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For Court use only

Judgment

Royal Emblem

Undecided Case No. 2161/2557

Decided Case No. 6564/2558

In the Name of the King

Phuket Provincial Court

1st September 2015

Criminal Case

Between	{	Phuket Public Prosecutor	Prosecutor
		Big Island Media Co., Ltd., the 1 st	
		Mr. Alan John Morrison, the 2 nd	
		Ms. Chutima Sidasathien, the 3 rd	Defendants

Subject: Defamation, offence against the Computer Crime Act

The Prosecutor prosecuted that, at day time of 17th July 2013, the three Defendants jointly imputed the Royal Thai Navy, the injured, to the third party by publicizing an English article titled “Thai Military Profiting from Trade in Boatpeople, Says special report” which could be translated into Thai as “รายงานพิเศษระบุว่ากองทัพเรือไทยได้ประโยชน์จากการค้าผู้อพยพทางเรือ” with the stated content that “The Thai naval forces usually earn about 2000 baht per Rohingya for spotting a boat or turning a blind eye, Said the smuggler, who works in the Southern Thai region of Phang Nga [north of Phuket] and deals directly with the navy and police.” which could be translated into Thai as “นักค้ามนุษย์ที่ติดต่อกับกองทัพเรือและตำรวจในพื้นที่จังหวัดพังงากล่าวว่า กองทัพเรือไทยมักจะได้รายได้ 2,000 บาทต่อชาวโรฮิงญา 1 คน สำหรับการตรวจพบเรือหรือปล่อยให้เรือผ่านไป”. Such statement in the above article implied that the Royal Thai Navy benefited from the trading of boat immigrants and Thai naval officers in the concerned region benefited from the smuggling of Rohingyas by sea route which was false. The three Defendant jointly imported this article, which was false computer data, to a computer system

via internet system by publicizing it on website www.phuketwan.com and disseminating the article which was false computer data to the public that could access the website www.phuketwan.com through the internet-connected computer system. The three Defendants were aware that such article was false computer data that would likely impair the reputation of the injured or to expose the injured to hatred and insult and would likely cause damage to the injured, other persons or the public. The incident occurred in connection at Wichit Sub-district and Talad Yai Sub-district, Muang Phuket District, Phuket Province. It was thereafter requested that the Court convict the Defendants pursuant to Articles 3 and 14 of the Computer Crime Act, B.E. 2550 and Articles 326, 328, 332 and 83 of the Criminal Code and additionally order the three Defendants to publicize the Judgment, wholly or in part, in one or several newspapers at the expense of the three Defendants

The three Defendants denied all the charges.

The Prosecutor produced that Navy Captain Pallop Komalotok had come across the news article on the website of the 1st Defendant namely www.phuketwan.com with the headline “Thai Military Profiting from Trade in Boatpeople, Says special report” followed by the content “The Thai naval forces usually earn about 2000 baht per Rohingya for spotting a boat or turning a blind eye, said the smuggler, who works in the southern Thai region of Phang Nga [north of Phuket] and deals directly with the navy and police” which could translated into Thai as “กำลังทางเรือมักได้รับเงิน 2,000 บาทต่อชาวโรฮิงญา 1 คน สำหรับการตรวจพบเรือหรือปล่อยให้เรือผ่านไป”. This imputed that the Royal Thai Armed Forces benefited from the trading of boat immigrants, was in a manner that defamed the Navy officers, and constituted a bad image of the Navy officers once read. The content was not a fair or righteous criticism but rather it maliciously destroyed reputation of the Navy officers. Accordingly, it was the offence of defamation and the offence under the Computer Crime Act.

The three Defendants similarly adduced that they had brought the article from the Reuters News Agency and the translation of the Prosecutor was not correct. There was no statement indicating the Navy officers. The three Defendants had no intention to damage the image of the Royal Thai Navy. In fact, they only reported the news to the public so that they would be aware of the importance of human trafficking issue including corruption by some state officials.

Upon consideration of the evidence produced by the Prosecutor and the three Defendants, the preliminary fact can be established that the injured is a government agency. To file a complaint, the Navy Chief authorized the Assistant Navy Chief to file a complaint pursuant to the Royal Thai Navy's Order No. 199/2553, exhibit Jor.6, thereafter Admiral Polwat Sirodom, the Assistant Navy Chief who had been authorized by the Navy Chief, authorized Navy Captain Pallop Komalotok to file a complaint against the three Defendants based on the power of attorney as shown in exhibit Jor.3. The 1st Defendant is a juristic person in the form of company limited, with the 2nd Defendant being a board member as shown in the company registration certificate, exhibit Lor.6, and with the purpose of producing news on the website www.phuketwan.com. On 17 July 2013, the three Defendants publicized an English article under the headline "Thai Military Profiting from Trade in Boatpeople, Says special report" and with the content "The Thai naval forces usually earn about 2000 baht per Rohingya for spotting a boat or turning a blind eye, said the smuggler, who works in the southern Thai region of Phang Nga [north of Phuket] and deals directly with the navy and police" in the website called www.phuketwan.com. The first issue to be considered is whether or not the Royal Thai Navy is the injured and has the authority to file the complaint. In this regard, it is found that Navy Captain Pallop, who is the person authorized by the Royal Thai Navy and the injured, testified during the cross examination by the 2nd Defendant's lawyer that they did not wish to litigate the three Defendants in relation to the headline but merely the detail in the news paragraph. As such, such news paragraph which states that "The Thai naval forces usually earn about 2000 baht per Rohingya for spotting a boat or turning a blind eye, said the smuggler, who works in the southern Thai region of Phang Nga [north of Phuket] and deals directly with the navy and police" is herein the issue of the case. Navy Captain Pallop testified during the cross examination by the 1st Defendant's lawyer that the term "กองทัพเรือ" referred to the Royal Thai Navy in English and thus the term "The Thai naval forces" did not refer to any specific agency but meant the naval force that has the duty to patrol the water ways which could be the Royal Thai Navy, the Marine Police or the water ways patrol section of the Internal Security Operations Command (ISOC). The three Defendants used the word "forces", which is a plural form thus referring to several agencies as aforementioned, and the general public could understand that it included the Royal Thai Navy, which has the duty of water ways patrolling. Accordingly, the Royal Thai Navy can be the injured and has the authority to file the complaint against the three Defendants.

The next issue for consideration is whether or not the act of the three Defendants is the offence of defamation by means of publicizing as charged. Navy Captain Pallop testified as a Prosecutor's witness that he worked at the Strategic Intelligence Division, Third Naval Area Command, Phuket Province, in the position of Deputy Director of Strategic Intelligence Division with the duty to monitor security and military-related information. On 17th July 2013 the witness found a news on the internet under the website www.phuketwan.com of which the news headline was that Thai Military Profiting from Trade in boatpeople followed by the content stating that "The Thai naval forces usually earn about 2,000 baht per Rohingya for spotting a boat or turning a blind eye". The Thai translation was that "กำลังทางเรือมักจะได้เงินประมาณ 2,000 บาทต่อชาวโรฮิงญา 1 คน สำหรับการตรวจพบเรือ หรือปล่อยให้เรือผ่านไป" as shown in exhibit Jor.1. The witness considered that such publicized news damaged the Royal Thai Navy and thus informed his superior. Later, he checked and learned that the owner of the website was the 1st Defendant with the 2nd Defendant as its board member. As such, the Royal Thai Navy authorized the witness to file a complaint with an inquiry official as shown in exhibits Jor.3 and Jor.4. The Human Rights Commission of Thailand arbitrated the dispute but no conclusion was reached. It is found that Navy Captain Pallop, the 2nd and the 3rd Defendants testified in the same manner that the news article publicized as prosecuted was brought from the Reuters News Agency by the 2nd and the 3rd Defendants. At the inquiry stage, the 2nd Defendant submitted the news report from Reuters News Agency to the inquiry official as appeared in the inquiry records of the 2nd and the 3rd Defendants, exhibits Jor.10 and Jor.11. The Prosecutor translated the statement that the 2nd and the 3rd Defendants had publicized into Thai as "นักค้ามนุษย์ที่ติดต่อกับกองทัพเรือและตำรวจในพื้นที่จังหวัดพังงากล่าวว่า กำลังทางเรือไทยมักจะได้รายได้ 2,000 บาทต่อชาวโรฮิงญา 1 คน สำหรับการตรวจพบเรือหรือปล่อยให้เรือผ่านไป". Nevertheless, the 3rd Defendant had argued since the inquiry stage that the translation was not correct as in English there was not any statement indicating the Royal Thai Navy. Mr. Wannasan Noonsuk, an instructor of the Doctor of Philosophy program of Walailak University who graduated with a doctorate degree from Cornell University in the United States of America, translated the statement in question as "เจ้าหน้าที่ทางเรือมักจะได้รับเงินราว 2,000 บาทต่อชาวโรฮิงญาหนึ่งคน จากการพบเห็นเรือหรือการทำให้ไม่เห็น กล่าวโดยผู้ลักลอบที่ทำงานใน

พื้นที่ภาคใต้ในจังหวัดพังงา (ทางเหนือของภูเก็ต) และติดต่อโดยตรงกับเจ้าหน้าที่ทหารเรือและเจ้าหน้าที่

ตำรวจ”. With respect to the discrepancy in translation, the Court has decided upon the matters of the injured and the prosecution power. There hence remains only the issue of whether or not the publicizing of the news from Reuters News Agency on the website of the 1st Defendant by the 2nd and the 3rd Defendants is the offence of defamation by publicizing as charged. It is considered that Reuters News Agency is a trustworthy source of news, worldwide accepted, and verifiable. It is believed that the news reporter of Reuters has verified the fact of the news. Furthermore, the content that the 2nd and the 3rd Defendants publicized on the website of the 1st Defendant as shown in exhibit Jor.1, when read thoroughly, has several parts which state that it was reported by Reuters News Agency and it is neither the fact nor opinion written by the three Defendants. The content of the news in the complaint is the same as that appeared in the news article of Reuters News Agency, as shown in exhibit Lor.9. Accordingly, the act of the three Defendants is not considered the offence of defamation by publicizing as charged.

The last issue to be considered is whether or not the act of the three Defendants is the offence of importing false computer data to the computer system pursuant to the Computer Crime Act. The Prosecutor has requested the punishment in accordance with Articles 3, 14 of the Computer Crime Act, B.E. 2550 whereof Article 14(1) involves importing to a computer system of forged computer data, either in whole or in part, or false computer data in a manner that is likely to cause damage to other persons or the public; Article 14(2) involves importing to a computer system of false computer data in a manner that is likely to cause damage to the national security or cause public panic; Article 14(3) involves importing to a computer system of any computer data related to the offence against the security of the Kingdom or the offence of terrorism under the Criminal Code; Article 14(4) involves importing to a computer system of any computer data of a pornographic nature and is publicly accessible; Article 14(5) involves dissemination or forwarding of computer data already known to be computer data under (1), (2), (3) or (4). Therefore, that the three Defendants brought from Reuters News Agency the news article stating that the Thai naval forces usually earned money from omitting to perform duty related to the trafficking of Rohingyas in the area of Phang Nga does not appear to contain any forged or false computer data as prescribed in 14(1). Such news report is not false data that is likely to cause damage to the national security or cause public panic under 14(2) and is not the offence against the security of the Kingdom or the

offence of terrorism under the Criminal Code pursuant to 14(3). The intent of Article 14 of this Act is not to punish a person who commits the offence of defamation by publicizing. As a matter of fact, the offence of defamation by publicizing is specifically stipulated in the Criminal Code. Therefore, the act of the three Defendants does not constitute an offence under the Computer Crime Act.

The case is hereby dismissed/

Mr. Chaipawat Chanaanapat

Mr. Naruedol Hengcharoen