MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO

ONOR. IMHALLEF
ANTON DEPASQUALE

ONOR. IMHALLEF
ALBERT J. MAGRI

Seduta tal-25 ta' Frar, 2005

Appell Civili Numru. 316/1998/1

Norman Hamilton f'ismu proprio u kif ukoll ghan-nom tas-socjeta` kummercjali Hamilton Travel Co. Ltd.

v.

Michael Falzon (Perit) f'ismu personali qua Editur tal-gazzetta "The People"

Il-Qorti:

Dan hu appell minn sentenza tal-Prim Awla tal-Qorti Civili moghtija fil-10 ta' Ottubru, 2001 li permezz taghha il-konvenut gie misjub responsabbli ta' malafama permezz ta' stampat fil-konfront tal-atturi, u gie kkundannat ihallas lill-istess atturi is-somma ta' Lm700, kif ukoll l-ispejjez tal-kawza.

L-istampat li minnu lmentaw l-atturi kien deher fl-ewwel faccata tal-gazzetta "The People" tal-11 ta' Frar, 1998. F'kaxxa rettangolari in-naha t'isfel tal-imsemmija faccata ta' quddiem ta' din il-gazzetta, hdejn ritratt ta' Chiara Siracusa, u taht l-intestatura ***"Not a question of chiaro scuro!"*** inkiteb hekk:

"Many people have been asking who actually is Chiara – the winner of this year's Song for Europe Contest. For many things were not so clear and Chiara was an unknown quantity. The chubby young girl with the beautiful classic voice who rocketed to fame with her song 'The One That I Love' and will be representing Malta at the Eurovision Song Festival in Birmingham later this year is actually Chiara Siracusa from Cospicua. **The People** ***can also reveal that, through an interesting coincidence, Chiara's father, Maurice Siracusa is a tour leader for Hamilton Tours, owned by Norman Hamilton, the Chairman of the organising committee of the Song for Europe Festival. Chiara will however be representing Malta – not Hamilton Tours – at the Eurovision song festival."***

L-unika eccezzjoni moghtija mill-konvenut fin-nota ta' eccezzjonijiet tieghu tat-3 ta' Dicembru, 1998 kienet *"Illi mkien, fl-istampat ezibit mill-attur, ma hemm xi haga li tista' titqies bhala malafamanti fil-konfront ta' l-attur."* It-tieni "eccezzjoni" li ssegwi, u cioe` *"Illi ghaldaqstant jirrespingi t-talba ghad-danni avvanzata mill-attur bhala infondata"*, hija biss konsegwenza logika tal-eccezzjoni proprija, u cioe` l-eccezzjoni li dak li nkiteb u gie stampat ma kien b'ebda mod malafamanti.

L-atturi talbu lill-Prim Awla *"(1) tiddikjara li l-kitba stampata giet ippublikata unikament biex l-attur Norman Hamilton u*

s-socjeta` minnu rappresentata jigu ingurjati u malafamati u di piu` jigu esposti ghar-redikolu jew disprezz tal-pubbliku u li jigi offiz l-unur u l-fama taghhom….,u (2) sussegwentement ai termini ta' l-artikolu 28 tal-Ligi ta' l-Istampa (Kap. 248) [l-attur] jigi kkundannat ihallas lil kull wiehed mill-atturi somma li tigi determinata minn din il-Qorti."

L-ewwel Qorti ddecidiet hekk: *"Ghal dawn il-motivi tiddecidi billi tilqa' t-talbiet attrici u tikkundanna lill-konvenut ihallas lill-atturi is-somma ta' seba' mitt lira Maltin (Lm700) bhala danni ghall-malafama bl-applikazzjoni ta' l-art. 28 tal-Kap. 248."*, u dan wara li dik il-Qorti kkunsidrat is-segwenti:

"L-attur qed joggezzjona ghall-artikolu billi qed jissottometti li min kiteb l-artikolu kitbu b'mod sarkastiku u malinn u abbina l-fatt li missier Chiara gieli hadem ghall kumpanija tieghu mar-rebha tal-kompetizzjoni nazzjonali tal-kanzunetta ghall-Ewropa. Skond l-attur dan kien evidenti mill-mod kif giet ippostulata l-implikazzjoni deskritta bhala koincidenza u *di piu'* bil-prominenza li nghatat fl-ewwel pagna tal-gazzetta. Il-kittieb ipprova jimplika xi xorta ta' favoritizmu favur Chaira u kien ovvju li dina nkitbet biex tqanqal suspett. Anke fit-titolu uzat Chiaro Scuro hemm implikat li fil-process kien hemm xi haga oskura jigifieri l-awtur ipprova jitfa' dell ikrah fuqu. L-attur cahad li hu pprova b'xi mod jindahal jew jinfluwenza lill-gurija. Fil-fatt Chiara wara kienet gabet rizultat tajjeb u kwazi rebhet il-European Song Festival.

Minn naha l-ohra l-konvenut qed jissottometti li hu fatt li missier Chiara kien *tour leader* ma Hamilton Tours. Il-fatti fl-artikolu huma kollha vera u l-kummenti huma liberi u l-kummenti li ghamel kienu *tongue in cheek*. Bit-titolu Chiaro Scuro ried ighid li xi hadd li jkun *relatively unknown* johrog fli-*spotlight* ghalhekk johrog mill-iskur ghac-car. B'kumbinazzjoni kien jisimha Chiara u kien hemm *play with words*. Hu ma kellu ebda intenzjoni li jimputa xi kunflitt ta' interess da parti ta' l-attur u lanqas ma ried jaghti xi

imbekkata. Hu ma kellu ebda intenzjoni li jimmalafama lill-attur. Il-kitba kienet *gossip* interessanti u ma ried jimputat ebda *innuendo*.

Tikkunsidra

F'materja ta' libell mhux dak li seta' talvolta kellu f'rasu min kiteb l-artikolu li jghodd, imma dak li fil-fatt kiteb, ghax dak jaqra l-qarrej (vol 27 p 4 p 1206 A.K. Mintoff vs Hedley 28/11/1953).

The question is not what the defendant intended, but what reasonable men, knowing the circumstances in which the words were published, would understand to be the meaning.

Fl-artikolu hemm kontraposizzjoni rizaltata bejn zewg fatturi: wiehed li Chiara, li kienet *an unknown quantity* rebhet is-Song for Europe Contest u l-iehor li missier Chiara huwa *tour leader* ma Hamilton Tours, li hi *owned* minn Norman Hamilton, Chairman tal-organising committee tas-Song for Europe Contest.

Meta wiehed jipprocedi biex jirrispondi ghad-domanda solita f'kazijiet ta' libell, cioe', *How where the words understood by those to whom they were originally published*? *What meaning did the whole passage convey to an unbiased mind*? (Odgers fol. 93), ir-risposta ovvja ghandha tkun li l-qarrej ordinarju jkun fehem li Chiara rebhet is-*song contest* ghax missierha kien *tour leader* ma' Hamilton Tours, u Norman Hamilton kien fil-kumitat organizzattiv.

L-artikolu mhux qed jirrisalta sempliciment il-fatt li Chiara ma kienitx maghrufa u f'daqqa harget mill-iskur ghad-dawl (chiaro), kif qed isostni l-konvenut, kieku ma kienux ser ippoguha b'tant prominenza fl-ewwel pagna. Imma kien hemm aktar minn hekk fl-artikolu. Kien hemm car u tond insinwazzjoni li hi rebhet il-festival ghax missierha kien *tour leader* ma' Hamiton Tours li tappartjeni lill Norman Hamilton li kien Chairman tal-*organising committee of the Song*

***for Europe Festival*. Kieku l-intenzjoni tal-konvenut kienet biss biex juri li Chiara kienet *an unknown quantity* ma kienx hemm bzonn li jdahhal il-konessjoni u koincidenza interessanti ta' Maurice Siracusa ma' Norman Hamiton.**

Il-konvenut issottometta li l-artikolu nkiteb b'*tongue in cheek* cioe' *a remark made as a joke and is not serious or sincere*. Fil-kaz in ezami kien hemm aktar minn *joke*. Kif ighid l-awtur Gatley:

'*The principle is clear, that a person shall not be allowed to murder another's reputation in jest. But if words be so spoken that it is obvious to every bystander that only a jest is meant, no injury is done, and consequently no action would lie. The whole question is, whether the jocularity was in the mind of the defendant alone or was shared by the bystanders'* Gatley on Libel and Slander - page 138.

Issa l-Qorti diga indikat aktar il-fuq x'jifhem qarrej ordinarju meta jaqra l-artikolu nkriminat.

Proprjament l-eccezzjoni tal-konvenut hi fis-sens li illi mkien fl-istampat ezibit mill-attur ma hemm xi haga li tista' titqies bhala malafamanti fil-konfront ta' l-attur. Izda fil-fatt dan mhux hekk, kif gja rajna ghax fl-artikolu hemm implikat li fil-process tal-ghazla, li fiha qed jghidu li kien involut l-attur, kien hemm xi haga oskura, cioe' li mhiex sewwa."

Minn din is-sentenza appella l-konvenut. Huwa ghandu erba' aggravji. L-ewwel zewg aggravji huma, bazikament, fis-sens li dak li nkiteb ma kienx malafamanti fil-konfront tal-atturi (appellati odjerni). Skond l-appellant, fl-artikolu in kwistjoni ma hemm ebda insinwazzjoni li kien hemm xi haga rregolari jew oskura fil-process ta' ghazla tar-rebbieha tas-*Song for Europe Contest* tal-1998, u li dak li nkiteb kien "fair comment" fuq "fatti li gew kollha verifikati u li rrizultaw veritjeri ghall-ahhar". Din il-Qorti difficilment tista' timmagina aggravju aktar fieragh minn dan. L-artikolu in kwistjoni kjarament jinsinwa – u l-qarrej

ordinarju dotat b'intelligenza ordinarja hekk biss seta' jifhmu – li l-kantanta in kwistjoni rebhet il-*Contest* tal-1998 minhabba li missierha kien *tour leader* ma' Hamilton Tours, socjeta` li tappartjeni lill-appellat l-iehor Norman Hamilton, u ghalhekk minhabba xi forma ta' irregolarita`; tant li l-artikolista bhal speci jwissi li, minkejja dan, il-kantanta *"…will however be representing Malta – not Hamilton Tourts – at the Eurovison Song Festival."* Ma kien hemm xejn "fair" f'tali insinwazzjoni, insinwazzjoni li kienet malafamanti kemm fil-konfront ta' l-appellati kif ukoll fil-konfront tal-kantanta in kwistjoni. L-insinwazzjoni ma kienitx kumment, izda mod indirett u subdolu kif wiehed ipoggi quddiem il-qarrejja xi haga bhala "fatt". Kif intqal in tema ta' libell:

"Words are normally construed in their natural and ordinary meaning, i.e. in the meaning in which reasonable men of ordinary intelligence, with the ordinary man's general knowledge and experience of wordly affairs, would be likely to understand them. The natural and ordinary meaning may also *'include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words.'* The words are not to be construed in a milder sense *(mitiori sensu)* merely because they are capable on some forced construction of being interpreted in an innocent way…Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief and a murderer. <u>But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning</u>." [1] (sottolinear ta' din il-Qorti).

Dana l-aggravju – jew zewg aggravji li bazikament jghidu l-istess haga fi kliem differenti – huwa ghalhekk infondat.

[1] **Gatley on Libel and Slander**, Sweet & Maxwell (London), 1981 (8th. ed.), paras. 93, 97, pp. 48, 51-52.

Fit-tielet aggravju tieghu l-appellant, filwaqt li jirreferi ghall-Artikolu 41 tal-Kostituzzjoni li jipprotegi l-liberta` ta' l-espressjoni ta' dak li jkun, jghid li bl-istampat in dizamina huwa *"…adopera ukoll il-liberta` ta' espressjoni parti tal-gurnalizmu u dan permezz ta' 'fair comment' fuq kwistjoni ta' interess pubbliku."* Apparti li, kif diga nghad, ma kien hemm ebda "fair comment" izda tqieghdet quddiem il-qarrejja bhala fatt allegazzjoni ta' agir hazin fil-konfront tal-appellati (specjalment fil-konfront ta' l-appellat Norman Hamilton), l-appellant donnu nesa li l-liberta` tal-espressjoni ma taghti ebda *carte blanche* li dak li jkun jimmalafama lil haddiehor – ara Artikolu 41(2)(a)(ii) tal-Kostituzzjoni u l-Artikolu 10(2) tal-konvenzjoni Ewropea. Dana l-aggravju, ghalhekk, huwa wkoll wiehed fieragh.

Fl-ahharnett, l-appellant jilmenta mill-*quantum* tad-danni likwidati. Pero` kif tajjeb josservaw l-appellati fir-risposta taghhom, fiz-zmien tal-pubblikazzjoni *de quo* il-ligi kienet diga inbidlet b'mod li l-massimu tad-danni morali li setghu jinghataw zdied minn elfejn lira ghal hamest elef lira[2]. Fic-cirkostanzi tal-kaz, din il-Qorti ma tara assolutament xejn eccessiv fid-danni kif likwidati mill-ewwel Qorti. Ghalhekk dana l-aggravju qed jigi wkoll respint.

Ghall-motivi premessi, tichad l-appell u tikkonferma s-sentenza appellata, bl-ispejjez kontra l-appellant. U peress li dana l-appell huwa wkoll wiehed fieragh u vessatorju fis-sens tas-subartikolu (4) tal-Artikolu 223 tal-Kap. 12, tikkundanna lill-appellant ihallas lill-appellati l-ispejjez ghal darbtejn.

< Sentenza Finali >

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[2] Ara l-Artikolu 15 tal-Att X tal-1996.