

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

In the matter of an Appeal  
from the Judgment of the  
Civil Appellate High Court.

S.A.C.Ranawaka.  
No. 206, Panselgodella,  
Galamuna.

Plaintiff

**SC APPEAL No. 135/2012**

SC HC CA LA No. 50/2012

High Court [North Central Province]

Appeal No. NCP/HCCA/ARP/878/2010

Polonnaruwa D.C. No. 10645/Damages/2005

Vs

1. Upali Chandrawansha,  
Revenue Administrator,  
C/O Lankapura Pradeshiya  
Sabha, Lankapura,  
Thalpotha.
2. Pradeshiya Sabha,  
Lankapura,  
Thalpotha.

Defendants

AND THEN

Upali Chandrawansha,  
Revenue Administrator,  
C/O Lankapura Pradeshiya  
Sabha, Lankapura,  
Thalpotha.

Defendant Appellant

Vs

S.A.C. Ranawaka,  
No.206, Panselgodella,  
Galamuna

Plaintiff Respondent

AND NOW BETWEEN

S.A.C. Ranawaka,  
No.206, Panselgodella,  
Galamuna

Plaintiff Respondent  
Appellant

Vs

Upali Chandrawansha,  
Revenue Administrator,  
C/O Lankapura Pradeshiya  
Sabha, Lankapura,  
Thalpotha

Defendant Appellant  
Respondent

**BEFORE**

**: S. EVA WANASUNDERA PCJ,  
K. T. CHITRASIRI J. &  
V. K. MALALGODA PCJ.**

**COUNSEL**

: Senany Dayaratne with Eshanthi Mendis  
for the Plaintiff Respondent Appellant.  
Lasitha Chaminda with Hasitha Amarasinghe  
for the Defendant Appellant Respondent.

ARGUED ON : 25.09.2017.  
DECIDED ON : 05.04.2018.

**S. EVA WANASUNDERA PCJ.**

I have read over and considered the draft judgment written by my brother Hon. Justice V.K.Malalgoda PC with which I disagree. As such I write this judgment in this Appeal.

The Plaintiff Respondent Appellant (hereinafter referred to as the Plaintiff) instituted action in the District Court of Polonnaruwa, against two Defendants, namely U. Chandrawansha **and** the Pradeshiya Sabha of Lankapura. When the trial commenced, after the admissions and issues, the Plaintiff had withdrawn the case against the 1<sup>st</sup> Defendant, Pradeshiya Sabha and it was discharged from the proceedings. Therefore U. Chandrawansha was the only Defendant against whom the Plaintiff proceeded with the trial. He is the Defendant Appellant Respondent (hereinafter referred to as the Defendant) in this Appeal.

The case was filed on the cause of action based on an **alleged defamatory statements** contained in the written and typed **record of proceedings** held at a Pradeshiya Sabha Meeting of the Members on **31.01.2005** in the auditorium, into which the Revenue Administrator, U. Chandrawansha, the Defendant was called upon and questioned regarding the recovery of lease rentals. The alleged defamatory ‘recorded written statement’ which was recorded as having said by the said Chandrawansha is as follows:-

“ලංකාපුර ප්‍රදේශීය සභාව මගින් පැවරූ නඩුවක විත්තිය වෙනුවෙන් පෙනී සිටි නීතිඥවරිය ගැන විශ්වාසය තබා ගැනීම අසීරුයි.....”

The Plaint dated 21.04.2005 in paragraph 4 states that consequent to the said recorded paragraph contained in the proceedings of the Pradeshiya Sabha Meeting of the Members, in the news paper ‘Dinamina’ of 31.03.2005 in page 18, it was published that the Defendant had mentioned that ‘it is difficult to trust the lady lawyer who works for the Pradeshiya Sabha and appears for the defence party against whom the Pradeshiya Sabha had filed action to recover the unpaid lease rentals.’ The newspaper ‘Dinamina’ was marked in evidence as P7 and it is in

the brief before this Court. In that newspaper article, the **name** of the lady lawyer is **not mentioned** any where but the Plaintiff submits that those who know her as the lawyer who works for the Pradeshiya Sabha could identify her as the said person and damages should be paid for the mental pain and loss of face in the society etc.

However, the newspaper employee who had given evidence as the journalist namely Gunadasa Galappatti who **was called by the Plaintiff to give evidence on behalf of the Plaintiff**, at page 153, in **examination in chief**, has stated that he reported the news regarding what had happened at the Pradeshiya Sabha monthly Meeting in the Dinamina newspaper as it was requested to be published in the newspaper by the **Pradeshiya Sabha Member, Sirisena Ranawaka**. He added in evidence that the said **Sirisena Ranawaka who is the father of S.A.C. Ranawaka, the Plaintiff, had called him to come and take the news report regarding the monthly meeting of the Pradeshiya Sabha and directed him to publish the same in the newspapers.**

I find that this is proof of the fact that this publication had been done through the influence made by the father of the Plaintiff, probably in collusion with his daughter the Plaintiff, with the intention of **getting it published** so that the Plaintiff could follow it up with a 'claim for damages' by way of an action to be filed in the District Court.

In the circumstances, I find that no Court could point the finger at the journalist who reported of what had happened at the Pradeshiya Sabha because publishing was done at the request of the Plaintiff's father. Surprisingly, **the publisher** of Dinamina newspaper was **not made a party**. The trial Court judge cannot point at the Defendant in this case for only having answered the questions of the members of the Pradeshiya Sabha, to have had **any intention of defaming the Plaintiff at all** for the conspicuous reason that, the act of publishing also had been at the instance of the Plaintiff's father. ***Actus Injuriarum is apparently absent*** in the mind of the Defendant when he had uttered whatever the sentences (which have not been quoted at any time) , within the Auditorium of the Pradeshiya Sabha.

The Plaintiff alleged that the said statement is **defamatory and insulting** and that she became an **unworthy character of unethical conduct** and therefore she was

entitled to **claim damages** from the Defendants in a sum of **Rs. 25 lakhs**. Prior to filing action two letters of demand had been sent to each Defendant claiming Rs. 25 Lakhs from each of them. Having received the letters of demand and summons to the Pradeshiya Sabha, making the said Pradeshiya Sabha as a defendant of this case, it had been decided by the Pradeshiya Sabha not to continue with the Plaintiff as the Pradeshiya Sabha's law officer and **her services were discontinued**. The father of the Plaintiff, namely, R.A.S. Ranawaka was a member of the same Lankapura Pradeshiya Sabha at the particular period the said incident. The services had been discontinued since the Pradeshiya Sabha did not want to have a law officer as an employee because she had filed a court action against it. Both the Defendants had filed answer in the District Court and denied the allegations and moved to dismiss the action. The Plaintiff cannot be heard to say reasonably that her services were discontinued just because the Defendant had uttered things against her at the Pradeshiya Sabha Meeting.

The Plaintiff as well as some other witnesses had given evidence at the trial and marked documents P1 to P10. The **1<sup>st</sup> Defendant who was the only Defendant** against whom the trial continued, also had given evidence along with some other witnesses and had marked documents V1 to V8. The **District Judge** had given judgment in **favour of the Plaintiff** granting as damages of an amount of **Rs. 15 lakhs to** be paid by the Defendant, Chandrawansha. Then the Defendant appealed to the Civil Appellate High Court against the judgment of the District Court. The **High Court set aside the judgment of the District Court and dismissed the Plaintiff.**

Then a leave to Appeal Application was preferred by the Plaintiff against the said judgment of the Civil Appellate High Court. This Court has granted leave to appeal on 30.07.2012 on four questions of law. The said questions can be summarized as follows:-

Did the High Court **err** in holding that;

1. The statement complained of was a **privileged** statement and hence not defamatory?
2. The ***animus injuriandi*** was not attributable to the Defendant in respect of the statement complained of?
3. The Defendant could **not be held responsible** for the publication of the said statement complained of?

4. The Plaintiff's claim of loss and damage to reputation, good name and professional standing and prospects, due to the statement complained of was **not substantiated by evidence?**

The facts pertinent can be narrated thus: On 31.01.2005, the monthly meeting of the Pradeshiya Sabha was held at the Auditorium. There was a query about the recovery of the lease rentals of the lessees to whom certain premises of the Pradeshiya Sabha was leased out. The letters of demand had been sent out to five lessees but the members did not know the progress of recovery thereafter. The Defendant was summoned to clarify matters as he was the Revenue Administrator. The Defendant had come to the Auditorium and explained to the members that prior to initiating legal action against the lessees who had failed to pay the lease rentals, it was necessary to send letters of demand to them through an Attorney at Law.

He had then told the Members that the law officer, meaning the **Plaintiff**, had appeared for **the defence** against the Pradeshiya Sabha, in cases **filed by the Pradeshiya Sabha against some persons** and due to that fact, it had become **difficult to have trust** on her. As a result, the Defendant had got letters of demand sent to the defaulting lessees through another Attorney at Law for a lesser fee than what was paid to the Plaintiff. The recorded detail is as aforementioned in Sinhala language and it is not a statement recorded as the Defendant's direct statement in his own words. However first of all, it has to be looked into through the evidence before the trial court, whether there is any truth in what is contained in that written recorded sentence alleged to be defamatory.

The particulars of the relevant case in which the Plaintiff is supposed to have appeared for the defense against the Pradeshiya Sabha is as follows: The case No. 98860 was filed on 27.08.2004 in the Magistrate's Court, Polonnaruwa by the Pradeshiya Sabha Revenue Administrator, the Defendant, Chandrawansa against one Renuka Jayasooriya of Ideal Pharmacy, Pulasthigama. The said case record was marked as P1. The said Renuka Jayasooriya had paid the money due from her to the Pradeshiya Sabha later on, after the case was filed against her, but to withdraw the case, she had paid Rs. 300/- to the Plaintiff as requested by the Plaintiff. There is an **affidavit to that effect marked as V1**. That document has **not been challenged**. Even though the said Renuka had got another lawyer,

named Bandara to file a motion and inform Court that money has been paid, the said Renuka had to pay a fee of Rs. 300/- to the Plaintiff, for the Plaintiff to grant her consent in open court to the fact that the due money had been paid to the Pradeshiya Sabha.

Therefore it can be concluded that the Defendant had not uttered a complete false statement before the Pradeshiya Sabha. The Affidavit of the said Renuka had been marked without any objection and read in evidence at the end of the case without any objection by the Plaintiff's counsel. It can be easily understood that the truth is that the Plaintiff had taken a fee of Rs. 300/- from the person against whom the Pradeshiya Sabha had filed action to recover the lease rentals.

Anyway, the contention of the Defendant is that he had never stated anything defamatory against the Plaintiff at any time and all what he stated was within the Pradeshiya Sabha Auditorium in the course of his duties as Revenue Administrator in that capacity and that **he was entitled legally to tell nothing but the truth in answering the queries of the Members.** Accordingly, the Defendant is in a position to have the cover of the defense of "Truth" available in an action on defamation.

The Plaint of the Plaintiff is based on the fact that 'the statement of the Defendant as recorded in the proceedings of the Pradeshiya Sabha was published in the newspaper Dinamina'. The Plaint does not complain that the statement as recorded per se is defamatory. Paragraph 4 is a long paragraph in the Plaint and it states how the cause of action has arisen. It distinctly states that "The Defendant has said about the Plaintiff at the Pradeshiya Sabha monthly Meeting on 31.01.2005 that it is difficult to trust the lady lawyer who serves the Pradeshiya Sabha because she appeared for the defendant party in a case filed by the Pradeshiya Sabha." It is alleged that the Defendant has acted by stating so, **with an intention to take revenge from the Plaintiff and with animosity.** Court has to consider the allegations not against the publisher because the publisher is not made a party but only against the Defendant who had stated thus.

Then, according to the argument of the Plaintiff herself, what is left for this Court to decide is 'whether the recorded portion of the proceedings as what has been said by the Defendant inside the Auditorium at the monthly Pradeshiya Sabha Meeting would amount to defamation.'

The learned Judges of the High Court have held that the statement complained of was a **privileged statement and hence it is not defamatory.**

In that regard both the contesting parties have directed the attention of Court to **R.G.McKerron in the Law of Delict, 7<sup>th</sup> Edition. At page 188,** it reads thus:

“ Privilege is the name given to the protection which the law affords to a person who makes a defamatory communication in the exercise of a right or the discharge of a duty. It is customary to refer to such a communication as a privileged communication. But it is to be observed that this expression, though sanctioned by usage, is not strictly accurate; for **it is the occasion on which the communication is made and,** not the communication itself, **that is privileged.**”

In the case in hand, the Defendant had made the communication which is alleged to be defamatory, **only when the members of the Pradeshiya Sabha had summoned him to the meeting that was going on.** I find that the Defendant had made the communication at **the occasion of the meeting of the members** which **meeting was a privileged one.** If the same kind of statement was communicated at another place other than that special place at the auditorium , such as at the market place or at the canteen of the work place, it could have been defamatory depending on the construction of the words. When queries were made from the Defendant who was the Revenue Administrator of the institution, by the Members, he had a **duty to answer** and he could not have waited without giving the reason for having sent letters of demand through another lawyer other than through the Plaintiff Attorney at Law of the Pradeshiya Sabha. **The Defendant could not have avoided telling the real reason** and that is why the communication which is alleged as defamatory had been uttered. So, it can be concluded that it was a **privileged occasion.**

In the case of **Molpe Vs Achterberg 1943 A.D. 85,** it was held that “ If the communication is **not relevant to the purpose of the occasion,** the privilege does not extend thereto and **the communication will not be protected.**” In the case in hand, the communication is quite relevant because the Defendant had to explain

the reason why the letters of demand were sent through another lawyer other than through the Defendant. The purpose of the occasion was to find out the position of collecting revenue and how it was going. **The communication was quite relevant to the purpose of the occasion.** It is clear that the communication of the Defendant is protected as it was relevant to the purpose of the occasion.

In the case of **M.G.Perera Vs A.V.Pieris 50 NLR 145**, which is a decision of the Privy Council it was held thus:

“ In Roman Dutch Law *animus injuriandi* is an **essential element** in proceedings for defamation and where the **words used are defamatory**, the burden of negating *animus injuriandi* **is on the defendant. If malice** in the publication of a particular report of any body **is not present** and the **public interest** is served by the publication, **such publication must be taken**, for the purpose of the Roman Dutch Law, as being directed to serving that interest and **will be privileged and the animus injuriandi will be negative.** “

If in the case in hand, the allegedly defamatory words such as ‘ it is difficult to trust the lady lawyer’ was used with malice, then it could be held defamatory. I do not find in the evidence of all the witnesses for the Plaintiff and in the documents marked by the Plaintiff that malice has been proved. It is only the evidence of the Plaintiff which simply states that it was revengeful. There is no proof of malice. There is no proof of revenge. The words used had spelt out the truth without any adjectives or adverbs. It is common sense that if a prosecuting lawyer takes a fee from the party against whom action is filed, then it is difficult to trust that particular lawyer. There is no malice in what the Plaintiff had mentioned. It was said so, within a privileged place as well established from the evidence. The public interest is served. The *animus injuriandi* is negative.

I answer the questions of law raised by the Plaintiff Respondent Appellant in the negative against the said Plaintiff Respondent Appellant and in favour of the Defendant Appellant Respondent. I affirm the judgment of the learned High

Court Judges dated 14.12.2012 and set aside the judgment of the learned District Judge dated 18.10.2010.

The Appeal is dismissed. However I order no costs.

Judge of the Supreme Court

K.T.Chitrasiri

I agree with the judgement of the Hon. Justice S. Eva Wanasundera PC while disagreeing with the judgement of Hon. Justice V.K.Malalgoda PC.

Judge of the Supreme Court