

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 3 of 2002

H.C.A. No. S-209 of 1985

BETWEEN

Harrylal Singh

Appellant

AND

AMOCO Trinidad Oil Company

First Respondent

AND

The Attorney General of Trinidad and Tobago

Second Respondent

PANEL: R. Hamel-Smith, J.A.

M. Warner, J.A.

A. Mendonca, J.A.

APPEARANCES:

Mr. R. Bissessar for Appellant

Mr. F. Gilkes for First Respondent

Ms. A. Rambarran for Second Respondent

DATE DELIVERED: 23rd February, 2005

I agree with the judgment of Mendonca J.A. and have nothing to add.

R. Hamel-Smith
Justice of Appeal

I too agree.

M. Warner
Justice of Appeal

JUDGMENT

DELIVERED BY MENDONCA J.A.

1. On August 16, 1984 at around 10:00 a.m. the Appellant was arrested by Daniel Francis (Francis) then a police officer, without a warrant for his arrest. The Appellant was detained by the police until August 18, 1984 when he was released without being charged for any offence. At the time of his arrest, the Appellant had in the trunk of his vehicle 746 pieces of instruments, valves and fittings (the fittings). When the Appellant was arrested, the police also took custody of the fittings. Notwithstanding the release of the Appellant on August 18, 1984, the fittings were not returned to him, but were kept by the police.

2. On January 18, 1985 at about 1:30 p.m. the Appellant was again arrested. On this occasion the arrest of the Appellant was made under the authority of a warrant issued by a Magistrate. The Appellant was then charged with larceny of the fittings, allegedly being the property of the first Respondent, Amoco Trinidad Oil Company (Amoco) contrary to Section 4 of the Larceny Act. The Appellant was released from custody later that day.

3. The charge against the Appellant was heard and determined before the Magistrates' Court and the Appellant was acquitted. The matter was heard before the Magistrates' Court on two occasions. On each occasion the Appellant was acquitted and there was an appeal to the Court of Appeal. On the first occasion the decision of the Magistrate was set aside by the Court of Appeal and a retrial was ordered. On the second occasion, the Magistrate's decision was upheld and on that occasion, which was sometime in February 1992, the Court of Appeal ordered that the fittings be returned to the Appellant. Shortly thereafter they were in fact returned to him.

4. The Appellant subsequently brought this action against the Respondents, Amoco and the Attorney General. The Attorney General is sued pursuant to the provisions of the State Liability and Proceedings Act, Chap. 8:02.

5 The Appellant's claim against the Respondents was for

- (a) a declaration that the fittings are his property;
- (b) the return of the fittings,
- (c) damages for their detention,
- (d) damages for their conversion; and
- (e) damages for false imprisonment

With respect to the claim for damages for false imprisonment, it should be noted that as against the second Respondent, the Attorney General, it related to both the arrest and the detention of the Appellant on August 16, 1984 and January 18, 1985. However, against Amoco the claim in false imprisonment related only to the first arrest and detention on August 16, 1984.

6. At the trial only the relief at (c) and (e) were pursued. The Judge, however, found for the Respondents and dismissed the Appellant's claim against them. The Appellant now appeals to this Court.

7. In so far as the claim for detention of the fittings is concerned, the Judge held that the detention of the fittings by the police was lawful. The police were entitled to detain the goods as it was material evidence in the prosecution of the criminal charge which was then pending.

8. With respect to the claim for damages for false imprisonment arising out of the second arrest on January 18, 1985, the Judge held that the Appellant's claim failed as he was arrested under a warrant of arrest and consequently, under both the common law and

Section 42 of the Police Service Act, Chapter 15:01, no claim lay against the second Respondent in false imprisonment.

9. Before this Court no complaint was made with respect to the Judge's dismissal of the claim for damages arising out of the second arrest on January 18, 1985. With respect to the detention of the fittings, the only complaint of the Appellant is that the Judge in dismissing the claim stated that there was no maintainable action against Amoco, since the fittings were detained by the police and not by Amoco. Counsel for the Appellant says that there was never a claim against Amoco for damages for wrongful detention of the fittings, and indeed this is noted as a ground of appeal in the Appellant's notice of appeal. While it is true, that there is no allegation in the statement of claim that the goods were detained by Amoco, there was, in both the endorsement on the writ and in the relief in the statement of claim, a claim against both Respondents for damages for the detention of the fittings. I therefore do not think that the Judge can be criticized for remarking as he did. In any event, this point is of no significance, as the Appellant is not saying that the Judge was wrong to dismiss the claim for damages for detention of the goods. This appeal therefore relates only to the claim against Francis and Amoco in false imprisonment arising out of the arrest of the Appellant on August 16, 1984 and his subsequent detention.

10. The material facts are as follows: the Appellant at the time of his arrest on August 16, 1984 was employed with Amoco and worked on an offshore platform. He had worked with Amoco for about ten (10) years prior to that. At the time of his arrest, as I mentioned, the Appellant had the fittings in his possession. They were in the trunk of his car. He had before the day of his arrest contacted Trinidad Valve and Fittings Company Limited (the Company) and had met with Arnold Mendes (Mendes) one of the Directors of the Company and arranged with him to sell the goods to the Company. There had been three meetings between Mendes and the Appellant before his arrest and the Appellant had provided Mendes with lists of the fittings.

11. At the first meeting the Appellant had with Mendes, he told him that he worked with Amoco and had access to the fittings. Mendes suspected that the items had been stolen from Amoco and unknown to the Appellant had been in close contact with the police from his initial contact with the Appellant, and had indicated to them his suspicions. As a consequence of Mendes's contact with the police, Francis was instructed by his superior to conduct inquiries.

12. Francis conducted inquiries and obtained information from Mendes that he was the sole distributor in this jurisdiction of the fittings and that some of the fittings had been sold by his company only to Amoco. Based on the information that he had, Francis on August 15, 1984 obtained a search warrant to search the home of the Appellant for fittings which would "afford evidence as to the commission of the offence of larceny". I should mention that this search warrant was not executed prior to the arrest of the Appellant.

13. On August 16, the Appellant met with Mendes at the Company's premises. It was then arranged that the Appellant would bring the fittings to the Company's premises that day. When the Appellant left the Company's premises Mendes called Francis and told him that the Appellant was just with him and that he would be returning with the goods.

14. With that information Francis went to the Company's premises, accompanied by other officers and waited for the Appellant. The Appellant arrived in his motor vehicle, parked it in the compound of the Company came out, and started towards the upstairs offices of the Company. Francis then approached the Appellant and identified himself to him. He told the Appellant that he had received information that he had in his possession a quantity of stolen instruments, valves and fittings. The Appellant replied that he did have some valves and fittings and that he was going to sell them, because he was in some financial distress. The Appellant also told him that he worked with Amoco and had taken the fittings from the offshore platform where he worked.

15. The Appellant was then arrested and detained and was not released until August 18, 1984. On August 17, the Appellant was placed by two police officers in an unmarked vehicle and taken to Amoco's premises at Galeota Point. There he and the police officers were joined by two of Amoco's security personnel and a Mr. Hicks, another of Amoco's employees. They were transported in a helicopter, which was either rented or owned by Amoco, to the offshore platform where the Appellant worked. At the platform, a locker used by the Appellant, as well as one he at one time shared with another of Amoco's employees, as well as other lockers, were searched by the Police. It appears that at least the locks on one of the lockers in which the Appellant had an interest, was cut by Mr. Hicks. As a consequence of the search, three fittings similar to those found in the Appellant's possession at the time of his arrest were found in the locker he once shared with the other employee.

16. While on the platform, the Appellant was taken into a room by Amoco's security personnel and interrogated. He stated that one of the security people threatened "to jail him". He was kept there for about 15 minutes and then taken to the platform supervisor's office, after which he was flown back to Amoco's premises at Galeota Point. There he was taken to a room and kept there for approximately one hour, during which time he was handed a letter informing him that his employment with Amoco had been suspended. He was then taken back to the police station and released the following day on August 18.

17. The Judge on the evidence held that the arrest of the Appellant by Francis was lawful. There was a reasonable basis for arresting the Appellant on suspicion of larceny. With respect to the claim against Amoco, the Judge was of the opinion that on the pleadings, there was no prima facie case of false imprisonment raised. In any event, the Judge considered the legal basis for the claim of false imprisonment against Amoco and held on the evidence that no case had been made out.

18. Now it is not disputed, as I have indicated, that the Appellant has been acquitted of the charges laid against him in respect of the larceny of the fittings. The Appellant is

therefore not guilty of the charges. That needs to be clearly stated and noted. It is also important to note that nothing that is said in this judgment is to be taken as derogating from that fact. But it must also be appreciated that an acquittal on the criminal charge does not mean that a civil suit arising out of the same circumstances will automatically succeed.

19. I will first deal with the arrest of the Appellant by Francis. In relation to this Counsel for the Appellant made essentially two submissions. The first submission was in quite general terms without much specificity that the Judge erred in coming to the findings of fact that he did. The second is that Francis did not have the requisite suspicion at the time he arrested the Appellant.

20. With respect to the first submission, Counsel argued that the Judge's findings of fact were undermined by the numerous inconsistencies in the evidence of the second Respondent. It is however, well established that a court of appeal would not lightly interfere with the trial judge's finding on issues of fact. The trial judge is in a position of advantage over the court of appeal, having seen and heard the witnesses. Due weight must be given to that. The appellate court ought not to set aside the judge's finding simply because it would have come to a different conclusion. For the judge's finding to be set aside, there must be some demonstrable flaw in the process by which he arrived at the finding. As de la Bastide, C. J. said in Civ. App. 66 of 1991 Hoodan and Ramsaran (page 4).

“Now, it is very established that a Court of Appeal will only with great reluctance and in special circumstances interfere with the findings of a trial judge on issues of fact. The reason for that is that the Court of Appeal does not have the advantage which the trial judge has of seeing and hearing the witnesses and, therefore, is not in as good a position as he is to form an impression as to whether or not they are telling the truth.

However, it is also well established that if a Court of Appeal is satisfied that the judge did not take full advantage of the opportunity which he had of observing the demeanour of the witnesses, or failed to weigh in the balance matters of substantive evidence which bear on the question of whether a particular witness was or was not telling the truth, then the Court of Appeal will substitute its own decision for that of the trial judge, even on an issue of fact.”

(See also Privy Council Appeal No. 5 of 1997 *Ramsaran v. Hoodan* where the essence of the paragraphs referred to above were quoted with approval).

21. In this case the Judge accepted the evidence of the witnesses of the second Respondent over those of the Appellant where there was a conflict. He was alive to the fact that there was some conflict among the second Respondent’s witnesses. He however, considered this to be the result of the lapse of time between the Appellant’s arrest in August of 1984 and the commencement of the trial, almost sixteen years later. He did not think therefore the inconsistencies sufficient to affect the credibility of the Respondent’s witnesses and on a perusal of the transcript of the evidence, it is difficult to disagree with that. But the decision of the Judge was based essentially on an assessment of the witness’s credibility. The Trial Judge was better positioned than this Court to make that assessment. I see no basis to interfere with the Judge’s findings.

22. Before I proceed to consider Counsel’s second submission, I will refer to the relevant legal principles.

23. The police of course can arrest an individual without a warrant. Two sources of this power were identified by the Judge. The first is found in Section 3 (4) of the Criminal Law Act Chap. 10:04 which provides:

“Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”

24. The other is found in Section 36 (1) (d) of the Police Service Act, Chap. 15:01. This Section provides as follows:

“36 (1) Any police officer may arrest without a warrant –

(d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing.”

25. The matter was dealt with by the Judge as if both sections were similar in effect. However, I do not think that they are. While both sections require the existence of reasonable suspicion, in the case of Section 3 (4) what is required is that the arresting officer personally has reasonable grounds for the suspicion. So that under this Section, for example, if the officer knowing nothing of the case, arrests someone, the arrest is unlawful, whether there might have existed reasonable grounds to suspect that the thing found on the person’s possession is stolen and that he has stolen it. What matters under Section 3 (4) is what is in the mind of the arresting officer. This does not appear to me to be so in relation to Section 36 (1) (d). It seems to me that from the use of the passive tense that the Section is more flexible and broader in scope. It provides for a broader test whether there was reasonable suspicion and does not confine the enquiry to matters in the mind of the arresting officer. What seems to me to be required under Section 36 (1) (d) is only the objective existence of reasonable grounds.

26. I will, however, consider the matter under Section 3 (4). I think it appropriate to do so, because the Judge clearly considered the matter from the point of view of the information in the possession of the arresting officer at the time of the Appellant’s arrest, and submissions before this Court were made on that basis. It also seems to me that if the arrest can be justified under Section 3 (4), as I think it clearly can be, then in this case under Section 36 (1) (d) it would also be justified and indeed it would be a stronger case.

27. Under Section 3 (4) the arresting officer must establish that he held a suspicion on reasonable grounds that an arrestable offence had been committed and that he suspected on reasonable grounds, the arrested person to be guilty of it. The test to determine whether these criteria have been met is a partly subjective and a partly objective one. It also requires that the inquiry be limited to the mind of the arresting officer. In *O’Hara v Chief Constable of the Royal Ulster Constabulary* [1997] 1 All E.R. 129, 138 Lord Hope said in relation to Section 12 (1) of the Prevention of Terrorism (Temporary Provisions Act) 1984, in language which is relevant to Section 3 (4):

“My Lords, the test which s 12 (1) of 1984 Act has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All the objective test requires is that these grounds be examined objectively and that they be judged the time when the power was exercised.”

28. There was, of course, no dispute that larceny is an arrestable offence but Counsel for the Appellant submitted that in this case, Francis did not have the requisite suspicion when he arrested the Appellant as he acted on the instructions of his superior, Superintendent Taylor. The submission therefore targets the subjective element of the test.

29. As I have said, under Section 3 (4) the law holds the arresting officer accountable as Lloyd Steyn said in the *O’Hara* case, *supra*, (at p. 133) “that is the compromise between the values of individual liberty and public order”. If the arresting officer acts

purely on the instructions of his superior officer then the arrest would not be justified under Section 3 (4). In such a case his superior's mere instructions to arrest, even if the officer on that basis formed a suspicion of the guilt of the arrested person, would not be capable of amounting to reasonable grounds for the suspicion. But in this case, there is no justifiable basis for saying Francis acted only on the instructions of his superior.

30. The fact that the arresting officer entertained a suspicion of the guilt of the arrested person, may be established on the basis of evidence from the arresting officer as to the state of his own mind. It may also be inferred from the information in the possession of the arresting officer (see *Siddiqui v Swain* [1979] R.T.R. 454). In this case, both elements are present. There is evidence of Francis as to the state of his own mind as well as evidence from which it may be inferred that he entertained the requisite suspicion. There is therefore ample evidence in this case from which the Judge could properly conclude that Francis arrested the Appellant on suspicion of larceny. I think this is clear from the following.

31. With respect to evidence of Francis as to the state of his own mind, it is true that Francis said in cross-examination that "when I arrested [the Appellant] I did that on instructions of Mr. Dennis Taylor" (his superior). But that is not inconsistent with Francis having the requisite suspicion and there was other evidence from which the Judge could properly find that Francis arrested the Appellant on suspicion of larceny. In cross-examination it was put to Francis that he was merely "following the suspicion of Mendes". He replied in these terms:

"How can I follow Mendes's suspicion? I had my own suspicion based on the articles which were found in his possession and the statements that were made by him."

32. That was a clear statement that Francis had formed his own suspicions as to the guilt of the Appellant. Apart from that statement, there were facts or information in his possession which amounted to the reasonable suspicion that the offence of larceny had

occurred and from which it can be inferred that Francis suspected the Appellant to have committed the offence. The day before he arrested the Appellant, Francis obtained a warrant to search the Appellant's premises. The warrant was obtained on the basis that there was reasonable ground for believing that a quantity of fittings which would afford evidence of larceny were concealed at the Appellant's premises. This was consistent with Francis telling the Appellant on his arrest that he had reason to believe that the fittings in his possession were stolen. Francis therefore believed that the fittings which were in the possession of the Appellant were stolen and the information in Francis's possession could point only to the Appellant as being the one who had stolen them. As the Judge found, Francis had information that

“[The Appellant] had in his possession a large quantity of valves and fittings which he... said he obtained from Amoco's offshore platform at Point Galeota and which he... was seeking to sell to Mr. Mendes's Company. (Cpl Francis had met and spoken with Mr. Mendes several times before the arrest, and had first been briefed by Mr. Taylor). Mr. Mendes's evidence was that the Company was the sole distributor of the valves and fittings. He had met and spoken with Senior Superintendent Taylor and then Corporal Francis about his meetings with [the Appellant] on July 23, 1984 and August 7, 1984. Cpl Francis' evidence was that he had been briefed by Mr. Taylor and that he had no reason to disbelieve Mr. Mendes. Mr. Mendes in his evidence before me was an extremely credible witness and in those circumstances, Cpl Francis' reliance upon his statements was reasonable.”

33. In addition there was just prior to the arrest of the Appellant the admission by the Appellant to Francis that he had taken fittings from Amoco. The information in Francis' possession and the statements made to him pointed to only one conclusion, that the Appellant had stolen the fittings.

34. In the circumstances, not only did Francis state that he held a suspicion, but on the evidence he obviously had in his mind facts or information which amounted to the commission of an arrestable offence and from which it can be inferred that he suspected the Appellant to have committed the offence. In my judgment therefore there is no merit in Counsel's submission. There is evidence from which the Judge could reasonably conclude as he did, that Francis arrested the Appellant on suspicion of larceny. Counsel for the Appellant did not challenge the fact that if such a suspicion existed that it was based on reasonable grounds. I do not think that there is any doubt that there were reasonable grounds. The information obtained by Francis from Mendes and the statements made by the Appellant provided reasonable grounds for the suspicion.

35. As I have mentioned I have dealt with Counsel's submission on the basis of Section 3 (4) of the Criminal Law Act. But if one adopts the broader test, under Section 36 (1) (d) that requires the existence purely of objective grounds the position of the second Respondent is even stronger. As I mentioned the existence of reasonable grounds for the Appellant's arrest on suspicion of larceny of the fittings was not challenged and there clearly were such grounds.

36. I will now turn to the Appellant's claim against Amoco.

37. The Appellant's claim on the pleadings against Amoco was that Amoco at the offshore platform joined the party of policemen and participated with the police officers in the wrongful detention of the Plaintiff. In response to a request for further and better particulars of the statement of claim by attorneys-at-law for Amoco, the Appellant stated that he intended to rely on the following acts as constituting participation in the wrongful detention of the Appellant:

- (a) one of Amoco's security personnel told the Appellant that he was in the custody of the police and that the Appellant should not say anything to other persons on the platform;

- (b) Mr. Hicks opened all the lockers on the platform, including the Appellant's locker with a bolt cutter;
- (c) Amoco's security personnel took the Appellant into a room on the platform, closed the door and asked the Appellant for information, and one of the security people threatened to jail the Appellant and told him to think of his safety and the safety of his family.

38. The Judge was of the opinion that the pleadings did not disclose a cause of action against Amoco in false imprisonment. The Appellant has complained of that, but I do not think that anything turns on it, as the Judge went on to consider what he thought to be the proper legal basis for an action in false imprisonment against Amoco and assessed the evidence on that basis. Having done so the Judge concluded that there was no proper legal basis for a false imprisonment action against Amoco. He stated:

“The actual arrest and imprisonment was affected by the police, thereafter he was always in the custody of the Police. Unless it is shown that the participation of the first defendant's (Amoco's) employees was somehow inextricably bound up in the actual physical taking of the Plaintiff (the Appellant) at the time of his arrest on August 16, 1984 or that the first defendant's security officers assumed custody and control of the plaintiff at Point Galeota, the plaintiff cannot succeed.”

39. The Judge concluded on the evidence that at all material times the Appellant was under the control of the police officers during the visit to the premises of Amoco including the offshore platform. The questioning of the Appellant by Amoco security personnel was done with the permission of the police, while they were on the platform. The search of the lockers was part of an ongoing investigation by the police with which Amoco cooperated.

40. The Appellant has submitted that the Judge did not properly understand the Appellant's case against Amoco. He treated it as though the allegation was one that Amoco continued the arrest, whereas the claim is that it "participated", or in other words acted in concert with the police in the arrest and the detention of the Appellant. Counsel for the Appellant submitted that there is clearly evidence to support the participation of Amoco.

41. Of course a private individual does not have the same powers of arrest and detention as a police officer. A private individual may arrest without warrant anyone whom he suspects with reasonable cause to be in the act of committing an arrestable offence or where an arrestable offence has been committed, anyone whom he suspects with reasonable cause to be guilty of the offence (See Sections 3 (2) and (3) of the Criminal Law Act). So far as the powers of detention are concerned as Lord Denning stated in *Dallison v Caffery* [1964] 2 All E. R. 610, 617:

"The private person must, as soon as he reasonably can, hand the man over to a constable or take him to the police station or take him before a magistrate; but so long as he does so within a reasonable time, he is not to be criticized, because he holds the man for a while to consider the position;"

42. If therefore Amoco arrested or detained the Appellant, in order to avoid liability it would need to establish that it reasonably suspected the Appellant to be in the act of committing an arrestable offence, or that an arrestable offence had been committed and that it reasonably suspected the Appellant to be guilty of the offence. With respect to the detention it would need to establish that it detained the Appellant no longer than was reasonable for the limited purposes outlined above. It is fair to say that Amoco has not established any of these things. Amoco contends that the arrest was by the police and not by it, and it did not participate in the arrest and the detention of the Appellant.

43. In this case no challenge has been made by the Appellant of his detention by the police and as the Judge has found, and in my judgment correctly so, the arrest of the Appellant was justifiable. But as the powers of the police and the individual are different, it is possible that Amoco may be liable for the Appellant's arrest and detention whereas the police are not.

44. There is no denying on the evidence that the Appellant was physically arrested and detained by the police. Even when the Appellant was taken by the police to Amoco's premises at Point Galeota and to the offshore platform, the Appellant remained under the control and custody of the police. In my judgment it would not be possible to put any other interpretation on the evidence. However, the physical arrest, custody and control of the Appellant by the police do not necessarily mean that no liability attaches to Amoco.

45. In *Davidson v Chief Constable of North Wales* [1994] 2 All E.R. 597, the question arose whether a store detective who had given information to the police that led to the arrest by the police of a customer of the store was liable in false imprisonment. It was held that the store detective was not liable. What the customer needed to establish was that the store detective went beyond the giving of information to the police and amounted to some direction, or procuring, or direct request, or direct encouragement that the police should arrest the customer.

46. I think that is relevant here. What the Appellant needs to establish is that Amoco's involvement in the arrest or detention of the Appellant amounted to some direction or procurement to take the Appellant into custody or to detain him or amounted to a direct request to or direct encouragement of the police to arrest or detain the Appellant (see also *Pike v. Waldron* [1952] 1 LLR 431). The Appellant must establish this before there is any burden on Amoco to justify the arrest or detention. The question therefore in this case is whether there is evidence that Amoco directed or procured, or directly requested, or encouraged the arrest or detention of the Appellant. This is a different question than that posed by the Judge. But I find it impossible to come to any other conclusion than he did. The evidence does not establish any liability on the part of Amoco. There is no evidence

that Amoco procured or directed or directly requested, or encouraged the arrest and detention of the Appellant. The fact that Mr. Hicks, an employee of Amoco, cut the locks to the Appellant's locker or that the Appellant was told he was in police custody and that he should not speak to anyone or was threatened with jail does not help the Appellant.

47. In so far as the interrogation of the Appellant by Amoco's security personnel in a room on the offshore platform is concerned, the evidence is that this was done with the permission of the police. In fact, the Appellant remained in the custody of the police for some time after leaving the offshore platform, not being released until the following day, while the police continued their investigation. That does not establish any, direction, encouragement, procurement or request that the Appellant be detained by the police.

48. In the circumstances I would dismiss this appeal with costs to be paid by the Appellant to the Respondents.

Allan Mendonca
Justice of Appeal