

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

NO. 3367 of 2001

IN THE MATTER OF AN APPLICATION BY THE DIRECTOR OF PUBLIC PROSECUTIONS FOR LEAVE TO APPLY FOR AN ORDER FOR JUDICIAL REVIEW PURSUANT TO ORDER 53 OF THE ORDERS AND RULES OF THE SUPREME COURT AND THE JUDICIAL REVIEW ACT, 2000

AND

IN THE MATTER OF INFORMATIONS NO. 599 OF 1999 AND 600 OF 1999 IN THE PRINCESS TOWN MAGISTRATE'S COURT

AND

IN THE MATTER OF THE DECISION OF THE HONOURABLE MAGISTRATE LUCINA CARDENAS-RAGOONANAN TO STAY INFORMATIONS NO. 599 OF 1999 AND 600 OF 1999 AS AN ABUSE OF PROCESS ON THE 27TH OF AUGUST 2001

Before the Honourable Justice M. Dean-Armorer

Appearances:

Mr. Busby for the Applicant

Mr. Prescott for the Respondent

JUDGMENT

Introduction

1. In these proceedings the Director of Public Prosecutions (“the D.P.P.”) applied for Judicial Review of a decision which was made by Her Worship Lucina Cardenas-Ragoonanan on the 27th August, 2001 to stay Informations No. 599 of 1999 and 600 of 1999 in the Princes Town Magistrate’s Court.
2. Counsel for the D.P.P. has contended that the decision of the learned Magistrate was irrational and made in error of the law and as such ought to be set aside by an Order of Certiorari.
3. The proceedings were initiated by the Statement which was filed by the D.P.P. on November 20, 2001 pursuant to the *Judicial Review Act*, 2000 and under 0.53 r. 3(2) of the *Rules of the Supreme Court*. By this Statement, the D.P.P. applied for leave to apply for judicial review.
4. The Application for leave was supported by the affidavit of Narissa Ramsundar, Attorney-at-Law attached to the Office of the Director of Public Prosecutions.
5. On the 22nd November 2001 the Honourable Justice Mendonca granted leave to the D.P.P to apply for judicial review.
6. On the 23rd November 2001, the D.P.P filed an Originating Notice of Motion seeking the following reliefs:-

- (a) A declaration that the decision of the Honourable Magistrate Lucina Cardenas-Ragoonanan to stay informations 599 and 600 of 1999 as an abuse of process is irrational and unreasonable.
- (b) A declaration that the decision of the Honourable Magistrate Lucina Cardenas-Ragoonanan to stay informations 599 and 600 of 1999 was wrong in law.
- (c) An order of certiorari to quash the decision of the Honourable Magistrate Lucina Cardenas-Ragoonanan of the 27th August 2001 to stay informations 599 and 600 of 1999.
- (d) An order of mandamus directing the Honourable Magistrate Lucina Cardenas-Ragoonanan to either hear and determine the preliminary enquiry or enquiries commenced by informations 599 and 600 of 1999 or to have same transferred to another Magistrate for hearing and determination.
- (e) In the alternative an order of mandamus directing the Chief Magistrate to list informations 599 and 600 of 1999 for hearing before another Magistrate.
- (f) An Order that the Respondent do pay the Applicant's costs.
- (g) Such further or other relief as the nature of the case may require.

7. The Grounds of the Application for Judicial Review were set out in the Statement filed pursuant to 0.53 r.3 (2) of the *Rules of the Supreme Court*. These Grounds, which were not set out in the Notice of Motion, were:

- (a) The decision of the Honourable Magistrate to stay Informations 599 and 600 of 1999 as an abuse of process is unreasonable and irrational.
- (b) The Honourable Magistrate erred in law in staying Informations 599 and 600 of 1999.
- (c) The Honourable Magistrate erred in the exercise of her discretion to stay Informations 599 and 600 of 1999.

The Facts

1. At the hearing of the Application for Judicial Review the D.P.P relied once again on the affidavit of Narissa Ramsundar. This affidavit was sworn and filed on the 20th November 2001. No affidavit was filed in response and the allegations contained in the affidavit of Ms Ramsundar must therefore be taken as the undisputed facts of this case.
2. The salient facts are set out hereunder:
 - (i) On the 26th August, 1998 the accused, Timildas Boodram was charged with two (2) offences viz. having sexual intercourse with a female who was nine (9) years old contrary to s. 6(1) of the *Sexual Offences Act* and unlawfully taking and carrying away a child contrary to her will.
 - (ii) On the 8th October 1998, the accused was committed by Chief Magistrate, Sherman Mc Nicolls to stand trial for the offences of having sexual intercourse with a minor and with kidnapping.

- (iii) In the course of the Preliminary Inquiry the learned Chief Magistrate received the sworn evidence of the virtual complainant who was a minor.
- (iv) The D.P.P. was of the view that the learned Magistrate had failed to comply with s. 19 of the *Children's Act* Ch. 46:01 as amended by s. 16 of the *Administration of Justice Act*, which required that a child's evidence in criminal proceedings be taken unsworn.
- (v) The D.P.P. was of the view that Magistrate Sherman Mc Nicolls had made an error, that the committal was flawed and that an indictment could not properly be preferred on the basis thereof.
- (vi) As a result the D.P.P. filed a *nolle prosequi* on the 18th February 1999. The D.P.P. issued instructions to the police as a result of which the charges against the accused were re-laid and the committal proceedings were re-instituted.
- (vii) The re-instituted committal proceedings came up for hearing before Magistrate Lucina Cardenas-Ragoonanan on the 13th February 2001, on which day Counsel for the accused submitted to the Learned Magistrate that the re-instituted committal proceedings ought to be stayed as an abuse of the Court's process.
- (viii) On the 27th August 2001, Magistrate Cardenas-Ragoonanan found that there may have been some manipulation of the process on the part of the prosecution and found that there was prejudice and abuse. Her Worship ruled that the proceedings be stayed and not be proceeded with without leave of the court.

- (ix) The submissions, which were made by Counsel for the accused, were exhibited as “NR4”. The extract from the Magistrate’s Case Book was exhibited as “NR5”. A certified copy of the proceedings was exhibited as “NR6”.
- (x) For the purpose of this Application the verbatim ruling of the learned Magistrate is relevant and is set out hereunder:

“Submissions made and Court accepts submissions made on the part of the Accused by Counsel. Prejudice and abuse Re Manipulation of the process has been seen. Court accepts that there may have been some manipulation on the part of the prosecution as to the process. Court rules that these proceedings be stayed and that they not be proceeded with without leave of the Court.”

Submissions of the Attorneys

1. Written submissions were filed by both parties and oral submissions were made on the 12th March 2002 and 13th March 2002. On the 27th March, 2002, the Court heard very brief supplemental submissions, which were made by Counsel for the Magistrate at the Court’s request.
2. The thrust of the submissions on behalf of the D.P.P. was that Magistrate Cardenas-Ragoonanan had erred in law in staying the Informations. Mr. Busby for the D.P.P. relied on the cases of *Rv. Telford Justices Ex parte Badhan (1991) 2Q.B.78* and *R. v Horseferry Road Magistrates’ Court ex parte Bennett (1993) 3 All ER 139* in his submission that the power of a magistrate to stay criminal proceedings was a power that is strictly confined.

3. Mr. Busby argued further that the Magistrate's decision to stay the Informations was so unreasonable that no reasonable Magistrate would have made such a decision.
4. Learned Counsel for the D.P.P. did not make submissions on the third ground of this Application, that is to say, that the learned Magistrate erred in the exercise of her discretion.
5. Mr. Prescott, Counsel for Magistrate Cardenas-Ragoonanan, argued in response, that the D.P.P, in order to succeed was constrained to show that the Magistrate was wrong in law. Mr. Prescott argued forcefully that the D.P.P had himself fallen into error in holding the view that the sworn evidence of the virtual complainant before Magistrate Mc Nicolls invalidated the deposition.
6. Mr. Prescott submitted that the issue in this case was whether the learned Magistrate directed her mind to the correct question. If she did, argued Mr. Prescott, her decision should stand. If she did not, the Court should grant certiorari.

Issues:

1. Whether the decision of the Learned Magistrate was so unreasonable that no reasonable Magistrate would have made it.
2. Whether the Learned Magistrate was wrong in law in finding that the prosecution had manipulated the process.
3. Whether the Magistrate was wrong in holding that the actions of the D.P.P. amounted to an abuse of process.

4. Whether for the purpose of these proceedings, the correctness of the views of the D.P.P. is of relevance.

Law

Re Applications for Judicial Review

1. The grounds on which decisions are reviewable in public law have been placed into three broad general categories of irrationality, illegality and procedural impropriety. *CCSU v Minister for the Civil Service* [1984] 3 All ER 935 at page 951a per Lord Diplock. Whereas these categories are not rigid they have been found to be useful tools of analysis in cases of this kind. These grounds are also set out at s. 5 of the *Judicial Review Act 2000*. (See Section 5 (3) (e) and (j).
2. A decision will be reviewable on the ground of irrationality if it is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at that decision. *CCSU v Minister for the Civil Service* [1984] 3 All ER 935 at page 951a per Lord Diplock.
3. An error of law is identified as a ground for judicial review at s. 5 (3) (j) of the *Judicial Review Act 2000*. The concept of errors of law going to the jurisdiction is now obsolete. All errors of law are now regarded as jurisdictional errors. See Clive Lewis, *Judicial Remedies in Public Law* (2nd Ed.) Para. 5 – 005. Judicial Review is available to correct errors of law by Magistrates' Court see Clive Lewis, *Judicial Remedies in Public Law* (2nd Ed.) Para. 13 – 037.

Abuse of Process

5. The jurisdiction to stay a prosecution for abuses of the Court's process was considered recently on the case of ***R v. Latif*** [1996]1W.L.R.104 112-113 where Lord Steyn regarded the law to be settled. Approving the speeches in ***R. v. Horseferry Road Magistrate's Court Ex parte Bennet*** (1993) 3 A11ER 139, Lord Steyn described an abuse of process as “..an affront to the public conscience..” .Lord Steyn went on to say:

“In a case such as the present, the Judge must weigh in the balance the public interest in ensuring that those who are charged with grave crimes should be tried and and the compelling public interest in not conveying the impression that the Court will adopt the approach that the end justifies the means.”

6. The power of a Magistrate to stay proceedings for an abuse of process was recognized in the case of ***R. v. Brenford Justices Ex p. Wong*** (1981) 1 A11ER 884.
7. The jurisdiction to stay proceedings for an abuse of power is held by the High Court and the power of the Magistrate to stay proceedings for abuse of process is one that should be exercised sparingly. In the case of ***R. v. Horseferry Road Magistrate's Court Ex parte Bennet*** (1993) 3All E.R. 139, Lord Griffiths stated at p. 152C:

“I would accordingly affirm the power of the Magistrates to exercise control over their proceedings through abuse of jurisdiction however, in the case of Magistrates this power should be strictly confined to matters affecting the fairness of the trial of the particular accused with whom they are dealing, such as delay or unfair manipulation of court procedures”

8. An erroneous finding of law on the part of the D.P.P does not amount to an abuse of process by the prosecution. See C.A. No. 132 of 88 **Shastri Moonan v D.P.P and Others,** where the learned Justice of Appeal Ibrahim, in considering the actions of the then D.P.P formulated the following rhetorical question at page 12 of his Judgment:

“...if...not acting in bad faith she comes to an incorrect decision on the law and institutes a prosecution on that basis, can it really be said that in such circumstances there was an abuse of process?”

The learned Justice of Appeal concluded at page 23 that there was no abuse of process.

“In my opinion, these further submissions on abuse of process, by themselves do not amount to abuse of process. The overall approach of the D.P.P. unfortunately demonstrates lack of care and negligence in the performance of such a responsible duty as that entrusted to a D.P.P. but that is no ground for holding that there was abuse of process in this case.”

Although one instance of relaying of charges might not amount to an abuse of process, repeated relaying of charges might be regarded as an abuse of process. See ***R. v Manchester City Stipendary Magistrate Exp. Snelson (1977) 1 WLR 911.***

9. Power of the D.P.P to enter a nolle prosequi and to institute subsequent proceedings

This power is conferred on the D.P.P by section 11 of the **Criminal Procedure Act** Ch. 12:02 which provides as follows:

*“Where a person charged with an offence triable on indictment is committed to prison or admitted to bail in respect of such offence, the Director of Public Prosecutions may, at any time before the trial, file in the Court the preliminary examinations upon which such prisoner was so committed for trial or admitted to bail, and put in a declaration in writing, signed by him to the effect that considering the evidence adduced against such person in the preliminary examinations to be insufficient, he will not upon such evidence further prosecute such person in respect of such offence;..... **but such discharge shall not operate as a bar to any subsequent proceedings against such person on the same facts .**”(emphasis mine).*

It is relevant to note at this point that Counsel for the learned Magistrate accepted that the D.P.P. was empowered to relay charges after having entered a nolle prosequi

REASONING AND DECISION

1. It is now trite law that in Judicial Review proceedings, the reviewing Court does not exercise an appellate jurisdiction but is confined to examining the relevant decision-making process.
2. In this matter, the Court focused principally on the decision of the learned Magistrate. The Court considered the impugned decision in the context of

the submissions, which were made before the learned Magistrate by Counsel for the accused on the one hand and Counsel for the D.P.P. on the other.

3. It may be said at the outset that the decision of the learned Magistrate did not fall within the ambit of the authoritative definitions of unreasonableness. This Court does not hold the view that the decision of the learned Magistrate was “*so outrageous in its defiance of logic or of accepted moral standards that no sensible person, who applied his mind to the question to be decided could have arrived at that decision,*” as outlined by Lord Diplock in *CCSU v. Minister for the Civil Service* (Supra).
4. Although the learned Magistrate did not state her reasons for the ruling which she gave, it is clear from her final ruling that her decision was founded on “prejudice” and a finding of “manipulation of the process”. The “*sensible person*” referred to by Lord Diplock in *CCSU v. Minister for the Civil Service*, would be required to apply his mind to the question of whether the Informations should be stayed. It would not be accurate to suggest the “*no sensible person*” could come to the decision to which the learned Magistrate came, that is to say that prejudice and \or a manipulation of the process were good grounds for a stay. There is in respect of any decision, a spectrum of reasonableness, which spectrum encompasses both correct and incorrect decisions. This Court is of the view that the decision of the learned Magistrate in this case falls within the spectrum of possible reasonable decisions and is therefore not reviewable on the first ground identified in the Statement.
5. On the ground of error of law, the Court holds the view that the learned Magistrate fell into error as to the law relating to abuse of process and the

extent of her power, as a Magistrate to stay proceedings for an abuse of process.

6. The power of judicial tribunals to prevent abuses before them was recognised in **Connelly v. DPP** [1964] 2 All E.R. 401. This power was circumscribed in the case of **R v. Crown Court at Derby Ex parte Brooks** (1980) 80 Cr App R. 164 where Sir Roger Omrod limited the Court's power to stop a prosecution to situations when the prosecution is an abuse of the process of the Court. Two categories of abuse were identified in that case namely

“... (a) the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by the law or to take unfair advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution which is unjustifiable ...The ultimate objective of this discretionary power is to ensure that there should be a fair trial according to law, which involves fairness to both the defendant and the prosecution...”

7. The categories of abuse were extended by later authorities one of which was the case of **Rv. Horseferry Magistrates' Court Ex Parte Bennet** [1993] 3 All E.R. 138. This decision of the House of Lords has been applied in a number of cases since 1993. In **Bennet**, Lord Griffiths linked the Court's power to interfere with a prosecution to the judiciary's acceptance of *“...a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law.* See page [1993] All E.R.138 at 151.

8. It is however of relevance that Lord Griffiths in that case expressed the view that the wider responsibility rested on the High Court and that the power of the Magistrate should be confined to matters directly affecting the fairness of the trial . See page [1993] All E.R.138 at 152 e. Lord Griffiths cited two examples of matters directly affecting the fairness of the trial, “..such as delay or unfair manipulation of Court procedures...”.
9. Moreover the pronouncements of the House of Lords exhort the Magistrate to use the power to grant stays “*sparingly*”.
10. The learned Magistrate based her decision on a finding of manipulation of process by the D.P.P. It is useful to consider the verbatim ruling of the Magistrate in the Extract of Magistrates Case Book, Exhibited as “NR5” at the affidavit of Narissa Ramsundar.

“Submissions made and Court accepts submissions made on the part of the Accused by Counsel. Prejudice and abuse Re Manipulation of the process has been seen. Court accepts that there may have been some manipulation on the part of the prosecution”

11. An examination of this ruling suggests that the stay was granted, not on the ultimate fairness of the trial of the accused but on a finding of prejudice and a “manipulation of the process.” There is no suggestion however that the learned Magistrate found such manipulation to be unfair. This Court is of the view that the learned Magistrate could not have appreciated the limitations on her power. In the view of this Court, the learned Magistrate erred in law as to the extent of her power.

12. In this regard the Court finds it appropriate to distinguish the case of ***Rv. Croyden Justices JJ Ex parte Dean*** [1993] Q.B.769, which was cited by Mr. Prescott. In that case the prosecution had given to the accused assurances that he would not be prosecuted. The Court in that case held that the prosecution of a person who received assurances that he would not be prosecuted could amount to an abuse of process and that the examining justices were bound to treat the case as an abuse of process.
13. In the instant case, there were no assurances by the prosecution in this case. Indeed, it was accepted by Counsel for the Magistrate that the D.P.P. had the power to relay the charges after the filing of a *nolle prosequi*. The accused could not therefore seriously contend that he was under the impression that the D.P.P. had promised not to prosecute him after filing the *nolle prosequi*. The Court is therefore of the view that the case of ***Rv Croyden Justices JJ Ex Parte Dean (Supra)*** is wholly distinguishable from the instant case.
14. The Court is of the view that the correctness of the decision of the D.P.P. is not relevant to this case. The impugned decision is that of the Magistrate and the correctness of the D.P.P.'s decision is only of relevance if the alleged error amounts to an abuse of process. Even if the D.P.P. himself was wrong in his view as to the effect of sworn evidence by the child complainant, his initial error, and his subsequent relaying of the charge would fall short of an abuse of process. See C.A. No. 132 of 1988 ***Shastri Moonan v D.P.P.and Others*** at page 23 of the judgment of the learned Justice of Appeal Ibrahim . It is noted however that the process may be abused if Informations are repeatedly discharged and relayed. See ***Ex parte Snelson (Supra)***.

15. The Court is also of the view that the learned Magistrate erred in law in her assessment of what constituted an abuse of process. Before finding that its process has been abused, a Court would be constrained to find some action on the part of the prosecution amounting to *an affront to the public conscience*. See *R.v. Latif (supra)*. The Court would be required to have regard to the public interest that serious crimes be tried and to weigh this interest against conveying the impression that the Court adopts the approach that the end justifies the means. If this exercise had been conducted by the learned Magistrate, it would have been clear that the prosecution was acting within its statutory powers and that the balance tilted in favour of the public interest in having the serious crime in this case tried.
16. The Court therefore holds the view that the Learned Magistrate fell into error in two ways namely: 1) as to the boundaries of her power as a Magistrate to stay a prosecution and 2) as to the kind of conduct on the part of the prosecution, which would amount to an abuse of process.
17. The third ground was not pursued by Counsel for the D.P.P. in either written or oral submissions and must be regarded as having been abandoned.

DECISION AND ORDERS

1. The Court therefore holds that the decision of the learned Magistrate is reviewable on the second ground identified in the Statement, that is to say for errors of law
2. The Court declares that the decision of the Honourable Magistrate to stay Informations 599 ad 600 of 1999 was wrong in law.

3. The Court also grants an order of certiorari to quash the decision of the Honourable Magistrate to stay Informations 599 and 600 of 1999.

Dated the 28th day of March 2002

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MIRA DEAN-ARMORER
JUDGE