

1983 December 15

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

LOUKIS PAPASTRATIS.

Appellant-Plaintiff

v

MICHAEL HADJIEFTHYMIU AND OTHERS

Respondents-Defendants

(Civil Appeal No 5693)

Libel—Defence of fair comment—Principles applicable—Sections 19(b) and 21(2) of the Civil Wrongs Law, Cap 148—Holders of Public Office may be the subject of fair comment—Respondents publishing allegation that appellant, a member of the Municipal Committee, had been a sympathizer of the abortive Coup d’etat of the 15th July, 1974—Existence of adequate substratum of true facts on which to base fairly the relevant conduct of the appellant—Reasonably open to the trial Court to find that the defence of fair comment should succeed—No absence of good faith on the part of the respondents in the sense of the above sections 19(b) and 21(2)

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The respondents published in their newspapers allegations to the effect that the appellant-plaintiff was a person who had been a sympathizer of those who attempted to carry out in our country the treacherous abortive coup d’etat of the 15th July 1974 and that, because of this, the members of the Municipal Committee of Nicosia, when they resumed their duties after the coup d’etat, made it a condition that the appellant, who had until then been a member of such Committee should not be allowed to continue to be a member of it

The trial Court found that the publication was defamatory of the appellant but dismissed his action for libel because it held that there had succeeded the defence of fair comment* which was put forward by the respondents.

* The defence of fair comment is provided for by sections 19(b) and 21(2) of the Civil Wrongs Law which are quoted at pp 907-908 post

Upon appeal by the plaintiff.

Held, that the public interest requires that a man's public conduct shall be open to the most searching criticism, that the private character and conduct of a person who fills a public office or takes part in public affairs may also be the subject for fair comment in so far as it has reference to or tends to throw light on his fitness to occupy the office or perform the duties thereof, but not otherwise (see Gatley on Libel and Slander, 8th ed p. 315 para. 732), that the trial Court has correctly found that the conduct of the appellant to which the public-actions in question relate was a matter of public interest and that the Court rightly believed, in connection with the said conduct of the appellant, the evidence of Lellos Demetriades, who was before the coup d' etat the Chairman of the Municipal Committee of Nicosia and who has resumed his duties once again after the coup d' etat, that there was adequate substratum of true facts on which to base fairly the comment about the relevant conduct of the appellant, that it was reasonably open to the trial Court to find that the defence of fair comment should succeed, and that there was not any absence of good faith on the part of the respondents, in the sense of sections 19(b) and 21(2) of Cap 148, which would prevent the defence of fair comment from succeeding, accordingly the appeal must fail

Appeal dismissed

Cases referred to 25

Synomospondia Ergaton Kyprou v. Cyprus Asbestos Mines Ltd (1965) 1 C L R 222.

Stephanou v HjiEfthymiou (1976) 1 C L R 225;

Manitoba Press Co v Martin (1892) 8 Manitoba R 70.

Appeal. 30

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stylianides, P.D.C.) dated the 8th March, 1977 (Action No. 475/75) whereby his action for libel against the defendants was dismissed.

L. Papaphilippou with *H. Solomonides*, for the appellant. 35

G.I. Pelagias with E. Christophidou (Miss), for the respondents.

Cur. adv. vult.

5 TRIANTAFYLIDIS P. read the following judgment of the Court.
The appellant has filed the present appeal against the dismissal by the District Court of Nicosia, of an action for libel which he instituted against the respondents in respect of publications in two newspapers, namely "Apogevmatini" and "Phileleftheros".

10 Both the said publications were found by the trial Court to be defamatory of the appellant.

His action was, however, dismissed because it was held by the trial Court that there had succeeded the defence of fair comment which was put forward by the respondents.

15 The main defamatory allegations in the publications in question were to the effect that the appellant was a person who had been a symathizer of those who attempted to carry out in our country the treacherous abortive coup d'etat of the 15th July 1974 and that, because of this, the members of the Municipal
20 Committee of Nicosia, when they resumed their duties after the coup d' etat, made it a condition that the appellant, who had until then been a member of such Committee, should not be allowed to continue to be a member of it.

25 The defence of fair comment is provided for by section 19(b) of the Civil Wrongs Law, Cap. 148, which reads as follows:

"19. In an action for defamation it shall be a defence—

(a) _____

(b) that the matter of which complaint was made was a fair comment on some matter of public interest:

30 Provided that where the defamatory matter consists partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is a
35 fair comment having regard to such of the facts alleged

or referred to in the defamatory matter complained of as are proved:

Provided further that a defence under this paragraph shall not succeed if the plaintiff proves that the publication was not made in good faith within the meaning of subsection (2) of section 21 of this Law; 5

(c) _____

(d) _____”.

Also, subsection (2) of section 21 of Cap. 148, which is referred to in section 19(b), above, reads as follows: 10

(2) The publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of subsection (1) of this section, if it is made to appear either--

(a) that the matter was untrue, and that he did not believe it to be true; or 15

(b) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or

(c) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged”. 20 25

Our Supreme Court has had occasion to examine the effect and proper application of the provisions of sections 19(b) and 21(2), above, in, inter alia, the cases of *Synomospondia Ergaton Kyprou v. Cyprus Asbestos Mines Ltd.*, (1965) 1 C.L.R. 222, and *Stephanou v. HjiEfthymiou*, (1976) 1 C.L.R. 225. 30

Our law of defamation has been based on, and is very similar to, the law of defamation in England; and it is particularly useful, in relation to the present case, to note that the first proviso to subsection (b) of section 19 of Cap. 148 is practically the same as section 6 of the Defamation Act, 1952, in England. 35

The proper approach to the defence of fair comment in relation to matters of public interest is to be found in the dictum of Bain J. in *Manitoba Press Co. v. Martin*, (1892) 8 Manitoba R. 70, that “_____ and it is now admitted and recognised
5 that the public interest requires that a man’s public conduct shall be open to the most searching criticism”, which is quoted by Gatley on Libel and Slander, 8th ed., p. 315, para. 732. Also, it is useful to quote from para. 732 of the same text-
10 by case-law: “The private character and conduct of a person who fills a public office or takes part in public affairs may also be the subject for fair comment in so far as it has reference to or tends to throw light on his fitness to occupy the office or perform the duties thereof, but not otherwise.*”

15 In the present instance we are of the view that the trial Court has correctly found that the conduct of the appellant to which the publications in question relate was a matter of public interest and that the Court rightly believed, in connection with the said conduct of the appellant, the evidence of Lellos Demetriades,
20 who was before the coup d’etat the Chairman of the Municipal Committee of Nicosia and who has resumed his duties once again after the coup d’etat.

Even assuming, without so deciding, that there ought to be excluded from the evidence of Demetriades those parts of it
25 which are, allegedly, hearsay evidence, we are still of the opinion that there was sufficient admissible testimony given by this witness which, when coupled with facts which could be judicially noticed by the trial Court, entitled the trial Court to hold that there was adequate substratum of true facts on which to base
30 fairly the comment about the relevant conduct of the appellant.

In our opinion this is, indeed, a case in which it was reasonably open to the trial Court to find that the defence of fair comment should succeed; and we are not of the view that there was any absence of good faith on the part of the respondents, in the
35 sense of sections 19(b) and 21(2) of Cap. 148, which would prevent the defence of fair comment from succeeding.

* *Seymour v. Butterworth* (1862) 3 F. & F. 372; *Blogden v. Bennett* (1885) 9 O.R. at p. 602; *Pankhurst v. Hamilton* [1887] 3 T.L.R. 500; *John Leng Ltd. v. Langlands* [1916] 114 L.T. 665, per Viscount Haldane at pp. 667, 668; *Lyle-Samuel v. Odhams Ltd.* [1920] 1 K.B., per Scrutton L.J. at p. 146.

Before concluding this judgment we would like to observe that the fact that in November 1974 the Municipal Committee of Nicosia decided to express the appreciation it felt for services rendered by the appellant while he was one of its members prior to the coup d'etat in July 1974, and presented him with a commemorative medal, in no way detracts from the reliability of the evidence of Demetriades, the at all material times Chairman of such Municipal Committee, as regards the reprehensible conduct of the appellant during the coup d'etat and immediately afterwards, on which what was found to be fair comment was based.

For all the foregoing reasons this appeal fails and is dismissed with costs.

Appeal dismissed with costs.