

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV405 & 406 / 2002

BETWEEN:

DR. RALPH E. GONSALVES

Respondent/Claimant

and

**KELVIN GIBSON
EDUARDO LYNCH
BDS LIMITED**

Applicants/Defendants

Appearances:

Mr. Linton Lewis for applicant Kelvin Gibson (405/02)
Mr. Stanley K. John for applicant Edwardo Lynch (406/02)
Mr. Bertram Commissiong Q.C., Miss Mira Commissiong with him, for BDS Limited (406/02)
Mr. Anthony Astaphan S.C., Mr. Grahame Bollers and Mr. Ronald Burche-Smith for the respondent.

2002:October 25, 31

JUDGMENT

**IN CHAMBERS
ALLEYNE J.**

[1] The respondent Dr. Ralph E. Gonsalves is the Prime Minister of St. Vincent and the Grenadines. The applicant Kelvin Gibson is a citizen of St. Vincent and the Grenadines, a member of the public. The applicant Edwardo Lynch is the host of a radio programme. On September 10th, 2002, the respondent issued separate claim forms in suits No.405 of 2002 and 406 of 2002 respectively against the

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Judgment Quotations – 2nd level: Press ALT R

applicants. BDS Limited is a defendant in suit 406 of 2002. The claims are in respect of alleged defamatory statements which the respondent claims were made and published of and concerning him.

- [2] On September 20th, 2002, the applicants Gibson and Lynch filed separate notices of application, each seeking an order that the words complained of in the separate actions are not capable of bearing the meaning or meanings attributed to them in the respective statements of claim.
- [3] It was agreed by all parties that the matters be taken together, they being closely related. All parties had submitted written skeleton arguments, which were extremely helpful to the court.
- [4] Counsel for the applicants and for the respondent were to a large extent agreed on the law applicable to the issue for decision. First, it was agreed that the respondent has not pleaded what is called in the authorities a legal innuendo, and as a consequence would not be permitted to tender evidence of extrinsic facts in support of a defamatory meaning. The respondent relies on the natural and ordinary meaning of the words complained of, and will not therefore be free to ask witnesses at trial what they understood the words to mean. **Lewis v Daily Telegraph** [1964] A.C. 234 at 263 and 264 per Lord Morris of Borth-y-Gest; page 271 per Lord Hodson; page 279 per Lord Devlin; **White Book 2000**(Autumn edition) page 1006, n. 53 PD – 008.
- [5] All counsel agreed that the principles governing defamatory meaning are set out in the House of Lords case of **Lewis v Daily Telegraph** *supra*. In that case Lord Reid, at page 259, quotes Lord Halsbury in **Nevill v Fine Art & General Insurance Co. Ltd.** As saying

“what is the sense in which any ordinary reasonable man would understand the words of the communication so as to expose the plaintiff to hatred, or contempt or ridicule ... it is not enough to say that by some person or another the words *might* be understood in a defamatory sense.”

Lord Reid went on to say;

“These statements of the law appear to have been generally accepted and I would not attempt to restate the general principle.

“In this case it is, I think, sufficient to put the test in this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question.

“What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression.”

[6] In **Skuse v Granada Television Limited** [1996] EMLR 278 at page 285 Lord Bingham M.R. defined the Court of Appeal's approach to the question in the following terms;

(1)“The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable person watching the programme once ...

- (2) The hypothetical reasonable reader (or viewer) is not naïve but he is not unduly suspicious. He can read between the lines. He can read an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
- (3) While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue.
- (4) The court should not be too literal in its approach.
- (5) A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally.

- (6) In determining the meaning of the material complained of the court is not limited by the meanings which either the plaintiff or the defendant seeks to place upon the words.
- (7) The defamatory meaning pleaded by the plaintiff is treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear.
- (8) The court is not at this stage concerned with the merits or demerits of any possible defence.

[7] Applying these principles to the cases before me I find in relation to suit 405 of 2002 that the words complained of are not, in their ordinary and natural meaning, capable of meaning that the respondent/claimant, in his capacity as Prime Minister and Minister of Finance, dishonestly with a view to gain a pecuniary advantage for himself, falsified an account contrary to section 228 of the Criminal Code Cap. 124 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990. I also find that the words complained of are not, in their ordinary and natural meaning, capable of meaning that the claimant, being a member of the Roman Catholic Church, is a homosexual and had committed the criminal offence of buggery contrary to section 146 of the said Criminal Code, or that the claimant, being a male member of the Catholic faith, is a homosexual.

[8] I find the words complained of, in their ordinary and natural meaning, capable of the other defamatory meanings alleged in the statement of claim.

[9] In relation to suit 406 of 2002, in my view the words complained of are not capable, in their ordinary and natural meaning, of meaning that the claimant in his capacity as Prime Minister and Minister of Finance obtained a fraudulent pecuniary benefit for himself and/or IRIE Investments Ltd. by submitting or causing to be submitted to the government treasury a false claim for airline tickets to Rome whereby he committed or conspired with other persons to commit one or more criminal offences under the Criminal Code.

- [10] I am further of the opinion that the words, in their ordinary and natural meaning, are not capable of meaning that the claimant was or is a silent shareholder of the travel agency operated by IRIE Investments Ltd. and conspired with the named or shareholders and officers or other persons involved in the affairs of the said IRIE Investments Ltd. to cause to be submitted to the Treasury a false claim relating to the cost of the airline tickets to Rome, or that the profits of the said false claim were intended for the claimant's private pecuniary benefit or the benefit of the shareholders or officers of IRIE Investments Ltd..
- [11] I find the words complained of in their ordinary and natural meaning capable of bearing the defamatory meanings alleged in the statement of claim other than those meanings herein set out.
- [12] In consequence, in relation to suit 405 of 2002, paragraphs 4 (d) and 4 (g) as well as paragraph 5 (c) are struck out, and in relation to suit 406 of 2002, paragraphs 5 (c) and 6 (a) and (b) are struck out.
- [13] Costs of this application will be costs in the cause.

Brian G.K. Alleyne
High Court Judge

Comment [BA2]: AT THE END OF JUDGMENT - after last paragraph, leave 4 clear lines and then type name of judge, right justified, bold and initial caps, press ENTER, and type the words "High Court Judge", right justified, initial caps