

IN THE JUDICIAL COMMITTEE

27, 1980

OF THE PRIVY COUNCILON APPEAL FROM THE COURT OF APPEALOF TRINIDAD AND TOBAGO

B E T W E E N : -

PATRICK CHOKOLINGO

Appellant

- and -

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGORespondent

CASE FOR THE RESPONDENT

1. This is an appeal from the judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali C.J., Corbin J.A., and Kelsick J.A.) dated the 28th December, 1978 which dismissed the Appellant's appeal from the judgement of Ulric Cross J. in the High Court of Justice dated the 28th April, 1975, dismissing the Appellant's Notice of Motion filed on the 31st January, 1975 claiming relief under the Constitution of Trinidad and Tobago, being the Second Schedule of the Trinidad & Tobago (Constitution) Order in Council 1962 (hereinafter referred to as the "former Constitution").

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2. The Respondent was the first named Respondent to the Notice of Motion but was not named as a Respondent to the Appellant's Notice of Appeal to the Court of Appeal. The Respondent in the Court of Appeal was the Trinidad and Tobago Law Society.

Nevertheless that Notice of Appeal was served upon the Respondent and the Attorney General appeared by counsel and argued before the Court of Appeal. In the course of argument in the Court of Appeal Counsel for the Appellant expressly stated that the Appellant did not seek any relief against the Attorney General. By an Order dated 30th October, 1979 the Judicial Committee of the Privy Council granted leave to the Attorney General to intervene in this appeal. Section 13 of the Supreme Court of Judicature Act 1962 provides as follows :-

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"In any action or proceedings brought by any person alleging that any provisions of section 1, 2, 3, 4, 5 and 7 of the Constitution has been, is being or is likely to be contravened in relation to him, the High Court shall give notice of the question arising in such proceedings to the Attorney General who shall be entitled as of right to be heard either in person or by counsel, notwithstanding that the State is not a party to the action or proceedings".

By an Order dated the 1st April 1980 the Judicial committee of the Privy Council substituted the Attorney General as Respondent to this Appeal in place of the Trinidad and Tobago Law Society ("The Law Society")

3. The Notice of Motion claimed relief under Section 6 of the former Constitution which Section provides for the enforcement of protective provisions of the Constitution as follows:-

"6. (i) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of the foregoing sections or section 7 of this Constitution has been, is being, or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available; that person may apply to the High Court for redress. 10

(ii) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of sub-section 1 of this section; and 20

(b) to determine any question arising in the case of any person which is referred to it in pursuance of sub-section 3 thereof, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of, any of the provisions of the said foregoing sections or section 7 to the protection of which the person concerned is entitled". 30

(3)

(4)

(5)

4. The relief claimed by the Appellant in his Notice of Motion was as follows:-

(a) An Order declaring that the Order made against him by the High Court in exercise of its criminal jurisdiction in proceedings No. 1218 of 1972 is unconstitutional, null void and of no effect; 40

(b) A further Order declaring that the imprisonment of the Applicant suffered under the said Order was illegal and a violation of the human rights and fundamental freedoms guaranteed to the Applicant by the Constitution of Trinidad and Tobago and in particular by section 1 thereof;

(c) A further Order directing the Respondent the Trinidad and Tobago Law Society to pay to the Applicant such damages as the Court may assess to have been suffered by the Applicant by his wrongful imprisonment under the said Order and a further Order that costs in the sum of \$ 11,369.27 paid by the Applicant to the Trinidad and Tobago Law Society be repaid by the said Society to the Applicant; 50

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(d) Such further or other Order as the justice of the case may require;

(e) An Order that the Trinidad and Tobago Law Society do pay the costs of these proceedings.

5. The Respondent submits that the following principal issues are raised by this appeal;

(1) Whether or not the matters of which the Appellant complains can be regarded as judicial errors, constituting a deprivation of due process of law:

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(2) Whether or not redress can be claimed under Section 6 of the former Constitution (now Section 14 of the Constitution of the Republic of Trinidad and Tobago) against any respondent other than a public authority or the Attorney General on behalf of the State :

(3) Whether or not a private individual has locus standi to make application to the High Court to commit for contempt of court where that contempt does not relate to proceedings to which he is a party or to any proceedings:

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(4) Whether or not the refusal by the Attorney General to apply to commit for contempt has any effect at all upon the locus standi of the private individual to so apply:

(5) Whether or not "scandalising the Court" without reference to particular proceedings is or is not obsolete in Trinidad and Tobago:

(6) Whether or not the article complained of constituted contempt of Court:

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(7) Whether or not there were circumstances of delay by the Appellant in claiming constitutional relief or in failing to appeal against the committal order which called for an explanation by him.

p.11 - 12 6. The Proceedings No. 1218 of 1972 had been commenced by the Law Society in the High Court of Justice by an Application to the Court for leave to issue a Writ of Attachment against or for an Order for the committal of the Appellant and one Ajodha Singh. By p.22 an Order of Achong J. dated 12th June, 1972 the Law Society was granted leave to issue and make application for such Writs on the ground of the alleged contempt of court by the Appellant and Ajodha Singh in publishing in the issue of the newspaper known as "The Bomb" for p. 7 - 10 the 26th May, 1972 an article under the heading "The Judge's Wife".

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p.23 7. Pursuant to that leave application was made by the Law Society in the High Court to Hassanali J. for the attachment or committal of the Appellant and Ajodha Singh. The Appellant was represented by leading and p.27 junior counsel at the hearing. His Counsel initially took three points by way of preliminary objection namely:

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(1) That under the provisions of the Trinidad and Tobago Law Society (Incorporation) Act No. 29 of 1969 the Law Society had neither the capacity nor the power to bring the motion;

(2) That the Law Society had adopted the wrong procedure;

(3) That the evidence before the Court was insufficient to identify the Appellant as the editor of the newspaper "The Bomb" of the 26th May, 1972.

8. The preliminary objections having been over-ruled affidavit evidence was put in by the Appellant which in its terms admitted - 10

(i) That the Appellant was the editor of "The Bomb" newspaper of the 26th May, 1972;

(ii) That the Appellant had been advised that the article complained of was a contempt of court; and

(iii) That the Appellant accepted that the article amounted to a contempt of court.

9. Further leading Counsel for the Appellant conceded that the publication was a contempt of court. Notwithstanding such concession it is apparent from the judgment of Hassanali J. that very full and detailed consideration was given to all the relevant authorities, which were of assistance to him in coming to his conclusion as to whether or not contempt of court had been proved. The Learned Judge concluded that the short story amounted to a contempt of court because of the probability that the readers of the newspaper would get the impression that the reference to bribery in the short story was a reference to the Judges of Trinidad and Tobago. As a result he concluded that such an allegation would tend to bring the Courts and the Administration of Justice into disrepute and public confidence in the Administration of Justice would be impaired or damaged. 20 30

p.41 10. The Appellant was committed to prison for 21 days without hard labour and Ajodha Singh was ordered to pay a fine of \$500, or in default thereof to be committed to prison for 21 days without hard labour. In fact the Appellant served 12 days in prison being released under remission from the State (Crown). 40

11. Section 1 of the former Constitution provides as follows :-

"1. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely -

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law; 50

- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i) Freedom of thought and expression;
- (j)
- (k) Freedom of the press. "

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In his Notice of Motion the Appellant suggested that the Order committing him to prison had contravened Section 1(a), Section 1(i) and Section 1(k) of the Constitution by in argument before Ulric Cross J. the only Constitutional deprivation complained of was the deprivation of liberty without due process of law. It was argued for the Appellant that due process of law had not been accorded to him because contempt by scandalising the Court was now obsolete. Secondly, that if such contempt still existed it could only be a contempt if related to particular proceedings. Thirdly, that the content of the short story amounted only to a criticism of a Judge as a private individual and not to the criticism of judges or a judge as a Court. Fourthly, that contempt proceedings should be brought by the Attorney General as the Law Society had no locus standi. Cross J. rejected those arguments and found that "scandalising the Court" was a form of contempt of court which was at all times and still is "a part of the law of Trinidad and Tobago"; it was certainly in force at the commencement of the Constitution; the offence was justifiable by Hassanali J. who had the power to commit the Appellant to prison if he thought fit, for what in the opinion of Cross J. was a clear contempt. Further, by inference Cross J. found that the Law Society was competent to initiate contempt proceedings.

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12. The Appellant appealed to the Court of Appeal and by Notice of Appeal and by Particulars delivered of his grounds of appeal the Appellant contended that the publication was not a contempt of court, that there was no offence committed by the publication and that therefore there was a denial of liberty without due process. The Particulars raised the contention that there had also been a deprivation of the fundamental right of freedom of thought and expression and of the right to the freedom of the press but the latter two grounds were not argued before the Court of Appeal.

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13. Hearing of the Appellant's appeal began on the 8th November, 1977 and it was concluded on the 24th November, 1977, but the Court of Appeal reserved its judgment until the outcome of the case of Maharaj v. The Attorney General of Trinidad and Tobago 1978 2 W.L.R. 902, which was at that time pending hearing by the Judicial Committee of the Privy Council. In fact for reasons not material to this appeal the Court of Appeal heard the Appellant's appeal de novo between the 9th and 12th October, 1978 (and after the judgement of the Board was delivered in Majaraj v. Attorney General (supra)). Three grounds were argued before the Court of Appeal; (i) that the Law Society was not authorised by its constitution to take proceedings to commit the Appellant for contempt in respect of the short story published; (ii) that if the Law Society was so authorised its motion to commit the Appellant for contempt should not have been entertained because the Attorney General had declined to take any proceedings against the Appellant and also because the Law Society did not and indeed could not allege that its interest as a party to litigation had been affected; and (iii) the short story did not constitute a contempt of court and accordingly, the Appellant suffered imprisonment for an offence without any evidence to support it, and was thereby deprived of his right to be presumed innocent until proved guilty according to law as prescribed by Section 2 (f) of the Constitution.

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14. Sir Isaac Hyatali C.J. followed, it is submitted correctly, the distinction drawn by Lord Diplock in Maharaj v. Attorney General (supra) between errors of substantive law and errors in procedure amounting to a failure to observe the rules of natural justice. It is submitted that the Chief Justice and other judges in the Court of Appeal correctly concluded that the grounds relied upon by the Appellant, if proved, could only amount to an error of substantive law and would not constitute a deprivation of due process of law. The specific deprivation of due process relied upon by the Appellant in the Court of Appeal was the particularization of due process specified in Section 2 (f) of the former Constitution namely to: (f) "Deprive a person charged with criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or the right to a reasonable bail without just cause;" It was argued that imprisonment resulting from an error of substantive law had the effect of depriving the Appellant of the presumption of innocence. The Learned Chief Justice rejected the submission that the substantive error of law if proved would have the effect of depriving the Appellant of the presumption, rejected the submission that the Law Society was not competent in the proceedings and firmly concluded as a matter of law that the article complained of did constitute a contempt of Court. Further, the Learned Chief Justice upheld the submission made by the Law Society that it was not the proper party to an application for redress under Section 6 of the Constitution. The Chief Justice held that the only proper party to a claim in public law for constitutional redress was the State or an arm of the State or a public authority endowed by law with coercive powers.

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15. Kelsick J.A. agreed with the Learned Chief Justice that the instant appeal raised allegations of errors of substantive law which did not fall within the ratio decidendi of the case of Maharaj v. Attorney General (supra.). He also considered at some length the submission made by the Appellant that since the Attorney General had not taken proceedings himself for the committal of the Appellant the Law Society had no locus standi to do so. The Appellant had sought support for this argument in the case of Gouriet v. The Union Post Office Workers and Others 1978 A.C. 435, a case which had been concerned with the right of a private individual to claim an injunction to restrain the commission of criminal offences and which had in no way been concerned with the right of an individual to apply to the Court for committal for contempt of court. The Learned Judge of Appeal, it is submitted correctly rejected the case of Gouriet (supra) as a relevant authority on this issue and rejected the argument, and held that the offence of contempt of court by scandalizing the Court was an offence in existence in Trinidad and Tobago. So far as the contention that the Appellant had been deprived of the presumption of innocence was concerned the Learned Judge of Appeal expressed the view that the presumption of innocence was in any event displaced by the content of the publication.
16. Unlike the Chief Justice and Corbin J.A., Kelsick J.A. did however accept part of the Appellant's argument in that he came to the conclusion having considered various authorities, and in particular the speech of Lord Diplock in Attorney General v. Times Newspapers Limited 1974 A.C. 273 that the summary remedy for committal was only available where the contempt related to a specific case of particular proceedings.
17. Corbin J.A. in a full and reasoned judgement in effect agreed with the Chief Justice and Kelsick J.A.
18. The Respondent submits as follows in relation to the principal issues set out in paragraph 5 above.
- As to 5 (1)
- That if valid, the arguments raised by the Appellant would demonstrate that the Order of Hassanali J. was upon the basis of substantive errors of law. It is submitted that the presumption of innocence is an evidential presumption to be accorded during a "fair hearing". It is no less accorded where a substantive error of law is made as to the ingredients of the offence charged than in any other trial. If the accused is innocent of the offence charged because the facts alleged do not constitute an offence, it is submitted the presumption of innocence adds nothing to his state of "innocence".
- As to 5 (2)
- Since the protective provisions are afforded against the contravention of constitutional rights and freedoms by the State or some other public authority endowed by law with coercive powers the State (the Attorney General) or the relevant public authority are the only possible

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parties. Stanley Abbott v. The Attorney General of Trinidad and Tobago (Privy Council Appeal No. 32 of 1978 Judgement delivered on 27th November, 1979 at page 7). By virtue of section 13 of the Supreme Court of Judicature Act 1962 (para. 2 above), the Attorney General has a right to intervene.

As to 5 (3) and 5 (4)

10 It is submitted that every person has a sufficient interest in the due administration of justice to entitle him to apply to commit another for contempt of court. Victims of criminal offences (including criminal contempt) are invariably the initiators of such applications, but where the victim is the public at large, it is submitted any member of the public may apply. Such right is no way dependent upon the fiat of the Attorney General and the decision of the Attorney General not to apply on behalf of the public at large cannot affect the individual's right. Lord Cross of Chelsea stated in Attorney General v. Times Newspapers Ltd. (1973) 3 All. E.R. 54 at pg. 87 :

20 "It is I think most desirable that in civil as well as in criminal cases anyone who thinks that a criminal contempt of court has been or is about to be committed should, if possible, place the facts before the Attorney General for him to consider whether or not those facts appear to disclose a contempt of court.....the fact that the Attorney General declines to take up the case will not prevent the complainant from seeking to persuade the court that notwithstanding the refusal of the Attorney to act the matter complained of does in fact constitute a contempt of Court of which the Court should take notice".

As to 5(5) and 5(6)

30 "Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a contempt of court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke L.C. characterised as "scandalizing a Court or a Judge". (Lord Russell of Killowen C.J. in R. v Gray 1900 2 Q.B. 36 cited with approval in Ambard v. Attorney of Trinidad and Tobago 1936 A.C. 322 at pg 334). It is submitted that there was clear evidence for the application of the law as laid down by Lord Russell of Killowen. Further, the unanimous judicial opinion at each stage of these proceedings was that "scandalising the court " existed as a class of contempt and that the article in "The Bomb" constituted such contempt".

40 Such contempt can be committed without reference to any particular proceedings and the summary remedy for committal is available although no contempt has been committed in the face of the Court, or in respect of a pending case (R. v. Gray (supra) also in Re. Tushar Kanti Ghosh AIR. 1935 Calcutta 419).

It was a form of contempt of Court which existed at the Record commencement of the Constitution and continued to exist as part of the law of Trinidad and Tobago by virtue of section 3 of the former Constitution and section 6 of the Constitution of the Republic of Trinidad and Tobago.

10 It is further submitted that in considering contempt of this nature the opinions of the judges of the place where the administration under attack is situated are vitally important. (McLeod v. St. Aubys 1899 A.C. 549 at pg 561 and Ambard v. Attorney General of Trinidad and Tobago (supra) at pg. 335).

As to 5 (7)

20 Ulric Cross J., (it is submitted correctly) held that the right to claim redress under section 6 of the former Constitution existed notwithstanding the existence of other remedies. Nevertheless, it is submitted that where there are alternative remedies which have not been utilised and, as in the instant case, facts disclosing delay in applying for constitutional relief, the High Court should be astute to any possible abuse of these important provisions, safeguarding as they do fundamental rights and freedoms, and where as here there has been delay, the Appellant should provide satisfactory explanations for such delay. No explanation was given by the Appellant.

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19. The Respondent accordingly submits that this appeal should be dismissed for the following (among other)

R E A S O N S

- (1) BECAUSE the Court of Appeal were right.
- 30 (2) BECAUSE no deprivation of due process of law was alleged or shown.
- (3) BECAUSE the Appellant was rightly convicted of Contempt of Court and the application was properly made by the ~~Respondent~~. *Trinidad & Tobago Law Society.*

GEORGE NEWMAN.

JEAN PERMANAND.

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL
OF TRINIDAD AND TOBAGO

B E T W E E N : -

PATRICK CHOKOLINGO

Appellant

- and -

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

Respondent

CASE FOR THE RESPONDENT

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