moghtija fil 25 ta’ Mejju 2017.

Semghet ix-xhieda ta’ **Mark Calleja Bayliss** moghtija fil 25 ta’ Mejju 2017.

Rat illi fil 25 ta’ Mejju 2017 l-intimati ddikjaraw illi ma kellhomx aktar provi x’jippresentaw u ghalhekk il-kawza giet differita ghal finali trattazzjoni.

Semghet it-trattazzjoni ta’ l-abbli difensur ta’ l-intimati moghtija fl-10 ta’ Lulju 2017, wara liema data il-kawza giet differita ghas-sentenza.

Rat illi r-rikorrenti ma ghamlet ebda talba sabiex taghmel is-sottomissjonijiet taghha waqt il-mori tad-differiment.

Ikkunsidrat

Jirrizulta illi ir-rikorrenti hija ‘*vocal director*’ u ghandha skola tal-kant filwaqt illi l-intimat Emil Calleja Bayliss huwa awtur tal-kanzunetti bil-Malti u bl-Ingliz u l-intimat Mark Calleja Bayliss huwa manager ta’ numru ta’ kantanti Maltin.

Jirrizulta, ghalhekk, illi l-partijiet lkoll jahdmu fil-qasam tal-muzika lokali filwaqt illi Mark Calleja Bayliss u r-rikorrenti Gillian Camenzuli Kerr kellhom agenzija flimkien ghal xi zmien bl-isem ta’ Ironic PR and Artists Management, liema agenzija eventwalment spiccat f’idejn l-intimat Mark Calleja Bayliss.

Jirrizulta illi, ghalkemm ghal xi zmien Mark Calleja Bayliss u r-rikorrenti kienu jahdmu flimkien, ir-relazzjoni ta’ xoghol ta’ bejniethom eventwalment iddeterjorat u spiccat illi ggieldu sew bejniethom.

Jirrizulta illi kemm ir-rikorrenti Gillian Camenzuli Kerr kif ukoll l-intimat Mark Calleja Bayliss it-tnejn jghidu illi spiccaw isofru minn ‘*depression’* minhabba l-attitudni tal-parti l-ohra, u spiccaw gewwa l-Isptar bil-medicini.

Ikkunsidrat

Jirrizulta illi r-rikorrenti tikkontendi illi l-intimati t-tnejn kienu qed joskurawlha r-reputazzjoni taghha meta kienu qed jghaddu kummenti f’konversazzjonijiet privati illi huma kellhom ma xi kantanti illi kienu jitghallmu ghandha.

Jirrizulta, fost affarjiet ohra, illi l-intimat Mark Calleja Bayliss, meta kien qieghed jitkellem fuq il-*Messenger* tas-sit socjali *Facebook* ma’ Stefan Galea, allega, fost affarjiet ohra, illi r-rikorrent ma kellhiex reputazzjoni tajba mal-PBS kif ukoll mal-European Broadcasting Union, u dana minhabba l-attitudni taghha lejn il-kantanti illi hija kienet tghallem.

Jirrizulta, da parte tieghu, illi l-intimat Mark Calleja Bayliss jishaq illi r-rikorrent kellha attitudni iebsa hafna mal-kantanti illi kienet tghallem u kienet taghmel hafna pressjoni fuqhom, liema fatt, jghid Calleja Bayliss, wassal sabiex hafna kantanti stabbiliti illi bdew maghha marru jkomplu l-istudji taghhom ma’ persuni ohra.

Jirrizulta, mill-banda l-ohra, illi dwar l-intimat Emil Calleja Bayliss, ir-rikorrent allegat illi huwa kien jhedded lill-kantanti taghha. L-intimat Emil Calleja Bayliss, da parte tieghu, sahaq illi huwa

ma riedx jahdem mar-rikorrenti peress illi kellu esperjenza hazina maghha u ghalhekk huwa ma kienx lest jaccetta illi kantanti mghallma mir-rikorrenti jkantaw diski minnu miktuba tant illi, darba minnhom, lill kantanta Dominique Azzopardi, hekk kif sar jaf illi kienet ser tibda titghallem ghand ir-rikorrent, kien gharrafha illi filwaqt illi ma kellu ebda diffikulta dwar dan, huwa ma xtaqx illi l-istess Azzopardi tkanta d-diska illi huwa kien ikkompona peress illi, kif qal hekk "*I do not want Gillian anywhere close or else, I would have to pull the song against my wishes.*"

Ikkunsidrat

Jirrizulta illi l-intimati, fid-difiza taghhom, qajjmu zewgt argumenti principali, ossija dik illi t-talbiet kienu infondati fil-fatt u fid-dritt kif ukoll dik illi l-elementi tal-libel ma' kienu jissusistu peress illi kieneu konversazzjoni privata bejn zewgt persuni fuq il-'*Messenger'* tas-sit socjali Facebook.

Jirrizulta, fil-kaz odjern, illi ghalkemm id-diskursata illi dwarha qieghda tilmenta r-rikorrent saret bejn Mark Calleja Bayliss u Stefan Galea, f'kaz minnhom, u bejn Emil Calleja Bayliss u Dominique Azzopardi f'kaz iehor, tali diskursata kienet tinkludi kummenti u kliem dwar terza persuna, ossija ir-rikorrenti, u ghalhekk l-elementi tal-pubblikazzjoni jirrizultaw ippruvati, a differenza ta' dak illi qed jallegaw l-intimati.

Kif jghid il-**Gately on Law and Libel**:

> *No civil action can be maintained for libel or slander unless the words complained of have been published. "The material part of the cause of action in libel is not the writing, but the publication of the libel." In order to constitute publication, the matter must be published to (communicated to) a third party, that is to say, <u>at least one person other than the claimant</u>. "A cannot sue B for defaming him to A himself, or to B himself; that is to say where B reads to himself his libel on A and then locks it away. A must prove that B defamed him to C." Defamation protects a person's reputation and his reputation is not the good opinion he has of himself but the estimation in which others hold him. A defamatory statement about the claimant communicated to the claimant alone may injure his self-esteem but it cannot injure his reputation. The requirement that there be a publication to a third party is also a requirement of malicious falsehood.*
>
> *…*
>
> *It is not sufficient that the matter has been merely communicated to the third party: it is also necessary that it be communicated in such a manner that <u>it may convey the defematory meaning</u> and that persons acquainted with the claimant could understand it to refer to him."*

Il-fatt illi l-intimati ghaddew kummenti dwar ir-rikorrenti lill-terzi persuni u ghamluha cara li kienu qieghdin jitlkellmu dwar ir-rikorrenti, irrispettivament b'liema mezz huma ghamlu dan, huwa sufficjenti biex ikun hemm il-pubblikazzjoni rikjest mill-Ligi u ghalhekk, a differenza ta' dak allegat mill-intimati, jesistu l-elementi tal-pubblikazzjoni rikjesti mill-Ligi.

Ikkunsidrat

Sorvolata il-kwistjoni dwar il-pubblikazzjoni, il-Qorti issa trid tghaddi biex tara jekk tali pubblikazzjoni, minnha innifisha, tista titqies bhala libelluza u malafamanti fil-konfront tar-rikorrenti.

Il-Qorti, qabel xejn, ma tistax ma' tosservax il-faqar ta' provi illi pprovdiet ir-rikorrenti, illi ghajr ghax-xhieda taghha u tal-assistenta taghha, Debbie Mizzi, esebit kopji fotostatici tad-diskursati li gew fil-pussess taghha u li dwarhom hija qieghda tilmenta, liema kopji huma difficilment legibbli, f'certi okkazjonijet, kif ukoll huwa kwazi impossibbli tivverifika min attwalment baghat il-messagg u lil min.

Dana in-nuqqas, generalment, huwa sufficjenti biex il-kawza tar-rikorrenti ma tirnexxiex, peress illi bl-ebda mod ma hemm indikat jew jidher ness tal-messaggi ma' l-intimati.

Madanakollu, fix-xhieda taghhom, l-intimat ikkonfermaw illi l-messaggi li dwarhom qieghda tilmenta r-rikorrenti kienu attwalment messaggi illi huma kienu baghtu, u ghalhekk il-prova dwar min baghat il-messaggi giet ippruvata, mhux mir-rikorrenti, izda mill-ammissjoni ta' l-intimati waqt ix-xhieda taghhom.

Ikkunsidrat

Jirrizulta, mid-dokumentazzjoni esebita, illi ir-rikorrenti qieghda tilmenta minn zewgt diskursati differenti illi saru: wahda bejn Marc Calleja Bayliss u Stefan Galea u ohra bejn Emil Calleja Bayliss u Dominique Azzopardi.

Dwar id-diskursata bejn Emil Calleja Bayliss u Dominique Azzopardi, (fol 14), imkien ma jidher illi hemm xi allegazzjonijiet malafamanti fil-konfront tar-rikorrenti. Il-fatt illi Emil Calleja Bayliss jghid "*I do not want that woman anywhere close to me. I'm more than done dealing with lots of bullshit, treat and all!*", minnha innifisha ma tistax titqies bhala malafamanti fil-konfront tar-rikorrenti, peress illi hija espressjoni ta' kif l-intimat Emil Calleja Bayliss kien ihossu fil-konfront tar-rikorrenti u ghalhekk, il-Qorti tikkontendi, dina ma tistax titqies bhala malafamanti peress illi hija espressjoni ta' l-opinjoni ta' Emil Calleja Bayliss, illi kellu kull dritt illi jesprimi.

Ikkunsidrat

Mill-banda l-ohra, dwar id-diskursata bejn Mark Calleja Bayliss u Stefan Galea (fol 2 sa 13), ghalkemm tali diskursata tinkludi frazijiet li jirriflettu l-opinjoni ta' Mark Calleja Bayliss tar-rikorrenti, bhal meta jghid "*she has an attitude and character whereas someone does their work well, she tries and makes (sic) him look bad*" kif ukoll "*she took me for grated, called me names, insulted me in front of people*" (fol 11), l-istess diskursata tinkludi wkoll allegazzjonijiet fil-konfront tar-rikorrenti, principalment is-segwenti: "*PBS and EBU ... Had arguments with Gillian over certain issues ... and they blacklisted her. As a result, anyone associate with her is more or less a sitting duck.*" (fol 3)

Waqt il-mori tal-kawza, ir-rikorrenti fix-xhieda taghha cahdet tali allegazzjoni u qalet "*Din hija kollha gidba jigifieri*". (fol 26) Mill-banda l-ohra, l-intimat Mark Calleja Bayliss, apparti li jsemmi okkazzjoni meta ir-rikorrenti kienet qieghda tghallem il-kantanta Federica Falzon u bdiet taghmillha

pressjoni u tghidilha illi jekk ma tmurx tajjeb tkun ser twaqqa isem ir-rikorrenti u isem Malta, ma jressaq ebda provi sabiex jikkorrobora l-allegazzjoni tieghu li dina l-attitudni tar-rikorrenti kienet urtat rappresentanti tal-PBS u tal-EBU waqt laqghat illi kien ikollhom tant illi giet "*blacklisted*" kif jallega hu.

Di fatti, l-intimat Mark Calleja Bayliss jishaq illi, minhabba fl-agir tar-rikorrenti, "*jiena (li) kont nahdem bhala publicist ghal kantanta kont ikolli in a way nirranga s-sitwazzjoni u nghid li din hija t-tip ta' relazzjoni li ghandhom l-kantanta u l-vocal coach taghha u ovvjament trid timxi b'dan il-mod.*"

Madanakollu, huwa ma jressaq ebda tip ta' prova in sostenn ta' tali fatti kif minnu allegati u wisq anqas ma jressaq ebda tip ta' prova illi turi li l-PBS u/jew l-EBU kienu tefghu lir-rikorrenti fuq "*blacklist*", kif huwa qal lill Stefan Galea.

Kien sta ghall-intimat illi jipprova tali fatti izda, quddiem dina l-Qorti, ghajr ghax xhieda tieghu u ta' huh, Emil Calleja Bayliss, ma ressaq ebda provi ohra in sostenn ta' tali allegazzjoni, liema allegazzjoni certament kienet intiza sabiex taghmel hsara mhux gid lir-reputazzjoni tar-rikorrenti.

Huwa seta facilment itella xi rappresentant tal-PBS u/jew tal-EBU sabiex jikkonferma tali fatti kif ukoll itella xi kantanti jew rappresentanti taghhom sabiex jixhdu dwar l-attitudini tar-rikorrent lejn l-istess kantanti, izda dana ma ghamlux.

Ladarba ma rnexxilux jipprova dak minnu allegat, ghalhekk il-frazi u l-allegazzjonijiet minnu maghmulha ghandhom jitqiesu bhala libelluzi w malafamanti fil-konfront tar-rikorrenti Gillian Camenzuli Kerr.

Ikkunsidrat

Tenut kont ta' dawna l-konsiderazzjonijiet, il-Qorti tghaddi biex taghmel l-ahhar osservazzjoni taghha.

Jirrizulta illi d-diskors illi dwaru qieghda tilmenta ir-rikorrenti kien diskors bejn zewgt persuni, liema diskors kellu jkun privat li ma kienx ghal fatt illi Stefan Galea ghazel illi jxandar dak li qallu l-intimat Mark Calleja Bayliss u jghid kollox lir-rikorrenti Gillian Camenzuli Kerr.

Jirrizulta, ghalhekk, illi d-dannu illi seta gie rekat fil-kaz odjern kien wiehed limitat hafna, stante illi indirizzat lill persuna wahda biss, ghalkemm dannu xorta wahda sar. Dana ghalhekk ser ikun rifless fid-danni li dina l-Qorti ser tghaddi biex taghti.

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi semghet it-trattazzjoni ta' l-abbli difensur ta' l-intimati,

Tghaddi biex taqta' u tiddeciedi l-kaz billi,

Tilqa l-eccezzjonijiet ta' l-intimat Emil Callejja Bayliss u ghalhekk tiddikjara illi l-kummenti illi ghamel hu ma kienux libelluzi w malafanati fil-konfront tar-rikorrenti, u

Tichad l-eccezzjonijiet ta' l-intimat Mark Calleja Bayliss u tiddikjara illi l-kummenti illi ghamel hu fil-konfront tar-rikorrenti ma' terzi, ossija illi hija kienet "blacklisted" mal-PBS u l-EBU, kienu libelluzi w malafamanti fil-konfront tar-rikorrenti, u ghalhekk,

A tenur tal-Artikolu 28 tal-Kap 248 tal-Ligijiet ta' Malta,

Tillikwida d-danni sofferti mir-rikorrent fis-somma ta' hames mitt Euro (€500) u

Tikkundanna lill intimat Mark Calleja Bayliss ihallas lir-rikorrenti Gillian Camenzuli Kerr is-somma ta' hames mitt Euro (€500), bhala danni a tenur tal-Artikolu 28 tal-Kap 248.

Spejjez kollha tal-proceduri odjerni u **Imghax** kalkolabbli millum sad-data tal-pagament effettiv ikun a kariku ta' l-intimat Mark Calleja Bayliss.

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur