

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

NO. S-2096 OF 2002

**IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND
TOBAGO BEING THE SCHEDULE TO THE CONSTITUTION OF THE
REPUBLIC OF TRINIDAD AND TOBAGO ACT 1976**

AND

**IN THE MATTER OF AN APPLICATION BY HAROON HOSEIN FOR
REDRESS IN PURSUANCE OF SECTION 14 OF THE SAID
CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR
A CONTRAVENTION OF SECTIONS 4 AND 5 OF THE SAID
CONSTITUTION IN RELATION TO THE APPLICANT.**

BETWEEN

HAROON HOSEIN

Applicant

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Respondent

NO. S-663 OF 2003

BETWEEN

HAROON HOSEIN

Plaintiff

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Defendant

Before the Honourable Mr. Justice R. Narine

Appearances

Mr. Ted Roopnarine for the Applicant/Plaintiff

Mr. Byam, Ms Baptiste and Mr. Corbin for the Respondent/Defendant

JUDGEMENT

Both these actions have been filed in respect of the same subject matter. On 30th December 2002 the Applicant filed a constitutional motion alleging that his detention at the St Ann's Mental Hospital was unconstitutional. On 15th April 2003 the Applicant filed a Writ of Summons, in order to preserve his cause of action in the event that the procedure by way of constitutional motion should be successfully challenged by the Attorney General.

The facts of the case are not in issue. On 7th January 2002 the Applicant made an application at the Magistrates' Court at San Fernando for a protection order against his sons Lennox Hosein and Adrian Hosein following an incident at his home on 5th January 2002. The Applicant alleged that his sons had assaulted him on that day.

On 14th January 2002 the Applicant and his sons met with Ms. Frances Turton-Long, a Probation Officer at the San Fernando Magistrates' Court, who submitted a report to the Magistrate, in which she recommended that the Applicant be admitted to the St Anns Hospital for psychiatric evaluation and drug testing. This recommendation was based on the Probation Officer's observation of the Applicant's "irrational, hostile and unreasonable behaviour". The purpose of the psychiatric evaluation was to determine whether the Applicant's thought processes were normal, and whether he was functional. At the time of the interview, the Probation Officer was of the opinion that the Applicant was under the influence of a drug. On the day of the interview, according to the Probation Officer, the Applicant's appearance "was that almost of a homeless person very dirty, dishevelled and untidy". He became agitated and angry very easily. He admitted that he had previously used marijuana and cocaine, and that he was diagnosed to be suffering with stress and depression.

On 22nd February, 2002, the matter came up before Magistrate Alert, who remanded the Applicant to the St Anns Psychiatric Hospital for psychiatric evaluation. According to the Magistrate, she made the order based on the Applicant's strange behaviour in court towards her on that day and on previous occasions. On each

occasion the Applicant was “very aggressive”. He was behaving “as though something was wrong with him, shouting at (her) in a very angry manner”. The Magistrate based her decision on the Applicant’s behaviour in Court, as well as the report of the Probation officer dated 29th January 2002.

On 8th March 2002, the Applicant was taken before Magistrate Alert, who discharged her order made on 22nd February 2002. The Magistrate then had the report of Dr. E.Martin attached to the St Anns Hospital. In that report, Dr. Martin noted that the Applicant had a history of admissions to the San Fernando General Hospital for depression and drug use. The Applicant admitted to using marijuana on a regular basis, and to having used cocaine in the past. He described the Applicant as a drug addict with a history of behavioural problems which produced many difficulties in his family life.

The Applicant’s application for a protection order was subsequently heard and dismissed by the Magistrate on 12th June 2002.

THE ISSUES

The main issues that arise for determination are:

- (1) Whether the magistrate had the power to send the Applicant to a mental institution under the provisions of the **Mental Health Act** Chapter 28:02.
- (2) If she did have such power, was it a proper exercise of that power in the circumstances of the case?

THE FIRST ISSUE

The relevant sections of the **Mental Health Act** are:

- 6. Every person who is reasonably believed to be in need of such treatment as is provided in a psychiatric hospital may be admitted thereto –**

.....

- (d) By an order of the Court made pursuant to section 13.**

- 13. (1) The Psychiatric Hospital Director may, by order of a Judge or Magistrate, admit to a hospital any person named in the order.**
- (2) Subject to subsection (4)(b) a person who has been admitted under section (1) shall not be kept in a hospital for more than fourteen days.**
- (3) The Psychiatric Hospital Director shall, as soon as practicable after admitting a person under subsection (1), make or cause to be made such examination as he considers necessary for determining whether or not the person is mentally ill and in need of care and treatment, and within fourteen days of the date of admission submit a report in writing to the Court relative to the mental condition of the person.**
- (4) On receipt of the report, the Court shall forthwith -**
- (a) rescind the order made under subsection (1), if the Psychiatric Hospital Director is satisfied that the person named in the Order is not in need of care and treatment; or**
 - (b) make another order authorizing the Psychiatric Hospital Director to admit the person named therein to a hospital for such further care and treatment as the Psychiatric Hospital Director may consider necessary.**
- (5) Where an order is made under subsection (4)(b), the Psychiatric Hospital Director shall, when he is satisfied that the patient is no longer in need of care and treatment report this fact to the Court which shall forthwith rescind the order.**
- (6) The Court shall, where it rescinds an order under subsection (4)(a) or makes an order under subsection (5), deal with the person in such manner as it deems necessary.**

It is to be noted that the Court has the power under section 6 (d) to make an order in respect of “every person” who is reasonably believed to be in need of such treatment as is provided in a psychiatric hospital. The power of the Court to send a person for psychiatric evaluation or treatment is not limited to persons charged with a criminal offence, or to use the language of Mr. Roopnarine in his written submissions “within the coercive power” of the Court.

Section 13(1) makes it clear that the Hospital Director may, by an order of a Judge or Magistrate, admit to a hospital any person named in the order. Once more the language of the section is sufficiently wide to include persons who are not the subject of any criminal proceeding.

In my view having regard to the clear language of sections 6 and 13 of the Act, the Magistrate has the power to send “any person” engaged in court proceedings before her, to a Psychiatric Hospital for psychiatric evaluation.

THE SECOND ISSUE

In the circumstances of this case, was it a proper exercise of this power?

In exercising her power to remand the Applicant for psychiatric evaluation, the Magistrate gave the following reasons:

- (1) The “strange behaviour” of the Applicant in Court. The Applicant was staring fixedly at her, and shouting at her in a very aggressive manner.
- (2) Due to the Applicant’s behaviour the Magistrate became concerned about his mental capacity.
- (3) The Magistrate was in possession of a Probation Officer’s report in which the Probation Officer expressed the view that the Applicant appeared to be irrational, and that his statements were contradictory, indicating a lack of normal thought processes. The report also spoke of allegations of frequent use of cocaine and marijuana. The Report ended with a recommendation

that the Applicant be admitted to the St Anns Mental Hospital for psychiatric evaluation and drug testing.

Having regard to the Magistrate's own observations in Court, and the contents of the probation officer's report which she had in her possession, I am unable to say that this was an improper or illegal exercise of the power of the Magistrate under Section 6 of the Act.

Mr. Roopnarine further submitted that the Magistrate exceeded her power under the Act when she included "drug testing" as one of the purposes for the referral to St Anns. Section 6 of the Act gives power to the Magistrate to refer "every person who is or who is reasonably believed to be in need of such treatment as is provided in a psychiatric hospital". The Act does not define "treatment". The framers of the Act may not have done so for good reason, since to specifically include certain mental illnesses or conditions, while omitting others, may considerably reduce the application and usefulness of the power.

It is well recognized that the frequent use of certain drugs may impair the mental health of persons who use them. Such persons may require treatment at a psychiatric hospital as a result. Before such treatment is administered, one would expect that certain tests would have to be carried out on the patient to ascertain the level of use of the particular substance and the effects, if any, such use would have had on the mental and physical health of the patient. Accordingly, I find that the inclusion of "drug testing" in the referral was not an excessive exercise of the power of the Magistrate.

This finding is supported by the express provisions of section 13(3) of the **Mental Health Act** which requires the Hospital Director to make such examination as he considers necessary to determine whether a person referred by the Magistrate, is mentally ill and in need of care and treatment. One would expect that such an examination would include such diagnostic tests as the Director considers necessary.

Heavy reliance was placed by Mr. Roopnarine on the Barbadian case of **Demerieux vs Attorney General** H.C.A. No. 734 of 1981 (unreported), in which a university lecturer was committed by the Magistrate to a psychiatric hospital when she refused to enter a plea, and turned her back on the Magistrate. It seems to me that this case was decided on its own facts, and on the provisions of sections 55(1) and 56 of the Magistrates Jurisdiction and Procedure Act, which give the Magistrate the power to refer an accused person for psychiatric evaluation before imposing sentence. On the facts of that case, the learned Judge found that the Magistrate could not have relied on these sections as a basis for the exercise of the power since he could not have been satisfied that the Applicant had committed an offence.

I have come to the conclusion that the Magistrate did have the power to refer the Applicant to the St Anns Hospital for psychiatric evaluation and drug testing, and that in the circumstances of this case it was not an improper or illegal exercise of that power. In my view, that is sufficient to dispose of both these matters.

However, in case I am wrong on the substantive issues, I will deal briefly with certain procedural points raised by Attorneys for the Attorney General.

In **Thakur Persad Jaroo vs Attorney General of Trinidad and Tobago** Privy Council Appeal No. 54 of 2000, it was held by the Judicial Committee that the procedure by way of originating motion under section 14(1) of the Constitution should be exercised only in exceptional circumstances. A similar view was taken by the Judicial Committee in **Attorney General of Trinidad and Tobago vs. Siewchand Ramanooop** (2005) U.K.P.C., in which it was held that the procedure by way of constitutional motion should not be used unless the case involves some feature which, at least arguably indicates that alternative means of legal redress would not be adequate. In the absence of such a feature, the motion would be an abuse of process.

In this case the complaint of the Applicant is that he was deprived of his freedom through the unlawful and arbitrary exercise of power by the judicial arm of the state. In my view, the case contains that special feature referred to in **Ramanoop** which makes it appropriate for procedure by way of constitutional relief.

In addition, there are no disputes of fact in this case which would render the procedure by way of originating motion inappropriate. This was an important consideration in **Jaroo**. The issue in this case is purely a question of law for the determination of the Court. I reject the submission that the procedure by way of constitutional motion was an abuse of process.

The Attorney General also took certain procedural points in the action commenced by Writ of Summons. These were:

- (1) The Statement of Claim does not contain an averment that the Magistrate was a servant or agent of the State acting in her capacity as such when she ordered the Plaintiff's detention. Accordingly, in so far as it relates to the actions of the Magistrate, the Statement of Claim discloses no cause of action against the Attorney General
- (2) However, even if there was such an averment, judicial officers, including magistrates, are specifically excluded from the definition of servant of the State under Section 2 of the **State Liability and Proceedings Act Chapter 8:02**. Further under section 4(6) of the Act, the State is not liable for the acts or omissions of anyone while discharging responsibilities of a judicial nature vested in him, or any responsibilities in connection with the execution of judicial process.
- (3) Under Section 4 of the **Magistrates Protection Act Chapter 6:03** the Writ of Summons must allege that the act was done maliciously and without reasonable and probable cause, or was done in a matter not within the jurisdiction of the Magistrate.

- (4) Under section 5(2) of the same Act, no action shall be brought for anything done under any conviction, order, or warrant of a Magistrate, until such conviction, order or warrant is set aside or quashed by the High Court.
- (5) Under Section 49 of the **Mental Health Act Chapter 28:02**, no person is liable in respect of any act done under lawful direction and authority under the provisions of the Act unless it can be shown to the satisfaction of the Court that the person acted without good faith or reasonable care. There is no such allegation against the police officer who carried out the order of the Magistrate in this case.
- (6) The actions of the police officer are also protected by section 4(6) of the **State Liability and Proceedings Act Chapter 8:02**, which protects the actions of a police officer in connection with the execution of judicial process.

In response to these procedural points Mr. Roopnarine submits that these matters should have been pleaded in the Defence in the Writ action. Of course these matters are strictly matters of law, and are based on the express provisions of the **State Liability and Proceedings Act**, the **Magistrates Protection Act** and the **Mental Health Act**. While it is desirable that a Defendant should plead issues of a procedural nature in order to put the Plaintiff on notice that he intends to take these points at the trial, the failure to do so cannot cure deficiencies in the Plaintiff's claim. For example, the express exclusion of magistrates from the definition of servant of the state, goes to the heart of the claim. If a Magistrate is not a servant of the State, then on what basis can the Attorney General be held liable for her actions?

Mr. Roopnarine further submitted that by its failure to plead these "statutory defences", the State has waived and/or given up these "defences". I respectfully

disagree. The failure of the State to plead express provisions in a statute cannot be taken to absolve the Plaintiff from complying with these provisions. It is not the Defendant's business to ensure the Plaintiff's compliance with the statutory provisions. The Plaintiff's claim must be properly constituted in the first place, in accordance with the law, statutory or otherwise.

Accordingly, I uphold the submissions of the State as set out above. It follows that quite apart from my findings on the issue of the power of the Magistrate and the exercise of that power, I hold that the statement of claim in the Writ action discloses no case against the Defendant.

The only issue that remains is the question of costs. While I have determined the substantive issues in the case against the Applicant, in the circumstances of this case I do not find that his challenge of the exercise of the Magistrate's power, to be unreasonable. I will therefore make no order as to costs.

THE ORDER

- (1) Both actions are dismissed
- (2) Each party will bear his own costs.

Dated this 15th day of February 2006.

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RAJENDRRA NARINE
Judge.