

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. 1502 OF 1997

BETWEEN

BOBBY RAMESAR

PLAINTIFF

AND

**1. CHANDRABHAN MAHARAJ
POLICE CONSTABLE NO.7746**

DEFENDANT

**2. THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

APPEARANCES

Mr. Rambally instructed by Ms. Persad for the Plaintiff.

Ms. Reid instructed by Ms. Barrington and Ms. Humphrey for the Defendants

JUDGMENT

This is an application for damages for malicious prosecution brought by Bobby Ramesar, (“the Plaintiff”) in 1996 as a result of the dismissal of charges of larceny and receiving stolen goods laid against him in February 1983.

The Defendants are the police officer who laid the charges, and the Attorney General sued on behalf of the State.

In the Assizes, in July 1993, the Plaintiff was found not guilty on the count of larceny but guilty on the count of receiving stolen goods. In July 1995 the Court of Appeal allowed the Plaintiff's appeal and quashed the conviction.

This action was assigned to me pursuant to the docket rules and, by notice dated the 13th October 2005, placed before me for the purpose of a pretrial review. Although not an action filed or converted to the 1998 Civil Proceedings Rules, by the powers vested in the court by Practice Direction dated 30th August 2005 with respect to the trial of civil matters I ordered that the issue of estoppel raised by the Plaintiff in his reply be dealt with as a preliminary issue and ordered the parties to file written submissions in this regard.

By his pleading the Plaintiff alleges that the Defendants are estopped from claiming that the Police had reasonable and probable cause for charging him or that there were in existence sufficient facts to warrant the laying of a charge of receiving against him.

According to the Plaintiff the factual basis for this contention is that:

- (i) Although not formally withdrawn from the jury, it was conceded by the Attorney for the State at the trial that he did not think that the offence of larceny was made out;
- (ii) The finding of the jury that the Plaintiff was not guilty of the charge of larceny;

- (iii) The quashing of the Plaintiff's conviction in the Court of Appeal based on its finding that there was no sufficient evidence to support the offence of receiving; and
- (iv) the Defendants seek to raise no additional facts in evidence in the malicious prosecution proceedings apart from those already determined by the Trial Judge and the Court of Appeal.

These facts, the Plaintiff submits, amount not only to an estoppel but any attempt to maintain these allegations is, in his submission, an abuse of process which the Court can prevent under its inherent jurisdiction.

The Defendant on the other hand denies the estoppel and submits that:

- (i) the fact of a not guilty verdict is only one of the elements to be determined in malicious prosecution cases. The real issue to be determined in these proceedings is whether the police officer had reasonable and probable cause to lay the charge, an issue which was not an issue in the previous proceedings;
- (ii) the concession made by Attorney for the State at the trial is not admissible against the State in these proceedings, cannot bind the police officer and does not assist in the issue to be determined by this court;
- (iii) the facts in support of the Defendant's case are not the same as those that were before the court. In the previous proceedings there was before the police officer a confession of a co-accused which although not admissible

at the trial, due to the fact that the co-accused had absconded, was available to the police officer at the time of the laying of the charges; was put into evidence at the Magistrates Court and was available to the Director of Public Prosecutions at the time of the preferring of the indictments against the Plaintiff.

The Defendant further submits that to allow the Plaintiff to continue this action would be an abuse of process since the jury at the trial has already rejected his version of the facts and in circumstances where the magistrate had determined that there was sufficient evidence to commit and the trial judge had determined that there was sufficient evidence to put before the jury.

It is not in dispute that the issue to be determined on an application for malicious prosecution is whether there was reasonable and probable cause to commence the prosecution. The Plaintiff has not seriously disputed that this issue was not an issue in the earlier proceedings.

The crux of the Plaintiff's submissions is that to allow the Defendant to adduce the same evidence in these proceedings that in the earlier proceedings led to an acquittal is an abuse of the process, even though it may not be an issue estoppel in the strict sense of the term. In support of this submission the Plaintiff relies on two cases, **Greenhalgh v Mallard [1947] 2 All E.R. 255** where at page 257 **H Somervell L.J.** states:

“I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly would have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.”

As well as the case of **North West Water Ltd v Binnie & Partners (a firm) [1990] 3 All E.R. 547** in which the court advocated a broader approach to the question of issue estoppel. In fact, as stated by Drake J at page 553 letter c, even where the Court is of the view that the more narrow approach to issue estoppel ought to be applied “it may nevertheless have no doubt that the issues between the parties have already been decided so that it would amount to an abuse of process to permit the party seeking to relitigate them to do so.”

At the end of the day in order to succeed on the point, whatever the approach used, the Plaintiff will have to meet and satisfactorily answer the question posed by Drake J in the North West Water case that is, have the issues between the parties already been decided in the earlier proceedings so that it would amount to an abuse of process to permit the defendant to relitigate these issues?

To my mind the answer to the question is no. The issues are not the same. In these proceedings what the Plaintiff is required to prove is that his prosecution was set in motion without reasonable and probable cause and that, in setting the law in motion, the police officer was actuated by malice in the sense of a wrong or indirect motive. In the

earlier proceedings the issue was the guilt or innocence of the Plaintiff. Save that a finding of not guilty is one of the elements in a claim for malicious prosecution the guilt or innocence of the Plaintiff is irrelevant in these proceedings. This court is not called upon to determine the Plaintiff's guilt or innocence, what this court is called upon to determine is whether the charging officer had a reasonable belief in the existence of the facts to justify prosecution rather than the actual existence of those facts.

CV. App No 87 of 2004 Cecil Kennedy v Donna Morris W.P.C.11435 and The Attorney General of Trinidad and Tobago, Sharma CJ at page 7 paragraph 19.

The jury being the final arbiter of the facts in a criminal prosecution the duty to determine the existence of those facts falls on them.

That said, as I understand the submissions of the Plaintiff, using the broader approach to issue estoppel as described in *Greenhalgh v Mallard* or the approach taken by Drake J. in *North West Water Ltd* the submission is that since the facts upon which the Defendant mounts its defence to the claim of malicious prosecution are those which have already been determined against the Defendants by final judgment in the earlier proceeding it would be an abuse of process to allow the Defendants to maintain these allegations in these proceedings. In support of this submission the Plaintiff embarks upon a comparison of the facts pleaded in the defence and the judgment delivered by the Court of Appeal.

While it is true that in its judgment the Court of Appeal considered the facts as pleaded, in the paragraphs of the defence drawn to the Court's attention by the Plaintiff it is equally true that in the earlier proceedings no evidence was led, and rightly so, as to a

confession by the Plaintiff's co-accused. On its pleading the crux of the Defendant's case is that it is this confession together with the evidence of PC Phillips and the facts pleaded in paragraph 14 of the defence that is relied on to prove reasonable and probable cause.

It would seem therefore that not only are the issues to be determined by the court in these proceedings different but the facts upon which the defendant relies are not exactly the same as in the earlier proceedings.

Neither to my mind can the Plaintiff rely on the concession made by Attorney for the State at the Assizes hearing. Firstly, because the issue at the assizes hearing was the actual existence of the facts rather than the police officer's reasonable belief in their existence the fact of a concession made by Attorney for the State at the Assizes, though perhaps marginally relevant, cannot in my opinion be conclusive. Further, according to the Court of Appeal judgment the concession made by the Attorney for the State was that on the evidence he did not think that the charge of larceny had been made out. For the purpose of the issue to be determined by me the concession made by the Attorney for the State must be seen in the light of the Defendants' pleading as to the existence of a confession from the co-accused and the submission of the Defendants that this confession was, in the particular circumstances not admissible at the trial. In addition despite the concession made the charge was not withdrawn from the jury by the trial judge. The trial judge must therefore have been satisfied that there were sufficient facts in support of that charge to place the charge of larceny before the jury.

At the end of the day therefore I am of the opinion that, whatever approach is taken to issue estoppel, in the instant case, although some of the facts relevant to the issues to be tried in this case may have been determined by a final court of competent jurisdiction this court, unlike the court in the earlier proceedings, is not called upon to determine the innocence or guilt of the Plaintiff but rather whether there was reasonable and probable cause to commence the prosecution. That is not to say that in doing so the court is entitled to go behind the finding of guilt or innocence, this Court is bound by the finding of fact by a final court of competent jurisdiction.

In the circumstances I do not accept the Plaintiff's submissions that the Defendant is estopped from alleging that it had reasonable and probable cause to commence the prosecution or from leading evidence in that regard.

The Defendant on the other hand submits that by virtue of the finding of guilt the jury has rejected the Plaintiff's version of the events and the subsequent quashing of the conviction by the Court of Appeal was as a result of the failure of the trial judge to direct the jury on a legal rather than a factual issue. In the circumstances, it is submitted that there being a finding by a competent and final court, that is the jury, rejecting the Plaintiff's version of the facts the Plaintiff ought not to be allowed to raise those facts in these proceedings. More simply put on the basis of the authorities referred to by the Plaintiff the Defendants submit that in these proceedings the Plaintiff is estopped from raising the same facts that were determined against him by a competent and final court. I accept that on a careful examination of the judgment of the Court of Appeal the

Plaintiff's conviction was quashed not because the Court of Appeal found that the finding of guilt by the jury was perverse but because the Court of Appeal found that the trial judge did not properly direct the jury as to how to treat with the question of control, an element of the charge. To my mind the decision of the Court of Appeal turned on a question of law not of fact. It did not, in my opinion disturb the jury's rejection of the Plaintiff's version of events. The Defendants' submission, however, can be answered simply by referring to the pleadings in this matter. The Plaintiff in his pleading does not seek to raise his version of the facts rather he relies on the finding of the jury with respect to the charge of larceny and the quashing of the conviction by the Court of Appeal.

The Defendants' submissions go further, however, the Defendants submit that in the light of the committal by the magistrate, the proffering of the indictment by the Director of Public Prosecutions, the placing of both charges before the jury by the trial judge and the finding of guilt by the jury, this action is frivolous and vexatious. According to the submission to allow the Plaintiff to pursue these proceedings in the circumstances is an abuse of process that should be met by a dismissal of these proceedings by the Court.

In support of this submission the Defendants rely on the House of Lords decision in the case of **Riches v DPP [1973] 1 WLR 1019**. In that case, in circumstances where the Plaintiff had been committed to stand trial on certain offences, had been found guilty by the jury at the assizes but subsequently had his convictions quashed by the Court of Appeal, in an action for malicious prosecution the defendant, by way of interlocutory

proceedings, sought an order that the action disclosed no reasonable cause of action, was frivolous, vexatious and an abuse of the process of court.

It was held inter alia that:

“...since the magistrates committed the plaintiff for trial on the evidence before them and the jury found him guilty on that evidence, it was impossible to establish any want of reasonable and probable cause by the prosecutor and, therefore the plaintiff could not possibly succeed in his action for malicious prosecution, so that the action was plainly frivolous and vexatious and an abuse of the process of the court.”

The Court therefore dismissed the proceedings without allowing it to proceed to trial.

In his judgment in dealing with the point Davies L.J. had this to say:

“Want of reasonable and probable cause. Here the prosecution was naturally, it being a director’s case, launched on the advise of counsel. We have the fact that the evidence put forward before the magistrates was sufficient to cause them to order the plaintiff, together with the other accused to be committed for trial. We have the fact that the jury came to the conclusion that the plaintiff was guilty as charged. It does seem to me that in those circumstances it would be utterly impossible for a judge to be able to rule- and it is a matter for the judge at trial- that there was any want of reasonable and probable cause in the present case.”

Similarly in the judgment of Stephenson L.J. in the same case he states:

“ I do not wish to be taken as saying that there may never be a case where a prosecution has been initiated and pursued by the Director of Public Prosecutions in which it would be impossible for an acquitted defendant to succeed in an action for malicious prosecution, or as saying that the existence of an Attorney-General’s fiat where required conclusively negates the existence of malice and conclusively proves that there was reasonable and probable cause for the prosecution. There may be cases where there has been, by even a responsible authority, the suppression of evidence which has led to a false view being taken by those who carried on a prosecution and by those who ultimately convicted. But that case is many miles from this one. There is nothing in the judgment of the Court of Criminal Appeal in this particular case which lends any support to the view that there was no case for the plaintiff to answer; and I cannot find anything that he has said to us or in any document that he has put before us to suggest that there was in existence any material showing that there was no basis in evidence for a prosecution of him”

The Indictable Offences (Preliminary Enquiry) Act Chap 12:02 requires that there be a preliminary enquiry into all indictable offences and provides a magistrate may only commit an accused if a prima facie case is made out. Similarly the Act provides that if on the receipt of the depositions the Director of Public Prosecution (“the DPP”) is of the opinion that the accused should not have been committed for trial but that the case is one

which should have been dealt with summarily the DPP need not lay the indictment but may if he thinks fit refer the case back to the magistrate with appropriate directions.

It would seem therefore that there is a duty on both the magistrate and the DPP to ensure that a prima facie case is made out. In the instant case, as in the Riches case, the jury rejected the Plaintiff's version of events.

I accept the statement of the law as stated by Davies L.J. and Stephenson J.A. in the Riches case. To my mind it would only be in very unusual circumstances that a plaintiff in a malicious prosecution case, could be successful where the prosecution has passed the prima facie test both at the magistrates court and by way of the statutory consideration of the case by the DPP and where a jury has rejected his version of the facts. It cannot be that the duty of a police officer in assessing the facts upon which a prosecution is based goes beyond that of a magistrate or of the D.P.P.

The Defendant submits that the court should at this stage dismiss the Plaintiff's case as was done in the Riches case.

The question here is whether the fact that the Plaintiff was found not guilty by the jury on the charge of larceny is such a situation to take this case out of the Riches' principle.

On the pleadings the Defendants plead the existence of a confession by the Plaintiff's co-accused. The submission is that this confession implicated the Plaintiff in the offence of larceny and that this confession was available to the police officer and placed before the magistrate in the preliminary inquiry but not admissible at the trial. This confession is

not, at this stage, before me. By his reply the Plaintiff has put the existence of the confession in issue. The existence of such a confession would therefore be a matter to be determined at the trial of this action. There is no doubt in my mind that if the Defendants' pleading is proved that is the end of the Plaintiffs' case.

What are the Court's options in the circumstances? If this matter were brought to me under **the Civil Proceedings Rules 1998 ("CPR")** given the overriding objective and my case management powers there is no doubt in my mind that I would deal with this action summarily at the case management conference. The question is whether this court has such a power under the 1975 rules? The practice direction referred to earlier, made under the 1975 rules, gives the court the power to manage its cases in accordance with parts 26, 27 and 39 of the CPR.

Part 39 allows the court to use its case management powers under Parts 26 and 27 when conducting pre trial reviews.

Part 26.1(k) allows the court to dismiss or give judgment on a claim after a decision on a preliminary issue;

Part 26.1(x), the "catch-all" section, allows the court to take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective. It would seem to me that I do have the power to apply the overriding objective in proceedings such as these in order to ensure that the case is dealt with justly.

Dealing with the case justly includes dealing with the case in a manner which saves expense; is proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each of the parties; ensuring that it is dealt with expeditiously and allotting to it an appropriate share of the court's resources while at the same time taking into account the need to allot resources to other cases. Uppermost in my mind is the length of time this matter has taken to come to trial and the fact that at the end of the day the Plaintiff is spared the cost of a full scale trial.

Even if I am incorrect in my view of my powers pursuant to the practice direction in my opinion the fact that the jury found the Plaintiff not guilty on the charge of larceny makes no difference since

- (i) the prosecution is only required to prove that it had a reasonable belief in the existence of the facts to justify prosecution rather than the actual existence of those facts;
- (ii) both the committing magistrate and the DPP exercising statutory functions were of the opinion that these facts justified the prosecution;
- (iii) the trial judge did not remove the charge of larceny from the jury;
- (iv) the jury, being the final arbiter of the facts accepted those facts as given in evidence by the prosecution; and
- (v) in any event both charges having been brought together on the same facts the Plaintiff has suffered no damage attributable only to the charge of larceny.

In all the circumstances I am of the view that the principle as adduced in the Riches case applies. A trial in this case would serve no useful purpose and pursuant to my powers in case management I dismiss the Plaintiff's case.

Dated this 6th day of July 2006

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Judith A.D. Jones
Judge