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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 128/97

**BEFORE: THE HON. MR. JUSTICE BINGHAM, J.A.
THE HON. MR. JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE PANTON, J.A.**

BETWEEN	LLOYD B. SMITH	1st DEFENDANT/ APPELLANT
A N D	WESTERN PUBLISHERS LIMITED	2nd DEFENDANT/ APPELLANT
A N D	CPL. RODNEY LEE	PLAINTIFF/ RESPONDENT

H. Charles Johnson for Appellants

Garth E. Lytle for Respondent

19th June and July 31, 2001

BINGHAM J.A.:

Having read in draft the judgment of Walker, J.A., I entirely agree and have nothing to add.

WALKER, J.A.:

On September 17, 1994 the second appellant of which the first appellant was the Managing Director and Editor published an article on the front page of its newspaper known as The Western Mirror. The article was captioned "Police

station being used as drug point? Five Policemen transferred". As a result of this publication the respondent who was then a Corporal of Police of the Jamaica Constabulary Force stationed at the Whitehouse police station sued the appellants for libel. The action, which was defended, was tried by Theobalds, J who on October 22, 1997 gave a judgment for the plaintiff (respondent) in the sum of \$750,000.00 with costs to be agreed or taxed. It is from this judgment that the present appeal is taken.

The article, captioned as aforesaid, reads:

"Five of the six regular policemen at the Whitehouse Police Station in Westmoreland have been transferred, effective last Thursday (September 15, 1994). Reports reaching The Western Mirror are that the station is being used as a 'drug trans-shipment point'.

The five police officers are Sergeant Clive Forbes, Corporal Rodney Lee, Acting Corporal Alva Douglas, Constable M. A. Gabbidon and Constable C. Gabbidon.

Allegations are that recently a quantity of 37 kilograms of coke was found at sea by fishermen. The drug was brought ashore and soon began to filter into the village. It is alleged that some of the coke went into the hands of the police then disappeared. It is further reported that words got to the ears of the higher authority who carried out investigations, leading to the men's transfer.

Speaking with Police Superintendent for the parish, Charles Scarlett, who ordered the transfer, he said that he had heard about the allegations but this was not true because contrary to popular belief, the transfers were routinely done and had nothing to do with any coke. He said that he was not aware that the station was being used as a drug point and that after hearing the rumours, preliminary investigations were actually done which had not revealed any evidence to support that claim.

The superintendent says that anyone who has substantial information is being urged to pass it on to him, Assistant Commissioner for Area One, or the Police High Command in Kingston. The matter, he has said, will be thoroughly investigated and dealt with. Mr. Scarlett added that he was hoping that the transferred officers would be able to utilize their training in their new posts."

The effective ground of this appeal complained as follows:

"The Judge erred in law in finding that the Defendants' plea of 'fair comment' could not stand, given the circumstances".

For the appellant Mr. Johnson submitted quite simply that the transfer of the policemen of which the article made mention was factual and that the respondent had failed to prove that the appellants had been actuated by malice. Contra, Mr. Lyttle argued strenuously that the element of malice was to be inferred from the fact that the article was published notwithstanding that, as was revealed in the article itself, Superintendent Scarlett had been consulted about the allegations mentioned in the article and had advised that those allegations were untrue.

It is a defence to an action of libel that the words of which complaint is made are fair comment on a matter of public interest. As Scott L.J. put it in

Lyon v Daily Telegraph [1943] 1 K.B. 746 at 753:

"The right of fair comment is one of the fundamental rights of free speech and writing ... and it is of vital importance to the rule of law on which we depend for our personal freedom".

The right is a "bulwark of free speech": (Faulks Committee Cmnd. 5909 [1975] at para 151. Where the media are concerned, they have a right of fair comment which they share with every member of the public: see ***Campbell v***

the part of the appellants or either of them. There was, in fact, no evidence adduced to destroy the appellants' defence of fair comment.

It was for these reasons that I concurred with my learned brethren in allowing this appeal and in entering a judgment for the defendants/appellants with costs here and below to be agreed or taxed.

PANTION, J.A:

I agree.