Privy Council Appeal No. 7 of 1976

Ramesh Lawrence Maharaj – – – – – – *Appellant*

v.

The Attorney General for Trinidad and Tobago – – *Respondent*

FROM

THE HIGH COURT OF JUSTICE OF THE SUPREME COURT OF JUDICATURE FOR TRINIDAD AND TOBAGO

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 27th JULY 1976

Present at the Hearing:

LORD SALMON

LORD EDMUND-DAVIES

LORD FRASER OF TULLYBELTON

[*Delivered by* LORD SALMON]

This is an appeal by special leave against an order of the 17th April 1975 made by the Hon. Mr. Justice Sonny Maharaj against the appellant, a practising member of the Bar of Trinidad and Tobago, committing him to prison for seven days for contempt of Court. No point was taken on the hearing of the Petition for special leave that such an appeal does not lie to Her Majesty in Council, nor was any such point taken in the respondent's Case. The point was however raised for the first time as a preliminary objection at the hearing of this appeal. Their Lordships can deal with it quite shortly.

It was conceded on behalf of the respondent that the point would have been unarguable before 1962, since it has long been well settled that it is competent for Her Majesty in Council to entertain appeals against orders of Courts of Record overseas imposing penalties for contempt of Court. (*Ambard v. A.G. for Trinidad and Tobago* [1936] A.C. 322.) Their Lordships consider that the point is equally unarguable now for they can discover nothing in the Trinidad and Tobago Supreme Court of Judicature Act 1962 or the Trinidad and Tobago (Procedure in Appeals to Privy Council) Order in Council 1962 which touches Her Majesty's powers in Council to entertain appeals against orders of Courts of Record overseas imposing penalties for contempt of Court.

The appellant was engaged as Counsel in a case in the Court of Appeal which began on the 2nd April 1975 and was estimated to last five days. The appellant had accepted a number of briefs to appear before Maharaj J. for the week beginning on Monday 14th April. He had thus allowed a margin of seven days in case the appeal ran beyond the five days in which it was expected to be concluded. The appeal however lasted until the 15th April 1975 and the appellant was unable to appear before Maharaj J. until the 16th April. The appellant was briefed for the plaintiffs in two

consolidated actions which were in the list for hearing on the 14th April 1975. Neither the appellant (who was still engaged in the Court of Appeal) nor Counsel who had been briefed for the defendant were in Court. Mr. Basdeo Maharaj held the appellant's brief and Mr. Frank Misir, Q.C., held the briefs of Counsel for the defendants. Mr. Basdeo Maharaj and Mr. Misir made a joint application for an adjournment on the ground that witnesses for Texaco Trinidad Ltd. (one of the defendants) were not available because of a strike at that defendant's refinery which had been completely shut down and because of the engagement of Counsel in the Court of Appeal. Further Mr. Basdeo Maharaj stated that Texaco Trinidad Ltd. had failed to disclose certain material documents and that an expert witness for the plaintiffs was not available. It appears that Mr. Basdeo Maharaj was unable to identify the witness or the document and that although, literally, he held the appellant's brief he knew little, if anything, of its contents. The learned Judge refused the application and dismissed the plaintiffs' claim without giving the plaintiffs who were personally in Court any chance of being heard.

After the dismissal of the consolidated actions, the case of *S. Dindal v. Caroni Ltd.* was called on for hearing. The appellant was briefed to appear for the defendants. Mr. Basdeo Maharaj then applied for an adjournment on the ground that besides the appellant being engaged in the Court of Appeal, the witnesses for Caroni Ltd. were not available because of a strike at Caroni Ltd.'s works which had been shut down. Mr. Seunath, the Counsel who held the brief for Mr. Allan Alexander on behalf of the plaintiff, informed the Judge that Mr. Alexander was unable to be present. Mr. Basdeo Maharaj told the learned Judge that he could not appear for the defendants because he had signed the statement of claim for the plaintiff. There was an application for an adjournment which was refused. The learned Judge then sent for the appellant's wife, who was also a member of the Bar, then appearing in another Court. When the appellant's wife appeared before Maharaj J. in answer to his summons, he took what appears to their Lordships to be a most strange and unfortunate course. He informed her that the case must proceed and that she must represent Caroni Ltd. even though she had not been retained to do so nor had any instructions from them. At the end of the case for the plaintiff, the appellant's wife applied for an adjournment on the ground that owing to the strike at Caroni Ltd. it was impossible to have process served on the defendants' witnesses at their place of work and she had no other address for them. The learned Judge refused the application. Two formal witnesses were called for the defendants. It was then about 1 p.m. It was the normal practice of the Court to sit in the morning of each working day at about 9 a.m. and rise between 12.30 and 1 p.m. The appellant's wife at about 1 p.m. again applied for an adjournment to the following day in order to give the defendants the opportunity of finding the driver of one of the vehicles and such other witnesses as they could. This application was also refused and in spite of the hour, the learned Judge called upon the appellant's wife to address the Court. This she did as best she could in the circumstances. Counsel for the plaintiff then addressed the Court. Judgment was entered for the plaintiff and the defendants' counterclaim was dismissed. The hearing was completed at 2 p.m.—one hour later than the Court normally sat.

Their Lordships doubt whether the appellant's clients left Court that day without feeling that they had received something less than justice.

We know from Maharaj J.'s written reasons given on the 20th July 1976 for his decision to commit the appellant for contempt that under the system which prevailed in April 1975 and had been introduced as an experiment to avoid waste of judicial time, eight or ten actions were fixed to be heard on the Monday in each week. " It was the duty of the Court

to get on with what it could on the Monday and allocate days later in the week for the hearing of the others" which were not settled. Their Lordships recognise how important it is not to waste judicial time. But if this can be avoided only by finding against a party without giving him a fair chance of being heard, then such a price for saving judicial time is far too high.

Earlier on the 14th April in the case of *Harripersad v. Mini Max Ltd.* Mr. Archibald, Q.C., appearing for the plaintiff applied for an adjournment on the ground that his witnesses were not available on that day. He was supported in this application by Mr. Basdeo Maharaj who was holding the appellant's brief for the defendant on the ground that the defendant's witnesses were also not available. The appeal in which the appellant was appearing was drawing to its close and indeed was completed on the following day, Tuesday the 15th April. It is perhaps a pity that *Harripersad v. Mini Max* was not adjourned until after 15th April as it might well have been. This would have enabled the appellant to appear for his clients and the unfortunate occurrences of the 17th April would probably have been avoided. Another case listed for hearing on the 14th April in which the appellant was not engaged was, on an application for an adjournment, adjourned until Friday 18th April. On the 15th April when *Harripersad v. Mini Max Ltd.* was called on for hearing, Mr. Basdeo Maharaj informed the learned Judge that the defendants objected to his representing them and that the appellant was still engaged in the Court of Appeal. Nevertheless the case was called on and two doctors gave evidence for the plaintiff whilst the defendants were unrepresented. At 12.30 p.m. the learned Judge said that he had another engagement and adjourned the hearing until Thursday the 17th April.

The case upon which the appellant had been engaged in the Court of Appeal having finished on the 15th April, the appellant appeared before Maharaj J. in chambers on the 16th April in order to conduct certain other cases before him. The appellant was, perhaps not unnaturally, very displeased that in the two cases to which reference has been made, judgment had been given against his clients without their having had any reasonable opportunity of being heard. He was a comparatively young man, aged thirty-one years, and had been called eight years previously. He recited what had occurred on the 14th April and then tactlessly and no doubt discourteously asked Maharaj J. to disqualify himself from taking any further cases in which he (the appellant) was engaged on the ground that the Judge had behaved unjudicially on the 14th April. The learned Judge refused his application and went on to hear two cases in which the appellant was briefed and appeared and then adjourned. It is to be observed that the learned Judge did not on the 16th April suggest that the appellant was in contempt of Court for anything which he had said on that day, although he did say that the appellant had abused his privileges as a barrister.

On the 17th April the hearing of *Harripersad v. Mini Max Ltd.* was resumed. The appellant then applied for the two doctors who had given evidence for the plaintiff on the 15th April (whilst the defendants were unrepresented) to be recalled so that he might have the opportunity of cross-examining them on behalf of the defendants. His application was refused. This, after what had occurred on the 14th April, may have seemed to the appellant to be the last straw. The appellant then repeated in open Court what he had said the previous day and stated that he exercised the right to impeach the entire proceedings, by which he presumably meant that he intended to appeal.

The learned Judge then took the curious course of writing out the following question and then putting it to the appellant:

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

The appellant had never said or suggested that the learned Judge had ever done anything corruptly or dishonestly. He had complained that on the 14th April the learned Judge had entered judgment against his clients without giving them any reasonable opportunity of being heard and that this amounted to unjudicial conduct. Their Lordships do not desire to express any view about these matters which are under appeal save that there may be circumstances under which a Judge who gives judgment against a party without giving him a proper opportunity of putting forward his own case could be regarded as acting unjudicially. Their Lordships have heard of such cases (rare though they be) in which judges have fallen into this error through undue zeal to get through their lists expeditiously—but never through dishonesty or corruption. Some judges may appear occasionally to grant the applications for an adjournment more favourably when made by some Counsel than by others—but, again, never corruptly or dishonestly.

The appellant was no doubt taken aback when the judge posed him the question to which reference has been made. He answered:—

"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."

This again was a very tactless answer. He may have thought that the learned Judge was trying to put words into his mouth which he had never uttered or suggested. Even so, it would have been far wiser to reply "Of course not, my Lord". Their Lordships are satisfied however that the appellant did not by his answer impute any corruption or dishonesty against the learned Judge.

The dialogue then went as follows:—

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

The appellant: "I am asking to have an adjournment to retain a lawyer."

Application refused.

The appellant: "I am not guilty. I have not imputed any bias or anything against your Lordship."

The learned Judge: "Mr. Maharaj, do you have anything to say on the question of sentence?"

The appellant: "I want to consult Dr. Ramsahoye to whom I have spoken about this matter and as a result of whose advice I appealed in the other matters."

The learned Judge: "7 days simple imprisonment."

The formal Court order was in the following terms:

SAMDAYE HARRIPERSAD — Plaintiff

and

MINI MAX LIMITED — Defendant

Dated the 17th day of April 1975

Before The Honourable Mr. Justice Maharaj

WHEREAS at a Sitting of the High Court of Justice of Trinidad and Tobago held at San Fernando Before His Lordship The Honourable Mr. Justice Sonny Maharaj on Thursday the 17th day of April, 1975, Mr. Ramesh Lawrence Maharaj, Counsel for the above-named Defendant said that the Court was guilty of "unjudicial conduct" in matters in which he was engaged.

> This Court being of the opinion that Counsel has been guilty of gross contempt of Court DOTH ORDER that the said Ramesh Lawrence Maharaj do stand committed to the Royal Goal [sic] for his said contempt for a term of seven (7) days simple imprisonment.
>
> (s) S. Cross
> Assistant-Registrar
> San Fernando:

" Unjudicial conduct " covers a very wide spectrum from instances in which the judge has asked far too many questions or by an excess of zeal for speedily disposing of his list has prevented one side or the other or both from properly presenting their case—to instances in which a judge has acted dishonestly or corruptly.

In the written reasons given by the learned Judge for his decision he more than once referred to what he described as " a vicious attack on the integrity of the Court " by the appellant. Their Lordships are satisified that the learned Judge mistakenly persuaded himself that the appellant had made such an attack upon him. There can be no doubt that that is the contempt with which the learned Judge intended to charge him and for which he committed him. He could hardly otherwise have contemplated adopting the drastic and most unusual course of sending Counsel to prison. Their Lordships would echo the words spoken by Lord Goddard in delivering the judgment of the Board in *Parashuram Detaram Shamdasani v. King-Emperor* [1945] A.C. 264 at p.270:

> " Their Lordships would once again emphasize what has often been said before, that this summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised, and to use it to suppress methods of advocacy which are merely offensive is to use it for a purpose for which it was never intended."

In charging the appellant with contempt, the learned Judge did not make plain to him the particulars or the specific nature of the contempt with which he was being charged. This must usually be done before an alleged contemner can properly be convicted and punished (*Pollard's case* (1868) 2 L.R.P.C. 106). In their Lordship's view, justice certainly demanded that the learned Judge should have done so in this particular case. Their Lordships are satisfied that his failure to explain that the contempt with which he intended to charge the appellant was what the judge has described in his written reasons as " a vicious attack on the integrity of the Court " vitiates the committal for contempt. Had the learned Judge given these particulars to the appellant, as he should have done, the appellant would no doubt have explained that the unjudicial conduct of which he complained had nothing to do with the judge's integrity but his failure to give the appellant's clients a chance of being heard before deciding against them.

Their Lordships would only add that although the law does not require that anyone charged with contempt in the face of the Court shall necessarily be given the opportunity of consulting solicitors or Counsel before he is dealt with, their Lordships think it unfortunate that in this case the learned Judge, in his discretion, refused the appellant's request for an opportunity of consulting Dr. Ramsahoye, a senior member of the Bar who no doubt would have given the appellant excellent advice and also perhaps have persuaded the learned Judge from falling into error.

Their Lordships have humbly advised Her Majesty to allow the appeal.

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In the Privy Council

RAMESH LAWRENCE MAHARAJ

v.

THE ATTORNEY GENERAL FOR TRINIDAD AND TOBAGO

DELIVERED BY

LORD SALMON

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