

**TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE
HCA No. 243 of 2000**

**IN THE MATTER OF THE CONSTITUTION OF TRINIDAD
AND TOBAGO CHAPTER 1:10 OF THE LAWS OF TRINIDAD
AND TOBAGO**

AND

**IN THE MATTER OF AN APPLICATION BY
CHRISTOPHER ASHTON A PERSON ALLEGING THAT HIS
RIGHTS GUARANTEED HIM BY SECTIONS 4 (a), (b), (d), (g)
AND 5 (2) (c), (e), (f), (i) AND (h) OF THE CONSTITUTION
HAVE BEEN, ARE BEING AND ARE LIKELY TO BE
CONTRAVENED IN RELATION TO HIM, FOR REDRESS
IN ACCORDANCE WITH SECTION 14 OF THE
CONSTITUTION**

**BETWEEN
CHRISTOPHER ASHTON**

Applicant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

B e f o r e:

The Honourable Mr. Justice Myers

**Mr S. Jairam SC and Mr. Martin George and Mr. Keith Scotland
for the Applicant (instructed by Miss Nicha Cardinez)**

**Mr. Brian Busby and Miss Petal John for the Respondent
(instructed by Miss C Murray)**

JUDGMENT

I.

Introduction

[1] Christopher Ashton was and is alleged to have twice had sexual intercourse with Miss X a young woman under the age of fourteen years, contrary to section 6 (1) of the Sexual Offences Act 1986. The first occasion on 3rd January 1992 in one Court district, Chaguanas (“the Chaguanas incident”). The second on 6th February 1992 in another Court district, Couva (“the Couva incident”). As a result, the same police complainant laid an Information in the Chaguanas Magistrates Court for the Chaguanas incident, and an Information in the Couva Magistrates Court for the Couva incident. Two ultimately protracted Preliminary Enquiries began at around the same time in these two Courts. The Chaguanas Magistrate completed his task first, and though for some reason evidence had been led in front of him about both incidents, on the 2nd February 1995 he committed Mr. Ashton to stand trial on the Chaguanas incident alone. Meanwhile, the Couva Preliminary Enquiry was progressing slowly on a parallel course, coming up and being adjourned periodically.

[2] Nearly three years after the Chaguanas Preliminary Enquiry had been completed and Mr. Ashton committed to stand trial, the Director of Public Prosecutions indicted Mr. Ashton to stand trial in Port of Spain on an indictment (dated 12th December 1997 but filed on 23rd January 1998) containing two counts, the second of which related to the Couva incident (which was misdescribed as having occurred in Chaguanas), into which the Magistrate in Couva was still enquiring.

[3] Some ten months after the Director of Public Prosecutions had proffered the two-count indictment in Port of Spain, the Preliminary Enquiry at the Couva Magistrates Court came to life, testimony was given and on 11th November 1998, the Magistrate there committed Mr. Ashton to stand trial on the Couva incident. Initially, Mr. Ashton could not make the bail set and spent five weeks in gaol before he was able to do so. During all the events narrated, Mr. Ashton had legal representation, albeit sporadically: his lawyers were not in attendance on

every occasion. However, they were there enough to suggest that he did have meaningful assistance.

[4] In February 1999, the Director of Public Prosecutions again indicted Mr. Ashton, but this time on a single-count indictment to stand trial in San Fernando on the same Couva incident that had formed, and then continued to form, the second count of the Port of Spain indictment, which remained extant. In July 1999, Mr. Ashton failed to appear in San Fernando for his trial and the Judge issued a warrant for his arrest. Because of the execution of that warrant and Mr. Ashton's inability to make the bail set, Mr. Ashton ultimately spent another fourteen days in gaol in December 1999. On 9th December 1999, Mr. Ashton's attorneys filed a Common Law Motion before the trial Judge at the Port of Spain Assizes. This was not argued to finality until early the following year.

[5] Mr. Ashton's attorneys filed another application on 1st February 2000 in Port of Spain. This, an Originating Notice of Motion seeking Constitutional relief, which is presently before me, and to which I turn in more detail shortly. The trial judge dismissed the Common Law Motion. Counsel appearing for the Director of Public Prosecutions applied to the trial judge to have the second count of the two-count indictment deleted. This was done and the trial proceeded, without Mr. Ashton ever having had to plead to the second count. Mr. Ashton was acquitted on the sole remaining count, leaving him to be tried on the Couva incident at the San Fernando Assizes.

II. The Amended Notice of Motion

[6] Before me is Mr. Ashton's Notice of Motion of 1st February 2000 against the Attorney General. It was amended during the course of the proceedings, so I shall refer to it as the Amended Notice of Motion. Mr. Ashton asks me to make fifteen declarations. I have divided them conceptually by reference to the particular section of the Constitution the State is alleged to have breached in respect of Mr. Ashton. Where a particular section contains more than one right, I have noted parenthetically, which particular right the State is alleged to have breached.

A. Section 4(a): life, liberty, security of the person, property and due process

[7] Section 4 (a) of the Constitution protects 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.” Mr. Ashton asks me to declare the following to be breaches of this section and illegal and unconstitutional:

- (1) His having been committed into custody at the State Prison on Frederick Street upon the conclusion of the Preliminary Enquiry by Magistrate Langley Baiju into Information No. 2212 of 1992 in the Couva Magistrate’s Court. This committal resulted in him remaining incarcerated for five (5) weeks before he could have his bail taken and be released (alleged breach of the right to liberty and the right not to be deprived thereof except by due process of law).¹
- (2) His having been placed on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992 (alleged breach of the right to liberty, security of the person and the right not to be deprived thereof except by due process of law).²
- (3) The issue of the Judge’s bench warrant on or about 22nd July 1999 in San Fernando Assize Case No. 17 of 1999 and his subsequent imprisonment thereupon on the 7th December 1999 and detention in custody at the State Prison, Frederick Street for fourteen (14) days thereafter until he could have his bail taken (alleged breach of the right to liberty and the right not to be deprived thereof except by due process of law).³

B. Section 4(b): equality before the law and the protection of the law

[8] Section 4(b) of the Constitution protects “the right of the individual to equality before the law and protection of the law.” Mr.

¹ Paragraph 10, Amended Notice of Motion.

² Paragraph 3, Amended Notice of Motion.

³ Paragraph 13, Amended Notice of Motion.

Ashton asks me to declare the following to be breaches of this section and illegal and unconstitutional:

- (1) The continuation of the Preliminary Enquiry by Magistrate Langley Baiju into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998,⁴ that is to say, after the two-count Port of Spain indictment was signed and/or filed.
- (2) His having been placed on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992.⁵

C. Section 4(d): equality of treatment from any public authority in the exercise of any functions

[9] Section 4(d) of the Constitution protects “the right of the individual to equality of treatment from any public authority in the exercise of any functions.” Mr. Ashton asks me to declare the following to be breaches of this section and illegal and unconstitutional:

- (1) The continuation of the Preliminary Enquiry by Magistrate Langley Baiju into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998.⁶
- (2) His having been placed on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992.⁷

D. Section 4(g): freedom of movement

[10] Section 4(g) of the Constitution protects the right of the individual to “freedom of movement.” Mr. Ashton asks me to declare the following to be breaches of that section and illegal and unconstitutional:

⁴ Paragraph 6, Amended Notice of Motion.

⁵ Paragraph 2, Amended Notice of Motion.

⁶ Paragraph 7, Amended Notice of Motion.

⁷ Paragraph 1, Amended Notice of Motion.

- (1) His having been committed into custody at the State Prison on Frederick Street upon the conclusion of the Preliminary Enquiry by Magistrate Langley Baiju into Information No. 2212 of 1992 in the Couva Magistrate's Court. This committal resulted in him remaining incarcerated for five (5) weeks before he could have his bail taken and be released.⁸
- (2) The issue of the Judge's bench warrant on or about 22nd July 1999 in San Fernando Assize Case No. 17 of 1999 and his subsequent imprisonment thereupon on the 7th December 1999 and detention in custody at the State Prison, Frederick Street for fourteen (14) days thereafter until he could have his bail taken.⁹

E. Section 5(2)(b): cruel and unusual treatment or punishment

[11] Section 5(2)(b) of the Constitution ensures that Parliament may not "impose or authorise the imposition of cruel and unusual treatment or punishment." Mr. Ashton asks me to declare the following to be breaches of that section and illegal and unconstitutional:

- (1) The continuation of the Preliminary Enquiry by Magistrate Langley Baiju into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998 (alleged breach of the right to be protected from the imposition of cruel and unusual treatment).¹⁰
- (2) His having been committed into custody at the State Prison on Frederick Street upon the conclusion of the Preliminary Enquiry by Magistrate Langley Baiju into information No. 2212 of 1992 in the Couva Magistrate's Court. This committal resulted in him remaining incarcerated for five (5) weeks before he could have his bail taken and be released (alleged breach of the right to be protected from the imposition of cruel and unusual treatment).¹¹
- (3) His having been placed on two separate indictments to stand trial twice at the same time in two different courts for the same alleged

⁸ Paragraph 11, Amended Notice of Motion.

⁹ Paragraph 14, Notice of Motion.

¹⁰ Paragraph 9, Amended Notice of Motion.

¹¹ Paragraph 10, Amended Notice of Motion.

offence of 6th February 1992 (alleged breach of the right to be protected from the imposition of cruel and unusual treatment).¹²

- (4) The issue of the Judge's bench warrant on or about 22nd July 1999 in San Fernando Assize Case No. 17 of 1999 and his subsequent imprisonment thereupon on the 7th December 1999 and detention in custody at the State Prison, Frederick Street for fourteen (14) days thereafter until he could have his bail taken (alleged breach of the right to be protected from the imposition of cruel and unusual punishment).¹³

F. Section 5(2)(e): the right to a fair hearing in accordance with the principles of fundamental justice

[12] Section 5(2)(e) of the Constitution provides that Parliament may not “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.” Mr. Ashton asks me to declare the following to be breaches of the protection provided by that section and illegal and unconstitutional:

- (1) The continuation of the Preliminary Enquiry by Magistrate Langley Baiju into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998.¹⁴
- (2) His having been placed on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992.¹⁵

G. Other Relief

[13] Declarations apart, Mr. Ashton seeks¹⁶:

- (1) All such Orders, Writs and Directions as may be necessary or appropriate to secure redress by him for the contravention of his

¹² Paragraph 4, Amended Notice of Motion.

¹³ Paragraph 15, Amended Notice of Motion.

¹⁴ Paragraph 8, Amended Notice of Motion.

¹⁵ Paragraph 5, Amended Notice of Motion.

¹⁶ Amended Notice of Motion, Paragraphs 16 to 20.

rights/freedoms as guaranteed him by the Constitution of Trinidad and Tobago.

- (2) Damages.
- (3) Exemplary and Aggravated Damages.
- (4) Costs certified fit for Senior and Junior Counsel.
- (5) Such further and/or other relief as I may deem fit.

H. The Grounds

[14] Mr. Ashton then set out seven paragraphs, which constitute the grounds in support of the relief sought, which I set out below, amending the references to “the Applicant” to “Mr. Ashton”.

- “(1) On 12th December 1997, the Director of Public Prosecutions indicted Mr. Ashton to stand trial before the Port of Spain Assizes for an alleged offence of 6th February 1992. This trial is still alive (or was when Mr. Ashton filed his Notice of Motion: the jury in Port of Spain ultimately acquitted him) and pending before the High Court and while it was so alive and pending, on the 3rd February 1999, the Director of Public Prosecutions again indicted Mr. Ashton to stand trial in respect of the same offence of 6th February 1992, this time before the San Fernando Assizes. At the time that Mr. Ashton filed his Notice of Motion, the Port of Spain trial was next listed for 1st February 2000 and the San Fernando trial was next listed for 17th February 2000. In effect, Mr. Ashton was being tried twice, at the same time, for the same offence of 6th February 1992. This was not normal or standard practice, it placed Mr. Ashton in double jeopardy and it contravened his fundamental right to equality of treatment from a public authority in the exercise of its

functions as guaranteed him by section 4(d) of the Constitution.

- (2) The indictment of 3rd February 1999 and the placing of Mr. Ashton on trial before the High Court a second time, for the same offence, even before the first trial had been concluded were both illegal and unconstitutional because it placed Mr. Ashton in the position of having to defend himself a second time, from this concurrent second trial. He also faced the risk of being convicted twice in the concurrent trials and being punished twice for the same offence. This would breach his fundamental rights to equality before the law and the protection of the law as guaranteed him by section 4(b) of the Constitution.
- (3) The strain, stress, expense and mental anguish and torture of the unnecessary continuation of the prosecution of the Preliminary Enquiry in the Couva Magistrate's Court after 12th December 1997 and of being on trial twice for the same offence of 6th February 1992 in two different courts at the same time, one in Port of Spain and the other in San Fernando were and are wreaking havoc on Mr. Ashton, and constitute and constituted cruel and unusual treatment by the State against Mr. Ashton, and constituted and constitutes a breach of his fundamental rights to be protected from cruel and unusual punishment as guaranteed him by section 5(2)(b) of the Constitution.
- (4) The very real possibility of Mr. Ashton being convicted twice concurrently, and being punished twice concurrently, constituted a threatened breach of Mr. Ashton's fundamental rights to security of the person,

liberty and the enjoyment of property and the right not to be deprived thereof except by due process of law as guaranteed him by section 4 (a) of the Constitution.

- (5) The purpose of a preliminary enquiry is primarily to determine if a prima facie case is made out by the Prosecution in order to call upon the accused to stand trial in the High Court. Having already indicted the Applicant on 12th December 1997 to stand trial for the 6th February 1992 incident, it was thus unfair, unjust and illegal for the State to continue prosecuting the Preliminary Inquiry against Mr. Ashton in the Couva Magistrate's Court after 12th December 1997 because such proceedings were useless and persecutory in nature as Mr. Ashton had already been placed on trial for that 6th February 1992 incident since 12th December 1997. This continued prosecution convicted to a persecutor [sic]¹⁷ of Mr. Ashton and breached his rights to equality before the law and the protection of the law and his right to a fair hearing, because the State through its indictment of 12th December 1997 had already decided that he should stand trial for this alleged incident of 6th February 1992.

- (6) The committal of Mr. Ashton into custody for five (5) weeks following this illegally continued prosecution of the Preliminary Enquiry against him must necessarily be of itself wrong and illegal in law as flowing from a wrong and illegal action. In the process, it contravened Mr. Ashton's right to liberty and freedom of movement and his right to be protected from cruel and unusual treatment as

¹⁷ There is a typographical error in the grounds here, of which I simply can make no sense.

guaranteed him by sections 4(a)(g) and 5(2)(b) of the Constitution.

- (7) The indictment of 3rd February 1999 was of itself illegal. Thus, the issue of the bench warrant, which flowed therefrom on 22nd July 1999, must also be illegal and unconstitutional, as was the subsequent detention of Mr. Ashton in custody at Royal Gaol, Frederick Street for fourteen (14) days from 7th December 1999. These actions contravened his rights to liberty, freedom of movement and the right to be protected from cruel and unusual punishment as guaranteed him by sections 4(a)(g) and 5(2)(b) of the Constitution.”

I. Particulars of Claim for Aggravated Damages

[15] Finally, Mr. Ashton sets out the particulars relating to his claim for aggravated damages, which I set out below, once more substituting “Mr. Ashton” for “the Applicant”:

- “(a) Mr. Ashton was largely unrepresented at the preliminary enquiries and at the San Fernando trial, thus the State through its presiding judicial officers had a duty to be vigilant to ensure that his rights were not trampled upon. However, unfortunately, this is exactly what happened and his rights were infringed and abused.
- (b) The State through its servant and/or agent WPC Hyacinth Rodney, the complainant in all the matters, must be taken to have been saddled with the knowledge of exactly what was going on, and how unfair it was to Mr. Ashton, yet no steps were taken to correct this injustice as the State rushed headlong in its relentless persecution of Mr. Ashton.”

III. The Issues

[16] I propose categorising the issues by reference to the particular section of the Constitution that Mr. Ashton alleges has been breached in respect of him. As I have decided to dismiss the Amended Notice of Motion, I do not need to pose any issues under quantum.

A. Section 4(a): life, liberty, security of the person, property and due process

[17] Was it a breach of Mr. Ashton's right to liberty and the right not to be deprived thereof except by due process of law, for him to have been committed into custody at the State Prison on Frederick Street (where he stayed for five weeks before he could have his bail taken) upon the conclusion of the Preliminary Enquiry by Magistrate Langley Baiju into information No. 2212 of 1992 in the Couva Magistrate's Court?

[18] Was it a breach of Mr. Ashton's right to liberty, security of the person and the right not to be deprived thereof except by due process of law for the Director of Public Prosecutions to have placed him on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992?

[19] Was it a breach of Mr. Ashton's right to liberty and the right not to be deprived thereof except by due process of law for the Judge to issue a bench warrant on or about 22nd July 1999 in San Fernando Assize Case No. 17 of 1999, and was his detention thereafter for fourteen days until he could have his bail taken, similarly a breach?

B. Section 4(b): equality before the law and the protection of the law

[20] Was it a breach of Mr. Ashton's right to equality before the law and the protection of the law for:

- (1) Magistrate Langley Baiju to continue the Preliminary Enquiry into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998?

- (2) The Director of Public Prosecutions to have placed Mr. Ashton on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992?

C. Section 4(d): equality of treatment from any public authority in the exercise of any functions

[21] Was it a breach of Mr. Ashton's right to equality of treatment from any public authority in the exercise of any functions for:

- (1) Magistrate Langley Baiju to continue the Preliminary Enquiry into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998?
- (2) The Director of Public Prosecutions to have placed Mr. Ashton on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992?

D. Section 4(g): freedom of movement

[22] Was it a breach of Mr. Ashton's right to freedom of movement for:

- (1) Mr. Ashton to have been committed into custody at the State Prison on Frederick Street (where he stayed for five weeks before he could have his bail taken) upon the conclusion of the Preliminary Enquiry by Magistrate Langley Baiju into information No. 2212 of 1992 in the Couva Magistrate's Court?
- (2) The Judge to issue a bench warrant on or about 22nd July 1999 in San Fernando Assize Case No. 17 of 1999, and was his detention thereafter for fourteen days until he could have his bail taken, similarly a breach?

E. Section 5(2)(b): cruel and unusual treatment or punishment

[23] Was it a breach of Mr. Ashton's right to be protected from the imposition of cruel and usual treatment for:

- (1) Magistrate Langley Baiju to continue the Preliminary Enquiry into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998?
- (2) Mr. Ashton to have been committed into custody at the State Prison on Frederick Street (where he stayed for five weeks before he could have his bail taken) upon the conclusion of the Preliminary Enquiry by Magistrate Langley Baiju into information No. 2212 of 1992 in the Couva Magistrate's Court?
- (3) The Director of Public Prosecutions to have placed Mr. Ashton on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992?

[24] Was it a breach of Mr. Ashton's right to be protected from the imposition of cruel and unusual treatment for the Judge to issue a bench warrant on or about 22nd July 1999 in San Fernando Assize Case No. 17 of 1999, and was his detention thereafter for fourteen days until he could have his bail taken, similarly a breach?

F. Section 5(2)(e): the right to a fair hearing in accordance with the principles of fundamental justice

[25] Was it a breach of Mr. Ashton's right not to be deprived of his right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations for:

- (1) Magistrate Langley Baiju to continue the Preliminary Enquiry into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998?
- (2) The Director of Public Prosecutions to have placed him on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992?

IV. The Evidence

[26] The parties filed two affidavits each in support of their cases.

1. Christopher Ashton, sworn to on the 26th January 2000 and filed on the 1st February 2000 (“Ashton 1st”), together with exhibits:

“C.A. 1”:

Copy Information No. 4437 of 1992.

“C.A. 2”:

Copy Indictment No. 191 of 1997.

“C.A. 3”:

Copy Information No. 2212 of 1992 with the deposition of evidence therein in respect of the Couva incident.

“C.A. 4”:

Copy Indictment No. 93 of 1998.

“C.A. 5”:

Copy Common Law Motion filed on 8th December 1999.

2. Geoffrey Henderson, DPP’s Department, sworn to and filed on the 9th March 2000 (“Henderson 1st”).
3. Christopher Ashton, sworn to and filed on the 17th March 2000 (“Ashton 2nd”).
4. Geoffrey Henderson, DPP’s Department, sworn to and filed on the 7th April 2000 (“Henderson 2nd”).

[27] Counsel agreed certain facts. They recorded that agreement in a Statement of Agreed Facts dated 19th May 2000. That, together with the affidavits and exhibits listed above, is the raw evidence, which I must examine to find the facts.

V. Findings of Fact

[28] What happened? As outlined at the beginning of this judgment, Mr. Ashton is alleged to have had had a sexual relationship with a Miss X (a female under the age of 14 years) during the early part of 1992, involving two sexual contacts, the 3rd January¹⁸ and 6th February incidents.¹⁹ Same people, two alleged sexual encounters, two different Court districts of the country.

[29] On the 15th September 1992, WPC Hyacinth Rodney No. 10960 of the Couva Police Station charged Mr. Ashton on an Information No. 4437 of 1992 laid in the Chaguanas Magistrates Court, which alleged in respect of the Chaguanas incident that he had committed an offence under Section 6 (1) of the Sexual Offences Act No. 27 of 1986, namely, having sexual intercourse with a female under the age of 14 years²⁰. On that same day, the very WPC Rodney charged Mr. Ashton on an Information No. 2212 of 1992 laid in the Couva Magistrates Court, which alleged in respect of the Couva incident that he had committed an offence under Section 6 (1) of the Sexual Offences Act No. 27 of 1986, namely, having sexual intercourse with a female under the age of 14 years²¹. Same people, two alleged sexual encounters, two different Court districts of the country, two Informations laid on the same day by the same Police complainant in two different Courts—Chaguanas and Couva, one in respect of each alleged sexual encounter.

[30] The proceedings in the Couva Magistrates Court began before the proceedings in the Chaguanas Magistrates Court. On the 21st September 1992, Mr. Ashton made his first appearance at the Couva Magistrates Court.²²

[31] On the 30th September 1992, Mr. Ashton made his first appearance at the Chaguanas Magistrate's Court.²³ The Preliminary Enquiry into Chaguanas incident was then called on ten occasions over the course of two years at the Chaguanas Magistrates Court, before the

¹⁸ Paragraph 2, Ashton 1st.

¹⁹ Paragraph 3, Ashton 1st.

²⁰ Paragraph 2, Ashton 1st.

²¹ Paragraph 3, Ashton 1st.

²² Paragraph 4, Ashton 1st.

²³ Paragraph 4, Ashton 1st, but see also manuscript numbered page 2 of "C.A. 1" where the first appearance in Court on this matter appears to be the 30th November 1992.

hearing of the matter eventually began on 14th December 1994²⁴. On that day, Mr. Ashton was unrepresented and although this was a Preliminary Enquiry into the Chaguanas incident alone (as specified in Information No. 4437 of 1992), the State led evidence in respect of both that incident and the Couva incident²⁵. On the 2nd February 1995, the Magistrate at the Chaguanas Magistrates Court committed Mr. Ashton to stand trial on the alleged 3rd January 1992 incident, but not on the alleged 6th February 1992 incident²⁶. Thus ended the Preliminary Enquiry in respect of Information No. 4437 of 1992 in the Chaguanas Magistrates Court.

[32] On the 12th December 1997, the Director of Public Prosecutions indicted Mr. Ashton to stand trial at the Port of Spain, High Court in Criminal Action No. 583 of 1997 on Indictment No. 191 of 1997. This indictment, which was not actually filed until the 23rd January 1998 contained two counts, i.e., Mr. Ashton was indicted for offences in respect of both the 3rd January 1992 and 6th February 1992 incidents²⁷. That Indictment was in the following language:

“FIRST COUNT

STATEMENT OF OFFENCE

SEXUAL INTERCOURSE WITH FEMALE UNDER FOURTEEN, contrary to section 6(1) of the Sexual Offences Act, 1986

PARTICULARS OF OFFENCE

CHRISTOPHER ASHTON, on the 3rd day of January, 1992, at Chaguanas, in the County of Caroni, had sexual intercourse with Miss X a female person under the age of 14 years.

SECOND COUNT

STATEMENT OF OFFENCE

SEXUAL INTERCOURSE WITH FEMALE UNDER FOURTEEN contrary to section 6(1) of the Sexual Offences Act, 1986

PARTICULARS OF OFFENCE

CHRISTOPHER ASHTON, on the 6th day of February, 1992, at Chaguanas, in the

²⁴ Paragraph 4, Ashton 1st.

²⁵ Paragraphs 4 and 5, Ashton 1st and “C.A. 1”.

²⁶ Paragraph 6, Ashton 1st.

²⁷ Paragraph 7, Ashton 1st.

County of Caroni, had sexual intercourse with Miss X, a female person under the age of 12 years.

SECOND COUNT

STATEMENT OF OFFENCE

SEXUAL INTERCOURSE WITH FEMALE UNDER FOURTEEN, contrary to section 6(1) of the Sexual Offences Act, 1986.

PARTICULARS OF OFFENCE

CHRISTOPHER ASHTON, on the 6th day of February, 1992, at Chaguanas, had sexual intercourse with Miss X, a female person under the age of fourteen years.”

[33] It is clear that the Particulars of Offence in respect of the Second Count misdescribed the place of commission of that count as Chaguanas, instead of Savonetta, Couva²⁸. The Attorney General does not dispute this.²⁹

[34] Mr. Aldric Benjamin, the then Director of Public Prosecutions was long deceased by the time Mr. Ashton filed these proceedings. However, there is an explanation before me as to why Mr. Benjamin decided to charge Mr. Ashton on two counts, when the learned Magistrate had committed him on one only. The depositions from the Chaguanas Preliminary Enquiry disclosed the commission of an offence on 6th February 1992, in addition to the offence of the 3rd January 1992. On that basis, Mr. Benjamin as he was entitled to (says the Attorney General in these proceedings) pursuant to section 25 (3) of the Indictable Offences (Preliminary Enquiry) Act Chapter 12:01, indicted for the two counts disclosed in the depositions³⁰. That section provides:

“A person committed for trial may be indicted for any offence for which he was committed for trial, **or for any offence which, in the opinion of the Director of Public Prosecutions, is disclosed by the depositions** [emphasis added].”

²⁸ Paragraph 8, Ashton 1st.

²⁹ Paragraph 8, Henderson 1st.

³⁰ Paragraph 6, Henderson 1st.

[35] Mr. Busby expanded and put Mr. Henderson's explanation in context in the following manner. Insofar as is relevant, section 3 of the Criminal Procedure Act Chapter 12:02 provides as follows:

“3 (1) **All persons committed** within the Counties of St. George, St. David and St. Andrew or **within the Wards of Chaguanas** and Cunupia in the County of Caroni **for trial of any offence shall be tried at Port of Spain** [emphasis supplied].

(2) **All persons committed** with the Counties of Victoria, St. Patrick, Nariva and Mayaro or **within the Wards of Couva** and Monstserrat in the County of Caroni **for trial of any offence shall be tried at San Fernando** [emphasis supplied].”

[36] Normally, therefore, where a person allegedly commits an offence in Couva, the Preliminary Enquiry into that alleged offence takes place in the Couva Magistrates Court. If such a person is committed to stand trial by the Couva Magistrates Court, the Assize that deals with matters from the Magisterial District is San Fernando: the Director of Public Prosecutions would indict in San Fernando. Where a person allegedly commits an offence in Chaguanas, normally the Director of Public Prosecutions would indict in Port of Spain. Mr. Busby suggested that as a result of the evidence in the Chaguanas Preliminary Enquiry relating to the 6th February 1992 offence (in Couva), the Director of Public Prosecutions may have been misled into thinking that this alleged offence occurred in Chaguanas and that is consistent with the language used in the second count of the Port of Spain indictment. Mr. Scotland objected to Mr. Busby taking that route as, he said, the then Director of Public Prosecutions (who both Mr. Scotland and I appeared to have forgotten had died) was the appropriate person to give evidence in support of this (his state of mind), not Mr. Henderson. For my own part, I am content that I can piece together a proper assessment of the state of play at the time from (1) what was actually done; (2) the statutory framework in which it was done; and (3) the presumption of regularity in the acts of officials.

[37] This is how that approach would work: the Director of Public Prosecutions is a public official. He is assumed to behave regularly.

Section 25(3) of the Indictable Offences (Preliminary Enquiry) Act Chapter 12:01 gave him the power to look at the committal papers and, if in his view the depositions warranted it, indict for an offence for which the Magistrate did not commit the accused. The papers he received from the Chaguanas Preliminary Enquiry involved a committal on one count. The depositions referred to another incident about a month after the alleged offence in respect of which the Magistrate had committed. The Director of Public Prosecutions then added a second count on the indictment referring to the second alleged offence as having occurred in Chaguanas. In my judgment, it would be reasonable to infer from this that he must have thought that the alleged offence had been committed there, rather than in Couva, where the evidence of the complainant in the Chaguanas Preliminary Enquiry said that it was. Therefore, I so find.

[38] While all of this was going on in Chaguanas, the matter in respect of the Information laid in Couva, which had first been called on the 21st September 1992 came up on twenty six subsequent occasions over the next six years. Eventually, on 4th November 1998, Senior Magistrate His Worship L Baiju began taking evidence³¹. He completed that task on the 11th November 1998. On that day, he committed Mr. Ashton to stand trial on the alleged 6th February 1992 incident on Information No. 2212³². Mr. Ashton, who was unable to raise the bail of \$20,000 with a surety, which had been set, was taken to the Royal Gaol, Port of Spain, where he remained for 5 weeks³³.

[39] The point here is that the Couva Preliminary Enquiry continued for nearly a year after the Director of Public Prosecutions had indicted Mr. Ashton to stand trial in respect of **both** incidents. As Mr. Ashton put it, having already indicted him to stand trial in the High Court for the Couva incident (as the second count of the Port of Spain indictment), the Director of Public Prosecutions continued to prosecute this preliminary enquiry against him in the Couva Magistrates Court in respect of the very same 6th February 1999 incident. This comprised the second count of indictment No. 191 of 1997 set out above.

[40] By the time that Senior Magistrate His Worship L Baiju committed him to stand trial on 11th November 1998, the trial in respect

³¹ "C.A. 3".

³² Paragraph 10, Ashton 1st.

³³ Paragraphs 10 and 11, Ashton 1st.

of the Indictment No. 191 of 1997 in Port of Spain had come on twice, although in light of the fact that the parties tell me that Mr. Ashton was ultimately never called upon to plead to the second count (which was eventually deleted), I infer that he had not been called to plead. Ever present in all of this was WPC Rodney, the complainant in both matters³⁴. In a nutshell, at that stage Mr. Ashton had been committed twice by two separate Magistrates in two separate Magistrates Court for the same offence, one of those committals (the Chaguanas committal) having already resulted in an indictment in Port of Spain, which covered both alleged offences.

[41] Things became ever more complicated. Having been committed twice and indicted once, on the 3rd February 1999, Mr. Ashton found himself being indicted by the Director of Public Prosecutions to stand trial at San Fernando by Indictment No. 93 of 1998. This indictment, which was not actually filed under later that month (see below) indicted him to stand trial for the same 6th February 1992, which was already the subject of the second count of the two-count indictment for trial in Port of Spain³⁵. As at that stage, Mr. Ashton had been committed twice in different Courts for the same offence, and indicted twice in different (and higher Courts) for the same offence. The common offence to both committals and indictments being the Couva incident. Common also was WPC Rodney, the complainant.

[42] On the 22nd July 1999, Mr. Ashton failed to appear at the San Fernando High Court for that trial. He says³⁶ that his failure to appear was due to a “mix-up” in the date. That was Mr. Ashton’s bare and thin explanation. He does not indicate the nature of that “mix up”. For my own part, absent any more detailed explanation, I find that Mr. Ashton’s failure to attend in San Fernando was his own fault. A warrant was issued for his arrest, with respect to Case No. 17 of 1999, pertaining to Indictment No. 93 of 1998 preferred by the Director of Public Prosecutions on the 3rd February 1999 (see above)³⁷.

[43] Some time during October 1999, Mr. Ashton came to hear of this warrant. He told his attorney-at-law, Mr. Martin George. Mr. Ashton reports that he then told Mr. George about the Couva Preliminary

³⁴ Paragraphs 8 and 9, Ashton 1st.

³⁵ Paragraph 12, Ashton 1st and paragraph 7, Henderson 1st.

³⁶ Paragraph 12, Ashton 1st.

³⁷ Paragraph 15, Ashton 1st as confirmed by paragraph 6, Henderson 2nd.

Enquiry and the San Fernando trial. Mr. George, says Mr. Ashton, ordered him to enquire as to which Station and which Police Officer had the warrant, so that he could surrender Mr. Ashton. Mr. George also requested Mr. Ashton to bring a copy of the depositions from the Couva Magistrates Court, along with the San Fernando Indictment for Mr. George to consider³⁸.

[44] It is common ground between the parties³⁹ that the Port of Spain trial came up on the 25th October 1999. Mr. Henderson appeared for the Director of Public Prosecutions. Mr. George, who appeared for Mr. Ashton, was ill. The Judge adjourned the matter to the 1st of December 1999.

[45] On the 1st December 1999. Mr. Ashton came to Port of Spain for the Port of Spain trial. Miss Maria Wilson appeared for the Director of Public Prosecutions. Mr. Martin George appeared for Mr. Ashton. Mr. George applied for an adjournment because Mr. Ashton's witnesses were not available⁴⁰. The Judge adjourned the matter to 7th December 1999. WPC Rodney saw Mr. Ashton (together with his attorney-at-law) and told him that there was a warrant for his arrest in respect of the San Fernando trial lodged at the Couva Police Station. Mr. George advised Mr. Ashton to go down to the Couva Police Station and surrender himself⁴¹.

[46] On the 7th December 1999, Mr. Ashton went to the Couva Police Station and surrendered himself. The warrant was duly executed at around 8:00 am and he was taken up in custody to the Port of Spain High Court, where the Port of Spain matter was called⁴². The parties tell me⁴³ that Ms. Maria Wilson and Mr. Martin George again represented the Director of Public Prosecutions and Mr. Ashton respectively. Both Counsel went to see my brother Baird J in his Chambers. There Ms. Wilson indicated her intention to make an application to amend the Port of Spain indictment by deleting the second count. Mr. George indicated that if she were to make such an application, he would need an adjournment to prepare himself to respond and to consider the point.

³⁸ Paragraph 15, Ashton 1st.

³⁹ Statement of Agreed Facts, page 1.

⁴⁰ Statement of Agreed Facts, page 1.

⁴¹ Paragraph 15, Ashton 1st.

⁴² Paragraph 17, Ashton 1st.

⁴³ Statement of Agreed Facts, pages 1 to 2.

Both sides have asked me to note well that Mr. George's position is that my brother Baird J had stated that these discussions were "off the record". Ms. Wilson's position is that she does not recall whether my brother Baird J made any such comment. Whatever the true status of those discussions, it is common ground that both Counsel returned to open Court, where Ms. Wilson stated that she had a formal application to make, without disclosing the nature of the application. Ms. Wilson also openly indicated that she had spoken to Mr. George, who had indicated that he would need an adjournment to prepare himself to respond to the application when made and to consider the point. My brother Judge adjourned the matter to 9th December 1999, on which occasion proceedings were to begin with Ms. Wilson's formal application.

[47] On the 8th December 1999, Mr. Ashton's attorneys-at-law, seeking a stay in the Port of Spain trial, erroneously filed a Common Law Motion before the Civil/Constitutional Court⁴⁴. On the 9th December 1999, they corrected the error and brought the matter in front of my brother Baird J in the First Criminal Court. The corrected Common Law Motion was served in Court on Ms. Wilson, who again appeared on behalf of the Director of Public Prosecutions. Mr. Theodore Guerra SC appeared for Mr. Ashton, leading Mr. Martin George and Ms. Nicha Cardinez. Mr. Guerra SC applied for an adjournment of the Common Law Motion in order to allow him an opportunity to file an affidavit. My brother heard arguments from Mr. Guerra SC on behalf of Mr. Ashton on the question of bail for the San Fernando matter. Mr. Ashton was placed on bail in the sum of \$10,000 with a surety and remanded into custody for bail to be taken (where he spent another 14 days). The hearing of the Common Law Motion was adjourned to 1st February 2000⁴⁵. On the 21st December 1999, Mr. Ashton's bail was taken and he was released from custody⁴⁶.

[48] On the 1st February 2000, Mr. Ashton's Originating Motion was filed in these proceedings. At the same time, the Common Law Motion (CR No. 538 of 1997) came up for hearing before Baird J in the Assizes. Ms. Wilson appeared for the Director of Public Prosecutions. Mr.

⁴⁴ Paragraph 18, Ashton 1st.

⁴⁵ Paragraph 18, Ashton 1st.

⁴⁶ Paragraph 18, Ashton 1st.

Ashton was present but unrepresented. Another matter was in progress before my brother. This matter was adjourned to the 3rd February 2000⁴⁷.

[49] On the 3rd February 2000⁴⁸ when the matter next came up, the Director of Public Prosecutions was ready to proceed. Mr. Guerra SC was engaged in another matter. The attorney for Mr. Ashton made an application for a further adjournment. My brother adjourned it to the 4th February 2000. On the 4th February 2000, Mr. Henderson and Mr. Wilson appeared for the Director of Public Prosecutions. Mr. Theodore Guerra SC leading Mr. Martin George and Ms. Nicha Cardinez appeared for Mr. Ashton. Arguments were advanced by both sides in the Common Law Motion, whereupon Baird J reserved his decision to the 7th February 2000. On the 7th February 2000, Baird J dismissed the Common Law Motion and the State applied for leave to amend the two-count indictment to delete the second count, which related to the alleged Couva incident. My brother granted leave. Mr. Ashton was therefore not asked to plead to that count⁴⁹. The trial in earnest began before in the Port of Spain Assizes and was proceeded with on one count from 7th February 2000 to 15th February 2000. The jury acquitted Mr. Ashton on the only count then for their determination.

VI.

The Law and the Law applied to the Facts and Issues

[50] For ease of exposition, and because of the “right by right” manner in which the jurisprudence of this jurisdiction has approached giving meaning to Chapter 1 of the Constitution, I propose examining the law and its peculiar application to the facts in this case on a section and sub-section by sub-section basis, which is the approach I have taken to setting out the issues (see above). In order to make it unnecessary for the readers of this judgment to go back to the section of headed “Issues”, I have taken the liberty of reproducing the “Issues” here, at the risk of further lengthening and overlong judgment.

⁴⁷ Statement of Agreed Facts, page 2.

⁴⁸ Statement of Agreed Facts, pages 2 to 3.

⁴⁹ Paragraph 9, Henderson 1st.

A. Section 4(a): life, liberty, security of the person, property and due process

Issues:

[51] The following issues arise under this section:

- (1) Was it a breach of Mr. Ashton's right to liberty and the right not to be deprived thereof except by due process of law, for him to have been committed into custody at the State Prison on Frederick Street (where he stayed for five weeks before he could have his bail taken) upon the conclusion of the Preliminary Enquiry by Magistrate Langley Baiju into information No. 2212 of 1992 in the Couva Magistrate's Court?
- (2) Was it a breach of Mr. Ashton's right to liberty, security of the person and the right not to be deprived thereof except by due process of law for the Director of Public Prosecutions to have placed him on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992?
- (3) Was it a breach of Mr. Ashton's right to liberty and the right not to be deprived thereof except by due process of law for the Judge to issue a bench warrant on or about 22nd July 1999 in San Fernando Assize Case No. 17 of 1999, and was his detention thereafter for fourteen days until he could have his bail taken, similarly a breach?

Answered

[52] In my judgment, the answer to all the questions posed under this group of issues is "no".

Law

[53] I am grateful to Mr. Jairam SC and Mr. Busby for their careful and clear submissions.

[54] I have derived certain principles from the authorities. It is clear that it is not every error by the State that would be capable of

constituting an infringement of the rights protected by section 4(a). The seminal statement on the nature of the error required and the approach to be taken by the Courts in that of Lord Diplock in **Maharaj v. Attorney General of Trinidad and Tobago (No. 2) [1979] AC 385**, page 399D to F:

“... no human right or fundamental freedom recognised by Chapter I of the Constitution⁵⁰ is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person’s serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. Where there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infallible but one that is fair. It is only errors of procedure that are capable of constituting infringements of the rights protected by section 1(a); and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to a failure of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a rare event.”

[55] So, when the entity exercising coercive powers commits (1) an error of fact or substantive law (even where a person has gone to gaol as a result), which can be appealed; and (2) a mere irregularity in procedure (even though it goes to jurisdiction), that falls short of a failure to observe one of the fundamental rules of natural justice (which would mean that there was no due process), no right recognised under section 4(a) can be breached.

[56] This analysis and approach has been applied and adopted in every authority since then, which I have been able to identify. So, in **Harrikissoon v. Attorney General of Trinidad and Tobago [1979] 3**

⁵⁰ The 1962 Independence Constitution. The position is the same under the 1976 Republican Constitution.

WLR 62, where a school teacher who had been transferred against his will deliberately chose not to apply for the extra-Constitutional remedy which the law gave him, his claim under section 1(a) and (b) of the 1962 Independence Constitution was misconceived. His remedy against the order transferring him was to apply under the relevant regulations for a review of the transfer order and until such an application was made, the Teaching Service Commission had no duty to consider his representations against the order. Accordingly, his claim that the order was unlawful failed in limine. Lord Diplock had this to say (at page 64):

“The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter I of the Constitution is fallacious. The right to apply to the High Court under section 6 [now section 14] of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking control of administrative action.”

[57] And in **Chokolingo v. Attorney General of Trinidad and Tobago (1980) 32 WIR 354**, the Judicial Committee of the Privy Council reiterated that an error of substantive law made by a judge resulting in wrongful imprisonment would not amount to a denial of due process of law; accordingly, such an error did not constitute a ground for redress for the contravention of the constitutional right not to be deprived of liberty except by due process of law under what was then section 1(a) of the 1962 Independence Constitution. Lord Diplock repeated (at page 358 f to g) that “[t]he fundamental right guaranteed by section 1 (a) and (b), and section 2, of the Constitution is not a legal system which is infallible but one which is fair.”

[58] In **Nankissoon Boodram v. The Attorney General 47 WIR 459**, Nankissoon Boodram, also known as Dole Chadee had been

charged with others of several murders and was in front of an Assize Court. Mr. Boodram brought a Constitutional Motion in which he claimed that because of adverse publicity in the media he could not get a fair trial. Thus, he wished the Constitutional Court to stay the criminal trial, or at the matter unfolded in argument, to postpone the criminal trial. The matter ultimately found its way to the Judicial Committee of the Privy Council.

[59] In the Court of Appeal (affirmed by the Board), Sharma JA (as then he was) had this to say (at page 484) about the law as it relates to that type of situation where one comes to the constitutional court to prevent a criminal trial from proceeding:

“The trial judge has at his disposal the several common-law options available to him on the application of the accused to decide whether it would be proper to postpone the trial, or to carry on with it, if the accused has not established prejudice on the part of the potential jurors, or to do whatever he thinks necessary to ensure the accused gets a fair trial.

It seems to me, that the criminal court is by far the more suitable forum for the accused to pursue his application. The prospective jurors would actually be there, and he would have the ideal opportunity to demonstrate “live” any alleged prejudice with some degree of certainty, and not leave it to the cold and clinical Constitutional Court to conjecture whether or not he is likely to get a fair trial.

This is not to say that he is being driven away from the Constitutional Court. His motion is simply stayed or dismissed if the judge is so satisfied and the more effective method can then be resorted to by the accused to ensure the fair trial which he so passionately craves.”

[60] Sharma JA is saying that the best place to deal with the issues should be the Assizes. This was endorsed by Lord Mustill speaking for the Board (at pages 494e to j):

“A similar flaw vitiates the arguments based on section 4. The “due process of law” guaranteed by this section has two elements relevant to the present case. First, and obviously, there is the fairness of the trial itself. Secondly, there is the availability of the mechanisms which enable the trial court to protect the fairness of the trial from invasion by outside influences. These mechanisms form part of the “protection of the law” which is guaranteed by section 4 (b), as do the appeal procedures designed to ensure that if the mechanisms are incorrectly operated the matter is put right. It is only if it can be shown that the mechanisms themselves (as distinct from the way in which, in the individual case, they are put into practice) have been, or being, or will be subverted that the complaint moves from the ordinary process of appeal into the realm of constitutional law. No such case is made out here. It is not even suggested that if an application to stay the trial is made, either at the commencement of the trial or in advance if a sufficient need is shown, the court will fail to receive it; or will not do its best to arrive at a solution which measures together the risk of prejudice, the steps which can be taken to ensure that the verdict is uninfluenced by improper comment, and the public interest in making sure that a case which has been committed for trial does in fact come to trial, and at a proper speed. Nobody could pretend that these are always easy decisions for the judge to make, but they are concerned with trial management within the context of a system whose fairness has not

been attacked. Thus, in the opinion of the Board, no constitutional question is invoked.”

[61] The issue came back before the Board in a different form in the later case of the **DPP v Jaikaran Tokai (1994) 48 WIR 376**. This matter involved the question of delay. The applicants filed a Constitutional Motion seeking a stay of a criminal trial on the basis of a delay in the proceedings. The Board endorsed what it had said earlier in **Nankisson Boodram, supra**, indicating that the questions which arose, which was whether there could be a fair trial, was a matter that had to be raised not in the Constitutional Court, but before the Judge in the Assizes and that a stay could only be granted in the exceptional case. This is clear from two passages:

“In the opinion of the court the decision to grant a stay was wrong. The delay was not unjustifiable, the chances of prejudice were small; the trial process would have provided ample protection for the accused; there was no danger of the trial being unfair; finally, the case was not in any sense so exceptional as to justify a stay.” (page 417C to D)

“The traditional procedures available to the criminal courts of Trinidad and Tobago exist for the purpose of securing that trials are fair. Application can be made to the trial judge for a stay, which the trial judge may grant if he considers that the case falls into the exceptional category indicated by Lord Lane CJ in **Attorney-General's Reference (No. 1 of 1990)**. If the trial judge does not grant a stay, it will be his duty in directing the jury to bring to their attention all matters arising out of the delay which tell in favour of the accused. If he fails to do that satisfactorily, the appeal process is available to put right any injustice which may have resulted from the failure, as in *R. Dutton* [1994] Crim LR 910. In that case the accused was tried on a charge of indecency with a male, the last alleged

indecent act having taken place fourteen years before the trial. The trial judge refused a motion for a stay without giving reasons, and failed to give the jury any direction that they should have regard to possible prejudice to the accused resulting from the delay. The Court of Appeal held that the trial judge was entitled to refuse a stay, but allowed the appeal against conviction on the ground of the judge's failure to direct the jury as to the possible adverse effects that the delay could have occasioned to the defence." (page 419f to j).

[62] However, the Board did not entirely close the door to Constitutional relief in a rare case where the chance of a fair trial had been totally destroyed:

“Lord Mustill [in **Boodram**, supra] proceeded to leave open the possibility of an application to the High Court for constitutional relief where the chance of a fair trial had been obviously and totally destroyed.”

[63] Then there is **Clinton Forbes v The Attorney General of Trinidad and Tobago, PC Appeal No. 2 of 2001 (delivered 15th May 2002)**. In that case, the Applicant was charged for a certain offence, possession of marijuana. The matter was heard before a Magistrate. He was convicted and sentenced to 5 years. He appealed that order from the Magistrate. The Magistrate then left the bench without delivering reasons for his order. The matter came up before the Court of Appeal and there were no reasons before the Court of Appeal for the Magistrate's decision. The Magistrate having not delivered reasons was in breach of section 130 (a) of the Summary Courts Act, which required the Magistrate to supply reasons. Faced with that, the Court of Appeal said that while it was true that the Magistrate did not provide reasons, they were in a position to go through the record of appeal to determine whether there was sufficient evidence on the basis of which, the Magistrate could have come to that decision. They found that there was sufficient evidence and dismissed the appeal. The Court of Appeal having dismissed that appeal, they went to the Privy Council.

[64] The Board overruled the decision of the Court of Appeal, saying that the Court of Appeal should not have looked through the record to see whether there was a sufficient basis for the Magistrate to have convicted because that would put too low a threshold on the finding of guilt. When the Court of Appeal dismissed the appeal, they ordered the applicant to serve his sentence, which they reduced to about 2 years. He had served a part of it before the Board heard the matter and ordered his release. He filed two constitutional motions, which were consolidated and heard together by Lucky J who dismissed them on the basis that the failure of the Magistrate to provide reasons was an error of law and in going through the proceedings to determine whether there was sufficient evidence for the Magistrate to have convicted, the Court of Appeal fell into error, which was of substantive law. There was no relief for that. The due process was his appeal to the Board against the ruling of the Court of Appeal. He had exercised his remedy and having done so, he could not come now to make his parallel attack to claim additional relief by way of Constitutional Motion.

[65] This decision was upheld by the Court of Appeal of this country, and the Judicial Committee of the Privy Council. Paragraphs 13 to 18 of the advice of the Board to Her Majesty warrants reproduction in full, cogently summarising the authorities:

“13. The appellant has spent two periods in custody, one of 19 months as a prisoner on remand and one of 11 months as a convicted prisoner serving a term of imprisonment with hard labour. The first was the result of a conviction which cannot be shown to be safe; the second was the result of an error of law on the part of the Court of Appeal in upholding the conviction. The conviction has now been quashed. The question, therefore, is whether a person who has served a term of imprisonment before his conviction is quashed on appeal has been deprived of his constitutional rights to due process and the protection of the law.

14. This question has been considered by the Board on more than one occasion. In *Maharaj v Attorney General of Trinidad and Tobago (No. 2)* [1979] AC 385, which arose under the 1962 Constitution, the appellant, a barrister engaged in a case in the High Court, had been committed to prison for seven days for contempt without being told plainly enough what he had done wrong to enable him to explain or excuse his conduct. This was a failure to observe a fundamental rule of natural justice which infringed the appellant's constitutional right not to be deprived of his liberty save by due process of law. In effect, he had been condemned without a trial. But Lord Diplock cautioned against making claims to constitutional redress save in exceptional circumstances. At p. 399 he said:

“In the first place, no human right or fundamental freedom recognised by Chapter I of the Constitution is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person's serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. Where there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infallible but to one that is fair. It is only errors in procedure that are capable of constituting infringements of the rights protected by section 1(a); and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to

a failure to observe one of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a very rare event.”

15. In *Chokolingo v Attorney General of Trinidad and Tobago* [1981] 1 WLR 106 an editor who had been committed for contempt issued a constitutional motion complaining that he had been deprived of his liberty without due process of law because his conduct could not have constituted a contempt in law. His motion was dismissed. At pp. 111-112 Lord Diplock said:

“Acceptance of the applicant’s argument would have the consequence that in every criminal case, in which a person who had been convicted alleged that the judge had made any error of substantive law as to the necessary characteristics of the offence, there would be parallel remedies available to him: one by appeal to the Court of Appeal, the other by originating application under section 6(1) of the Constitution to the High Court with further rights of appeal to the Court of Appeal and to the Judicial Committee. These parallel remedies would be also cumulative since the right to apply for redress under section 6(1) is stated to be ‘without prejudice to any other action with respect to the same matter which is lawfully available’. The convicted person having exercised unsuccessfully his right of appeal to a higher court, the Court of Appeal, he could nevertheless launch a collateral

attack (it may be years later) upon a judgment that the Court of Appeal had upheld, by making an application for redress under section 6(1) to a court of co-ordinate jurisdiction, the High Court. To give to Chapter I of the Constitution an interpretation which would lead to this result would, in their Lordships' view, be quite irrational and subversive of the rule of law which it is a declared purpose of the Constitution to enshrine."

16. In *Boodram v Attorney General of Trinidad and Tobago* [1996] AC 842 the appellant, who was on trial for murder, complained that his constitutional rights had been infringed by continuing press reports which were calculated to prejudice his trial and by the failure of the Director of Public Prosecutions to take measures to forestall or prevent their publication. His constitutional motion was dismissed by the Court of Appeal and their decision was affirmed by the Board. At p. 854 Lord Mustill said:

"The 'due process of law' guaranteed by this section has two elements relevant to the present case. First, and obviously, there is the fairness of the trial itself. Secondly, there is the availability of the mechanisms which enable the trial court to protect the fairness of the trial from invasion by outside influences. These mechanisms form part of the "protection of the law" which is guaranteed by section 4(b), as do the appeal procedures designed to ensure that if the mechanisms are incorrectly operated the matter is put right. It is only if it

can be shown that the mechanisms themselves (as distinct from the way in which, in the individual case, they are put into practice) have been, are being or will be subverted that the complaint moves from the ordinary process of appeal into the realm of constitutional law ...

In expressing this conclusion their Lordships do not altogether foreclose the possibility of an application to the High Court for relief under the Constitution in a case of trial by media where the chance of a fair trial is obviously and totally destroyed, for there is no due process of law available in such a case to put the matter right ... Equally, however, they have no doubt that it is only in a very rare case that an application to the High Court should be entertained. The proper forum for a complaint about publicity is the trial court..."

17. In *Hinds v Attorney General of Barbados* [2002] 2 WLR 470 the appellant was convicted of a serious offence and sentenced to eight years imprisonment. He had been refused legal aid and was unrepresented at his trial, though he was represented by counsel on his appeal to the Court of Appeal against conviction. His appeal was dismissed. He then brought a constitutional motion in which he complained that his right to a fair trial had been infringed. The motion was dismissed by the Court of Appeal and its decision was affirmed by the Board. The Board held that, since the appellant had been represented by counsel on his appeal against conviction and this had enabled him to argue any matters

reasonably open to him, the ordinary appellate processes had given him adequate opportunity to vindicate his right to a fair hearing, so that his constitutional motion had properly been dismissed. At p. 484 Lord Bingham of Cornhill said:

“It would be undesirable to stifle or inhibit the grant of constitutional relief in cases where a claim to such relief is established and such relief is unavailable or not readily available through the ordinary avenue of appeal. As it is a living, so the Constitution must be an effective, instrument. But Lord Diplock's salutary warning remains pertinent: a claim for constitutional relief does not ordinarily offer an alternative means of challenging a conviction or a judicial decision ... The applicant's complaint was one to be pursued by way of appeal against conviction, as it was ...”

18. Their Lordships do not think that it would be helpful or desirable to add their own observations to the foregoing citations. They establish that it is only in rare cases where there has been a fundamental subversion of the rule of law that resort to constitutional redress is likely to be appropriate. However the exceptional case is formulated it is clear that the constitutional rights to due process and the protection of the law do not guarantee that the judicial process will be free from error. This is the reason for the appellate process. In the present case the appellant was deprived of his liberty after a fair and proper trial before the magistrate, that is to say by due process of law. The appellant was able to

challenge his conviction by way of appeal to the Court of Appeal and, when the Court of Appeal wrongly failed to quash his conviction, by way of further appeal to the Board. The appeals were conducted fairly and without procedural error, let alone any subversion of the judicial process. The appellant thus enjoyed the full protection of the law and its internal mechanisms for correcting errors in the judicial process. His constitutional rights have not been infringed, and the Courts of Trinidad and Tobago were right to dismiss his constitutional motions.”

Application of Law to Issue 1

[66] Mr. Ashton was committed into custody at the State Prison on Frederick Street, Port of Spain (where he stayed for five weeks before he could have his bail taken) upon the conclusion of the Preliminary Enquiry by Magistrate Langley Baiju into Information No. 2212 of 1992 in the Couva Magistrates Court. In my judgment, this was not a breach of Mr. Ashton’s right to liberty and the right not to be deprived thereof except by due process of law as protected by section 4(a) of the Constitution. There was nothing unlawful about the Couva Preliminary Enquiry from inception to conclusion and committal. It began perfectly properly, as one of two Enquiries into two allegedly criminal incidents in two separate Court districts. That is the way the system works within the statutory framework: the Couva Magistrates Court was the appropriate place for a Preliminary Enquiry into an event in Couva to take place. Therefore, it began lawfully.

[67] Further, in my judgment, that the Director of Public Prosecutions decided to indict Mr. Ashton in Port of Spain on an indictment which included a count relating to the Couva incident would not convert what had, thus far, been an entirely lawful and constitutional Preliminary Enquiry in Couva, into an unlawful and unconstitutional one. The Director of Public Prosecutions, as I have found, made a mistake about the location of the Couva incident (he must have thought that it had occurred in Chaguanas: see the words of the second count), which led him to proffer the second count. But, that mistake resulted in a second count which at its worst, could only be categorised as a mere irregularity,

which did not eviscerate due process and the extra-Constitutional checks and balances built into the system to ensure fairness. Those checks and balances (which include the duty of the Director of Public Prosecutions to act fairly in the exercise of his or her functions and the power of the judge to act to delete counts on an indictment: see **R v. Johal [1972] 2 All ER 449**) resulted in the second count being deleted from the Port of Spain indictment, on the application of the Director of Public Prosecutions. That was Mr. Ashton's due process: an imperfect system replete with various non-Constitutional tools to repair error to ensure fairness. It is that to which he was entitled, not a perfect error free system: see **Maharaj (No. 2), supra; Harrikissoon, supra; Chokolingo, supra; Boodram, supra; Tokai, supra; and Forbes, supra**. In view of this, I find it impossible to conclude that the commission of an act, which at worst could be said to have spawned the mere irregularity of the second count of the Port of Spain indictment, could so contaminate the Couva Preliminary Enquiry. That would be to attach too much significance to it in a system of checks and balances. There was no subversion of the process, to adopt the words of Lord Millett in **Forbes, supra**. There was no evisceration and destruction of due process. That being the case, Mr. Ashton's committal into prison at the completion of the Couva Preliminary Enquiry in the normal course of events because of his inability to make his bail, cannot be impeached on constitutional grounds.

[68] I am further fortified in my views by the manner in which, driven by circumstances, Mr. Jairam SC vigorously attempted to distinguish **Tokai, supra** and **Boodram, supra** and that line of cases. These cases, he said, were different and inapplicable to the present circumstances because there, the applicants had been seeking to stay or postpone criminal trials. Here, on the other hand, Mr. Ashton was not asking for any declaration, or order impinging or affecting the criminal proceedings in San Fernando, which flowed from the Couva Preliminary Enquiry and the San Fernando indictment based on the committal in Couva. Mr. Ashton was saying that his rights had been infringed in the past. Mr. Ashton was not saying, submitted Mr. Jairam SC, that the continuation or pendency of the indictment in San Fernando was unconstitutional and null and void. What he was saying was that as soon as the Director of Public Prosecutions filed the two-count indictment in Port of Spain in respect of both the Chaguanas and Couva incidents, it became unconstitutional to proceed with the Couva Preliminary Enquiry. And, for the Magistrate in Couva to commit Mr. Ashton for trial was

unconstitutional, and his consequent imprisonment being unable to obtain bail was also unconstitutional. But, when the Director of Public Prosecutions applied for and obtained leave to amend the two-count indictment in Port of Spain by deleting the second count relating to the Couva incident, from that moment the indictment in San Fernando was “cured”. Put another way, although the period between the filing of the two-count indictment in Port of Spain and its amendment was a time during which the Director of Public Prosecutions’ position vis a vis Mr. Ashton in respect of the Couva Preliminary Enquiry was unconstitutional, it did not follow ipso facto that everything that flowed therefrom was unconstitutional.

[69] I do not accept that argument. In my judgment, if Mr. Ashton’s committal into custody at the end of the Couva Preliminary Enquiry was unconstitutional because continuing the Couva Preliminary Enquiry after the Director of Public Prosecutions had indicted him for the Couva incident in Port of Spain made the Couva Preliminary Enquiry unconstitutional, everything which flowed from it, including the committal and the San Fernando indictment would be unconstitutional. That is the internal inconsistency in Mr. Jairam SC’s submissions.

[70] The point is this: the approach in the authorities is not to view the State action sought to be Constitutionally impeached in a vacuum. The Judge is not supposed to freeze the moment in time, having concluding that the State has acted irregularly, and declare a breach of the Constitution at that moment. The Judge has to ask: was this State act underpinned by a mistake of fact, or substantive law, in which case Constitutional relief would not lie, or was it underpinned by serious procedural error, so serious as to eviscerate the extra-Constitutional safeguards and subvert due process? This involves a prospective look at the error alleged: this may be an error, but can it be fixed by processes built into the system? The answer in the present case would plainly be “yes”. That the problem could be cured by the application to delete the second count of the Port of Spain indictment is proof that there was nothing unconstitutional about continuing the Couva Preliminary Enquiry before the second count was deleted. To repeat the judges’ mantra: Mr. Ashton was not entitled to a perfect system; he was entitled to a fair system and due process. This, he received.

Application of Law to Issue 2

[71] In my judgment, it was not a breach of Mr. Ashton's right to liberty, security of the person and the right not to be deprived thereof except by due process of law for the Director of Public Prosecutions to have placed him on two separate indictments to stand trial twice at the same time in two different courts for the same Couva offence. I have come to that conclusion by adopting the approach I have derived from the authorities, which I have outlined above: examine the State action complained of and categorise it—mistake of fact, mistake of substantive law, mere procedural irregularity, or serious procedural irregularity resulting in the evisceration of the extra-Constitutional protections and the due process built into the system?

[72] Mr. Busby submitted that the fact that there were two indictments in existence at the same time in respect of the same offence did not render either of them unconstitutional. He went on to say that it is possible in law, and in fact lawful, to have two indictments in existence. This, he said, was illustrated by the case of **Regina v. Culliford 1 Salk 382**, a case of very respectable antiquity. The report is short. I set it out below:

“Where two indictments are for the same fact, proper to try on both at once.

Per Cur: if there be two indictments against H for the same thing, as if one be found by a coroner's request, and another by the grand jury, and H is acquitted upon one, yet he must still be tried upon the other, to which he may plead he former acquittal; but the usage of the Old Bailey is, and indeed so it is the fairest course, to try him on both indictments at once.”

[73] Mr. Jairam SC dealt with this authority as follows: it was a very old case dating back to the days when England had grand juries, which no longer exist. In those days, it was possible to have two indictments arising out of a Coroners Inquest and out of the Grand Jury. If, which Mr. Jairam SC did not concede, it was possible for such a situation lawfully to arise before the passing of the Constitution, since the passing of the Constitution, such a situation was unlawful and unconstitutional.

However, Mr. Jairam SC did accept that it did not “quite get to double jeopardy”.

[74] There is something counterintuitive about the conclusion that all is well with having two indictments in existence at the same time, the second count of one, covering the same offence dealt with by the other indictment. There is something asymmetric about such a state of affairs; it is untidy and generative of unease. However, I consider that **Culliford, supra** applies because the real objection to the mere existence of two indictments in such circumstances is the potential **ultimately** for the accused to be placed in double jeopardy. It is not as though Mr. Ashton had been called upon to plead to the second count in the Port of Spain indictment. He was not. He was never put in jeopardy on it. Therefore, it is in part, a question of timing: the mere existence of the two indictments simultaneously does not, at that stage, trigger off the doctrine. In my view, therefore, Mr. Busby is correct: the mere existence of the indictments simultaneously was not unlawful.

[75] Even if I am wrong on that, it makes little difference to the analysis, driven as that analysis is by the prospective approach taken in the leading authorities, which I have already cited and considered. If the Director of Public Prosecutions’ conduct was unlawful, it was a mistake either of substantive law, or of fact, or a mere procedural irregularity. To my mind, by no stretch of the imagination could it be said to have been so serious a procedural error as to have eviscerated Mr. Ashton’s due process rights. Once again, the proof of the efficacy of those rights is the ultimate outcome: the deletion of the second count in the Port of Spain indictment. He had his due process: that is the end of that.

Application of Law to Issue 3

[76] In the light of the view I have taken on the first three issues, it is hardly surprising that in my judgment, it was not a breach of Mr. Ashton’s right to liberty and the right not to be deprived thereof except by due process of law for the Judge to issue a bench warrant on or about 22nd July 1999 in San Fernando Assize Case No. 17 of 1999, and therefore his detention thereafter for fourteen days until he could have his bail taken, was similarly not a breach.

[77] As I have previously mentioned, Mr. Jairam SC confirmed that it was not his intention to attempt to impeach the trial in San Fernando. In

view of this correct concession, I cannot see how it could be argued that the decision of the Judge in San Fernando to issue a bench warrant to compel Mr. Ashton's attendance was unlawful. The existence of the two-count Port of Spain indictment did not render the continuation of the Couva Preliminary Enquiry unconstitutional (for the reasons which I have set out above). The Couva Preliminary Enquiry resulted in a perfectly legal committal, which in turn resulted in a perfectly legal second indictment in San Fernando. As I have said, the existence of the two indictments together was not of itself unlawful. Mr. Ashton did not appear in San Fernando. He should have. Even if he had attended and pleaded to the San Fernando indictment, while the second count of the Port of Spain indictment was still extant, it would have made no difference to my analysis because he had yet to plead, and ultimately never pleaded, to the second count of the Port of Spain indictment.

[78] Put another way, and at the risk of repetition, nothing occurred which could be categorised as a procedural error of appropriate magnitude to eviscerate the extra-Constitutional remedies and due process. Mr. Ashton failed to appear to receive his due process. The system dealt with him as the system often deals with accused persons who fail to appear to meet the charge made against them.

B. Section 4(b): equality before the law and the protection of the law

Issues:

[79] Was it a breach of Mr. Ashton's right to equality before the law and the protection of the law for:

- (1) Magistrate Langley Baiju to continue the Preliminary Enquiry into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998?
- (2) The Director of Public Prosecutions to have placed Mr. Ashton on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992?

Answered

[80] In my judgment, the answer to all the questions posed under this group of issues is “no”.

Law

[81] The authorities on “protection of the law” (and to some extent “equality before the law”), which I have found helpful, in the order in which they were decided, are as listed below. I will explain my views on the right to “equality before the law”, and my reasons for declining relief based on an allegation of a breach of this right, when I turn to deal with Mr. Ashton’s claim under section 4 (d) of the Constitution.

Harrikisson v. The Attorney General of Trinidad and Tobago [1979] 3 WLR 62.

Attorney General of Trinidad and Tobago v. McLeod [1984] 1 WLR 522.

Boodram, supra.

Learie Alleyne-Forte v. The Attorney General of Trinidad and Tobago [1998] 1 WLR 68.

Jaroo v. The Attorney General of Trinidad and Tobago [2002] 2 WLR 705.

[82] In **Harrikisson, supra**, Mr. Harrikisson, a school teacher, had been transferred against his will from one school to another. The relevant Regulations gave him certain rights. Instead of availing himself of those rights, on legal advice he chose to bring an application under what was then section 6 of the Independence Constitution seeking, inter alia a declaration that his rights under section 1(b) of the Constitution “to equality before the law and the protection of the law” had been breached. Lord Diplock, speaking for the Board, made the following comments:

“This too is manifestly untenable. What the appellant is entitled to under this paragraph was the right to apply to a court of justice for such remedy (if any) as the law of Trinidad

and Tobago gives to him against being transferred from one post to another against his will. There is nothing in the material before the High Court to give any colour to the suggestion that he was deprived of the remedy which the law gave him. On the contrary he deliberately chose not to avail himself of it.” (page 65)

“These regulations define the legal rights enjoyed by the appellant in relation to his transfer from one post to another in the Teaching Service. **It is in the exercise of these rights that he is entitled to the protection of the law** [emphasis supplied].” (page 66)

“If he objected to the transfer on these or other grounds such as personal inconvenience ... the protection that the law afforded him was, in the first instance, to give notice to the Permanent Secretary of his desire to make representations to the commission for a review of the order and to submit his representations in writing to the Permanent Secretary for transmission to the commission, together with the Permanent Secretary’s own comments thereon. Then, and not before then, it would become the duty of the commission to consider any representations against the order that the appellant wished to make, together with the Permanent Secretary’s comments on them. Having failed to avail himself of this remedy—apparently deliberately, for he was acting on legal advice—his claim that the order for his transfer was unlawful, in their Lordship’s view, fails in limine.”

[83] In **McLeod, supra** the Board declined to provide a comprehensive definition of what is meant by “protection of the law”.

However, speaking through Lord Diplock at page 531, they had this to say:

“For Parliament to purport to make a law that is void under section 2 of the Constitution because of its inconsistency with the Constitution deprives no one of the “protection of the law”, so long as the judicial system in Trinidad and Tobago affords a procedure by which any person interested in establishing the invalidity of that purported law can obtain from the courts of justice, in which the plenitude of the judicial power of the state is vested, a declaration of invalidity that will be binding upon Parliament itself and upon all persons attempting to act under or enforce the purported law. **Access to a court of justice for that purpose is itself “the protection of the law” to which all individuals are entitled under section 4(b)** [emphasis supplied].”

[84] In **Boodram, supra**, the Court of Appeal and the Board approved the above passage from **McLeod, supra**. Lord Mustill, speaking for the Board, went on to say:

“The “due process of law” guaranteed by this section [section 4] has two elements relevant to the present case. First and obviously, the fairness of the trial itself. Secondly, there is the availability of mechanisms, which enable the trial court to protect the fairness of the trial from invasion by outside influences. These mechanisms form part of the “protection of the law” which is guaranteed by section 4(b), as do the appeal procedures designed to ensure that if the mechanisms are incorrectly operated the matter is put right. **It is only if it can be shown that the mechanisms themselves (as distinct from the way in which, in the individual case, they are put into practice) have been, are**

being or will be subverted that the complaint moves from the ordinary process of appeal into the realms of constitutional law.”

[85] And in **Learie Alleyne-Forte, supra**, the Board said that where a car owner had his car taken by the police in a tow away area, a breach of section 4(b) did not arise because the “car owner may have recourse to the courts to challenge the lawfulness of the removal of his car.” (at page 72). These earlier authorities were cited with approval in **Jaroo, supra** at pages 710 to 711.

Application of Law to Issue 1

[86] It is clear to me on an application of the authorities set out above that no breach of Mr. Ashton’s right to the protection of the law could be said to arise from Magistrate Baiju having continued the Preliminary Enquiry into Information No. 2212 in the Couva Magistrate’s Court after the 12th December 1997 and/or 23rd January 1998. Even, if the decision to continue the Couva Preliminary Enquiry after the signing and filing of the Port of Spain indictment on 12th December 1997 and 23rd January 1998 was unlawful, or irregular, there is nothing to suggest a subversion of the mechanisms that allowed Mr. Ashton to have access to the Court to complain about this. That protection could have included, but may well not have been confined to, a public law application to quash the committal, a common law motion at the San Fernando Assizes to quash the indictments and all the various appeals elsewhere from any such attempt that might have failed. He had the protection of the law, as defined by the authorities. The system of checks and balances had not been subverted.

Application of Law to Issue 2

[87] The same reasoning applies here. Even if the decision of the Director of Public Prosecutions to place Mr. Ashton on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992, was in some way unlawful or irregular (and I have already held that it was not), Mr. Ashton was not, and has not been deprived of the protection of the law, as understood in the authorities. His access to the courts through the system was not cut off: he could apply to have one or other of the

indictments quashed, or a count deleted. There was “law” there to protect him.

C. Section 4(d): equality of treatment from any public authority in the exercise of any functions

Issues:

[88] Was it a breach of Mr. Ashton’s right to equality of treatment from any public authority in the exercise of any functions for:

- (1) Magistrate Langley Baiju to continue the Preliminary Enquiry into Information No. 2212 of 1992 in the Couva Magistrate’s Court after the 12th December 1997 and/or 23rd January 1998?
- (2) The Director of Public Prosecutions to have placed Mr. Ashton on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992?

Answered

[89] In my judgment, the answer to all the questions posed under this group of issues is “no”.

Law

[90] The cumulative effect of **Smith v. LJ Williams (1982) 32 WIR 385**, **Attorney General v. KC Confectionery Limited (1985) 34 WIR 387**, **Pittiman v. The Attorney General HCA No. 743 of 1985 (Edoo J)** and **The Attorney General of Trinidad and Tobago v. Wayne Hayde CvA No. 12 of 1999** is to import into the law of this jurisdiction, and apply, the requirements set out in **Basu’s Shorter Constitution of India (7th Edition) Vol 1** at page 47 as regards the criteria for determining whether a person has been discriminated against or denied equality of treatment. Where a particular statute is not itself discriminatory and, like here, the charge of violation of equal protection is only against the official who is entrusted with the duty of carrying it into operation (the Magistrate and the Director of Public Prosecutions), the charge will fail if the power has been exercised in good faith within the jurisdiction imposed by the legislation and for the achievement of

the objects the legislation had in view. If mala fides is alleged it must be proved.

[91] An applicant has the burden of displacing the presumption of regularity in the acts of public officials, which would be displaced on proof of mala fides. The proof of mala fides would depend on the nature of the allegation being made by the applicant: see Sharma JA (as then he was) in **Hayde, supra** at page 8 (citing **LJ Williams, supra** and **KC Confectionery, supra**).

Application of Law to Issues 1 and 2

[92] For my own part, I can think of nothing I have seen to make me conclude that the conduct complained of on the part of the Magistrate in Couva and the Director of Public Prosecutions was in any way mala fide. Mr. Jiram SC suggested to me that the fact that the State has not produced any evidence to show that they have done these very things to any other person is inequality of treatment because, even if prima facie they ought not to do what they did because of the need to comply with the due process requirement. That being so, if they are to neutralise the prima facie position and say “look here, we have not discriminated against this man: we have done this on many occasions in the past.” Based on the authorities cited above, I do not accept that.

[93] There is nothing to suggest that the Magistrate was involved in anything else but a bona fide attempt to conduct a preliminary enquiry under the terms of the legislation. Mr. Jiram SC suggested that it could not have been the object of the legislation for a preliminary enquiry to continue in the circumstances of this case, therefore it could not be said that the power to enquire had been exercised for the achievement of the objects the legislation had in view. In my judgment, the objects the legislation had in view was the conduct of preliminary enquiries according to its terms. That Magistrates might make mistakes in performing their function to enquire under the legislation would not necessarily mean that they were doing anything else but aiming at achieving the objects of the legislation. The position of the Director of Public Prosecutions under the **Criminal Procedure Act, supra** is entirely the same. He indicts. Provided he is bona fide, that is to say absent any proof of mala fides, and aiming at achieving the objects of the legislation, that is to say indict (rather than some other purpose), that

is that: the treatment is not unequal under either section 4(d) or the “equality before the law” requirement of section 4(b).

D. Section 4(g): freedom of movement

Issues

[94] Was it a breach of Mr. Ashton’s right to freedom of movement for:

- (1) Mr. Ashton to have been committed into custody at the State Prison on Frederick Street (where he stayed for five weeks before he could have his bail taken) upon the conclusion of the Preliminary Enquiry by Magistrate Langley Baiju into information No. 2212 of 1992 in the Couva Magistrate’s Court?
- (2) The Judge to issue a bench warrant on or about 22nd July 1999 in San Fernando Assize Case No. 17 of 1999, and was his detention thereafter for fourteen days until he could have his bail taken, similarly a breach?

Answered

[95] In my judgment, the answer to all the questions posed under this group of issues is “no”.

Law

[96] While the framers of the Constitution thought it appropriate to carve out a right to “freedom of movement” separate and apart from the right to liberty and the right not to be deprived thereof except by due process of law, I am hard pressed to see how, as a matter of principle, where a person has been deprived of his liberty, that is has been sent to gaol, in a manner which does not offend section 4(a), that this could offend section 4 (g). I accept that there may be cases where there might be a breach of the right to freedom of movement, which did not necessarily involve a deprivation of the right to liberty. For example, the right to stage marches and processions as part of the rights to freedom of movement and of association and assembly: see **Ramdwar & Ors v. Weekes & Ors Vol XX, T & T Reports (Part 1), 99 (Court of Appeal)** and **Fundamental Rights in Commonwealth**

Caribbean Constitutions by Margaret Demerieux (1992) at page 321.

Application of Law to Issues 1 and 2

[97] I have already found that Mr. Ashton was afforded due process and that there was no breach of section 4(a). Accordingly, as a matter of logic and principle (see above), I cannot see how the matters complained of under this heading could be construed as a deprivation of freedom of movement. Mr. Ashton was appropriately deprived of his liberty, because of which, he was no longer free to move.

E. Section 5(2)(b): cruel and unusual treatment or punishment

Issues:

[98] Was it a breach of Mr. Ashton's right to be protected from the imposition of cruel and usual treatment for:

- (1) Magistrate Langley Baiju to continue the Preliminary Enquiry into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998?
- (2) Mr. Ashton to have been committed into custody at the State Prison on Frederick Street (where he stayed for five weeks before he could have his bail taken) upon the conclusion of the Preliminary Enquiry by Magistrate Langley Baiju into information No. 2212 of 1992 in the Couva Magistrate's Court?
- (3) The Director of Public Prosecutions to have placed Mr. Ashton on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992?

[99] Was it a breach of Mr. Ashton's right to be protected from the imposition of cruel and unusual treatment for the Judge to issue a bench warrant on or about 22nd July 1999 in San Fernando Assize Case No. 17 of 1999, and was his detention thereafter for fourteen days until he could have his bail taken, similarly a breach?

Answered

[100] In my judgment, the answer to all the questions posed under this group of issues is “no”.

Law and Application of Law to Issues 1 to 4

[101] Mr. Jairam SC sought to suggest that there was something inherently stressful about looking down the barrel of the litigation, in particular, the criminal litigation gun, was very stressful. It was cruel to put a man to face a court of law. It was even worse to impose upon him the cruel punishment of incarceration. That submissions does not, in my respectful view, survive an application of **Reyes v. R [2002] 2 WLR 1034** and **Thomas v. Baptiste [1999] 3 WLR 249**. From these authorities, it is clear to me that a “cruel and unusual punishment” is one that is so excessive as to outrage standards of decency, that is to say, a punishment that is grossly disproportionate to what would have been appropriate (see **Reyes, supra** at page 1047). “Cruel and unusual treatment”, an expression which “does not gain by being broken up into its component parts” (**Thomas, supra** at page 264) involves treatment of a magnitude that goes beyond harsh and could properly be described as cruel and unusual. This is a value judgment, in which local conditions have to be taken into account (see **Thomas, supra** at pages 264 to 265).

[102] In my view, it is entirely implausible to suggest that any of the State actions outlined above constituted either cruel and unusual treatment or punishment by reference to the explanation of those terms, which I have provided above. As a matter of principle, it cannot be enough, without more, that Mr. Ashton was submitted to the stress of a criminal proceedings and incarceration while attempting to make his bail. He was not subjected to the long years of alternating hope and despair as was the condemned man in **Pratt v. Morgan [1994] 2 AC 1**, although I accept that all of this must not have been anything less than very unpleasant for Mr. Ashton. In my judgment, however, neither the “punishment” nor the “treatment” meted out here was of such a degree as to warrant the appellation “cruel and unusual”.

F. Section 5(2)(e): the right to a fair hearing in accordance with the principles of fundamental justice

Issues

[103] Was it a breach of Mr. Ashton's right not to be deprived of his right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations for:

- (1) Magistrate Langley Baiju to continue the Preliminary Enquiry into Information No. 2212 of 1992 in the Couva Magistrate's Court after the 12th December 1997 and/or 23rd January 1998?
- (2) The Director of Public Prosecutions to have placed him on two separate indictments to stand trial twice at the same time in two different courts for the same alleged offence of 6th February 1992?

Answered

[104] In my judgment, the answer to all the questions posed under this group of issues is "no".

Law

[105] Section 5(2)(e) of the Constitution provides further and better particulars of the "due process of law" requirement under section 4(a) and the "protection of law" requirement under section 4(b): see **Thornhill v. The Attorney General of Trinidad and Tobago [1980] 2 WLR 510**, at page 516. The principles of fundamental justice would include the right to be heard, the right to know the details of the charge made against one, the right not be deprived of the protection of the law: in other words, the right to have a hearing that a Constitutional lawyer would recognise as fair.

Application of Law to Issues 1 and 2

[106] I have already held that Mr. Ashton received due process. There is nothing in the evidence to suggest that the Couva Preliminary Enquiry was conducted in anything but a fair manner: Mr. Ashton was represented (albeit not on every occasion: Mr. Ramlal was actually

present on the day that Mr. Ashton was committed if only to apply to be relieved), he was heard and allowed to cross-examine. So far as the role of the Director of Public Prosecutions was concerned in placing Mr. Ashton on two separate indictment to stand trial twice at the same time in two different courts for the same alleged offences, in my judgment, this did not deprive Mr. Ashton of his right to a fair hearing in accordance with the principles of fundamental justice. The checks and balances built in to the system (which I have considered elsewhere in some detail) ensured that this conduct on the part of the Director of Public Prosecutions had no effect on the fairness of the hearings involved.

**VII.
Disposition**

[107] In view of the above, I order that Mr. Ashton's Amended Notice of Motion be dismissed. Mr. Ashton shall pay the Attorney General's costs fit for two Counsel.

Dated the 18th day of September 2002.

David A Myers
Judge