Fil-Prim Awla tal-Qorti Civili

Onorevoli Imhallef Albert J. Magri B.A., LL.D.

Seduta ta' nhar il-Erbgha 30 ta' Jannar 2002

Citazzjoni numru 519/99 AJM

Kawza numru

Gordon Debono

Vs

Carmel sive Charles Demicoli bhala editur tal-Gazzetta "The People on Sunday"

Il-Qorti,

Rat ic-citazzjoni presentata fl-1 ta' Marzu 1999 li permezz taghha l-attur wara li ppremetta illi l-konvenut huwa l-editur tal-gazzetta "The People on Sunday" u ghaldaqstant huwa wkoll responsabbli ghall-artikolu intestat "Mag Company Director Guilty of Fraud" li gie ppubblikat fi pagna tlieta tal-harga tal-21 ta' Frar 1999 ta'l-imsemmija gazzetta; illi l-imsemmi artikolu jallega lil l-attur tressaq fuq proceduri kriminali u gie misjub hati ta' frodi, liema allegazzjoni hija ghal kollox inveritjera; illi l-imsemmi artikolu jallega ukoll li l-attur tressaq ukoll inter alia b'konnessjoni ma'negozju ghall-valur ta' eleuf ta' liri ma' bank

principali, liema allegazzjoni hija wkoll inveritjera; illi l-imsemmi artikolu inghata riljev kbir mill-konvenut fl-imsemmija harga tal-gazzetta, fejn sahansitra l-intestat ta' l-artikolu gie riprodott bi prominenza fl-ewwel pagna ta' l-istess gazzetta; illi ghalhekk l-imsemmi artikolu attribwixxa fatti determinati fil-konfront ta' l-attur li huma nveritjeri u li ghandhom li skop li joffendu l-unur u l-fama tieghu u li jesponuh ghar-ridikolu jew ghad-disprezz tal-pubbliku; illi dawn l-allegazzjoni huma rezi aktar gravi bil-fatt li l-konvenut huwa kompetitur dirett, fl-istess generu ta' negozju, tal-attur; illi l-attur hassu ingurjat u offiz u ghalhekk ghandu d-dritt ghad-danni kontemplati fl-artikolu 28 tal-Ligi ta' l-istampa (Kap 248 tal-Ligijiet ta' Malta); talab li din il-Qorti:-

1. tiddikjara lill-konvenut responsabbli ghall-artikolu intestat "Mag Company Director Guilty of Fraud", ippubblikat f'pagna tlieta tal-harga tal-21 ta' Frar 1999 ta' The People on Sunday";
2. tiddikjara lill-konvenut responsabbli ta' malafama u libell fil-konfront ta' l-attur minhabba li l-artikolu fuq imsemmi huwa libelluz u malafamanti fil-konfront tieghu u li jesponieh ghad-disprezz u ghar-ridikolu tal-pubbliku;
3. tillikwida s-somma dovuta lill-attur ai termini ta' l-artikolu 28 tal-Ligi ta' l-istampa minhabba l-istess malafama;
4. tikkundanna lill-konvenut ihallas is-somma hekk likwidata.

Bl-ispejjes kontra l-konvenut li hu minn issa ngunt ghas-subizzjoni u b'riserva ghal kull azzjoni fil-ligi.

Rat id-dikjarazzjoni, l-lista tax-xiehda u d-dokument ezebit mill-attur.

Rat in-nota tal-konvenut presentata fit-2 ta' Frar 2000 li permezz taghha eccepixxa:-

1. In-nullita' tan-notifika stante illi l-eccipjent gie notifikat biss bil-mozjoni tar-riappuntament u qatt ma gie notofikat bic-citazzjoni promotrici.
2. Illi t-talbiet attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu respinti bl-ispejjes kollha kontra l-attur stante illi l-eccipjent ma ta' ebda malafama lill-istess attur.
3. Illi l-affti attribwiti lill-attur fl-artikolu de quo huma veritjeri kif se jirrizulta waqt it-trattazzjoni tal-kawza.
4. Illi oltre dan il-kontenut tal-artikolu de quo ghal fair comment (sic) billi bbazat fuq fatti sostanzjalment veri.

Rat id-dikjarazzjoni w l-lista tax-xiehda tal-konvenut.

Rat il-verbal ta'l-udjenza tal-15 ta' Frar 2000 quddiem din il-Qorti diversament preseduta meta l-kawza giet mibghuta quddiem din il-Qorti ghas-seduta tat-12 ta' April 2000 sabiex tigi trattata u deciza.

Hadet konjizzjoni tal-provi prodotti u d-dokumenti ezebiti.

Ittrattat il-kawza.

Ikkunsidrat:-

Qabel xejn ghandu jigi rilevat li l-konvenut ma ressaq ebda provi u illimita ruhu li jaghmel kontro ezami tal-attur u dana ghalkemm inghata l-possibbilita' li jipproduci l-provi tieghu. F'din il-kawza xhed biss l-attur

li illimita ruhu li jichad dak li hemm fl-artikolu in kwistjoni oltre li ressaq, ghal ragunijiet ovvju ufficjal tal-korp tal-Pulizija li ezebixxa kopja tal-fedina penali tieghu.

L-artikolu li minnu qed jilmenta l-attur gie stampat fil-harga tal-21 ta' Frar 2001 tal-gazzetta The People on Sunday li taghha qed jigi allegat li l-konvenut huwa jew kien l-editur. Ma ingiebet ebda prova dwar min kien editur tal-imsemmija gazzetta fid-data imsemmija izda ma jirrizultax li dan il-fatt huwa kontestat mill-istess konvenut billi fl-eccezzjonijiet tieghu ma qal xejn fir-rigward.

Apparti l-eccezzjoni ta' natura procedurali dwar in-nullita' tan-notifika li llum ma ghandha ebda validita' ohra stante li l-istess eccezzjonijiet fil-mertu pprezentati mill-konvenut jissanaw l-kwistjoni ta' xi difett fin-notifika, il-konvenut qed jissottometti li huwa ma ta' ebda malafama, li l-fatti imsemmija huma veritjeri u li dak li jinghad ghandu jigi kunsidrat bhala "fair comment".

Jkun utili ghalhekk li jigi prodott l-artikolu fl-intier tieghu li ma huwiex twil hafna. L-artikolu in kwistjoni li hu intestat "Mag Company Director Guilty of Fraud" jghid hekk:

"Gordon Debono is a man with a past. In fact over the space of a few years Debono has collected quite a few court orders against him as creditors chase him for thousands of maltese liri. In the past few weeks The People on Sunday has received many reports in connection with Debono. Further investigations have revealed that he was and is currently being arraigned in court by more than one company in connection with fraud charges and for not paying his debts.
Two builders told The People on Sunday that to date they were still waiting to be paid by Debono after they were employed by him to demolish a building. "We did not ask for payment in advance, but as we finished our work we contacted him and we gave him the bill. He told us

that it would be no problem and in fact he made us three cheques of LM500 each."
But the builders were in for a sour surprise as when they went to the bank with the cheques the bank refused to accept them. As a result the case ended up in court where Debono was ordered to pay the sum of LM1,500 and all court expenses. However so far they have not received a penny.
The People on Sunday has learnt that the case is only one in a line of cases involving Debono.
In fact Debono was also arraigned in court for failing to pay the sum of LM820 in wages, overtime and bonuses as well as (the) sum of LM730 in another case. He has also been arraigned in connection with dealings worth thousands of liri with a major bank.
The People on Sunday has also been informed that on March 1 Gordon Debono is due to be arraigned in court by Enrico Travel in connection with travel expenses.
Debono is a director of the newly formed publishing house Time Publications."

Fl-ewwel faccata tal-istess gazzetta f'caption li taqra "MAG COMPANY DIRECTOR GUILTY OF FRAUD" il-qarrejja huma indirizzata lejn pagna 3 tal-istess gazzetta fejn gie riportat l-artikolu.

Fix-xhieda tieghu moghtija fl-udjenza tat-2 ta' Gunju 2000 l-attur iddikjara b'mod kategoriku hekk "Qatt ma nstabt hati, qatt ma tressaqt il-Qorti u lanqas qatt ma nstabt hati fuq frodi." Ghalhekk kompla jghid l-attur li l-"istatement" li huwa kien tressaq kriminalment fuq frodi kien falz. Il-fedina penali ta' l-attur ezebita mill-Ispettur Carmelo Magro tindika li kontra tieghu ma kien hemm ebda sentenza kriminali la fuq frodi u lanqas fuq xi akkuza ohra.

In kontro ezami l-attur ammetta li huwa kien gie investigat darbtejn fuq frodi u li ma jiftakarx kemm kienu ittiehdu proceduri kontrih civilment. Hu jsostni li l-artikolu kien intiz sabiex mhux biss jaghmillu hsara morali konsistenti f'malafama izda ukoll kellu li skop li jaghmillu hsara finanzjarja u skond l-attur hekk gara billi bhala rizultat tilef hafna klienti.

Ikkunsidrat:-

Hija massima f'proceduri gudizzjarji li minn jallega jrid jipprova a sodisfazzjon tal-Qorti. Il-konvenut qed jghid li l-artikolu jirriproduci fatti veritjeri fir-rigward ta' proceduri kriminali u civili li gew istitwiti kontra l-attur in konnessjoni ma frodi. Izda jidher li l-konvenut ma ressaq ebda prova in sostenn ta' l-allegazzjoni tieghu.

Li persuna tissemma f'gazzetta in konnessjoni ma proceduri civili li jittiehdu kontra taghha ghall-krediti, fiha nfisha ma taghti lok ghal ebda malafama dejjem kemm-il darba tali proceduri jkunu tassew ittiehdu. Mix-xhieda tal-istess attur jidher li dan kellu proceduri kontra tieghu in konnessjoni ma dejn u ghalhekk f'dan ir-rigward l-attur ma jistax jilmenta. Izda li wiehed jasserixxi f'gurnal li persuna hija hatja ta' frodi "Guilty of fraud" meta dan ma jkunx minnu, hija mhux biss ingurjuza u malafamanti izda wkoll tirreka dannu lill-parti interessata billi tnaqqas il-fiducja tal-pubbliku u partikolarment il-klassi kummercajli, f'dik il-persuna.

Il-fatt li wiehed jigi investigat ghall-frodi mhux l-istess bhal meta wiehed jinstab hati ta' akkuza simili. Ghalhekk l-attur kellu ragun li jhossu ruhu urtat sew bil-'caption' kif ukoll bl-artikolu per se billi dak li nkiteb huwa intiz sabiex mhux semplicement jirraporta dwar proceduri "civili" li setghu ttiehdu kontra l-attur izda sabiex dan jiccappaslu ismu billi jigi dikjarat frodist. F'dan tirrizulta l-mala fama li twassal ghal proceduri imsemmija fil-Kap 248 tal-Ligijiet ta' Malta u s-sanzjonijiet kontemplati fl-artikolu 28 tal-istess Kap.

Illi fil-fehma ta' din il-Qorti l-akkuza hija wahda serja u ghalhekk fl-assenza ta' provi in sostenn ta' dak allegat ssib lill-konvenut responsabbli ta' malafama u tillikwida kumpens fis-somma ta' hames mitt lira maltin.

Ghar-ragunijiet fuq moghtija l-Qorti filwaqt li tichad l-eccezzjonijiet kollha tal-konvenut tilqa t-talbiet attrici, tiddikjara li dan gie malafamat bl-artikolu fuq imsemmi, tillikwida bhala kumpens is-somma ta' hames mitt lira maltin (LM500) u konsegwentement tikkundanna lill-konvenut ihallas lill-attur l-ammont hekk likwidat. Bl-ispejjes kollha kontra l-konvenut.

Onor Imhallef Albert J. Magri