

STATE (Healy)

1982/654SS 253 ✓

THE HIGH COURT

BETWEEN :

THE STATE (AT THE PROSECUTION OF
THOMAS HEALY)



Prosecutor

and

DISTRICT JUSTICE T. BALLAGH

Respondent

Judgment delivered on the 22nd day of April 1983 by
Finlay P.

This is an application to make absolute notwithstanding cause shown a Conditional Order of Certiorari made by the High Court on the 24th November 1982 directing the Respondent to send forward to be quashed an order made by him on the 29th July 1982 returning the Prosecutor for trial on charges of robbery, possession of firearms and associated charges being offences alleged to have occurred on the 12th February 1982.

The Prosecutor was charged before the District Court jointly with two other persons and in the Book of Evidence served upon him there were 64 witnesses. I have

been informed that at the application of one of the other persons then accused each and every one of the 64 witnesses contained in the Book of Evidence were pursuant to the right of the accused brought forward to have their evidence taken on deposition before the District Court. The taking of depositions commenced on the 29th day of June 1982 and took place on a number of days subsequent to that terminating on the 29th day of July 1982 when the order returning for trial was made.

The application to make absolute the Conditional Order was based on a number of affidavits including those of Solicitors acting on behalf of the Prosecutor at the taking of the depositions. Cause was shown by a number of affidavits filed on behalf of the Respondent including those of Counsel appearing for the Director of Public Prosecutions on the taking of the depositions and of certain Garda Officers who were witnesses at that hearing. Some element of conflict between the evidence appearing in these various affidavits occurred before me but I did

not consider it necessary to permit the parties to adduce oral evidence nor did the parties press me so to do and I am satisfied I can decide the legal questions arising on this application without so doing.

To summarise the complaint of the Prosecutor it is that in the course of the preliminary examination where all the witnesses were taken upon deposition in the course of the cross-examination of two witnesses who gave a general description of the clothing worn by one of the persons involved in the armed robbery, Counsel on behalf of the accused having sought the production of a duffle coat and scarf which formed two of the exhibits and these articles not being readily available, the District Justice told him to proceed with the cross-examination and did not procure the production of the exhibits. I am satisfied on the evidence that the reason why this occurred was that Counsel on behalf of the accused had prior to the cross-examination of these witnesses sought from the learned District Justice a direction that all Garda witnesses other than those actually giving evidence at

any time should be excluded from the Court. This application was acceded to and the Garda Officer who was also a witness and who was in charge of and in possession of the Exhibits was outside the Court.

I am satisfied that no further application at any later stage during the many days of the taking of depositions when the Exhibits Officer was in court with all the exhibits was made on behalf of this accused for the recall of any of these witnesses. It is conceded that on making submissions with regard to the question of the return for trial no reliance was placed on behalf of this accused on the absence of production of these exhibits to these two particular witnesses.

The order for return of trial was as I have indicated made at the very end of July 1982 and the application for a Conditional Order of Certiorari was not brought until the end of November 1982, a very short time indeed before the date which had already been fixed by the Special Criminal Court for the trial of this accused.

I am satisfied that the only grounds on which the Prosecutor could be entitled to have made absolute this Conditional Order of Certiorari were if I were satisfied that there was a genuine miscarriage of justice in the preliminary examination carried out by the Respondent or to put the matter in the more usual form if I were satisfied that the preliminary examination conducted by the Respondent was contrary to natural justice.

I have come to the conclusion that this could not possibly be so. The evidence of the two witnesses concerned with regard to the general nature and colour of the garments observed by them on one of the raiders formed a very small part indeed of the general evidence tendered against this accused. It could by no means be described as a vital or fundamental proof and neither establishment of it nor its destruction could in my view conceivably affect the overall decision of a District Justice as to whether there was a sufficient prima facie case established against the accused to warrant an order

returning him for trial.

In these circumstances, I am satisfied that the Respondent has shown good cause against the making absolute of this order and that the Conditional Order must be discharged and the cause shown allowed.

approved
J. A. Funder
5.5.1955