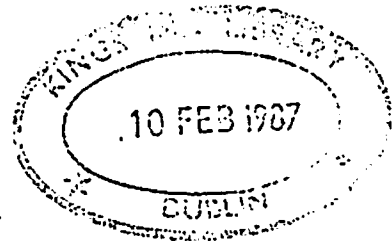


(B.)

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THE HIGH COURT
(STATE SIDE)



1986 No. 142 S.S.

BETWEEN

THE STATE AT THE PROSECUTION OF
JOHN BRENNAN

PROSECUTOR

-AND-

DISTRICT JUSTICE AIDAN O'DONNELL, DISTRICT JUSTICE PETER CONNELLAN
THE DIRECTOR OF PUBLIC PROSECUTIONS AND GARDA THOMAS McGRATH

RESPONDENTS

Judgment of Egan J. delivered 1st December 1986.

The affidavits do not disclose with certainty what precisely happened in this matter. It appears that on the 7th October 1984 the prosecutor and a co-accused were charged in the Metropolitan District Court with larceny and receiving. They were remanded on a number of occasions until the 11th March 1985 on which date the charges were struck out as there was no Book of Evidence available for service.

On the 22nd March 1985 the prosecutor was re-arrested by the 4th named respondent and was re-charged with the same offences of larceny and receiving. There were further remands until the 24th April 1985 and a Book of Evidence was served on the prosecutor on that date. Again there were further remands and on the 29th May 1985 the matter was again before the Court for the purpose of taking depositions which the co-accused had requested. Some evidence was given on that date. There were further remands including the 2nd October 1985 when notice of additional evidence was served on the prosecutor.

The matter came before the Court again on the 18th November 1985 before the first-named respondent who "struck out" the charges. The prosecutor contends that the Learned District Justice should have "discharged" him pursuant to sec. 8(5) of the Criminal Procedure Act, 1967 and he seeks an Order of Prohibition to prevent the further prosecution of the charges, he having been re-arrested again on the 22nd January 1986 and re-charged with the same original charges of larceny and receiving. The matter is now pending before the Metropolitan District Court.

There is some confusion as to the basis upon which the Learned District Justice arrived at his decision to "strike out" the charges but it appears to have been for the reason that the prosecutor had not been "put on his election" and that there was no evidence that the Director of Public Prosecutions had, at any earlier stage, refused to consent to the charges being dealt with summarily. On the face of the charges having regard to the total amounts specified the District Justice would not have been entitled to deal summarily with the charges without the consent of the Director (Section 2(2) of the Criminal Justice Act 1951 as amended by Section 19 of the Criminal Law Procedure Act 1967).

I find it difficult to understand what occurred and why it occurred. Counsel for the prosecution had informed the Court (according to the affidavit sworn by the respondent Garda Thomas McGrath) that the Director of Public Prosecutions was refusing to consent to the summary disposal of the charges but later, according to the same affidavit, suggested to the Justice that the prosecutor should be put on his election there and then. This would surely have been premature as on my construction of Section 20 of the 1967 Act the absence of the consent of the Director could quite properly have been conveyed orally to the Court just the same as his consent could have been conveyed if, in

fact, he had consented. It is difficult to understand, therefore, why the Justice may have taken the view that there was no "evidence" or refusal of consent. If I am correct in this the question of an objection could only have arisen if the Justice formed the opinion under Sec. 8(2) of the 1967 Act that there was sufficient case to put the accused on trial for some indictable offence other than those charged.

Mr. John Allen, solicitor for the prosecutor, had submitted to the Justice that, as a preliminary investigation of the charges had already been embarked upon, an order had to be made pursuant to Section 8 of the 1967 Act discharging the accused.

Counsel for the prosecutor relies on the Judgment of the Supreme Court in:-

Castello .v. The Director of Public Prosecutions and the A.G. 1984
I.R. P. 436

which was mainly concerned with the constitutionality of Sec. 62 of the Courts of Justice Act, 1936. References to Sec. 8 of the Criminal Law Procedure Act, 1967, are made in the Judgment of O'Higgins, C.J. but, so far as the present case is concerned, the references amount to no more than a repetition of the contents of the section.

Subsec. (1) provides that if the Justice is of opinion that there is a sufficient case to put the accused on trial for the offence with which he has been charged, he shall send him forward for trial. Subsec. (2) provides that if the Justice is of opinion that there is a sufficient case to put the accused on trial for some indictable offence other than that charged, he shall cause him to be charged with that offence and proceed as stated in the subsection. Subsection (4) provides that if the Justice is of opinion that a summary offence only is disclosed, and the Attorney General (now meaning the Director) consents, he shall cause the accused to be charged with the summary offence and deal with

the case accordingly. The prosecutor relies on subsection (5) which provides that "if none of the foregoing provisions applies, the Justice shall order the accused to be discharged as to the offence under examination".

Can it be said that "none of the foregoing provisions applies"? In my opinion, it cannot. It is perfectly clear from the affidavits that the learned District Justice had never applied his mind to the "foregoing provisions" and did not, therefore, form any "opinion" as to whether there was or was not any sufficient case of any of the categories against the accused. In my opinion, therefore, he was not bound to order that the accused be discharged.

Cause shown is accordingly allowed and the Conditional Orders of Certiorari and Prohibition will be discharged.

Notwithstanding the foregoing the prosecutor will be allowed his costs (including a Certificate for Senior Counsel) against the respondents. Accused persons are entitled to a reasonably speedy trial and there were, in my opinion, too many delays in this case which were not the fault of the prosecutor.

B. F. Egan