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

In the matter of an application for Leave to Appeal from the Judgment of the Provincial High Court (Civil Appellate) of the North Central Province in case No. NCP/HCCA/ARP/878/2010, under and in terms of the High Court of the Provinces (Special Provisions) (Amendment) Act, No 54 of 2006

Supreme Court Appeal 135/2012

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

Plaintiff

High Court (North Central Province)
NCP/HCCA/ARP/878/2010
Polonnaruwa District Court
Case No. 10645/Damages/2005

Vs,

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

Defendant

And,

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

Defendant-Appellant

Vs,

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

Plaintiff-Respondent

And now between

R.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.E. Wanasundera PC J**

K.T. Chitrasiri J

Vijith K. Malalgoda PC J

Counsel: Senany Dayaratne for the Plaintiff –Respondent-Appellant

Lasith Chaminda for the Defendant-Appellant-Respondent

Argued on **25.09.2017**

Decided on **05.04.2018**

Vijith K. Malalgoda PC J

Plaintiff Respondent Appellant Ranawaka Arachchige Chandrakanthi Ranawaka had filed the present appeal against the decision of the Provincial High Court (Civil Appellate) of the North Central Province holden in Anuradhapura in Appeal Case No. NCP/HCCA/ARP/ 878/2010 dated 14.12.2011.

When this matter was supported for leave, the Supreme Court after considering the material placed on behalf of the Plaintiff Respondent Appellant had granted leave to appeal on the questions set out in paragraph 7 (f) (g) (h) and (k) of the petition, and re-numbered those issues as 1,2,3,4, in the journal entry dated 30.07.2012 which reads as follows;

1. Did the Learned Judges of the Provincial High Court (Civil Appellate) of the North Central Province err in law, by holding that the statement complained of was a privileged statement, and hence not defamatory?
2. Did the Learned Judges of the Provincial High Court (Civil Appellate) of the North Central Province err in law, by holding that *animus injuriandi* was not attributable to the Respondent in respect of the said statement complained of?
3. Did the Learned Judges of the Provincial High Court (Civil Appellate) of the North Central Province err in law, by holding that the Respondent could not be held responsible for the publication of the said statement complained of?
4. Did the Learned Judges of the Provincial High Court (Civil Appellate) of the North Central Province err in law, by holding that the Petitioner'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?

As revealed before this court the Defendant Appellant Respondent (hereinafter referred to as the Respondent) to the present appeal was the Revenue Administrator at Lankapura Pradeshiya Sabha in the North Central Province. The Plaintiff Respondent Petitioner (hereinafter referred to as the Petitioner) who is a legal practitioner in the Polonnaruwa and Hingurakgoda Courts, was engaged by the said Lankapura Pradeshiya Sabha to attend to all legal matters of the said Pradeshiya Sabha.

The Petitioner had initiated legal proceedings initially against two Defendants namely the Respondent above named and the Lankapura Pradeshiya Sabha claiming damagers of Rs. 2,500,000/- in the District Court of Polonnaruwa. The events that lead to initiate the said proceedings before the District Court can be summarized as follows;

a) On or about 31st January 2005 the monthly meeting of the Pradeshiya Sabha was held at its Auditorium
b) During the said meeting, certain issues were raised with regard to the recovery of lease rentals by initiating legal proceedings
c) When the said issues were raised, certain queries were made from the Respondent who is the Revenue Administrator of the Pradeshiya Sabha with regard to initiating proceedings before the Magistrate's Court
d) Answering the said issues raised, the Respondent made a statement to the effect that the Appellant appeared on behalf of the opposing party in a Magistrate's Court proceeding against the interest of the Pradeshiya Sabha, and therefore steps were taken to retain a new Attorney at Law in order to send letters of demand at a lower fee.
e) The said reply given by the Respondent at the meeting of the Pradeshiya Sabha was reported in the "Dinamina" Daily Sinhala News Paper on 31st March 2005

f) Whilst initiating the proceedings before the District Court, the Petitioner had claimed that, as a consequence of the said publication based on the utterances made by the Respondent, the Petitioner suffered loss and damage to her reputation, good name, professional standing and prospects

As revealed before us, the Petitioner had withdrawn her case against the 2nd Defendant Pradeshiya Sabha and proceeded only against the 1st Defendant who is the Respondent to the present application.

The trial before the District Court of Polonnaruwa was commenced after recording 07 admissions, 06 issues in favour of the Plaintiff and 09 issues in favour of the Defendant. At the conclusion of the District Court Trial, the learned District Judge of Polonnaruwa answering the 1st to the 6th issues in favour of the Plaintiff had granted damages in sum of Rupees 15 lacks to the Plaintiff.

Being dissatisfied with the said decision of the District Judge, the Respondent appealed to the Provincial High Court (Civil Appellate) of the North Central Province. During the said appeal, the judges of the Provincial High Court (Civil Appellate) of the North Central Province, by the judgment dated 14.12.2011, set aside the judgment of the District Judge of Polonnaruwa.

The instant appeal is against the said decision of the Provincial High Court, and when the matter was supported for leave, this court had granted leave, on the questions of law referred to above.

When considering the appeal before us it is important for this court to first satisfy, whether the statement referred to above had in fact been made by the Respondent and whether it was made to or published to some person other than the person defamed. This position was discussed by R.G. McKerron as follows;

> "By publication is meant the act of making known the defamatory matter to some person or persons other than the person defamed."

(***R.G. McKerron, Law of Delict 7th Edition at page 183***)

In the case of the ***Independent News Papers Ltd V. Devadas (1983) 2 Sri LR 505*** it was held that,

> "It is an essential element of defamation that the words complained of should be published of the plaintiff. Where he is not named the test of this is whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to"

As revealed before the trial court the statement referred to as defamatory against the Appellant was made by the Respondent at a meeting of the Pradeshiya Sabha held at its auditorium attended by its members. During the trial before the District Court, in addition to the News Paper referred to above, minutes of the Lankapura Pradeshiya Sabha dated 31.01.2005 was produced marked P-1. In the said minute, at page 6 the statement said to have made by the Respondent was recorded as follows;

> "එම අවස්ථාවේදී ආදායම් පරීපාලක මහතා සභාවට කැඳවා වඩාත් විස්තර දැනගැනීමට සභාව තීරණය කරන ලදී" ආදායම් පරිපාලක ඒ.පී. උපාලි චන්ද්‍රවංශ මහතා කඩකාමර හිඟ අයකරගැනීමට ඇති ප්‍රමාණය සඳහන් කරමින් පළමුව උසාවි දැමීමට පෙර පළමු පියවර වශයෙන් නීතීඥවරයෙකු මාර්ගයෙන් එන්තරවාසි යැවීම සිදුකල බව පැවසීය. සභාව මගින් පත් කර ගත් නීතීඥවරිය සභාව මගින් පවරන ලද නඩුවක විත්තිය වෙනුවෙන් පෙනීසිටීම නිසා එම නීතීඥවරිය විශ්වාසය තැබීම අසීරුවී ඇති හෙයින් වෙනත් නීතීඥවරයෙකු හරහා අඩු නීතීඥ ගාස්තුවක් යටතේ එන්තරවාසි යැවීමට කටයුතු කල බව පැවසීය.

When going through the said minute it appears that, what was reported in the News Paper was the correct proceeding of the Lankapura Pradeshiya Sabha taken place on 31.01.2005. However as

transpired before us, the Plaintiff in the District Court proceedings (the Appellant before us) has decided not to proceed against the News Paper which published the said news item, but decided to proceed against the maker of the said statement. As further transpired, the Petitioner got to know about the said statement when it was reported in the News Paper but, the Appellant whilst giving evidence before the trial court had further said "that the members of the Pradeshiya Sabha had telephoned her and asked whether she is not ashamed to accept money from both sides." The said statement made by the witness clearly indicates that the members of the Pradeshiya Sabha had taken note of the statement made by the Respondent and confronted the same with the Petitioner.

When considering the matters referred to above this court is satisfied that the statement said to have made by the Respondent had been published within the meaning of the term 'Publication'.

However as observed by the Judges of the Provincial High Court of Civil Appeal as well as by the District Judge, Polonnaruwa, the most important matter to be resolved is to consider whether the said publication comes within privilege communication or not.

The possible defences in a case of this nature was discussed by Lord Uthwatt of the Privy Council in the Privy Council decision of ***M.G. Perera Vs, A.V. Peiris 50 NLR at page 159,*** as follows;

> "Their Lordships' attention has not been drawn to any case under the Roman Dutch Law or the common law which exactly covers the point at issue. Both systems accord privilege to fair reports of judicial proceedings and of proceedings in the nature of judicial proceedings and to fair reports of parliamentary proceedings, and much time might be spent in an inquiry whether the proceedings before the Commissioner fell within one or other of these categories. Their Lordships do not propose to enter upon that inquiry. They prefer to relate

> their conclusions to the wide general principle which underlies the defence of privilege in all its aspects rather than to debate the question whether the case falls within some specific category.
>
> The wide general principle was stated by their Lordships in *Macintosh V. Dun*[1] to be the "common convenience and welfare of society" or "the general interest of society" and other statements to much the same effect are to be found in *Stuart V. Bell*[2] and in earlier cases, most of which will be found collected in Mr. Spencer Bower's Valuable work on Actionable Defamation. In the case of reports of judicial and parliamentary proceedings the basis of the privilege is not the circumstance that the proceedings reported are judicial or parliamentary-viewed as isolated facts- but that it is in the public interest that all such proceedings should be fairly reported. As regards reports of judicial proceedings reference may be made to *Rex V. Wright*[3] where the basis of the privilege is expressed to be "the general advantage to the country in having these proceedings made public", and to *Davison V. Duncan*[4] where the phrase used is "the balance of public benefit from publicity"; while in *Wason V. Walter*[5] the privilege accorded to fair reported of parliamentary proceedings was on the same basis as the privilege accorded to fair reports of judicial proceedings- the requirements of the public interest."

In the said decision Lord Uthwatt had further observed, the importance of malice in relevant publication as follows;

> "As regard the News Paper the Report was sent to it by the authorities in the ordinary course. Nothing turns on any implied request to publish–that would in their Lordships opinion be relevant only if malice were in issue…."

When going through the facts of the case in hand as discussed above and the evidence given by the Respondent before the trial court it appears that the Respondent was summoned before the monthly meeting by the members of the Pradeshiya Sabha and questioned him with regard to the recovery of arrears money and steps taken to recover those monies. When the Respondent explained the steps taken, it was transpired that the services of a new Attorney at Law was obtained by the Respondent in order to send letters of demand to the respective tenants and the Respondent had justified his decision to retain a new Attorney at Law of his choice without obtaining the prior approval of the Pradeshiya Sabha by making the statement in question.

As observed earlier in this judgment the Petitioner has decided not to prosecute the News Paper which published the news item but decided to prosecute the maker of the statement. When considering the circumstances under which the Respondent had made the above statement, it is important to consider whether the said statement was made strictly within his employment and therefore his statement comes within a privilege statement.

In this regard, it is also important to consider the facts transpired before the District Court from the evidence by both parties.

The Appellant whilst giving evidence, had denied the fact that she appeared for an accused person in a case filed by the Pradeshiya Sabha and produced the certified proceedings of the case in question namely Magistrate's Court, Polonnaruwa case No 98660 as P-1. According to the evidence of the Appellant, the case was called on a motion filed by Nalaka Bandara Attorney at law on 17.12.2004. Since the accused Renuka Jayasuriya of Ideal Pharmacy produced the payment receipt, the Appellant who represented the Pradeshiya Sabha admitted the payment and the accused was discharged accordingly by court. The said fact was confirmed by Nalaka Bandara AAL when he was called as a witness for the Plaintiff.

Upali Chandrawansa the Respondent when giving evidence before the District Court whilst challenging the above position had confirmed the fact that the Petitioner appeared for an accused person in the Magistrate's Court as follows;

(Examination in chief of witness Chandrawansa proceedings at pages 8-9 dated 21.01.210)

"98660 කියන නඩුවට වර්ෂ 2004.12.17 වන දින මහේස්ත්‍රාත් අධිකරණයේදී තිබුන නඩුවට සහභාගී වුනේ නෑ. මේ අධිකරණයේ වෙනත් නඩුවක් තිබුනා. 98412 කියන නඩුව තිබුනේ. එදින විත්තිකාරිය අධිකරණයට ආවා. අංක 02 උසාවියේ නඩුව ගන්නකොට මම හිටියේ නෑ. මම මේ දිස්ත්‍රික් උසාවියේ හිටියේ. මම එදින ලංකාපුර ප්‍රාදේශීය සභාව වෙනුවෙන් පෙනී සිටින්න කියලා මේ පැමිණිලිකාර මහත්මියට උපදෙස් දීලා තිබුනේ නෑ. ඒ නඩුවේ විත්තිකාරිය රේණුකා ජයසූරිය. ඒ නඩුවේ විත්තිකාරිය වෙනුවෙන් හිටිය නීතීඥවරිය වන්නේ රණවක මහත්මියයි. රණවක මහත්මිය මේ විත්තිකාරිය එක්ක මගේ ලඟට ආවා. විත්තිකාරිය වෙනුවෙන් පෙනී සිට නඩුවක් දැම්මා කියලා මට සාක්ෂි දෙන්න කීවා උසාවියට ඇවිල්ලා. ඊට පස්සේ මම ගියේ නෑ මම මෙතනම හිටියා. මෙදින විත්තිකාරිය විසින් 98660 කියන මෙම නඩුවේ පැමිණිලිකාර මහත්මියට පෙනී සිටින්න කියලා මුදල් දෙනවා මම දැක්කා. මේ විත්තිකාරිය එක්කගෙන එහා පැත්තට යනවා මම දැක්කා. මුදල් ප්‍රමාණයක් මම දැක්කේ නෑ. මුදල් ගණුදෙනුවක් කලා මම දැක්කා. එදින 2004.12.17 වන දින මීට කලින් සාක්ෂි ලබා දුන්න නීතීඥ නාලක බංඩාර මහතා පෙනී සිටියේ නෑ. වි. 05 පෙන්වා සිටී. (2005 ජූලී 12 වන දින දාතමින් යුතු දිවුරුම් ප්‍රකාශයක් පෙන්වා සිටී.) සාක්ෂිකරු එය හඳුනා ගනී. එය වි. 05 ලෙස ලකුණු කර ඉදිරිපත් කරයි. මේ දිවුරුම් ප්‍රකාශය රේණුකා ජයසූරිය කියන විත්තිකාරිය මට දුන්නේ. මේ දිවුරුම් පත්‍රයේ අධිකරණයට ඉදිරිපත් කරන්න කියලා වරෙන්තු කරා කියලා තිබෙනවා. 03 වන ඡේදයේ නීතීඥ රණවක මහත්මිය රුපියල් 300ක මුදලක් ගෙවා මේ නඩුව අවසන් කර ගත්තා කියලා තියෙනවා."

As referred to in the said evidence the Respondent had seen one Ms. Jayasuriya giving some money to the Appellant and in support of his version he had submitted an affidavit from the said Renuka Jayasuriya as well.

However under cross examination this witness's credibility was challenged and at one stage witness had to admit that he was in a different court house on that day and some of the answers were given by going through the proceedings of that day.

Some of the important questions put to the Respondent and answers given by him are referred to as follows;

(Cross examination of witness Chandrawansa proceedings at pages 16-19 dated 21.01.2010)

ප්‍රැ 98960 කියන නඩුව තිබුනේ කොයි උසාවියේද?

උ: එහා එකේ

ප්‍රැ ඒක මෝෂමකින් කතාකල එකක්ද වරෙන්තු කල නඩුවක්ද?

උ: උත්තරයක් නැත

ප්‍රැ එදින පෙනී සිටියේ කව්ද?

උ: මම නෙමෙයි

ප්‍රැ විත්තිකාර මහත්මිය වෙනුවෙන් කව්ද පෙනී සිටියා කීවේ කව්ද?

උ: නීතීඥ රණවක මහත්මිය

ප්‍රැ කව්ද තමුන්ට කීවේ? දිසා අධිකරණයේ ඉඳලා මහේස්ත්‍රාත් අධිකරණයේ වෙච්ච දේවල් දන්නේ කොහොමද?

උ: මම දැක්කා මෙතනින් එක්ක යනවා විත්තිකාරිය තමයි රණවක නෝනා එක්කගියේ

ප්‍රැ උසාවියේ පෙනී සිටියා කියලා දැක්කද?

උ: උත්තරයක් නැත.

මේ අවස්ථාවේදී සාක්ෂිකරු අසන ලද ප්‍රශ්නවලට උත්තර නොදෙන බැවින් අසන ලද ප්‍රශ්නවලට නිවැරදි පිළිතුරු දෙන ලෙසට නියම කරමි.

ප්‍රැ තමුන් දැක්කද උසාවියේ ඉන්නවා?

උ: මම දැක්කේ නෑ.

ප්‍ර: තමුන් කොහොමද කියන්නේ පෙනී සිටියා කියලා?

උ: කාර්ය සටහන් අනුව මම කීවේ.

ප්‍ර: මොකක්ද සටහන්වල තියෙන්නේ?

උ: විත්තිකාරිය වෙනුවෙන් නීතිඥ රණවක මහත්මිය පෙනී සිටියා කියලා.

ප්‍ර: නීතිඥ මහත්මිය කවුරු වෙනුවෙන් පෙනී සිටියා කියලද හිතන්නේ?

උ: රේණුකා වෙනුවෙන් පෙනී සිටියා කියලා.

වි. 03 පෙන්වා සිටී.

ලංකාපුර ප්‍රා. සභාව වෙනුවෙන් පෙනී සිටින නීතිඥ මහත්මිය වගඋත්තරකරු..... කියවා සිටී.

ප්‍ර: මේකේ සටහන් වෙලා තියෙනවද නීතිඥ මහත්මිය වගඋත්තරකාර පාර්ශවය වෙනුවෙන් පෙනී සිටියා කියලා?

උ: මෙතන එහෙම නෑ.

ප්‍ර: මේ සටහනේ නීතිඥ මහත්මිය කවුරු වෙනුවෙන්ද පෙනී සිටියේ කියලා තියෙනවද?

උ: නෑ.

ප්‍ර: මම තමුන්ට කියන්නේ තමුන් සටහන් බලලා මේ ගරු අධිකරණයට බොරු කියන්නේ කියලා කියනවා?

උ: මම පිළිගන්නේ නෑ.

ප්‍ර: මේ නීතිඥ මහත්මිය සමඟ තියෙන අමනාපය නිසා තමයි මේ බොරු කියන්නේ කියලත් යෝජනා කරනවා?

උ: පිළිගන්නේ නෑ.

An affidavit and a letter said to have prepared by one Renuka Jayasuriya had been produced marked “වි-5” and “වි-6” respectively during the trial in the District Court. Even though several objections were raised with regard to the admissibility of the said affidavit, I don’t think it is necessary to consider them at this juncture, since the document itself is contradictory to the testimony of witness Renuka Jayasuriya. In her affidavit affirmed on 12.07.2005 and the letter dated 26.03.2005 addressed to the Chairman Lankapura Pradeshiya Sabha, she had taken up the position that she paid Rs. 300/ to the Petitioner in order to withdraw the case filed against her. However whilst giving evidence on behalf of the Respondent the witness had explained as to what happened in the Magistrate’s Court, when her evidence being led by the counsel on behalf of the Respondent as follows;

> “අංක 2 දරණ මහේස්ත්‍රාත් අධිකරණයේ ලංකාපුර ප්‍රාදේශීය සභාවට පවරන ලද නඩුවක් තිබුනා. ඒ නඩුව මට පවරලා තිබුනේ ප්‍රාදේශීය සභාවේ බදු ගෙව්වේ නෑ කියලා. රු. 450/ ක මුදලක් ගෙවන්න තිබුනේ. ඒ මුදල මම ප්‍රාදේශීය සභාවට ගෙව්වා. අධිකරණයට නෙමෙයි ගෙව්වේ. මම නීතීඥ රණවක මහත්මියට කතාකලා. නීතීඥ මහත්මිය කීවා එයාට ඒක භාරගන්න බෑ. උසාවියට එන්න කීවා අපිට නීතීඥ වරයෙක් හඳුන්වලා දෙන්නම් කීවා.
>
> මම ලංකාපුර ප්‍රාදේශීය සභාවට ලිපියක් ඉදිරිපත් කලා. ඒ අකුරු මගේ. මට මේ ලිපියේ කොපියක් දුන්නා. ප්‍රාදේශීය සභාවේ රාජමන්ත්‍රී මහත්මයා මට කීවා මේ බදු මුදල් වලට අමතරව නීතීඥ රණවක මහත්මියට මුදල් දුන්නා කියලා නෑ මේ ලිපියේ නෑ. නාලක මහතාටත් මුදල් දුන්නා කියලා ඒ විදිහට ලියලා දෙන්න කීවා. (මේ අවස්ථාවේදී විත්තියේ නීතීඥ මහතා විත්තියේ සාක්ෂි කරුවන්ගෙන් යෝජනා කරමින් ප්‍රශ්ණ අසන හෙයින්, සාක්ෂි ආඥා පනත යටතේ එලෙස ප්‍රශ්ණ කිරීමට නොහැකි බව නීතීඥ මහත්මාට දන්වා සිටිමි.) මට මේ විදිහට සාක්ෂි දෙන්න කියලා කව්රුත් උපදෙස් දුන්නේ නෑ. මේ දිවුරුම් ප්‍රකාශයේ තිබෙන්නේ මගේ අත්සන. මේ දිවුරුම් ප්‍රකාශය ගැන මම දන්නේ නෑ. මේ ස්වාමීණ්වහන්සේ ඉදිරිපිට මම අත්සන් කලේ නෑ.”

When considering the above evidence with the two documents referred to above, the affidavit and the letter produced marked "වි-5" and "වි-6" respectively, it is clear that the Respondent had made an attempt to introduce some evidence in support of his version. The said attempt by him clearly indicates his intention to mislead the court to cover up his position which appears to be untrue. The said conduct of the Respondent indicates the fact that the Respondent when making the statement in question had acted in malice against the Petitioner.

In the case of ***David V. Bell 16 NLR 319*** it was held that,

> In the case of defamation malice in modern English Law is no more than the absence of just cause or excuse and similarly an actual intention or desire to *injuria* is not under the Roman Dutch Law necessary to continue the animus *injuriandi*. Rackless or careless statements may be taken as proof of animus *injuriandi* and while English Law malice can only be refuted by showing the occasion was privileged or that the words were no more than honest and fair expression of opinion or matters of public interest and general concern, the Roman Dutch Law allows proof not only of such circumstances that the occasion was privileged but of any other circumstances that furnish a reasonable excuse for the use of words explained of"

The position taken up by the Respondent when he was subject to cross examination and the evidence of witness Jayasuriya clearly establish that the statement referred to was made not only with malicious intent towards the Appellant but was also made recklessly.

In the said circumstances I observe that the Judges of the Civil Appellate High Court err in law when they conclude that the statement made by the Respondent was a privilege statement since it was made at the monthly meeting to some questions raised from him within the four walls of the committee hall, even though it was found to be a untrue statement.

The Petitioner whilst testifying before the District Court had explained the embarrassment she had to undergo when the statement was made by the Respondent at the meeting as well as it was later published in the News Paper. The above evidence was sufficiently considered by the trial judge in her order when granting compensation.

It is further revealed that the said Pradeshiya Sabha had promptly taken steps with regard to the complaint made by the Respondent to the effect that the Petitioner had appeared in a case filed by the Pradeshiya Sabha against the interest of the Pradeshiya Sabha and taken steps to remove her from the work assigned to her.

The above position clearly shows that the statement made by the Respondent was considered by the Lankapura Pradeshiya Sabha as a statement made by the Respondent in his official capacity as the revenue administration of the said Pradeshiya Sabha and decided to act upon the said statement.

When considering whether the statement made by the Respondent was defamatory on the Appellant the Judges of the High Court of Civil Appeal had further observed that there wasn't sufficient material before the District Court to conclude that the said statement was made with malice or with the intent of defaming her or with the intent of putting her in difficulty.

In this regard the Judges of the High Court of Civil Appeal have referred to the decision of ***Pittard V. Oliver (1981) 60 L.J.Q.B. 219*** where it was observed that an answer given to a quarry made by the members of a Local Authority does not amount to defamation on a third party but as observed by me, the matters elicited before the District Court had clearly indicated that the Respondent had made the said statement with the intention of harming the Petitioner and the necessary animus *injuriandi* was present in the case in hand.

In the case of ***Dahanayake V. Jayasekara 5 NLR 257*** it was held that the Plaintiff in a defamation case must be given the opportunity to establish that the alleged statement was untrue and that it was made with improper motive.

Considering all the matters referred to above, I answer the questions of Law raise before this court in favour of the Petitioner and allow the appeal before us. I therefore make order setting aside the judgment of the Provincial High Court of Civil Appeal of the North Central Province dated 14.12.2011 in Appeal Case No. NCP/HCCA/ARP/878/2010 and affirm the judgment of the District Judge of Polonnaruwa in case No. 10645/Damages/2005, dated 18.10.2010.

However, I make no order with regard to cost.

Appeal allowed no costs.

Judge of the Supreme Court