

REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE COURT OF APPEAL
(SAN FERNANDO)**

MAG. APP. NO. 52 OF 2003

BETWEEN

**CHANDRABHAN MAHARAJ
POLICE INSPECTOR NO. 7746**

APPELLANT

AND

BRENDA RAMCHARAN

RESPONDENT

CORAM:

***M. Warner, J.A.
R. Nelson J.A.***

APPEARANCE:

***Mr. R. Boodoosingh for the Appellant
Ms. P. Elder for the Respondent***

DATE DELIVERED:

21st November, 2003

JUDGMENT

Delivered by Warner J.A.

1. This is an appeal against the decision of a Magistrate in which he dismissed a complaint against respondent Brenda Ramcharan who was charged with having in her possession a dangerous drug for the purpose of trafficking, contrary to Section 5 (4) of the Dangerous Drugs Act 1991.

2. She had been charged jointly with two other persons. The case against them was however, dismissed after a no case submission was upheld.

3. **The case for the prosecution**

At about 1:00 p.m. on the 31st May 2000, a party of policemen which included the complainant, Inspector Chandrabhan Maharaj, took up surveillance duty in a bushy area at Pascall Road, Piparo, in the vicinity of a dwelling house. They remained there for about three hours. During that period, they observed several persons alight from vehicles, enter the house, remain there about five minutes, and then leave. About two persons came on foot. The complainant was in possession of a search warrant in the name of one of the persons charged (not the appellant), to enter and search the premises for narcotics.

4. The complainant executed the warrant at about 4:15 p.m. They met the respondent, her daughter and another person on the premises. The respondent told him that her mother was the owner of the premises

and that her stepfather lived there. She further testified that she had come to the premises to visit her **'sick daughter'** who lived there. She however, admitted in cross-examination that she signed the bail bond in these proceedings, on which her address was stated to be Pascall Road, Piparo, the subject premises.

5. The complainant testified that a search was carried out on the premises and after half an hour he found a greyish plastic bag in a cupboard. The bag contained cream like substance resembling cocaine. He showed the appellant the contents of the bag. She began to cry. She said **'Inspector give me a chance nah.'** The substance was subsequently analysed and found to be cocaine , and it weighed 1.65 kg.

6. Another police officer found a quantity of cash in another cupboard. This amounted to \$6,985. (TT currency) and \$58.00 US currency. The complainant told the appellant that he was of the opinion that the money represented the proceeds of sale of illicit drugs. She did not respond. He took possession of the money. Two other persons were subsequently arrested, one when she arrived at the house shortly after the search and the other about 6 weeks later.

Questions of both law and fact arose for determination.

7. Section 21 (1) of the Dangerous Drugs Act No. 38 of 1991 provides as follows -

"Without limiting the generality of Section 5 (1) or (4) any person who occupies, controls, or is in

possession of any building, room, vessel, vehicle, aircraft, enclosure or place in or upon which a dangerous drug is found shall be deemed to be in possession thereof unless he provides that the dangerous drug was there without his knowledge and consent.”

8. It seems that the Magistrate focused on the fact that other persons on the premises at the time were not charged. He posed the question ***‘Why was (sic) only 2 and 3 charged in this matter when the complainant/appellant (sic) own evidence said he knew there were other occupiers of the premises on the day in question?’*** Although the Magistrate stated in his reasons that he applied the dictum in ***Ramdass and Ramoutar v PC Knights Mag. App. 13 of 2000 (unreported)***, it seems that he misunderstood the reasoning in the case. In ***Ramdass***, one of the issues for determination was whether the appellants were occupiers of the premises. Chief Justice Sharma after reviewing the authorities had this to say –

“the proper sense to be attributed to the word ‘occupies’ in s. 17 is the limited sense that will extend the section only to cases where there is an element of control and of their use by the person charged.

.....and the mere fact that the appellants were visiting and found by the police on Jadoo’s premises does not make them occupants of the premises.”

9. In our view, therefore, the Magistrate ought not to have been influenced in determining the issue of occupation, by the fact that other persons who were present at the time were not charged. The police had

to make a judgment call and they were obviously satisfied that the “**other persons**” were only visitors, who were not in possession of the drug

10. If the respondent were found to be in occupation of the premises she would be deemed to be in possession of the drugs, unless she proved that the drug was there without her knowledge and consent. (See **The State v Gomes and Gomez [2000] 59 WIR 479 at 487**). The Magistrate failed however, to evaluate the vital piece of evidence as to the bail bond, which was tantamount to an admission in writing that she resided at Pascall Road, Piparo, the subject premises, and to make a specific finding. He merely recited the respondent’s reply when the inconsistency was drawn to her attention..

11. Another aspect of the case that weighed heavily with the Magistrate was the fact that the police kept the premises under surveillance for three hours without following and searching the persons who entered. Here again we do not consider this factor to have been of great importance in the determination of the issue he had to decide.

We are of the view that there was sufficient evidence upon which the Magistrate could have found that the respondent was in occupation of the premises.

The burden would then have shifted to the respondent to show that the cocaine was in the room without her knowledge or consent. The Magistrate did not however, set out the reasoning process which led him

to conclude that on a balance of probabilities the cocaine was in the room without the respondent's knowledge and consent.

12. Mrs. Elder identified what she described as inconsistencies, contradictions and shortcomings in the prosecution's case which she submitted, justified the Magistrate's decision to acquit.

13. Among them was the fact that the complainant kept the drugs in his possession until its presentation for analysis on the next day. While we do not wish to comment on the reasons for the procedure which the complainant adopted, the most important aspect was that there was no suggestion that the exhibits were tampered with.

14. Another point raised was that the complainant had at some stage directed a junior officer to use **'white off'** (correction ink) to obliterate the statement allegedly given to the complainant. The words - **'Inspector give me a chance nah,'** were inserted and corresponded with the complainant's oral testimony. There is no indication as to what was originally recorded. While we do not at all countenance the method adopted to alter the statement, we are however unable to conclude on the state of the evidence, that the respondent was in any way prejudiced. What is clear is that it would have been obvious that there was a change, so that there could have been no attempt to conceal that fact. We can therefore discern no ulterior motive for the change.

15. Since we propose to order a retrial in the matter, we do not think that it is necessary to identify all the other matters which Counsel has raised, or to comment further on them.

16. We therefore allow this appeal and remit this matter to be retried de novo by another Magistrate.

Margot Warner,
Justice of Appeal

R.Nelson,
Justice of Appeal