CaseAnalysis
| *[2021] MLJU 11* | **[2021] 2 MLJ 142**

Nor Aziz bin Mat Isa v Sun Teoh Tia (SAC) (Pengerusi Lembaga Tatatertib Polis Diraja Malaysia Bukit Aman) & Ors
[2021] 2 MLJ 142

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FEDERAL COURT (PUTRAJAYA)

ZAWAWI SALLEH, HASNAH HASHIM AND HARMINDAR SINGH FCJJ

CIVIL APPEAL NO 01(f)-38–11 OF 2019(W)

8 January 2021

Case Summary

Police — Disciplinary proceedings — Dismissal — Policeman ('appellant') who insulted Inspector-General of Police in police report was dismissed from service following disciplinary proceedings — Appellant contended that the disciplinary proceedings and dismissal were unlawful as absolute privilege should have been accorded to his impugned remarks in the police report — Whether appellant's case was not the same as cases where persons who lodged police reports giving information about crimes were accorded absolute privilege on grounds of public policy to encourage such practice by relieving them of the fear of being sued for defamation — Whether no ground of public policy made it necessary for the absolute privilege rule to be extended to the appellant to immunise him from disciplinary proceedings for wantonly making defamatory remarks of his superior officers just to ruin their reputation — Whether appellant was bound to strictly observe disciplinary rules and regulations relating to his profession — Whether the action that was taken against him was justified

The appellant, who was a policeman with the Royal Malaysian Police ('RMP') for 27 years, was dismissed from service after the RMP's disciplinary board found him guilty of insulting the Inspector-General of Police ('IGP') in a police report. In the said report, the appellant had described the IGP as 'bodoh dan dayus' (stupid and incompetent). The second respondent instituted disciplinary proceedings against the appellant for making the said offending remarks and also on 11 other charges of misconduct. Ultimately, the appellant was found guilty of three of the charges but it was the charge of insulting the IGP that got him dismissed from the force. Dissatisfied with the decision, the appellant applied to the High Court for judicial review ('JR'). He argued that the impugned remarks in his police report was protected by absolute privilege and should not have been made the subject-matter of disciplinary proceedings against him under the Public Officers (Conduct and Discipline) Regulations 1993. The High Court dismissed the JR application holding that absolute privilege did not apply since public policy did not require his adverse remarks about the IGP to be protected from suit. The Court of Appeal affirmed the decision and further held that as long as the appellant was with the RMP he was bound to follow its

disciplinary rules and regulations, one of which considered a policeman's use of rude and threatening language, action or behaviour against [*143]
his superior officers a serious offence. The Federal Court allowed the appellant leave to file the instant appeal against the COA's decision on the question whether the maker of a police report could be subjected to disciplinary action when police reports made under s 107 of the Criminal Procedure Code were accorded absolute privilege. The appellant argued that just like the s 107 cases, absolute privilege should be accorded to protect a policeman from disciplinary action for remarks he had made in a police report. The respondents replied that the rationale for according absolute privilege, on the ground of public policy, to persons who made police reports giving information about crimes was to encourage such practice by alleviating the fear of being sued for something they had said in the report, but that principle could not be extended to the appellant because he had used his police report for no other purpose than to vent his anger and frustration against the IGP.

Held, unanimously dismissing the appeal:

(1) Absolute privilege was founded on policy considerations. A police report lodged would be absolutely privileged if it was the first step in the process of criminal investigation by the police and therefore not actionable for the purpose of the law of defamation. With such a report, the crime would be investigated and the perpetrator brought to justice. The grounds of public policy which explained the basis for the absolute privilege rule was to encourage honest and well-meaning persons to assist in the process of investigating a crime with a view to prosecution by relieving the persons who lodged the police report of the fear of being sued for something they had said in the report (see para 19).

(2) There was no compelling reason to extend the absolute privilege rule to a police report which was lodged for purposes other than for the police to kick-start an investigation into the commission of a crime. In the instant case, the contents of the appellant's police report in their literal and ordinary meaning meant that the IGP was incompetent and stupid. It was not a genuine complaint to the authorities. The appellant was venting his frustration publicly. His conduct of lodging the police report was not in discharge of his public duty to report crimes or provide information to his colleagues in investigating a suspected crime (see para 22).

(3) There was no public policy consideration that recognised that the defence of absolute privilege was automatically invoked when a police report was lodged and that no action whatsoever could be taken against the maker of the report, such as disciplinary proceedings like in the instant case. It had not been demonstrated in the present case that it was necessary for the appellant to have made the impugned statements in the police report. Those statements were made out of ill-will and improper motives, or causelessly and wantonly for the purpose of injuring the IGP [*144]

or tarnishing his image and not for the purpose of actually reporting crime or to enforce obedience to the law or to see that guilty people were punished (see para 25).

(4) What reason was there of public policy that made it necessary that a police officer should be immune from disciplinary proceedings when he made statements defamatory of his superior, which he knew to be false and scandalous, for the purpose of injuring or ruining his reputation? The impugned statements in the present case was not a matter of public concern but was designed to tarnish the IGP's image as the head of the RMP. The appellant's behaviour was a serious breach of para 8.1.3 (now para 33.1.4) of the Perintah-Perintah Tetap Ketua Polis Negara (PTKPN A110), namely, 'menggunakan bahasa mengugut, biadap dalam perkataan atau perbuatan dan

tingah laku terhadap mana-mana pegawai polis yang berpangkat lebih kanan daripadanya' and was inconsistent with his professional duties. As such, the disciplinary action leading to the appellant's dismissal was perfectly justified (see paras 26–27).

Perayu, yang merupakan anggota polis Polis Diraja Malaysia ('PDRM') selama 27 tahun, dipecat dari perkhidmatan setelah lembaga tatatertib PDRM mendapati beliau bersalah kerana menghina Ketua Polis Negara ('KPN') dalam laporan polis. Dalam laporan tersebut, perayu telah menggambarkan KPN sebagai 'bodoh dan dayus'. Responden kedua memulakan prosiding tatatertib terhadap perayu kerana membuat pernyataan yang menyinggung tersebut dan juga atas 11 pertuduhan salah laku lain. Akhirnya, perayu didapati bersalah atas tiga daripada pertuduhan tersebut tetapi pertuduhan menghina KPN yang membuatnya diberhentikan dari tugas. Tidak berpuas hati dengan keputusan tersebut, perayu memohon ke Mahkamah Tinggi untuk semakan kehakiman ('SK'). Beliau berpendapat bahawa kenyataan yang didakwa dalam laporan polisnya dilindungi oleh hak keistimewaan mutlak dan seharusnya tidak dijadikan perkara utama perbicaraan tatatertib terhadapnya di bawah Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993. Mahkamah Tinggi menolak permohonan SK dengan memutuskan hak keistimewaan mutlak tersebut tidak terpakai kerana dasar awam tidak memerlukan kenyataan menyinggung beliau terhadap KPN dilindungi dari tuntutan mahkamah. Mahkamah Rayuan mengesahkan keputusan tersebut dan seterusnya memutuskan bahawa sekiranya perayu masih bersama PDRM, beliau terikat dalam mematuhi kaedah dan peraturan tatatertibnya, yang mana salah satunya mengambilkira penggunaan bahasa yang kasar atau mengancam oleh anggota polis terhadap pegawai atasannya adalah kesalahan yang serius. Mahkamah Persekutuan membenarkan kebenaran perayu untuk memfailkan rayuan semasa terhadap keputusan COA mengenai persoalan sama ada pembuat laporan polis boleh dikenakan tindakan tatatertib apabila laporan polis yang dibuat di bawah s 107 Kanun Tatacara Jenayah diberikan hak [*145] keistimewaan mutlak. Perayu berpendapat bahawa seperti kes-kes s 107, hak keistimewaan mutlak harus diberikan untuk melindungi anggota polis dari tindakan tatatertib atas kenyataan yang dibuatnya dalam laporan polis. Responden menjawab bahawa alasan untuk hak keistimewaan mutlak, atas dasar awam, kepada sesiapa yang membuat laporan polis dalam memberikan maklumat mengenai jenayah adalah untuk mendorong amalan tersebut dengan mengurangkan kegusaran dari disaman atas sesuatu yang mereka katakan dalam laporan, tetapi prinsip tersebut tidak dapat diperluaskan kepada perayu kerana beliau telah menggunakan laporan polisnya untuk tujuan lain selain untuk melepaskan kemarahan dan kekecewaannya terhadap KPN.

Diputuskan, dengan sebulat suara menolak rayuan:

(1) Hak keistimewaan mutlak diasaskan pada pertimbangan dasar. Laporan polis yang dibuat akan dikira sebagai keistimewaan mutlak sekiranya ia merupakan langkah pertama dalam proses siasatan jenayah oleh polis dan oleh itu tidak dapat dilaksanakan untuk tujuan undang-undang fitnah. Dengan laporan seperti itu, jenayah akan disiasat dan pelakunya dibawa ke muka pengadilan. Asas dasar awam yang menjelaskan asas peraturan hak keistimewaan mutlak adalah untuk mendorong seseorang yang jujur dan amanah untuk membantu dalam proses siasatan jenayah dengan tujuan pendakwaan dengan melepaskan seseorang yang membuat laporan polis atas kegusaran disaman atas sesuatu yang mereka katakan dalam laporan tersebut (lihat perenggan 19).

(2) Tidak ada alasan yang wajar untuk memperluaskan peraturan hak keistimewaan mutlak kepada laporan yang dibuat demi tujuan selain dari pihak polis untuk memulakan siasatan terhadap perbuatan jenayah. Dalam kes semasa, kandungan laporan polis perayu dalam makna literal dan biasa bermaksud bahawa KPN dayus dan bodoh. Ianya bukalah aduan yang tulen kepada pihak

berkuasa. Perayu melepaskan kekecewaannya secara terbuka. Tingkah lakunya dalam membuat laporan polis bukanlah dalam pelepasan tanggungjawab awam beliau dalam melaporkan jenayah atau memberikan maklumat kepada rakan sekerjanya dalam membuat siasatan terhadap dakwaan jenayah (lihat perenggan 22).

(3) Tidak ada pertimbangan kepentingan awam yang mengakui bahawa pembelaan bagi hak keistimewaan mutlak secara automatik terpakai apabila laporan polis dibuat dan tidak ada sebarang tindakan yang dapat diambil terhadap pembuat laporan, seperti prosiding tatatertib seperti dalam kes semasa. Ianya tidak dibuktikan dalam kes semasa bahawa ianya adalah perlu bagi perayu dalam membuat pernyataan yang menyinggung dalam laporan polis. Pernyataan-pernyataan tersebut dibuat atas niat jahat dan motif yang tidak wajar, atau tanpa sebab dan dengan sengaja untuk tujuan merosakkan KPN atau mencemarkan imejnya dan bukan [*146]

demi tujuan sebenar untuk melaporkan jenayah atau untuk menguatkuasakan pematuhan kepada undang-undang atau untuk melihat orang-orang yang bersalah dihukum (lihat perenggan 25).

(4) Apakah alasan ianya untuk dasar awam yang memerlukan anggota pegawai polis kebal dari prosiding tatatertib apabila beliau membuat kenyataan memfitnah pegawai atasannya, yang mana beliau tahu tidak benar dan berunsur fitnah, dengan tujuan merosakkan atau menjatuhkan reputasi beliau? Kenyataan yang didakwa dalam kes semasa bukanlah perkara yang menjadi kebimbangan awam tetapi dibuat untuk mencemarkan imej KPN sebagai ketua PDRM. Tingkah laku perayu adalah pelanggaran serius perenggan 8.1.3 (sekarang perenggan 33.1.4) Perintah-Perintah Tetap Ketua Polis Negara (PTKPN A110), iaitu, ‘menggunakan bahasa mengugut, biadap dalam perkataan atau perbuatan dan tingah laku terhadap mana-mana pegawai polis yang berpangkat lebih kanan daripadanya’ dan tidak selari dengan tugas profesional beliau. Oleh yang demikian, tindakan tatatertib yang menyebabkan pemecatan perayu telah dijustifikasikan dengan sempurna (lihat perenggan 26–27).]

Cases referred to

Buckley v Dalziel and another [2007] 1 WLR 2933, QBD (refd)

Darker and others v Chief Constable of the West Midlands Police [2001] 1 AC 435, HL (folld)

Dato’ Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals [2017] 5 MLJ 413; [2017] 8 CLJ 369, FC (refd)

Evans v London Hospital Medical College (University of London) and others [1981] 1 WLR 184, QBD (refd)

Lee Yoke Yam v Chin Keat Seng [2013] 1 MLJ 145, FC (distd)

Mann v O’Neill (1997) 145 ALR 682, HC (refd)

Noor Azman bin Azemi v Zahida bt Mohamed Rafik [2019] 3 MLJ 141, FC (refd)

Taylor and another v Director of the Serious Fraud Office and others [1999] 2 AC 177, HL (refd)

Westcott v Westcott [2009] 2 WLR 838, CA (refd)

Legislation referred to

Criminal Procedure Code s 107

Police Act 1967 s 4

Public Officer (Conduct and Discipline) Regulations 1993 reg 37

Appeal from: Civil Appeal No W-01(A)-506–12 of 2017 (Court of Appeal, Putrajaya)

[*147]

MM Athimulan (Tinoshiny Arumugam with him) (Athimulan & Co) for the appellant.
Shamsul Bolhassan (Mohd Asraf Abdul Hamid with him) (Attorney General's Chambers) for the respondents.

Zawawi Salleh FCJ (delivering judgment of the court):

INTRODUCTION

[1]The short legal question that arises in this appeal is whether absolute privilege should be extended to the defamatory statements contained in a police report lodged by a police officer under *s 107* of the *Criminal Procedure Code* ('the CPC') for the purpose of disciplinary proceedings against him under the Public Officer (Conduct and Discipline) Regulations 1993 ('the Regulations 1993').

[2]The courts below opined that the ambit of absolute privilege should not be extended for such purpose. For the reasons set out later in this judgment, we agree with the decisions of the courts below.

THE OUTLINES FACTS

[3]The appellant was, until his dismissal on 18 August 2015, a police man with the Royal Malaysia Police ('RMP') for 27 years.

[4]A show-cause letter dated 12 September 2013 was issued to the appellant informing that the second respondent had decided to pursue disciplinary proceedings against him pursuant to reg 37 of the Regulations 1993, with a view to dismiss or reduce in rank. There were 12 charges preferred against the appellant:

(a) the first to ninth charges were in respect of the appellant's failure to report physically to the battalion chief;

(b) the tenth charge was in respect of the appellant's police report dated 27 August 2012 for which the appellant had insulted the Inspector General of Police ('IGP');

(c) the 11th charge was in respect of the appellant's statement for which he had insinuated that the IGP was in good terms with the Bridge Commander and any reports made against him would have no effect (*tidak akan membawa kesan*); and

(d) the 12th charge was that the appellant's conduct had adversely tarnished the image of the public service.

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[5]The appellant had responded to the show-cause letter vide his letter dated 31 December 2013.

[6]After considering the appellant's representation, the second respondent found that the appellant was not guilty of misconduct in respect of the first to ninth charges. The second respondent found that the appellant was guilty of misconduct in respect of the tenth to 12th charges. The punishment imposed against the appellant are as follows:

(a) the tenth charge, the appellant's service was terminated; and

(b) the 11th and 12th charges, the appellant was given a warning.

The second respondent had informed the appellant of its decision via letter dated 21 August 2015.

[7]Dissatisfied with the decision, the appellant filed an application for judicial review. The High Court refused the application. The appellant's appeal to the Court of Appeal was dismissed.

POLICE REPORT NO SG SIPUT (U) 002450/12

[8]Central to the present appeal was the police report lodged by the appellant which became the subject matter of the tenth charge and upon which the appellant's service was terminated. The report, with the impugned words appearing in bold, reads as follows:

> Jutaan terima kasih diucapkan kepada Tan Sri Ismail Haji Omar selaku Ketua Polis Negara kerana menamatkan perkhidmatan saya (di buang kerja) nasib saya baik kerana tidak di buang daerah. Perpatah inggeris berkata kalau ikan busuk di kepala ini bermakna surat yang dibuat oleh pegawai bawahan KPN pun turut sama busuk. Sepanjang 23 tahun saya bekerja dibawah pucuk pimpinan 7 orang Ketua Polis Negara, dalam 205 sejarah PDRM tidak pernah lagi PDRM diberi penghinaan oleh seorang **Ketua Polis Negara yang** begitu **bodoh dan dayus** yang boleh disamakan dengan lawak seperti Mr Bean. Tepatlah kata pepatah orang-orang bodoh sentiasa mencari orang yang boleh untuk ia dikagumi. Yang anehnya, **bagaimana orang yang bodoh boleh menjadi KPN**?

THE HIGH COURT'S DECISION

[9]The main reason of the High Court in refusing the appellant's application for judicial review was that

the defence of absolute privilege did not apply to disciplinary proceedings under Regulations 1993. The High Court stated:

> viii) Kes-kes yang dirujuk pada pandangan saya adalah tidak relevan dengan tindakan tatatertib yang dijalankan terhadap Pemohon. Kes-kes yang dirujuk [*149]
> adalah saman fitnah di Mahkamah dan laporan polis yang dibuat itu diputuskan oleh Mahkamah mempunyai elemen kepentingan awam yang perlu dilindungi.

THE COURT OF APPEAL'S DECISION

[10]The Court of Appeal arrived at the same conclusion. The Court of Appeal stated:

> [41] Perayu berhujah bahawa laporan polis dan kandungannya adalah dokumen terlindung 'absolute privilege' dan tidak boleh dijadikan asas untuk pertuduhan. Hakim Mahkamah Tinggi mendapati nas-nas yang dirujuk oleh perayu tidak relevan dengan tindakan tatatertib yang dijalankan terhadap perayu kerana kes-kes yang dirujuk adalah saman fitnah di mahkamah di mana laporan polis yang dibuat itu diputuskan oleh mahkamah sebagai mempunyai elemen kepentingan awam yang perlu dilindungi. Kami bersetuju dengan dapatan Hakim Mahkamah Tinggi.
>
> [42] Tindakan terhadap perayu adalah tindakan pentadbiran iaitu tindakan tatatertib di mana perayu sebagai anggota polis terikat dengan PTKPN yang menjadi asas pertuduhan. Mengikut perenggan 8.1.3 PTKPN, mana–mana pegawai polis yang berlakuan mengugut, biadap dalam perkataan atau perbuatan dan tingkahlaku terhadap mana-mana pegawai polis yang berpangkat lebih kanan daripadanya, adalah melakukan kesalahan tatatertib dan boleh dikenakan tindakan tatatertib.

LEAVE QUESTION

[11]Leave to appeal was granted by this court on 22 November 2018 on the sole question of law as follows:

> When the defence of absolute privilege is extended to police report under section 107 of the Criminal Procedure Code, whether the disciplinary action can be based on the police report against the maker, who lodged the police report?

PARTIES' COMPETING SUBMISSIONS *The appellant's submission*

[12]The nub of the appellant's submission is that absolute privilege has been extended to protect a statement contained in a police report lodged under s 107 of the CPC based on public policy consideration. As such, no disciplinary action based on such report could be taken against him and his dismissal was unlawful. The appellant placed reliance on cases of *Lee Yoke Yam v Chin Keat Seng* [2013] 1 MLJ 145 and *Dato' Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals* [2017] 5 MLJ 413; [2017] 8 CLJ 369 in support of his contention. The appellant posited that these cases extended the scope of the defence of absolute privilege beyond its traditional which confines to statements made in the course of judicial and quasi-judicial proceedings to out-of-court statements leading to judicial proceedings, such as statements [*150]

made in a police report. In doing so, the courts were swayed by an overriding public interest of encouraging members of the public to report alleged criminal conduct to the police without fear of being embroiled in civil litigation. In other words, absolute privilege is based on a policy that regards the ends to be gained by permitting such statements as outweighing the harm may be done to the reputation of others. The defamatory statements contained in police report are deemed privilege so that the individual making the statements will not be deterred by the threat of civil liability.

The respondent's submission

[13]Learned senior federal counsel ('SFC') acknowledged that the law recognises that on public policy consideration, absolute privilege is accorded to statements made in a police report irrespective of whether there is element of malice on the part of the complainant, and he should be free from accountability by way of defamation suit. However, the protection should not be extended to disciplinary proceedings. Learned SFC referred us to the case of *Noor Azman bin Azemi v Zahida bt Mohamed Rafik* [*[2019] 3 MLJ 141*] in which the Federal Court stated that the ambit of absolute privilege should not be extended unnecessarily. The underlying purpose of absolute privilege of a police report is to encourage public to give information of a crime. In the case at hand, the police report was used to vent the appellant's anger against the top management or senior officers in the MPF. In such circumstances, to resort to absolute privilege is a clear abuse. On the factual matrix of the present case, it was contended that the calling names against the IGP in the police report lodged by the appellant does not relate to information of a crime.

DISCUSSION AND ANALYSIS *The Malaysian position*

[14]In *Lee Yoke Yam*, this court held that the defence of absolute privilege should be extended to statements made in a first information report for reasons of public policy. In the court's view, there was an 'overriding public interest that a member of the public should be encouraged to make [a] police report with regard to any crime that comes to his or her notice'. Such public interest outweighed the countervailing consideration that this could sometimes lead to an abuse by a malicious informant, and in any case, there would be a sufficient safeguard against such malicious report in that informants could be prosecuted for making a false report. This position is subsequently followed by this court in the case of *Dato' Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals* [*[2017] 5 MLJ 413*]; [2017] 8 CLJ 369.

[15]In *Noor Azman*, this court sets limit to the defence of absolute privilege accorded to a police report. It held that the subsequent publication of the [*151]
contents of a police report made by the maker of the report was not protected by the defence of absolute privilege except where the contents of the report were made in or in connection with judicial proceedings. There is no valid reason of public policy why the maker of a police report should be free from accountability by way of defamation action to publish the defamatory words contained in the police report to the world at large. The court reasoned, 'the right of the maker of the police report to speak and write freely to the public cannot override an individual's interest in protecting his reputation'.

The English position

[16]In *Buckley v Dalziel and another* [*[2007] 1 WLR 2933*], the English High Court held that absolute privilege applied to a statement made to the police. It reasoned that the need to protect those who provided evidence to police officers, or other investigatory agencies, in the course of an inquiry into possible

illegality or wrongdoing had to take priority over any competing public policy consideration regardless of whether the informant was a mere witness or the initial complainant. Significantly, the statement in question had been recorded in the course of investigations which commenced after a complaint was made.

[17]Subsequently, in *Westcott v Westcott* [2009] 2 WLR 838, the English Court of Appeal extended the scope of absolute privilege further to cover the initial complaint to the police. Ward LJ took the view that the necessity of allowing informants to speak freely overrides the sanctity of a good reputation in such cases. Ward LJ stated that:

> The police cannot investigate a possible crime without the alleged criminal activity coming to their notice. Making an oral complaint is the first step in that process of investigation. In order to have confidence that protection will be afforded, the potential complainant must know in advance of making an approach to the police that her complaint will be immune from a direct or a flank attack. There is no logic in conferring immunity at the end of the process but not from the very beginning of the process. Mr Craig's distinction between instigation and investigation is flawed accordingly. In my judgment, any inhibition on the freedom to complain will seriously erode the rigours of the criminal justice system and will be contrary to the public interest. In my judgment immunity must be given from the earliest moment that the criminal justice system becomes involved. It follows that the occasion of the making of both the oral complaint and the subsequent written complaint must be absolutely privileged.

[18]The court in *Westcott* adopted the test laid down in *Evans v London Hospital Medical College (University of London) and others* [1981] 1 WLR 184 that was endorsed by the House of Lords in *Taylor and another v Director of the Serious Fraud Office and others* [1999] 2 AC 177: can the offending statement fairly be said to be part of the process of investigating a crime or a possible crime [*152] with a view to a prosecution or possible prosecution in respect of the matter being investigated? The court in *Westcott* held that the making of an oral complaint and a subsequent written complaint to the police could, since 'immunity must be given from the earliest moment that the criminal justice system becomes involved'.

[19]It can be seen from the decisions of the cases referred to above, absolute privilege is founded on policy consideration. A police report lodged would be absolutely privileged if it is the first step in the process of criminal investigation by the police and therefore not actionable for the purpose of the law of defamation. With such a report, the crime will be investigated and the perpetrator be brought to justice. In our opinion, the grounds of public policy which explain the basis for the absolute privilege rule is to encourage honest and well-meaning persons to assist in the process of investigating a crime with a view to prosecution by relieving the persons who lodged the police report from the fear of being sued for something they say in the reports (see *Noor Azman*).

[20]Learned counsel for the appellant vehemently argued that cases of *Lee Yoke Yam, Dato' Dr Low Bin Tick* and *Noor Azman* binds us to find otherwise. Learned counsel submitted that in order to achieve the objective of administration of criminal, it is essential that the immunity given to the maker of police report should be extended to protect a policeman against any disciplinary proceedings. To decide otherwise

would render the defence of absolute privilege illusory.

[21]With respect, we disagree. In our judgment, any expansion in the ambit of the defence of absolute privilege must relate to this underlying aim of facilitating the effective discharge of the shared public duty in judicial proceedings or events leading to judicial proceedings. As we have alluded to earlier, a police report lodged would be absolutely privileged if it is the first step in the process of criminal investigation by the police and therefore not actionable for the purpose of the law of defamation. The public policy would dictate that citizens must have unfettered access to make police reports. It recognises the importance of ensuring an 'open channel of communication' between citizens and the police.

[22]As we examine the policy consideration, however, we see no compelling justification for extending an absolve privilege to a police report for the purpose of disciplinary proceedings against the maker who lodged the report for the purposes other than for the police to kick start the investigation on the course of the commission of a crime. In the instant case, there can be no doubt that the contents of the statement in the police report lodged by the appellant in their literal and ordinary meaning were understood to mean that IGP was [*153]
incompetent and stupid. It was not a genuine complaint to the authorities. The appellant was venting his frustration publicly. His conduct of lodging the said police report could not be said to be discharging his public duty to report crimes or provide information to his colleagues in investigating a suspected crime. That is the crucial difference between the present case and the case of *Lee Yoke Yam*.

[23]In our judgment, the suggested extension of the scope of absolute privilege would be wholly disproportionate and unnecessary for the aim of encouraging members of the public to report suspected wrongdoings. The defence of absolute privilege is afforded for sound reasons of policy, but it must not be extended further than is necessary. Thus, in *Darker and others v Chief Constable of the West Midlands Police* [2001] 1 AC 435, Lord Cooke said at p 453:

> Absolute immunity is in principle inconsistent with the rule of law but in a few, strictly limited, categories of cases it has to be granted for practical reasons. It is granted grudgingly, the standard formulation of the test for inclusion of a case in any of the categories being McCarthy P's proposition in *Rees v Sinclair* [1974] 1 NZLR 180 at 187: The protection should not be given any wider application than is absolutely necessary in the interests of the administration of justice ...

[24]We respectfully adopt Lord Cooke's speech. Absolute privilege should not be given any wider meaning than is absolutely necessary in the administration of justice. Any extension of absolute privilege must be 'viewed with the most jealous suspicion and resisted unless its necessity is demonstrated'. In the Australian case of *Mann v O'Neill* (1997) 145 ALR 682, Brennan CJ, Dawson, Toohey and Gaudron J had considered the policy considerations for the extension of absolute privilege to such complaints and concluded in their joint judgment that:

> It may be that the various categories of absolute privilege are all properly to be seen as grounded in necessity, and not on broader grounds of public policy. Whether or not that is so, the general rule is that the extension of absolute privilege is 'viewed with the most jealous suspicion, and resisted, unless its necessity is demonstrated'. Certainly, absolute privilege should not be extended to statements which are said to be analogous to statements in judicial proceedings unless there is demonstrated some necessity of the kind that dictates that judicial proceedings are absolutely privileged.

[25]In our considered opinion, there is no public policy consideration to recognise that the defence of absolute privileged is automatically invoked when a police report is lodged and there could be no action whatsoever be taken against the maker, like a disciplinary proceedings in the instant case. Furthermore, it has not been demonstrated in the present case of the necessity for the appellant to make the impugned statements in the said police report. [*154]
The impugned statement was made from ill will and improper motives, or causelessly and wantonly for the purpose of injuring the IGP. In fact, the police lodged by the appellant is not for the purpose of actually reporting crime, or to enforce obedience to the law, or to see that guilty people are punished but for the purpose of tarnishing the image another individual.

[26]What reason is there of public policy that make it necessary that a police officer should be immune from disciplinary proceedings when he makes statements defamatory of his superior which he knows to be false and scandalous for the purpose of injuring or ruining his reputation. The IGP sits atop hierarchical structure of the RMP that spans multiple policing competencies across the country. Section 4 of the *Police Act 1967* states:

> The force shall be under the command of an Inspector General who shall be a police officer and shall be responsible to the Minister for the control and direction of the force …

[27]The impugned statement in the present case is not a matter of public concern but is designed to tarnish the IGP's image as the head of the RMP. The appellant's behavior was a serious breach of the para 8.1.3 (now para 33.1.4) Perintah-perintah Tetap Ketua Polis Negara (PTKPN A110) (menggunakan bahasa mengugut, biadap dalam perkataan atau perbuatan dan tingkah laku terhadap mana-mana pegawai polis yang berpangkat lebih kanan daripadanya) and inconsistent with his professional duties. As such, the disciplinary action leading to the appellant's dismissal is perfectly justified.

CONCLUSION

[28]For all the above reasons, the leave question is answered in the negative. Consequently, the appeal is dismissed and we make no order as to costs.

Appeal dismissed.

Reported by Ashok Kumar

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