FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn, tmintax (18) ta' Jannar 2016

Rikors Numru 507/10 FDP

Dominic Grima
(ID 388371M)

vs

Louiselle Vassallo
(ID 22572M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fid-29 ta' Novembru 2010 fejn ir-rikorrent talab lill-Qorti tikkundanna lill-intimata, bhala editur ta' l-istazzjoni televisiv NET TV, thallsu ghad-danni u malafama li sofra meta, fil-bullettin ta' l-ahbarjiet ta' NET TV ta' nhar it-Tlieta, 9 ta' Novembru 2010, gew imxandra allegazzjonijet malafamanti fejn gie allegat illi r-rikorrenti, li huwa Sindku ta' Rahal Gdid, hu membru ta' sit pornografiku li permezz tieghu membri jistghu jiltaqghu ma' rgiel ohra, liema xandira saret bil-ghan illi ttellef ir-reputazjoni tieghu u bil-hsieb preciz illi taghmilu hsara anke fil-qadi ta' dmirijietu bhala Sindku ta' Rahal Gdid.

Ra l-eccezzjonijiet ta' l-intimata ippresentati fl-14 ta' Dicembru 2011 fejn laqa' ghal dak lilha intimat billi sahqet illi l-pubblikazzjoni ma kienetx malafamanti u ghalhekk ma kienetx libelluza filwaqt illi sahqet illi l-publikazzjoni tammonta ghall *fair comment* bbazata fuq fatti sostanzjalment korretti dwar persuna fil-hajja pubblika.

Sema x-xhieda tar-rikorrent **Dominic Grima** in ezami u kontro ezami moghtija fil-21 ta' Mejju 2012 kif ukoll ra it-traskrizzjoni tal-bullettin meritu tal-kawza odjerna esebita mill-istess rikorrent a fol 17.

Sema x-xhieda ta' **Kevin Borg**, Segretarju Ezekutiv tal-Kunsill Lokali ta' Rahal Gdid, moghtija fis 17 ta' Settembru 2012.

Sema x-xhieda ta' **Dominic Grima** moghtija fil-15 ta' Frar 2013 fejn esebixxa d-DVD bil-filmat tal-ahbar meritu tal-kawza odjerna.

Sema x-xhieda ta’ **Louiselle Vassallo**, prodott mir-rikorrenti u moghtija fis 26 ta’ April 2013 u fit 22 ta’ Novembru 2013 u ra it-*transcript* tan-*news item* minnha esebita.

Ra illi fis-17 ta’ Novembru 2014, Kevin Borg deher biex jesebixxi dokument, ossija l-email illi abbazi taghha saret l-ahbar illi hija meritu tal-kawza odjerna, liema dokument kien obbligu ruhu illi jippresenta sentejn qabel.

Ra illi fis 26 ta’ Jannar 2015 ir-rikorrent iddikjara illi ma kellu ebda provi ohra x’jippresenta.

Sema x-xhieda ta' **Kenneth Xuereb** moghtija fis 27 ta’ April 2015, li kien il-gurnalist responsabbli tan-*newsroom* meta giet ippubblikata l-ahbar meritu tal-kawza odjerna u ra id-dokumentazzjoni minnu esebita.

Sema il-kontro ezami ta’ Kenneth Xuereb moghtija fit 18 ta’ Gunju 2015.

Ra illi fit-18 ta’ Gunju 2015 il-partijiet iddikjaraw illi ma kellhomx aktar provi x’jippresentaw u ghalhekk il-kawza thalliet ghas-sottomissjonijiet finali.

Ra is-sottomissjonijet ta’ l-intimata ippresentati fl-14 ta’ Settembru 2015.

Ra is-sottomissjonijiet tar-rikorrent ippresentati fit 28 ta’ Settembru 2015.

Ra illi fil 5 ta’ Ottubru 2015 il-kawza thalliet ghas-sentenza.

Ikkunsidrat

Il-fatti tal-kaz huma, fil-qosor, is-segwenti:

Jirrizulta illi r-rikorrent kien sindku tal-Kunsill Lokali ta’ Rahal Gdid, u dana bejn Marzu 2007 sa Marzu 2012.

Jirrizulta illi fl-10 ta’ Novembru 2010, kienet skedata laqgha tal-Kunsill Lokali li kellha tigi ppresjeduta mir-rikorrent, bhala Sindku tal-Kunsill Lokali.

Jirrizulta illi fit-8 ta’ Novembru 2010, fit-20.32 ta’ filghaxija, r-rikorrenti baghat email lill kunsulliera fejn gharrafhom illi, peress illi ma kienx jiflah ghax, kif stqarr l-istess rikorrent, “*telghatli cesta taht halqi u miguh hafna*”, huwa xtaq illi l-laqgha tigi posposta ghal data ohra u talab il-ko-operazzjoni taghhom biex tinstab data alternattiva.

Jirrizulta illi dina l-email intbghatet lill diversi email addresses, fosthom l-email address team@outpersonals.com.

Jirrizulta illi l-ghada, 9 ta’ Novembru 2010, fit-8.04 ta’ filghodu, is-Segretarju Ezekuttiv tal-Kunsill Lokali, Kevin Borg, kiteb lir-rikorrent fejn gharrfu Illi l-email intbghatet lill email address team@outpersonals.com, fejn dana qallu s-segwenti:

> *Sur Sindku, l-ewwel net nigbidlek l-attenzjoni li qieghed tibghat il korrispondenza lill xi terzi persuni bl-email Address huwa team@outpersonals.com u qieghed ma tibghatx lill Kunsullier il-gdid Mark Ferris.*

Jirrizulta illi l-istess Borg kompla biex gharraf lir-rikorrent dwar il-procedura illi kellu jadopera f'kaz illi kellha tigi posposta l-laqgha.

Jirrizulta illi dakinhar stess, fid-9 ta'Novembru 2010, fl-ahbarjiet tas-19.45pm illi dehru fuq in-NET TV, giet imxandra l-ahbar illi r-rikorrent kien baghat email lill-kunsilliera tal-Kunsill Lokali ta' Rahal Gdid u kien inkluda fl-emails dik tas-sit 'outpersonals' illi, kif ddeskriviha l-awtur ta' l-ahbar, "*huwa sit pornografiku li permezz tieghu membri jistghu jiltaqghu ma' rgiel ohrajn*".

Jirrizulta illi r-rikorrent, illi gie mgharraf bl-ahbar mill-familjari tieghu, hassu malafamat b'dak hemm deskritt, partikolarment bil-fatt illi gie indikat li "*hu membru f'sit pornografiku*", u ghalhekk nieda l-kawza odjerna.

Ikkunsidrat

Ikun opportun, ghall-ahjar intendiment tal-kawza, illi jigi rappurtat, in intjier, dak illi ntqal fl-ahbarjiet illi dwarhom ir-rikorrent ihossu malafamat, u dana kif jidher kemm mit-traskrizzjoni esebit mir-rikorrent (fol 17) kif ukoll dik esebita mill-intimata stess (fol 46). Dana gie rapport kif gej:

> *"U sa nitkellmu issa dwar aktar inkwiet f'Kunsilli Laburisti, Minn informazzjoni li ghandu dan l-istazzjoni, jirrizulta li s-Sindku ta' Rahal Gdid, Dominic Grima, hu membru f'sit pornografiku li permezz tieghu membri jistghu jiltaqghu ma' rgiel ohra. Dan hareg b'korrispondenza illi Grima baghat lill-Kunsillieri ohrajn u li inkuda, fost id-destinatarji, l-email ta' dan is-sit.*
>
> *Dettalji*
>
> *Iktar inkwiet fil-Kunsilli Laburisti, din id-darba fil-Kunsill Lokali ta' Rahal Gdid, precizament b'rabta mas-Sindku Dominic Grima. Minn informazzjoni li ghandu dan l-istazzjoni, jirrizulta li Dominic Grima baghat email lil Kunsulliera l-ohra biex laqgha li kellha ssir nhar it-Tlieta, tkun posposta ghall-Erbgha minhabba li kien mughguh b'cesta f'halqu izda, fost id-destinatarji ta' din l-email ta' Sindku Grima, kien hemm l-indirizz tas-sit 'Outpersonals'. Mit-tfittxija ghall-indirizz ta' dan is-sit jirrizulta li dan huwa sit pornografiku li wiehed jista jidhol ghalih biss jekk inkun abbonat bhala membru. Aghar minn hekk, dan is-sit pornografiku joffri l-possibbilta' li jlaqqa membri tieghu ghal-laqghat ghal skopjijet ta' sess ma' membri ohra, inkluz Malta. Ghadu mhux maghruf jekk il-Partit Laburista huwiex ser jiehu azzjoni dixxiplinarja fil-konfront tas-Sindku ta' Rahal Gdid li jidher li hu abbonat f'sit li jlaqqa' membri ma' rgiel ohrajn ghall skopjijet tas-sess."*

Ikkunsidrat

Jirrizulta ammess mir-rikorrent stess fix-xhieda tieghu illi fl-email illi huwa kien baghat lill-kunsilliera l-ohra fit-8 ta' Novembru 2010, huwa kien erronjament inkluda wkoll email tas-sit 'www.outpersonals.com', u aktar precizament l-email address 'team@outpersonals.com'.

Jirrizulta illi s-sit 'www.outpersonals.com' huwa sit illi jippromwuovi ruhu bhala sit fejn "*Meet Gay Men for Sex Dates*".

Jirrizulta illi l-istess sit jispjega l-utilita' ta' tali sit fil-kliem kif gej:

> *"Out Personals is the premier gay dating site for men to find other sexy men for dates. Whether you want a long term relationship or casual hookups. Out Personals is the day dating site for you. This dating site helps you find gay, bisexual and straight men seeking other me. We have everything you need on this site to find hot hay guys for sex. There are search tools, member profiles, 1 on 1 chat, blogs, a magazine, group chat and more."*

Ghalkemm ir-rikorrent jikkontesta l-fatt illi huwa ma huwiex membru tas-sit fuq imsemmi u jishaq illi huwa ma ghandu ebda idea kif dana l-indirizz dahal fil-kuntatti tieghu, huwa jikkonferma illi l-email huwa kien baghtha minn fuq il-laptop personali tieghu.

Ir-rikorrent jinsisti illi l-email address dahal fil-computer tieghu bhala '*spam'*, madanakollu huwa kemmxejn inverosimili illi tali indirizz dahal fil-kuntatti tas-sistema tal-computer personali tieghu minghajr xi tip ta' involviment da parte ta' l-operatur ta' l-istess computer, jigifieri tar-rikorrent stess.

Ikkunsidrat

Id-difiza mressqa mill-intimata hija, principalment, dik ta' '*fair comment*', stante illi sahqet illi l-pubblikazzjoni hija bbazata fuq fatti sostanzjalment korretti fuq persuna involuta fil-hajja pubblika.

Dwar il-livel ta' kritika li politiku tista ssirlu, kif gie stabbilit fid-decizjoni tal-European Court of Human Rights fis-sentenza **Ligens vs Austria**, u abbracjata mill-Qorti Maltin, intqal illi:-

> *Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.*
>
> *The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.*

Minn naha l-ohra, dwar id-difiza ta' 'fair comment', kif jinghad f'**Gatley on Libel and Slande**r :

> *To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.*

Huwa fatt illi d-difiza tal-"*fair comment*" kienet kkreata principalment sabiex tissalvagwardja dritt li hu importanti daqs dak li individwu jipprotegi r-reputazzjoni tajba tieghu, u cioe` id-dritt tal-espressjoni hielsa.

Kif inghad minn Lord Justice Scott fil- kawza **Lyon v. Daily Telegraph**:

> *The right of fair comment is one of the fundamental rights of free speech and writing which are so dear to the British nation, and it is of vital importance to the rule of law on which we depend for our personal freedom.*

Ikkunsidrat

Mill-fatti kif ippresentati quddiem dina l-Qorti, jidher illi sostanzjalment il-fatti kif esposti fin-*news item* meritu tal-kawza odjerna kienu korretti stante illi huwa minnu illi r-rikorrent baghat email illi fiha kienet hemm l-email address '*team@outpersonals.com'* u huwa minnu wkoll illi dana is-sit huwa intiz sabiex irgiel jiltaqghu ma irgiel ohra sabiex, fost diversi affarjiet ohra, ikunu jistghu jaghmlu sess flimkien.

Ghalkemm mill-provi prodotti ma ingabux provi effettivi biex juru illi attwalment ir-rikorrent kien membru tas-sit, il-Qorti tifhem illi huwa impossibbli ghal-gurnalist illi jaghmel tali verifika stante illi biex taghmel tali verifiki trid tissieheb mas-sit www.outpersonals.com inniffsu u, anke kieku ghamel hekk, mhux necessarjament ikun jista jinstab ir-rikorrent bhala membru stante illi huwa facili illi wiehed jaghti dettalji foloz f'tali siti socjali. Il-Qorti tifhem ukoll illi l-fatti kollha kif esposti mill-intimata u kkonfermati, in parte, mir-rikorrent stess, jaghtu aktar x'jifhem illi jista jkun li r-rikorrent kellu xi tip ta' konnessjoni mas-sit www.outpersonals.com milli ma jaf xejn dwar is-sit fuq imsemmi.

Il-Qorti tosserva ill huwa fatt maghruf illi biex jintbghatu emails allegatament '*spam*' lill indirizz elettroniku, huwa mehtieg illi tali indirizz elettroniku, b'xi mod, accessa ghas-sit minn fejn tali emails allegatament '*spam*' intbghatu, u ghalhekk il-fatt li r-rikorrent allegatament ircieva spam mill-indirizz elettroniku fuq indikat huwa indikazzjoni sufficjenti biex turi li attwalment r-rikorrent kien acceda ghas-sit www.outpersonals.com wara illi rregistra ma' tali sit elettroniku u halla d-dettalji ta' l-email elettroniku tieghu ma' dana s-sit.

Finalment, il-Qorti ma tistax ma tosservax illi persuna illi hija involuta fil-hajja pubblika, aktar u aktar persuna politika illi hija eletta sabiex tirrappresenta lic-cittadin, ghandha toqghod ferm aktar attenta ghal kull azzjoni illi taghmel, stante illi hija soggetta ghall-gudizzju tac-cittadin illi ghandu kull dritt illi jkun mgharraf bl-azzjonijiet ta' tali persuni, liema azzjonijet jistghu, b'xi mod, jikkondizzjonaw l-immagini illi tali persuna ghandu mac-cittadin in generali.

Il-Qorti, ghalhekk, tikkonkludi illi l-gurnalista illi ppubblika l-istorja kellu obbligu illi jinforma lic-cittadin b'tali storja u l-fatti kif esposti ma humiex malafamanti stante illi jirriflettu l-fatti kif kienu u kif gew ippruvati quddiem dina l-Qorti.

Konkluzjoni

Wara illi Rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa l-eccezzjonijiet kollha ta' l-intimata,

Tichad it-talbiet attrici.

Spejjez tal-proceduri odjerni ikunu kollha a kariku tar-rikorrenti.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur