

O N A P P E A L

FROM THE HIGH COURT OF JUSTICE, TRINIDAD AND TOBAGO

IN THE MATTER of a committal for contempt of Court

B E T W E E N :

RAMESH LAWRENCE MAHARAJ

Appellant

- and -

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGORespondent

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CASE FOR THE RESPONDENT

TRANSCRIPT

1. This is an appeal, by special leave granted the 2nd February, 1976, from an order of Maharaj J., sitting in the High Court of Trinidad and Tobago, made the 17th April, 1975, committing the Appellant to prison for seven days for contempt of court. The order was made in the course of the hearing by Maharaj J. of a civil action, in which the Appellant, a barrister, appeared on behalf of the defendants.

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2. The law of Trinidad contains no provision for appeal to the Court of Appeal against either conviction or sentence for a contempt, but the Appellant by notice of motion dated the 17th April, 1975, applied to the High Court for relief alleging breach of the fundamental rights provisions of the Constitution of Trinidad and Tobago and, inter alia, seeking damages. The notice of motion was addressed to Maharaj J., and to the Respondent. On the same day, Braithwaite J., upon an ex parte application, made a conservatory order releasing the Appellant against his own recognisance of \$1,000 and fixing the trial of the motion for the 23rd April. The notice was served on the Respondent, by order, but it would appear that it was not served on Maharaj J. The substantive motion was duly heard by Scott J., on the 23rd July, 1975, who, after taking evidence, both on affidavit and

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viva voce, dismissed the motion. From this dismissal the Appellant appealed to the Court of Appeal, the appeal being pending.

3. Evidence of the events leading up to the committal was given, on affidavit and under cross-examination, by: Mr. Sinanan (the Solicitor instructing the Appellant on the 17th April); Mr. Scott (the clerk of the court); and, the Appellant. Extracts from the notebook of Maharaj J. were also exhibited. The events leading up to the committal were, it appears, spread over a period of four successive days:

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a) The 14th April 1975

The Appellant was engaged in an appeal before the Court of Appeal in Port of Spain, but had consolidated cases (Henry and Others v. Texaco Trinidad and another) listed for hearing before Maharaj J. in San Fernando. The Appellant was for the plaintiffs, and a Mr. Basdeo Maharaj held his brief for him. According to the Appellant, counsel appearing before Maharaj J. agreed to apply for an adjournment on the grounds that certain witnesses for the defendants were not present, and because retained counsel were in the Court of Appeal. Applications for adjournment were made and refused, and Maharaj J. dismissed the action, although the plaintiffs were in court. From the learned Judge's notes, it would appear that Mr. Basdeo Maharaj first said that documents were required from the defendants, but was unable to identify the documents. Mr. Basdeo Maharaj then said that an expert witness was absent. He was asked to give the name of the witness and say what efforts had been made to get him to attend, but was unable to give the witness's name. Maharaj J. then dismissed the action for want of prosecution.

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Upon the dismissal of Henry and Others v. Texaco Trinidad and Another, an action entitled Dindial v. Caroni Ltd. was called on. The Appellant was for the defendants and again Mr. Basdeo Maharaj held his brief. According to the Appellant, Mr. Basdeo Maharaj sought an adjournment on the grounds that witnesses for the defendants were not available. The applicant was refused. Mr. Basdeo Maharaj said he could not go on because he had signed the statement of claim. Maharaj J. then sent for the Appellant's wife, who was also a barrister and who was in another court. According to the Appellant, although she had not been retained by the defendants she was told she must represent them, and the action proceed. The evidence of

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10 Mr. Scott was that, although Mrs. Maharaj was sent for, she was holding the Appellant's brief. According to the Appellant, the plaintiffs' case was heard, two formal witnesses for the defence were called, and application was made for an adjournment to obtain other witnesses. The application was refused. Counsel addressed the court and Maharaj J. gave judgment for the plaintiff, dismissing a counter-claim.

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b) The 15th April 1975

20 The Appellant was still in the Court of Appeal but had a case called Harripersand v. Mini Max Ltd. before Maharaj J. in San Fernando. Again Mr. Basdeo Maharaj held his brief, which was for the defendants. Mr. Basdeo Maharaj told the learned judge that the defendants objected to him acting, and he was given leave to withdraw. The hearing proceeded with the defendants unrepresented. Evidence was given by two doctors, and thereafter the case was adjourned to the 17th April. According to Mr. Scott, the learned judge continued a part-heard case before rising.

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c) The 16th April 1975

30 Maharaj J. was sitting in chambers and the Appellant appeared before him on an assessment matter. The Appellant made application to the learned judge to disqualify himself from sitting in any proceedings in which the Appellant appeared. The application was made on the basis of the above-mentioned events of the 14th and 15th April, and because, in cases involving other counsel, adjournments had been granted. Maharaj J. refused the application. The Appellant said: "I submit that you have pursued an unjudicial course of conduct."

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d) The 17th April 1975

40 The case of Harripersand v. Mini Max Ltd. was resumed, the Appellant appearing. The Appellant applied for the recall of the two doctors for cross-examination. Maharaj J. refused the application. The following exchanges then took place, as recorded in the learned Judge's notebook:

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"R.Maharaj: Having regard to what I submitted this morning and what I submitted yesterday in the matter of Bachan I reserve

the right to impeach those proceedings.

Court: Are you suggesting that this Court is dishonestly and corruptly doing matters behind your back (because it is biased against you)?

R. Maharaj: I do not think this is the right place to answer that question. I do not think the question arises. But I say you are guilty of unjudicial conduct having regard to what I said yesterday.

Court: Mr. Maharaj, you are formally charged with contempt of Court and I now call upon you to answer the charge. 10

R. Maharaj: I am asking for an adjournment to retain a lawyer.

Application refused

R. Maharaj: I am not guilty. I have not imputed any bias or anything against Your Lordship.

Court: Mr. Maharaj, do you have anything to say on the question of sentence? 20

R. Maharaj: I want to consult Dr. Ramsahoye to whom I have spoken about this matter and as a result of those advice I appealed in the other matters.

Court: 7 days simple imprisonment."

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According to Mr. Sinanan, the Appellant, and Mr. Scott, the learned Judge, before asking his question, asked the Appellant to think carefully before answering the question that he was about to put. Mr. Scott said the learned Judge repeated his question when the Appellant answered as he did, and that there was a further exchange of words before Maharaj J. formally charged the Appellant. 30

pp.152-160

4. Braithwaite J. gave written reasons for granting the conservatory order. The learned Judge's reasons were that :

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a) The common law requires that a person charged with contempt is entitled to have the charge against him particularised. This charge had not been particularised. 40

p.159 1.17

b) The Constitution of Trinidad conferred upon a person charged with a criminal offence the right to be defended by counsel of his choice. This right had been denied to the Appellant.

10 5. Scott, J. delivered a written judgment. Although, strictly, his Lordship was concerned only with an application for redress for alleged breaches of fundamental rights conferred by the Constitution (in respect of which, by Section 6(1) of the Constitution, the application is made to the High Court), his Lordship dealt with the complaint in the round. It had been alleged, inter alia, on behalf of the Appellant that: the committal of a barrister for contempt was unprecedented; the circumstances were not such as to enable the Court to punish counsel summarily for contempt; with criminal contempt it was necessary for the specific offence to be stated to the alleged contemnor and that he be afforded an opportunity of answering the charge, but no specific offence had been stated, and no opportunity of answering had been given; and, that sworn evidence should have been taken.

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20 6. His Lordship first considered whether there had been contempt. Contempt existed where there was any conduct tending to bring the authority and administration of the Court into disrespect or disregard. To charge a Judge with injustice was a grievous contempt. His Lordship was satisfied on the clearest possible evidence that the Appellant had committed an act of contempt in the face of the Court. Further, it was clear that the Court was entitled, in the circumstances, to proceed and punish summarily for contempt. It was certainly the case that, when a contemnor was being dealt with summarily, he must be informed of the charge and afforded an opportunity of answering it. But, on the authorities, no special formulation of the charge need be put, so long as the specific offence was brought home to the contemnor. It was clear, on the evidence, that the Appellant knew the specific offence with which he had been charged, and was afforded ample opportunity to answer it.

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50 7. The Appellant complained that he was refused an adjournment and denied the right to be represented by counsel, claiming that the fundamental rights provisions of the Constitution had thereby been breached. But the fundamental rights were largely derived from the common law, which the Constitution sought to continue and protect. In his Lordship's view, the law of contempt of Trinidad was the common law of contempt. Under such law the procedure was summary, instant and swift, and the contemnor was not as of right entitled to counsel or any adjournment. The Phillimore Report had

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recommended changes in the law in these two reports, but the law of Trinidad was unchanged. His Lordship concluded that he had no jurisdiction to entertain the motion.

8. It is respectfully submitted that the Appellant committed a grave contempt of court; that he was sufficiently aware of the nature of the charge against him; that he was given sufficient opportunity to answer the charge; that he was not entitled to an adjournment or to counsel; that, in all the circumstances, the penalty imposed was a right and proper one; and that Scott J. was correct in the conclusions he reached. 10

9. It is respectfully submitted that the conviction and sentence ought to be upheld for the following, among other

R E A S O N S

- (1) BECAUSE the Appellant had committed a grave contempt of court 20
- (2) BECAUSE the charge was sufficiently formulated to the Appellant and he had ample opportunity to answer it
- (3) BECAUSE, in the circumstances, the Appellant was not entitled to an adjournment, either for the purposes of retaining counsel or otherwise.

GERALD DAVIES

IN THE PRIVY COUNCIL

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B E T W E E N :

RAMESH LAWRENCE MAHARAJ

Appellant

- and -

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO

Respondent

CASE FOR THE RESPONDENT

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