

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A No. S Cr 57 of 1998**

**BETWEEN**

**THE STATE**

**AND**

**WINSTON JAMES A/C SOONDAR**

*Before the Honourable Justice P. Moosai*

**Appearances:**

*Mr. Chaitram Sinanan for the Accused*

*Ms. G. Lucky and Ms. I. Ramkissoon for the State*

**JUDGMENT**

This is an oral motion to quash an indictment against the Accused for non-compliance by the Magistrate with certain prescribed requirements of the Indictable Offences (Preliminary Enquiry) Act Chapter 12:01 (“the Act”). Although Mr. Sinanan’s submission did not deal with non-compliance by the Magistrate with s.18 of the Act, he indicated that the arguments are basically the same.

Sections 17 (as amended by Act No. 8 of 1990) and 27 A, B and C of the Act state:

**Section 17:**

(1) After the examination of the witnesses called on behalf of the prosecution has been completed and after the depositions have been signed, the Magistrate shall, unless he discharges the accused

person, inform him that he is entitled to give evidence upon oath, or to remain silent.

(2) Where the accused person indicates that he wishes to give evidence the Magistrate shall address him in the words following or words to the like effect -

“Having heard the evidence do you wish to say anything in answer to the charge? You are not obliged to say anything but if you do you must do so under oath and you will be subject to cross-examination. In any event whatever you say will be taken down in writing and may be given in evidence at your trial.”

(3) Where an accused person gives evidence, such evidence shall be taken down in writing and shall be signed by the accused person and the Magistrate after it has been read out to the accused person and shall be kept with the depositions of the witnesses for the prosecution, and such evidence taken down as aforesaid may be admitted in evidence at the trial without further proof thereof unless it is proved that neither the accused person, where such evidence purports to have been signed by him, nor the Magistrate purporting to have signed such evidence, did in fact sign it.

(4) Nothing in this section shall apply to proceedings which began before the commencement of the Indictable Offences (Preliminary Enquiry) (Amendment) Act, 1990.”

**27A.** In a preliminary enquiry except when the charge is one of treason or murder, if an accused person who is represented by an

attorney informs the magistrate that he is guilty of the charge the magistrate may commit him for sentence before the High Court in accordance with section 27 C (2).

**27B.** Except where the offence is one of treason or murder, if, after being informed of his rights under section 17, an accused person instead of giving evidence upon oath says or admits that he is guilty of the charge, then the magistrate shall further say to him the words following, or words to the like effect:

“Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence, instead of being committed for trial.”

**27C. (1)** Where the accused, in answer to the question referred to in section 27A states that he does not wish the witnesses again to appear to give evidence against him, his statement shall be taken down in writing and read to him and shall be signed by the magistrate and by the accused, if he will, and shall be kept with the depositions of the witnesses. The witnesses may thereupon be bound over conditionally in the manner provided by section 21 (5).

**(2)** In any such case as mentioned in this section the magistrate shall, instead of committing the accused for trial, order him to be

committed for sentence before the High Court, and in the meantime, the magistrate shall, by his warrant, commit the accused to prison to be there safely kept until the sittings of that Court, or until he is admitted to bail or delivered by due course of law.

(3) The statement of the accused made under this section shall be received in evidence upon its mere production without further proof by the Court before which he is brought for sentence.

(4) The magistrate shall, as soon after the committal as is practicable, transmit to the Director of Public Prosecutions the record or the proceedings in the manner required by section 24 and the Director of Public Prosecutions shall prefer and file in the High Court an indictment against the accused person committed for sentence.”

The record reveals that after the witnesses called on behalf of the prosecution had given evidence the Magistrate, pursuant to s.17 (1) of the Act, informed the Accused that he was entitled to give evidence on oath or to remain silent. The Accused in answer thereto stated “I wish to speak”. Thereafter, pursuant to s.17 (2), the Magistrate informed the Accused that he was not obliged to say anything but if he did, he must do so under oath and be subject to cross-examination. The Accused in answer thereto stated “I am guilty. I am sorry for

what I have done and I ask the Court for leniency.” The two responses of the Accused were not signed.

Mr. Sinanan submits that whatever the Accused said was evidence and that s.17 (3) prescribed that the Magistrate read over that evidence to the Accused and have him sign same. The Magistrate not having complied with the provisions of s.17 (3), the proceedings are a nullity.

I am of the view that s.27 provides the answer to Mr. Sinanan’s contention. s.27 (B) provides that if, after being informed of his rights under s.17, an accused person instead of giving evidence upon oath says or admits that he is guilty of the charge, then the Magistrate shall further enquire if he wishes the witnesses again to appear against him at trial.

In the instant case the Accused, after being informed of his rights under s.17 said or admitted that he is guilty. In those circumstances. the provisions of s.17 (3) are not applicable.

The Magistrate did not, as required by s.27 (B) of the Act, ask the Accused whether he wished the witnesses again to appear to give evidence at his trial. The question that arises is, is non-compliance in these circumstances fatal?

I refer to The State v. Guniss Seecharan H.C.A. No. 423 of 1997 where I held that the failure of a Magistrate to comply with s. 18 of the Act does not make the committal proceedings a nullity.

A fortiori I am of the view that non-compliance with the provisions of s.27 (B) of the Act amounts to no more than a mere irregularity.

In The State v. Latiff Ali et al. H.C.A. Criminal No. 118 of 1990 Justice

Ibrahim (as he then was) stated at p.12:

“I do not think that mere breach of the procedure would necessarily vitiate the committal order made. Some breaches may be slight as where the evidence of very formal witnesses have not been taken in strict compliance with the procedures....”

In Neill v. North Antrim Magistrate’s Court [1992] 4 All E R 846(H.L.)

Lord Mustill, in dealing with committal proceedings, stated at page 856:

“Thus I think it would be impossible to maintain that all errors of this kind on the part of examining magistrates must necessarily be fatal to the committal. The situation is far removed from that which existed in cases such as Rex v. Gee [1936] 2 K.B. 442 Rex v. Phillips [1939] 1 K.B. 63 and Rex v. Wharmby [1946] 31 Cr.App.R. 174, where the departure from the requirements of the Indictable Offences Act 1848 was so radical as to render the indictment, and hence the resulting trial, a nullity. Whatever the current state of the law about the difference between void and voidable adjudications it could not sensibly be said that in the present case the resident magistrate’s error entailed that there was no committal at all.”

In my view this amounts to no more than a mere breach or a slight breach.

Alternatively the departure from the Act is not so radical as to render the

indictment, and hence the resulting trial, a nullity. For the foregoing reasons the motion to quash fails.

The trial of this matter is adjourned to Friday 18th September, 1998.

DATED this 17th day of September, 1998.

Prakash Moosai

Judge