[MT] Freedom of Expression vs. Protection of One's Honour

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On 7 October 1994, in a programme aired on a Maltese radio station, the presenter and owner of the station, Mr Joseph Grima, made several vulgar, insolent and unfair remarks about the ex-Chairman of the Broadcasting Authority, Professor Joseph M. Pirotta. Amongst other things, Mr Grima claimed that the Authority's ex-Chairman had regularly acted in an incorrect way, in a biased and discriminatory manner and on instructions from the Prime Minister. Professor Pirotta was also referred to by such appellations as "stupid" and "a fool".

The Authority's ex-Chairman filed libel proceedings against Mr Grima. The latter pleaded that the words used by him during the broadcast in question were permissible under Article 10 of the European Convention on Human Rights and Fundamental Freedoms, which protects freedom of expression. Indeed, Mr Grima claimed that he was exercising his right to freedom of expression, that the Authority's ex-chairman was a public figure, that the statements made were based on substantially correct facts and moreover that anyone, including Professor Pirotta himself, could have phoned in and intervened during the programme, to make their case.

The Civil Court, First Hall, in its judgement of 7 October 1995, found in favour of the Authority's ex-Chairman. On 3 November 2007, the Court of Appeal confirmed this judgement, declaring that the words used with regard to Professor Pirotta offended his honour and reputation and exposed him to public ridicule.

In its judgement, the Civil Court had held that, in so far as fair comment was pleaded by Mr Joseph Grima, the criticism of public officials can be severe, provided it is based on facts that are substantially true. The criticism has to be acceptable in a democratic society or be in the public interest. A balance has to be struck between the right of freedom of expression and the defence of a person's reputation, honour and good name, which everyone is entitled to enjoy in a democratic society,. It is not acceptable to attack a person's reputation by alleging false statements. When the words uttered are per se derogatory and injurious, the intention to inflict harm is presumed. The question does not concern what the defendant intended, but rather what reasonable persons, knowing the circumstances in which the words were used, would understand to be their meaning. Liability for libel does not depend on the intention of the defamer, but

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on the fact of the defamation. The question is not what the writer of an alleged libel meant, but the actual meaning of the words he used. It is not the defendant's intention or the meaning in his or her own mind that constitutes the libel, but the meaning and inference that would naturally be drawn by reasonable and intelligent persons reading it.

Mr Joseph Grima, being aggrieved by the decision of the Civil Court, entered an appeal calling for its revocation.

On 30 November 2007, the Court of Appeal delivered its judgement, dismissing Mr Grima's appeal and thereby rejecting all his grievances. It confirmed the decision of the Civil Court in its entirety, including the award of damages, which was not considered to be exaggerated in the circumstances. The following reasons were given for the Court's decision:

- The fact that listeners could participate "live" was no defence nor did it neutralise any libellous comment;

- The statements against Professor Pirotta were offensive and were not acceptable in a democratic society. The offensive words amounted effectively to "character assassination" at the expense of Professor Pirotta. Nor was the veracity of the allegations proven;

- For words to be libellous, it is not necessary that they be repeated by others. In the context of libel, it is sufficient if the words offend a person's honour and reputation and expose him to public ridicule. There have been numerous judicial attempts to define what is defamatory. The most common defines a defamatory allegation as one that tends to make reasonable people think the worst of the claimant;

- Professor Pirotta was entitled to sue for libel without the need to seek *a priori* a correction/rectification;

- In view of the gravity of the offensive comments, it was not appropriate to consider Mr Grima's apology for the purposes of limiting the damages awarded. His apology was made too late and after the damage had been done.

Dr Joseph M. Pirotta v. Joseph Grima sew proprju kif ukoll bhala direttur ghan-nom u in rapprezentanza ta' Grima Communications Ltd, u Dr Emy Bezzina

http://docs.justice.gov.mt/SENTENZI2000_PDF/MALTA/TA%27%20L-APPELLI%20CIVILI%20(SUPERJURI)/2007/2007-11-30_96-1995-1_46415.PDF

Dr Joseph Pirotta vs. Joseph Grima in his own name and as Director in the name of and on behalf of Grima Communications Limited and Dr Emy Bezzina

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