

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. NO. 167 OF 2002

BETWEEN

**IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF
TRINIDAD AND TOBAGO**

AND

**IN THE MATTER OF AN APPLICATION OF RAJESH MATHURA FOR
REDRESS IN PURSUANCE OF SECTION 14 OF THE SAID CONSTITUTION
OF TRINIDAD AND TOBAGO FOR A CONTRAVENTION OF SECTIONS 4
AND 5 OF THE SAID CONSTITUTION IN RELATION TO THE APPLICANT**

RAJESH MATHURA

AND

**THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO**

Before the Honourable Justice R. Narine

Appearances

Mr. Rajiv Persad instructed by Mr. F. Mohammed for Applicant
Ms Linda Khan instructed by Ms. Rehanna Hosein for Respondent

JUDGEMENT

By a constitutional motion filed on 17th January 2002, the Applicant seeks the following relief:

- (1) A Declaration that the Applicant's right to life and the security of the person as protected by Section 4A of the Constitution was infringed by the acts and/or omissions of the State.

- (2) A Declaration that the Applicant's right to protection of the law as protected by Section 4B of the Constitution was infringed by the acts and or omissions of the State
- (3) A Declaration that the Applicants right not to be subjected to cruel and unusual treatment as protected by Section 5(2)B of the Constitution was infringed by the acts and/or omissions of the State.
- (4) A Declaration that the failure by the Police to conduct proper and/or adequate investigations to ensure the proper prosecution of the matter against the persons who assaulted the Applicant effectively deprived the Applicant of those procedural provisions that were necessary for the purpose of giving effect and protection to the Applicant's rights under Sections 4 and 5 of the Constitution.
- (5) An Order that monetary compensation including aggravated damages and/or exemplary damages be assessed by a Judge in Chambers and paid by the Respondent to the Applicant as a result of the above mentioned unconstitutional action.

The application is supported by an affidavit of the Applicant filed the same day. On 22nd May 2002 the Respondent was ordered to file affidavits in opposition within 21 days. On 12th December 2002 the time for filing the Respondent's affidavits was extended to 20th December 2005. The Respondent failed to comply with both orders.

On 28th June 2005, 3 ½ years after this action was commenced, the Respondent sought leave at the cause list hearing to file affidavits in opposition. This leave was refused. In spite of this, the Respondent proceeded to file affidavits on 8^h September 2005, 27th September, 2005 and 3rd October 2005. On 6^h October 2005, this matter came up for trial.

The Respondent sought the Court's leave to use these affidavits at the hearing. Mr. Persad objected strenuously pointing out that the Respondent had disobeyed the orders of

the Court for filing affidavits on two previous occasions, and had proceeded to file their affidavits in complete disregard of the Court's refusal to entertain the filing of affidavits after a delay of 3 ½ years. In addition to this, the filing of affidavits at this late stage may involve applications for discovery and cross-examination and the filing of affidavits in reply by the Applicant.

Ms. Khan submitted that the Court should take into account conditions prevailing in the State's legal departments where there is a high turnover of staff and files are reassigned to other officers. In addition to this, two deponents had retired while this matter was pending and there was some difficulty in locating these deponents.

Excuses of this kind are routinely given by State Counsel in these Courts to provide explanations for the late filing of documents. The basis of the submission is essentially that in developing societies like ours, resources are not sufficient to provide adequate funding for staff and resources in the State's legal departments and for the administration of justice generally. While this may have been true in previous years it can hardly be denied that in the last several years the State has had increasingly high revenues due to the record high prices of oil on the world market. It is not the place of this Court to suggest how the resources of the State should be allocated. On the other hand, if the State has resources available to adequately fund and staff its legal departments and chooses not to do so, this Court is hardly likely to be receptive to a submission based on the inadequate resources of the State's legal department.

After hearing both Counsel, the Court upheld the submissions of Mr. Persad, and refused leave to the Respondent to use these affidavits at the hearing.

The Preliminary Point

The respondent submitted that the Applicant had adopted the wrong procedure in approaching the Court by way of constitutional motion, rather than by way of Writ of Summons for damages for negligence by the State.

In support of her submission, Ms Khan relied heavily on the decision of the Judicial Committee of the Privy Council in **Thakur Persad Jaroo vs Attorney General of Trinidad & Tobago** PC Appeal No. 54 of 2000, in which the Court held that the procedure by way of originating motion under Section 14(1) of the Constitution should be exercised only in exceptional circumstances where there is a parallel remedy.

Similar sentiments were expressed by the Judicial Committee in **A.G. of T.T. vs. Siewchand Ramanooop** (2005) U.K. PC, where their Lordships opined that the procedure should not be used unless the case involves some feature which, at least arguably, indicates that alternative means of legal redress available would not be adequate. In the absence of such a feature, the motion would be an abuse of process.

In Ms. Khan's submission there is no special feature in the case which justifies the Applicant proceeding by way of motion. The Applicant has a viable alternative remedy by way of a common law action in negligence for the failure of Police and/or Prison authorities to put adequate mechanisms in place to prevent persons from having in their possession items which may be used to injure others.

However, Mr. Persad contends that a common law remedy is not available to him with respect to another aspect of this case, which involves the failure of the police to carry out proper investigations to ensure the proper prosecution of the persons who had assaulted him while he was in the custody of the State. It is contended that this failure effectively deprived the Applicant of those procedural provisions that were necessary for the purpose of giving effect to the protection to the Applicant's rights under sections 4 and 5 of the Constitution.

I have considered the submissions of Counsel very carefully. This case involves the mechanisms and procedures which have (or have not) been put in place to provide for the security of persons who are in the custody of the police and prison authorities. It also involves the duty of the police to carry out proper investigations and prosecutions in order to protect the rights of persons in their custody.

In my view this case has a distinct constitutional flavour. It involves the right of persons in the custody of the State to security of the person, protection of the law, and procedural provisions which are necessary to give effect and protection to those rights, under sections 4 and 5 of the Constitution. This case contains that special feature, referred to in **Ramanoop** which makes it appropriate for procedure by way of constitutional relief.

In addition to this, there are no disputes of fact in this case which would render the procedure by way of originating motion inappropriate. This was an important factor underlying the decision in **Jaroo**. If the State wished to dispute any of the allegations made by the Applicant, it had ample opportunity to do so. It chose not to take advantage of this opportunity. It follows that the statements of fact contained in the affidavit of the Applicant stand undisputed.

Having considered the submissions of both Counsel, and the authorities to which they referred, I hold that the procedure by way of originating motion in this case is not an abuse of process.

THE FACTS

On 12th February 1998 the Applicant was arrested on a charge of assault occasioning a wound. He was taken before a Magistrate at San Fernando. He pleaded not guilty. Bail was fixed by the Magistrate, after which the Applicant was placed in a cell downstairs of the Magistrates' Court with about 25 other prisoners.

At about 2.45 p.m. the Applicant observed a prisoner (Thomas) holding a cigarette lighter which he used to set fire to a jersey. He threw the jersey on some food boxes placed at the entrance of the cell. The boxes caught fire.

After this, another prisoner (Mc David) took a piece of iron chain and proceeded to hit the Applicant on his head with it, causing him to bleed. Mc David and another prisoner (Briggs) demanded the Applicant's shirt. Briggs proceeded to rub the Applicant's back with a razor blade. His shoulder started to bleed.

Thomas, Mc David and Briggs beat the Applicant and took away his shirt, pants and shoes, leaving him in his underwear. The cell was filled with smoke. The Applicant called for help. About 20 minutes elapsed before anyone came to his assistance. The fire was put out, and the prisoners were taken out in batches of two at a time. The Applicant was the last person to be removed from the cell. This was about half an hour after he was attacked. He was bleeding from his wounds. He was placed in the prison van with the other prisoners. The van left the Magistrates' Court. The Applicant was bawling for help, calling out to the officers to stop the van and help him. Other prisoners began pounding the side of the van, demanding that the vehicle be turned back and that the Applicant be taken to hospital.

After some ten minutes, the van returned to the Magistrates' Court. The Applicant was taken off. He lost consciousness. He awoke at the San Fernando General Hospital some time later.

An Inspector Ali visited the Applicant at hospital. The Applicant told the police that he would give a statement after he secured bail, since he was scared that he would be killed by the prisoners if he spoke to the police. He did, however, tell them that although he did not know the names of the prisoners, he would be able to recognize them.

The Applicant was released on bail a few days later. He gave a statement to the police on 20th February 1998. Inspector Ali showed him a book with photographs. He was able to identify two of the men. He was not asked to attend any identification parade.

Charges of malicious wounding and malicious damage were laid against the three prisoners who had attacked the Applicant. On 15th March 2001 the Applicant gave evidence against them. No other eyewitnesses were called. The Magistrate upheld a no case submission based upon the evidence that the Applicant never pointed out the accused persons. The prosecutor, a Sergeant of Police, conceded the case on the no case submission.

THE ISSUES

- (1) Whether there was a breach of the Applicant's right to life and the security of the person;
- (2) Whether there was a breach of the Applicant's right to protection of the law;
- (3) Whether there was a breach of the Applicant's right not to be subjected to cruel or unusual treatment;
- (4) Whether the Applicant was deprived of the procedural provisions necessary for the purpose of giving effect and protection to his rights under sections 4 and 5 of the Constitution.

The Right to Life and the Security of the Person

Section 4(a) of the Constitution recognizes and declares the existence of the right of the individual to life, liberty, the security of the person, and the enjoyment of property, and the right not to be deprived thereof except by due process of law.

For the State Ms. Khan submitted that mechanisms were put in place to ensure the security of the Applicant. The onus was on the Applicant to show that these mechanisms have been subverted in relation to him in order to bring his matter into the realm of constitutional law.

In making this submission, Ms Khan relied on certain dicta of Lord Mustill in **Nankissoon Boodram vs A.G.** (1996) 47 WIR 485 at 494 E-J., where his Lordship was referring to mechanisms available to the trial judge in a criminal trial in order to protect the fairness of the trial from outside influences. In his Lordship's judgment those mechanisms form part of the "protection of the law". I understand that Ms. Khan's submission was made by analogy. In her submission, mechanisms were put in place to protect the Applicant while he was in the custody of the States. While these mechanisms may not be perfect, the Applicant's right to due process was an entitlement to an imperfect system, not an infallible one.

For this submission Ms Khan was extrapolating from the much quoted dicta of Lord Diplock in **Maharaj vs. AG (No.2)** (1998) 2 AER 670 at 679 F – J, where his Lordship was considering the effect of judicial error which amounts to a failure to observe one of the fundamental rules of natural justice. In this context his Lordship observed that the fundamental human right is not to a legal system that is infallible but to one that is fair.

Ms Khan submits that there is a system in place to ensure the security of the Applicant. Prisoners are searched before they are placed in the holding bay. Parcels of clothing brought by prisoners are emptied, searched and returned to them. A metal detector is used on each person before he is placed in the holding cell. The area of the holding cells is restricted. Only authorised persons are permitted to enter it.

These facts are contained in the affidavit of Police Corporal Calvin Kennedy filed on 27th September 2005. Although the Court refused leave to Ms Khan to use the affidavit, I still take judicial notice of the contents of the affidavit which is filed in the proceedings and forms part of the Court's records.

In spite of these procedures, three prisoners in the holding cell were in possession of objects that could be used to inflict an injury on others – a cigarette lighter, a metal chain and a razor blade. These facts are not in dispute. It is not in dispute that the prisoner Andrew Thomas lit a fire in the holding cell with discarded food boxes and clothing from other prisoners.

It is also not in dispute that some 25 prisoners were placed in a holding cell. According to Police Constable Kennedy's affidavit there were only five police officers present in the holding bay to deal with any situation that might arise. According to Corporal Kennedy this was insufficient manpower to secure the number of prisoners detained. The cell could not be cleared until police officers from the Guard and Emergency Branch arrived.

There are a number of features of this situation which causes the Court some concern. These are:

- (i) In spite of the procedures for searching prisoners, and parcels, the prisoners managed to arm themselves with potentially dangerous items. The lighter and the razor blade may be unobserved, but how did a metal chain escape the attention of the searchers? Clearly the system is inadequate, or the police officers responsible for searching the prisoners did not carry out a thorough search.
- (ii) About twenty five prisoners were placed in one cell. There is no evidence of any system whereby prisoners are separated according to their potential or proclivity for violent behaviour. A prisoner arrested on a maintenance warrant, or for failure to appear on a traffic charge, may be sharing the same cell as repeated offenders for robbery with violence or even murder.
- (iii) What makes matters even worse, there were only five police officers present in the holding area to deal with any emergency that might arise. In the emergency which arose in this case, the five officers admittedly were not able to handle the situation. They had to await assistance from the Guard and Emergency Branch before they could begin to clear the cell. During this time the Applicant could have been more seriously injured or even killed.

Having regard to the undisputed evidence in this case it is clear that the police and prison authorities did not put adequate measures in place to ensure the security of the Applicant while he was in custody. Clearly the State has a duty to put systems in place to ensure that persons in their custody are not exposed to avoidable or unreasonable risk of physical injury or death.

In the circumstances of this case I hold that there has been a breach of the Applicant's right to security of the person.

Protection of the Law

There is no evidence in this case that the Applicant's right to protection of the law has been infringed. Accordingly I refuse to grant the declaration sought.

Cruel and Unusual Treatment

Mr. Persad submits that the failure of the State to put in place mechanisms to prevent injury to him, amounts to a breach of his constitutional right not to be subjected to cruel and unusual treatment.

In **Reyes Patrick vs. R (2002)** 60 WIR 42 at p. 56, the Judicial Committee of the Privy Council opined that the phrase “cruel and unusual treatment or punishment as contained in the Constitution of Trinidad and Tobago bears a similar meaning to “inhuman and degrading treatment or punishment” as in the European Convention.

In support of his submission Mr. Persad referred to a number of cases involving Article 3 of the European Convention, decided by the European Court of Human Rights.

In **R.(Q) vs. Secretary of State for the Home Department** (2003) 3 WLR 365 UK the Court of Appeal approved the approach taken in **Pretty vs. U.K.** (2002) EHRR 1 at para 52:

“As regards the types of ‘treatment’ which fall within the scope of Article 3 of the Convention, the Court’s case law refers to “ill-treatment” that attains a minimum level of severity and involves actual bodily injury or intense physical or mental suffering. Where treatment humiliates or debases an individual showing lack of respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance, it may be characterized as degrading and also fall within the prohibition of Article 3. The suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible.”

This passage was cited in **Civil Actions Against the Police**, Richard Clayton and Hugh Tomlinson Sweet and Maxwell, at p. 656 para 16 – 055.

The learned authors of this work also cited with approval a passage from the judgment of the European Court of Human Rights in Kalashkinov vs Russia (2003) 36 EHRR 34 at para 94 in which the Court opined that the State must :

“ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment his health and well being are adequately secured”

As statements of principle, one can hardly find fault with the sentiments expressed in these cases. I find them to be of highly persuasive authority, though of course not binding on this Court.

However, it seems to me that the cases cited to me by Mr. Persad are distinguishable on the facts.

In Ribitsch vs, Austria (1995) 21 EHRR 573, the Applicant alleged that he was insulted and physically assaulted by the police. He received punches to the head, he was pulled to the floor by his hair and his head was banged on the floor. The physical violence was used by the police in order to extract a confession from the applicant.

In Aksoy vs Turkey (1996) 23 EHRR 553, the applicant was stripped naked with his hands tied behind his back, and strung up by his arms in the form of a torture known as “Palestinian hanging”. While he was hanging the police connected electrodes to his genitals and threw water over him, while they electrocuted him. He was repeatedly beaten by the police for two days. The torture continued for four days.

In Assenov & Ors. vs. Bulgaria, a 14 year old boy was arrested by police for gambling. It was alleged that the officers beat him with truncheons.

All of the cases cited to me in support of the Applicant's contentions of cruel and unusual treatment have a common thread. They all deal with allegations of violence or torture inflicted on the applicants by the police on persons in their custody.

This is not the case at hand. There is no allegation in this case of violence inflicted by the police. The allegation is in the nature of an omission by the State to put systems in place for the security of the Applicant. There is no allegation in this case of any cruel or inhuman treatment meted out by any servant or agent of the State.

It seems to me that the Applicant has failed to make out a case of cruel and unusual treatment on the evidence. Accordingly the declaration sought in respect of the breach of this right is refused.

Deprivation of Procedural Provisions

Mr. Persad submitted that when a serious crime is alleged and it affects fundamental rights such as the prohibition on cruel and unusual treatment, there is a duty on the relevant authorities to respond diligently and effectively. There is a duty to conduct timely and efficient investigations backed by criminal prosecutions where appropriate.

In this case, the three prisoners who assaulted the Applicant were charged for malicious wounding and malicious damage of the Applicant's clothing. The police did not call any supporting eyewitness, nor did they conduct an identification parade. The case against all three assailants was dismissed following a submission of no case, based on the unreliability of the identification of the assailants.

The Applicant alleges that the failure of the police to conduct proper investigations, to call material witnesses, and to hold an identification parade resulted in the dismissal of the charges.

This failure to conduct proper investigations in the submission of Mr. Persad, has resulted in the Applicant being deprived of the procedural provisions referred to in Section 5(2)(h)

of the Constitution, which are necessary for the protection of his rights guaranteed under section 4.

In support of this submission Mr. Persad has relied once more on cases emanating from the European Court of Human Rights. The principles to be derived from the cases are summarized in **Blackstone's Human Rights Digest** Blackstone Press Limited at p. 152 under the rubric **ECHR principles:**

- When serious crime is alleged and it affects fundamental rights – such as the right to life or the prohibition on inhuman and degrading treatment – there is a duty on the relevant authorities to respond diligently and effectively: this requires timely and efficient investigations, backed up by criminal prosecutions where appropriate:
- What is required is a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure. (**Aksoy v Turkey**, para. 98; **Aydin v Turkey**, para 103, **Kaya v Turkey**, para 107; **Kurt v Turkey** para 140)
- This duty is particularly acute where state agents or officials have been involved in an incident affecting fundamental rights: what is required is ‘some form of official investigation’ (**McCann v UK**, para 161).
- The duty to carry out a ‘thorough and effective investigation’ will not be fulfilled where the investigating authorities fail to ascertain possible eye-witnesses, fail to question suspects at a sufficiently early stage of the inquiry, fail to search for corroborating evidence or adopt an over-deferential attitude to authority (**Aksoy v Turkey** para 104-109).
- Other failings can include not following up the victim’s complaints (**Kurt v Turkey**, para 141, ignoring obvious evidence (**Aksoy v Turkey**, ref), not carrying out a proper autopsy and not testing for gunpowder traces (**Kaya v Turkey**, para. 89).

Once more, one can hardly disagree with the dicta cited above by the European Court of Human Rights. They are of highly persuasive authority. Clearly, where a person has been brutalized or subjected to inhuman or degrading treatment by police or prison authorities while in their custody it is highly desirable that there be prompt, diligent and thorough investigations followed by timely and effective prosecutions. The importance of the principle becomes apparent when one considers the practical difficulties a person in custody may experience in enforcing his rights, and the facility with which such incidents may be covered up, or attempts to investigate them may be frustrated.

On the facts of this case, one can hardly disagree with Mr. Persad that the investigation carried out by the police and the subsequent prosecution left a lot to be desired. In view of the fact that the Applicant did not know his assailants before, there clearly was a need for identification parades to be held. The incident took place in full view of about 25 other persons. While it is probable that many of these persons may not have wished to testify as supporting witnesses for the Applicant for fear of repercussions in prison, there is no evidence that any attempts were made by the investigating officer to secure any supporting witness. I have noted as well that the matter was prosecuted by a Police Sergeant, who promptly conceded the case upon a submission of no case made by Defence Attorney. The majority of non-capital offences in the Magistrates' Courts are still prosecuted by police officers. In a case such as this, which may involve the conduct of police or prison officers, this is clearly undesirable.

Section 5 of the Constitution provides:

(1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognized and declared.

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not-

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

Having regard to the undisputed facts of this case, I am unable to say that the Applicant has been deprived of any procedural provisions that are necessary to give effect to the protection to his rights.

The Applicant in this case has had due process in that his complaints of malicious wounding and malicious destruction of property have been investigated and prosecuted by the police. It is true that the investigation and the prosecution were far from perfect. However to use the words of Lord Diplock in Maharaj vs Attorney General No 2 (supra) at 679 the Applicant's fundamental human right is not to a legal system that is infallible but to one that is fair.

There is no complaint in this case that the investigation or the summary trial of the offences was unfair, or that there was a failure to observe one of the fundamental rules of natural justice. On the evidence the Applicant has received due process from a legal system which has time and again shown itself to be far from perfect.

In addition to this the Applicant's right to due process cannot be better than that of the ordinary citizen. The citizens of this country all rely on the police to protect them from the criminal elements at a time of unprecedented criminal activity. When citizens are murdered, kidnapped, robbed and raped, it is the duty of the police to carry out efficient and thorough investigations, supported where possible by adequate forensic facilities. Having concluded their investigations, it is left for the legal system to provide properly trained prosecutors, and adequate court facilities, to accommodate judicial officers, Attorneys and prisoners in comfortable and humane conditions. If perpetrators are found guilty the penal system becomes responsible to house them in accommodation which is compatible with respect for their human dignity, and in which their health and well being are adequately secured, bearing in mind the practical demands of imprisonment and the resources available to the state.

To a large extent this case has been about the allocation of resources to various departments of the administration of justice. There is a complaint that the legal departments of the State are understaffed. There is a high turnover of legal officers due to a lower level of remuneration in the public sector. This results in cases being reassigned to other officers causing delay in the filing of affidavits and the preparation of cases for trial. Magistrates sitting at San Fernando have been quite vocal about the conditions under which they and Attorneys are forced to work, and the conditions under which persons are kept in the holding cells. In a recent television broadcast highlighting the administration of justice, a Senior Magistrate has drawn attention to the fact that as many as eighty (80) prisoners are kept in the holding cell. There have been complaints that the police are understaffed, and inadequately equipped to deal with the increased criminal activity in the society. On the facts of the case, it is clear that the officers assigned to the holding cell were not sufficient to deal with any emergency that might arise. In this case, the prosecution of the offences at the Magistrates' Court was entrusted to a police officer. It is apparent that the Director of Public Prosecutions does not have sufficient officers to handle all prosecutions of serious offences at the magisterial level.

There is complaint as well that the Forensic Science Centre is understaffed and ill-equipped to handle the upsurge in criminal activity. It has frequently come to the Court's attention that summary trial, and preliminary inquiries at the Magistrates' Courts are delayed for several months before certificates of analysis become available.

This at a time when many murders are labeled by the police as "drug related".

Finally there is the question of providing facilities at the prisons and at the Magistrates' Courts for holding prisoners who have been charged but who have not yet obtained bail. This case clearly demonstrates that the "system" in place for handling such persons is woefully inadequate.

On the particular facts of this case, I have refused to grant a declaration that the Applicant's right not to be subjected to cruel and unusual treatment has been infringed. I wish to indicate, however that I have had the privilege of touring the prison at Golden Grove. I have noted the conditions under which convicted prisoners and prisoners on remand are housed. It seems to me only a matter of time before constitutional motions are filed on behalf of prisoners seeking relief for breach of their right not to be subjected to cruel and unusual treatment.

This case has a great deal to do with the value which the society at large places on the rights of the individual who comes into contact with the judicial system and the respect for the role which the administration of justice plays in regulating the society. The allocation of the State's resources to the various departments which have a role to play in the administration of justice reflects this value and respect. In some cases it may well be that a society has a proper respect for the rights of the individual, but resources are inadequate to properly staff and equip the departments.

However, it is hardly likely that this is the case in this society at this time. This country is enjoying unprecedented levels of revenue. It is not for the Judiciary to suggest to the Executive how the State's resources should be allocated among competing needs and demands in the society. However it may well be that a society that has \$850 million to expend on a sporting facility, may just have sufficient resources to adequately fund, staff and equip the various agencies which directly impact on the administration of criminal justice at a time of unprecedented criminal activity.

The principles that I have referred to in the decisions of the European Court of Human Rights may appear to be high sounding and unrealistic having regard to conditions that prevail in the penal system of developing societies. However, this society has expressed an intention to achieve "developed status" by the year 2020. Perhaps within this concept of "developed status" may be included the investment of resources in a judicial and penal system that shows a proper respect for the rights of the individual and basic standards of human dignity.

In the result the Applicant's motion succeeds. I will make the following order:

- (1) A declaration that the Applicant's right to security of the person has been infringed.
- (2) An order that monetary compensation be assessed.
- (3) The Respondent will pay the Applicant's costs of the motion.

Dated this 30th day of January, 2006

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Rajendra narine
Judge