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Ex-Brooklyn Prosecutor Can't Sue Sexual Assault Accuser

By **Y. Peter Kang**

Law360 (March 9, 2021, 10:46 PM EST) -- A New York appellate court on Tuesday tossed a defamation suit alleging a New York Daily News reporter falsely claimed to police that a former Brooklyn prosecutor sexually assaulted her, saying that allowing the case to proceed would embolden sexual assaulters to "weaponize the legal system in order to silence their victims.

A four-judge Appellate Division panel for the First Department found that a Manhattan trial judge erred by refusing to toss a 2018 suit accusing the female journalist of falsely reporting to police that the former assistant district attorney, Chrismy Sagaille, twice put his tongue in her mouth while she was giving him a ride home and grabbed her breast over her clothing without consent. Sagaille was working in the sex crimes unit of the Brooklyn District Attorney's Office at the time of the alleged assault.

The trial court had rejected the reporter's bid to have the suit dismissed on the grounds that her statements to police were privileged and conferred qualified immunity. The judge said Sagaille plausibly alleged that the reporter acted with malice in reporting the allegedly false claims, which would overcome the qualified privilege protecting the reporter's statements to police.

However, the panel on Tuesday found that the trial court erred by determining that an inference of "actual malice" could be gleaned based solely on the statements, as they are a "straightforward rendition of the incident" the reporter claims took place during the car ride.

"There was nothing excessive or 'vituperative' in the character of the reported statements that would support an inference of actual malice," Justice Sallie Manzanet-Daniels wrote for the court. "Indeed, it is difficult to see how defendant could have been more succinct or restrained in her description of the events while accomplishing her purpose: to report to the police that she had been the victim of sexual assault."

The panel said the trial court's ruling "rings of the outdated assumptions that have plagued sexual assault victims over time — namely, that women are likely to lie about sexual assaults and that such complaints are inherently vituperative."

Justice Manzanet-Daniels noted that sexual assaults are vastly underreported primarily due to victims' fears of retaliation, and that defamation suits against alleged victims may constitute one form of retaliation as such suits could lead to years of litigation and invasive discovery and force victims to relive traumas during depositions and court testimony.

"The lower court's holding has the effect of dissuading a victim from seeking an order of protection since the sexual assault victim must file a police report in order to obtain an order of protection," the opinion states. "It has the effect of emboldening sexual assaulters who seek to weaponize the legal system in order to silence their victims."

Attorneys for the parties did not immediately respond to requests for comment Tuesday.

Sagaille was criminally charged with two counts of sexual abuse and one count of forcible touching in 2017, but the trial ended in a hung jury and a mistrial was declared, according to the opinion.

Justices Sallie Manzanet-Daniels, Barbara R. Kapnick, Tanya R. Kennedy and Martin Shulman sat on the panel for the Appellate Division's First Department.

Sagaille is represented by Nanette Ida Metcalf of Metcalf & Metcalf PC.

The reporter is represented by Christian D. Carbone and Sarah Levitan Perry of Loeb & Loeb LLP.

The case is Sagaille v. Carrega et al., case number 2020-02369 154010/18, in the Supreme Court of the State of New York Appellate Division, First Judicial Department.

--Editing by Bruce Goldman.

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