1986 No 3535.S.
88 (NML)
1243

IN THE MATTER OF THE SUMMARY JURISDICTION ACT, 1857

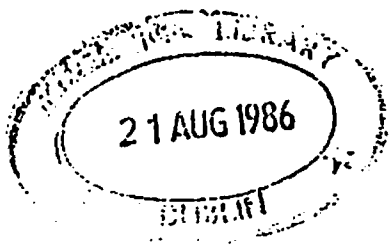
AND IN THE MATTER OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT, 1961

BETWEEN/

GARDA PATRICK MAHER

COMPLAINANT

AND



CIARAN CARROLL

DEFENDANT

Judgment of Mr. Justice Blayney delivered the 8th day of August, 1986.

The question on which the opinion of the High Court is sought in this case is whether the learned District Justice was right in law in striking out a complaint because of the delay in bringing it before the District Court.

The Defendant appeared in the District Court on the 13th January, 1986 charged with having driven a motor car in a public place on the 25th January, 1985 when the quantity of alcohol in his body exceeded the permitted limit contrary to Section 49, subsection (3) and subsection (4)(A) of the Road Traffic Act, 1961 as inserted by Section 10 of the Road Traffic (Amendment) Act, 1978

At the commencement of the proceedings Counsel for the Defendant applied to have the complaint dismissed on the ground that there was excessive delay in bringing the complaint before the Court.

Garda Patrick Maher, the Complainant, and Mr. Michael O'Donnell District Court Clerk, gave evidence and their evidence is set out

as follows in paragraphs 4 and 5 of the Case Stated:-

"4. Garda Patrick Maher gave evidence to the following effect:-

(1) He said he was the Complainant in the present case. He said that the date of the alleged offence was the 25th of January 1985. He said that on the 9th day of July 1985 he had made out a complaint form which was lodged shortly thereafter. He said he had not been able to make a complaint on an earlier date because of the volume of work he dealt with.

(2) He said he was on motor cycle duty and dealt almost exclusively with alleged violations of the Road Traffic Acts This resulted in a very heavy work-load. He illustrated this by saying that over the previous twelve months he had made complaints resulting in the issue of approximately 1,800 summonses.

(3) He explained the procedure he used in all cases, namely, that once a month while on night-duty he would make out complaints for a certain number of offences. He said he would go through his notebooks and transfer the details of the various offences on to summons application forms which were then forwarded to the District Court Clerk. He said that in deciding on the number of complaints he made out on any one occasion he took into consideration the fact that if he made out too many complaints this might result in a large number of his cases being listed in Court on any one particular day.

(4) He said that after he had made a complaint in July 1985 in the present case it was a matter for the Court Clerk to issue a summons and allocate a return date. The summons was

served on the Defendant on the 14th day of December 1985.

5. Mr. Michael O'Donnell, District Court Clerk, gave evidence to the following effect:-

(1) He said he was a District Court Clerk involved in the issue of summonses. He said that in the present case a complaint was received by the District Court Clerk's Office on the 17th day of July 1985. He said that in all cases before the Court on the 13th day of January 1986 in which Garda Maher was the Complainant there had been a delay in issuing the summonses because he, Mr. O'Donnell, had questioned whether the complaints by Garda Maher of using mechanically propelled vehicles without insurance cover were in fact valid complaints.

(2) He had asked Garda Maher to produce further particular to assist him in deciding whether the complaints were valid. This resulted in all Garda Maher's summonses being delayed. Garda Maher had taken the view that the complaints were valid without the necessity of producing further particulars. Eventually, it was decided to issue the summonses in all cases.

(3) In the present case a summons was issued on the 4th da of November 1985. The earliest return date for the summons was the 13th day of January 1986 because of the heavy work-load in the Court."

The Defendant did not give evidence nor was any witness called to give evidence on his behalf.

On these facts the learned District Justice held that there had been undue delay in making the complaint which had been compounded by a further delay in issuing the summons. She state

that she was satisfied that the delay had prejudiced the Defendant and accordingly she ordered that the summons be struck out because of the delay.

When the case was argued before me on the 21st July, 1986, I was informed by Counsel that earlier in the month, on the 7th July, the Supreme Court had had before it an appeal in which the question of delay in bringing on a criminal trial had been considered, and while the Court had allowed the appeal, they had adjourned giving their reasons until a later date. In view of this I reserved my Judgment so that I would have the opportunity of considering the Supreme Court's reasons for their decision before giving it. The case in question was The State (at the prosecution of James O'Connell) .v. His Honour Judge Sean McDermott Fawsitt and The Director of Public Prosecutions. The Judgment of the Superme Court was given on the 30th July. There is a single Judgment, that of the Chief Justice, the other four members of the Court concurring.

I will give a brief summary only of the facts of the case as it is not necessary to set them out in detail since all I am concerned with is the legal principles on which the Court based its decision. The Prosecutor was returned for trial on the 8th July, 1982 before the sitting of the Cork Circuit Criminal Court charged with assault causing actual bodily harm, the offence being alleged to have taken place on the 25th January, 1981 Between the 2nd November, 1982 and the 19th June, 1984 the case was adjourned on a number of occasions on the application of The State, Counsel for the Prosecutor objecting each time. On no occasion during this period was the case actually listed for hearing. A number of further adjournments followed, the last one being an adjournment to the 30th May, 1985. At that date

the Prosecutor applied for a Conditional Order of Prohibition on the ground of the delay which had taken place.

A Conditional Order was granted. Murphy, J. refused to make the Conditional Order absolute. It is not necessary to go into his reasons for doing so as his decision was reversed by the Supreme Court. But the aspect of the case on which Murphy, J. was reversed was his application to the facts of the case of his conclusions on the law, which conclusions were accepted by the Supreme Court. At page 5 of his Judgment, the Chief Justice said:-

> "The Motion to make absolute that Order came before the Court on the 6th June 1985 and reserved Judgment was delivered in it on the 16th October 1985. The learned trial judge having considered a number of American decisions dealing with delay in providing a trial as well as a decision of the Privy Counsel in Bell .v. The Director of Prosecutions dealing with the Constitution of Jamaica, which provided an express right to a hearing in a criminal case within a reasonable time, quoted the decision of Gannon, J. in The State (Healy) .v. Donoghue 1976 I.R. as expressly approved of by this Court, and also dealt with the Judgment of this Court in the matter of Paul Singer (Number 2) 98 I.L.T.R. Having considered these various decisions the learned Judge stated as follows:
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> > "It seems to me, therefore, that the authorities have established that the Constitution guarantees to every citizen that the trial of a person charged with a criminal offence will not be delayed excessively or to express the same proposition in positive terms, that the trial will be heard with reasonable

> expedition ..... the nature of the delay must be considered as has already been pointed out, having regard to the circumstances of the case."

In my view, that is a correct, short summary of the true legal and constitutional position that a person charged with a criminal offence is entitled as part of his right to being tried in due course of law, to a trial with reasonable expedition."

In the light of this statement of the law it seems clear that what I have to decide in this case is whether the Defendant's right to a trial with reasonable expedition has been infringed. If it has been, he is entitled to have the charge against him dismissed.

At page 18 of his Judgment in O'Connell's case, Murphy, J. said:-

> "There is no fixed scale by reference to which reasonable expedition can be measured. Reasonable expedition or, its converse, excessive delay can only be determined having regard to all of the circumstances of a particular case and taking into account a variety of factors to which I have already made reference."

Murphy, J. had referred to these factors on page 13 of his Judgment but as he was dealing with an indictable offence the factors he referred to were relevant to a trial of that type of offence rather than to a summary trial in the District Court. However, his conclusions have a bearing on both types of trial.

> "At the end of the day the test will be whether in all the relevant circumstances reasonable expedition was achieved. It is, however, material to bear in mind that in reaching

that conclusion the Court has to recognise, as O'Higgins, C.J. pointed out in delivering the decision of the Supreme Court in the Criminal Law (Jurisdiction) Bill 1975, 1977 I.R. 129 that the phrase "due course of law" which imports the requirement of reasonable expedition itself "requires a fair and just balance between the exercise of individual freedoms and the requirements of an ordered society.""

In considering what are the relevant circumstances in the present case it seems to me that the first is the nature of the procedure in regard to summary offences. The procedure is initiated by a complaint which under Rule 29 of the District Cour Rules may be made to "a Justice, a Peace Commissioner or a Clerk" and must be made "within six months from the time when the cause of complaint shall have arisen but not otherwise" (see Section 10 paragraph 4 of the Petty Sessions (Ireland) Act 1851, as applied to cases of summary jurisdiction within the Dublin Metropolitan area by Section 21, subsection (2) of the Courts of Justice Act 1928). Pursuant to Rule 30 of the Rules a summons may then be issued by a District Justice in any case in which he has jurisdiction and by a Peace Commissioner or District Court Clerk in the cases in which they are authorised to do so by the rules.

There are accordingly two separate matters to be attended to successively in order to bring a summary ofence to trial, firstly, the making of the complaint, for which a time limit of 6 months is fixed by statute, and secondly, the issue of the summons, for which no time limit is fixed. In considering the question of delay it seems to me that each of these steps has to be considered separately. One has to consider first whether there was reasonable expedition in making the complaint, and then, provided the findin

is that there was, whether there was reasonable expedition in issuing the summons after the complaint was received.

Mr. White, on behalf of the Defendant, submitted that the delay in making the complaint was occasioned by Garda Maher arbitrarily determining when he would make it, and that it was no part of the function of a Garda to make such a determination. It seems to me that this criticism of Garda Maher goes too far. It was clearly up to him to make the complaint, so he had to determine when to make it; it follows that such determination was part of his function. And as to his determination being arbitrary, he appears to have followed a particular routine which he had adopted, and whether one agrees with it or not, it is difficult to say that in following it he was acting arbitrarily.

However, the real issue is whether, looking at the question objectively, one would have to conclude that there had not been reasonable expedition in making the complaint. And one has to take into account particularly that there is a time limit of six months fixed by statute. Can it be said that a complaint which was made within the limit was not made with reasonable expedition? In the absence of very special circumstances, it seems to me that it cannot. The legislature has prescribed a relatively short period for making the complaint, and once it is made within that period I consider that a Defendant's right to reasonable expedition has not been infringed. Were this not the case, one would be introducing a second time limit in regard to the making of complaints, a wholly undefined one based on a Defendant's right to reasonable expedition, which would create a serious element of uncertainty in the prosecution of summary offences. This would not be consistent in my opinion with maintaining "a fair and just balance between the exercise of

individual freedoms and the requirements of an ordered society" to quote again from the Judgment of O'Higgins, C.J. referred to by Murphy, J. in the passage from his Judgment in O'Connell's case which I cited earlier.

At the same time, I should not be taken as approving any avoidable delay in the matter of making complaints. It is clearly desirable that complaints should be made as rapidly as possible and the Garda Síochána should make it their aim in every case to see that this is done.

I now go on to consider whether there was an absence of reasonable expedition in the issue of the summons. The summons was not issued until approximately three and a half months after the complaint was received. The reason for the delay had nothing to do with this particular summons though it did relate to another summons against the Defendant, a summons for using a mechanically propelled vehicle without insurance cover, an offence alleged to have been committed at the same time and place as the offence which is the subject matter of the Case Stated. Mr. O'Donnell, the District Court Clerk, questioned the validity of the complaint and of other complaints in similar summonses and asked Garda Maher to produce further particulars to assist him in deciding whether the complaints were valid. Garda Maher took the view that such further particulars were unnecessary. It appears that Mr. O'Donnell eventually gave in and issued the summonses.

There is no suggestion that Mr. O'Donnell acted in any way which was not entirely proper. In questioning the validity of the complaints, he was conscientiously discharging the duties of his office. There was a genuine difference of opinion between himself and Garda Maher in regard to the validity of the complaints and this was the cause of the delay. In these circumstances was

there a lack of reasonable expedition? In my opinion there was not. The delay was not the result of inaction. It was caused by the kind of thing that can happen in any procedure - a dispute as to the validity of a particular document which was an essential part of the procedure. It is something that cannot be avoided and so is in my opinion excusable. Apart from this, the delay, which was of approximately three and a half months, could not of itself be said to be excessive.

Mr. White submitted that as the dispute related to an offence other than the one with which I am concerned, it did not justify the summons for that offence being held up. But this was not the sole offence with which the Defendant was charged. He was also charged with an offence which had been the subject of the dispute. Since it was reasonable that all the charges against him should be heard at the same time, I consider that the dispute did justify the delay in issuing the summons I am dealing with.

Two further matters arose in the course of the submissions. The first was the question of the Defendant being prejudiced as a result of the delay; and the second was as to the form of the Order made by the learned District Justice, being an Order striking out the summons, rather than dismissing it.

On the question of prejudice, I propose to say very little, as I am not satisfied that there was any prejudice. While the learned District Justice stated in her Judgment that she was satisfied that the delay had prejudiced the Defendant, there was no evidence to support such a finding. The Defendant did not give evidence nor was any witness called on his behalf. So there was no evidence from which an inference of prejudice could be drawn. In the circumstances it is not in my opinion a factor that arises for consideration.

As to the form of the Order, Mrs. Denham submitted that as the learned District Justice considered there had been excessive delay, the correct Order was to dismiss the summons. She pointed out that none of the circumstances which would entitle the District Justice to strike out under Order 66 of the District Court Rules was to be found in the case. In my opinion this submission is well founded but having regard to the conclusion I have reached that the learned District Justice should have heard the case, it is not necessary to consider it in detail.

For the reasons which I gave earlier, I consider that the learned District Justice was not correct in striking out the complaint against the Defendant on the ground of delay in bringing it before the District Court.

H Sloyan.
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