

IN THE PRIVY COUNCIL

No. ~~974~~² of 1976

O N A P P E A L

FROM THE HIGH COURT OF JUSTICE OF THE SUPREME COURT OF JUDICATURE FOR TRINIDAD AND TOBAGO

B E T W E E N :

RAMESH LAWRENCE MAHARAJ

Appellant

- and -

THE ATTORNEY GENERAL FOR TRINIDAD AND TOBAGO

Respondent

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CASE FOR THE APPELLANT

1. This is an Appeal by special leave from an Order of Committal of the Appellant for contempt in the face of the Court by the Honourable Mr. Justice Sonny Maharaj on the 17th April 1975.

2. The Appellant is a member of the Bar of Trinidad and Tobago and a member of the Honourable Society of the Inner Temple and carries on the practice of Barrister in Trinidad and Tobago and has so done for a period of about 8 years.

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3. The Order of Committal was made by the Learned Judge during the course of the conduct by the Appellant on behalf of the Defendant of a civil action intituled Samdaye Harry Persaud (Plaintiff) and Mini Max Limited (Defendant) Action No. 564 of 1973. The said action had first been heard on 15th April 1975, before the said Learned Judge in the absence of the Appellant who was then appearing in a matter in the Court of Appeal, Port of Spain, which had commenced on 2nd April, 1975 and which

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had been expected to last only 5 days. An application to the said Learned Judge on behalf of the Defendant in the said action for an adjournment to enable the Defendant to be represented by the Appellant was refused by the said Learned Judge and the hearing proceeded with the Defendant unrepresented. On 17th April 1975, the trial of the said action was continued and the Appellant as Counsel for the Defendant applied to the Learned Judge for the Court to recall 2 witnesses on behalf of the Plaintiff so that he (the Appellant) could cross-examine them on behalf of the Defendant. The said application was refused. 10

4. This passage then occurred between the Appellant and the Learned Judge :-

"R. Maharaj: Having regard to what I submitted this morning and what I submitted yesterday in the matter of Bachan I reserve the right to impeach these proceedings. 20

Court: Are you suggesting that this Court is dishonestly and corruptly doing matters behind your back because it is biased against you?

R. Maharaj: I do not think this is the right place to answer that question. I do not think the question arises. But I say you are guilty of unjudicial conduct having regard to what I said yesterday". 30

5. Immediately following the aforesaid passage the Appellant was charged by the Learned Judge with contempt of Court and sentenced thereon to 7 days simple imprisonment.

6. There is no right of appeal to the Court of Appeal in Trinidad and Tobago or otherwise from such conviction or sentence. Accordingly the Appellant was unable to challenge the said conviction or sentence in Trinidad and Tobago upon its merits. However, certain rights and freedoms are entrenched in section 2 of the Constitution of Trinidad and Tobago, in the Second Schedule of the Trinidad and Tobago (Constitution) Order in Council 1962 (S.I. No. 1875 of 1962) and it was and is as hereinafter set out contended on behalf of the Appellant and that 40

10 in so convicting and sentencing him the Learned Judge had breached rights and freedoms so entrenched. Accordingly pursuant to the provisions of Section 6 of the said Constitution upon the same day (17th April, 1975) the Appellant applied by motion to which the Learned Judge was the First Respondent and the Attorney General of Trinidad and Tobago was the Second Respondent for a declaration that the Order of the Learned Judge was unconstitutional, illegal, void and of no effect and for certain ancillary relief. The Honourable Mr. Justice A. Braithwaite granted a conservatory Order upon the said date directing the release of the Appellant from custody pending the full hearing and determination of such Motion. The hearing of the aforesaid Motion took place on some 13 days between 23rd April and 27th June 1975, before the Honourable Mr. Justice Garvin M. Scott who on 23rd July, 1975 gave judgment dismissing the Motion and Ordered that the Appellant return to custody forthwith and serve the remnant of the term imposed upon him by the Honourable Mr. Justice Maharaj. The Appellant accordingly has served the said sentence. Notice of Appeal to the Court of Appeal in Trinidad and Tobago has been given against the said dismissal of the said Motion.

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30 7. The Appellant respectfully submits that the words spoken by him were not a contempt of the Court nor were they intended by him to be a contempt. The Appellant expressly stated to the Learned Judge:

"I am not guilty. I have not imputed any bias or anything against Your Lordship".

Even if, which is denied, the words concerned were tactless or discourteous to the Court (contrary to the intention and wishes of the Appellant) the Appellant submits that such would not of itself amount to contempt and in the context did not so amount.

40 8. The Appellant further respectfully submits that contrary to the requirements of the common law the Learned Judge :-

- (a) Failed to give sufficient or adequate particularisation of the alleged contempt or of the basis upon which the Learned Judge considered the words concerned to amount to a contempt;

- (b) When the Appellant said: "I am not guilty. I have not imputed any bias or anything against Your Lordship", failed to indicate to the Appellant properly, adequately or at all the respects in which such assertion by the Appellant failed to meet the charge;
- (c) When the Appellant asked for an adjournment to retain a lawyer, without sufficient or any reason refused the application; 10
- (d) Deprived the Appellant of a sufficient and proper opportunity of making explanation;
- (e) When the Appellant asked to consult Senior Counsel, did not allow the said request but immediately and without then giving the Appellant opportunity of giving reasons against summary measures being taken sentenced him to 7 days' imprisonment;
- (f) Although the alleged contempt was not such that summary procedure or summary imprisonment were appropriate, dealt with the matter summarily; 20
- (g) Imposed a sentence which if (contrary to the contention of the Appellant) he had been guilty of any contempt was wholly disproportionate to the offences and wrong in principle.

9. The Appellant respectfully submits as aforesaid more particularly on the basis of the decisions in POLLARD -v- CHIEF JUSTICE OF THE SUPREME COURT OF HONGKONG (1868) L.R. 2 P.C. 106; SHANDASANI -v- KING EMPEROR (1945) A.C. 264 P.C.; IZUORA -v- THE QUEEN (1953) A.C. 327 P.C.; APPUHAMY -v- THE QUEEN (1963) A.C. 474 P.C. 30

10. The Appellant further respectfully submits that the Learned Judge in committing him as set out above denied the Appellant certain human rights and fundamental freedoms enshrined in provisions of Chapter I of the Constitutional of Trinidad and Tobago. 40

Section 1 of the Constitution so far as is relevant to the present Appeal, is in the following

terms :-

"1. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

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- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;

.....

- (i) Freedom of thought and expression;"

The relevant provisions of Section 2 are as follows:-

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"2. Subject to the provisions of sections 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared and in particular no Act of Parliament shall -

- (a) authorise or effect the arbitrary detention, imprisonment or exile of any person;

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.....

- (c) deprive a person who has been arrested or detained

- (i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;

- (ii) of the right to retain and instruct without delay a legal adviser of his choice and to hold communication with him;

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(iii) of the right to be brought promptly before an appropriate judicial authority;

(iv)

(d) authorise a Court, Tribunal, commission, board or other authority to compel a person to give evidence if he is denied legal representation or protection against self crimination;

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations; 10

(f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal; 20

(g)

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

11. The Appellant submits that the specific prohibition upon what may be done by future Acts of Parliament set out in section 2 of the Constitution are directed to elaborating what is meant by "due process of law" in section 1(a) and "the protection of the law" in section 1(b); as decided in De FREITAS -v- BENNY (Privy Council Appeal No. 20 of 1974). 30

12. Section 3 so far as relevant reads as follows :-

"3. (1) Sections 1 and 2 of this Constitution shall not apply in relation to any law that is enforced in Trinidad and Tobago at the commencement of this Constitution.

(2)"

By virtue of section 105(1) "law" includes "any 40

instrument having the force of law and any unwritten rule of law".

10 13. The Appellant submits that there was no "law" in force in Trinidad and Tobago at the commencement of the Constitution (31st August, 1962) which required that the Appellant was not entitled in the circumstances of this matter to the human rights and fundamental freedoms set out in section 1 and particularised in Section 2 of the Constitution. The Appellant further
15 submits that there was a manifest deprivation of his right to liberty and the right not to be deprived thereof except by due process of law and the right to equality before the law and the protection of the law and that he was deprived of the human rights and fundamental freedoms particularised in section 2(a), (c), (d), (e) and (f) of the Constitution in that
20 amongst other reasons he was not promptly and with sufficient particularity informed of the reasons for the charge against him of contempt; he was not permitted to hold communication with or be represented by a legal adviser; it was not appropriate for the Learned Judge to try the said charge summarily; he was denied legal representation; he did not have a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations; he was not presumed innocent until proved guilty according to law in a fair and public hearing by an independent and and impartial tribunal; and he was deprived of procedural provisions
30 necessary for the purpose of giving effect and protection to the rights and freedoms recognised and declared by the Constitution.

14. The Appellant submits that the Order aforesaid of the Honourable Mr. Justice Sonny Maharaj was wrong in law and should be set aside for the following among other

R E A S O N S

- 40 1. BECAUSE there was no ground upon which the Appellant could properly be held to have been guilty of contempt of Court.
2. BECAUSE the Appellant was not given proper or sufficient particulars of the alleged contempt.
3. BECAUSE the Appellant was deprived of any or proper opportunity of making explanation or of defending himself.

4. BECAUSE the Appellant was not permitted any or sufficient opportunity to have legal representation or to obtain legal advice.
5. BECAUSE even if (contrary to the contention of the Appellant) what he said or did was capable of being or was in contempt of Court it was not such a contempt that it was necessary or appropriate that it should be dealt with summarily.
6. BECAUSE the Appellant was committed in breach of the requirements of natural justice. 10
7. BECAUSE the sentence was utterly disproportionate to any offence which the Appellant had committed (which is denied) and was wholly wrong in principle.
8. BECAUSE the Appellant was deprived of human rights and fundamental freedoms recognised and declared by the Constitution of Trinidad and Tobago.

D. J. TURNER-SAMUELS, Q.C. 20

IAN HUNTER

No. ~~934~~⁷ of 1976

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MAHARAJ

V

THE ATTORNEY GENERAL FOR
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CASE FOR THE APPELLANT

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