IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Judicial Review No: HBJ 11 of 2018

BETWEEN : **RAJNEEL ROHITESH SINGH** of Tomuka, Lautoka

APPLICANT

A N D: **THE FIJI POLICE FORCE** of 4 Gladstone Road, Government Buildings, Suva

1st RESPONDENT

A N D: **THE ATTORNEY GENERAL OF FIJI** Suva

2nd RESPONDENT

Counsel : Applicant In Person
Mr Vishal Chauhan for the Respondents
Date of Hearing: 20 June 2019
Date of Ruling : 05 November 2019

RULING

INTRODUCTION

1. I have before me now an application filed by the Office of the Attorney-General on 25 February 2019 to strike out an application seeking leave to issue judicial review proceedings (**"leave application"**).

2. The striking out application is made pursuant to Order 18 Rule 18(1) (a) of the High Court Rules 1988.

3. The leave application in question was filed by Rajneel Rohitesh Singh (**"Singh"**) on 17 December 2018 pursuant to Order 53 Rule 3(2) of the High Court Rules 1988. It is supported by an affidavit sworn by Rajneel Rohitesh Singh on 03 December 2018.

BACKGROUND

4. On 20 June 2019, the date of the hearing, I granted leave to Singh's wife (**"Mrs. Singh"**) to speak on his behalf in Court.

5. The courts of law in the common law world would normally allow a *McKenzie Friend* to assist a self-represented litigant in person only in so far as to prompt, take notes and quietly give advice, but never to address the Court directly on any matter (**McKenzie v McKenzie** (1970) 3 W.L.R. 472).

6. However, in this instance, I took into account that Singh had a veritable throat condition as confirmed by the medical reports he produced. He could barely speak. I also took into account that I was merely dealing with a striking out application pursuant to Order 18 Rule 18(1) (a) which requires no evidence.

7. Singh used to operate an internet shop in Lautoka. Sometime in 2015, he came across some highly sensitive emails in one of his computers which related to "government stabilization", as Mrs. Singh puts it.

8. Singh would inform Mr. Aiyaz Saiyed Khaiyum about his discoveries, who then arranged for a meeting between Singh and the Commissioner of Police. Singh later met the Commissioner at a hotel in Nadi where he turned over all emails and "other documents".

9. The very next day after that meeting with the Commissioner, Singh was abducted and taken to a remote spot in Nabou where he was tortured and abandoned. A passing motorist spotted him and helped him contact Mrs. Singh.

10. Singh lodged a complaint to the Police in 2015.

11. He would follow up on this in 2016, 2017 and lastly, on 11 November 2018.

12. One way or another, Singh appears to have formed the view that Mr. Aiyaz Saiyed Khaiyum was responsible for the torturous and inhumane treatment he received in the hands of some unidentified *i*-taukei men who abducted Singh in 2015.

13. Singh annexes some email communications which were purportedly made between the Khaiyums and himself.

14. He is aggrieved by Police inaction in investigating his complaint and police decision not to lay charges.

15. Singh deposes as follows in paragraphs 3 to 19:

> 3. *.. on the 11th day of November, 2018 at around 1724 hours I reported the matter regarding my assaults and inhumane treatments which led to severe injuries with the Lautoka Police Station with enough evidence so that the charges can be laid against Mr. Aiyaz Saiyad Khaiyum and Riyaz Saiyad Khaiyum. I also provided them with the email confirmation which proves that they are at fault and procured the commission of the offence.* ***(The copy of the said emails are attached and referred to as Annexure "A").***
> 4. *That after reporting the matter I have been following the status of this report and found out that till to date the Police is just delaying in order to lay the charges against the person described in paragraph 3 above. They even did not take any statements of the suspects till to date. On 11th of November 2018 I again went to Lautoka Police Station to check the status of this report and I was told that they have transferred the file to Suva and furthermore they cannot lay a charge against the persons mentioned in paragraph 3 above. The Police Officers also informed me that have received a directive from their superiors that they should not lay any charges against the persons mentioned in paragraph 3 above and that this the decision I am challenging before this honorable Court.*
> 5. *That in the year 2015, I have also reported the matter to police but the Fiji Police Force failed to take any action. That firstly I provided all the information regarding this emails to the Attorney General, Mr. Aiyaz Sayed Khaiyum at the Nadi Airport in November. He also advised me that he will assign an officer of his to get in contact with me and take all the information. Thereafter on the 18th of November I met with the Commissioner of Police at Tokatoka Resort opposite the Nadi Airport around 8pm and disclosed all the information to him and I also provided him with all the hard copies of those information.*
> 6. *That the very next day was a Friday where I was called by the Ba Police Station and tortured and thrown in the Nabou pine area where I was rescued by a truck driver who then called my wife and informed her about the status of my condition. My wife immediately called the Commissioner of Police and the Police Commissioner thereafter then arranged for the Military to pick me from the Sigatoka Town and brought me to Nadi Hospital from where I was sent to Lautoka Hospital. I was hospitalized in Lautoka Hospital with Military Guards.*
> 7. *That on Saturday morning a team of police officers of Nadi came to me asking me to change my statement and were later chased away by the Military Officers. This is when the Commissioner of Police called off the Lautoka Police to stay from the case and a team of officers were appointed to investigate the matter from Suva.*

8. *That later my shop was robbed and all computers were damaged to the extent of beyond repair. I had to close my shop after I was discharged from the Hospital. My house was even attacked a number of times and once it was fire bombed, stoned and also at once somebody tried to set a fire around my house and somebody also tried to get inside my house. On the second instance some men entered into the house but managed to escape. Each time I tried to get an update on the investigation where I was told that it is under the investigation. No action is been taken.*
9. *That after some time Mr. Aman Ravindra Singh took the matter to Amnesty International where I was interviewed by Denial Webb and I was told that I can get a refugee status in Australia but I stayed back in Fiji. Fiji Human Rights did not took any action in my matter. That when the International Media was pressing on the case and investigation progress than the Commissioner of Police told in media that he reframes from making any comments on my case and investigation report.*
10. *That till now there has been no progress on the investigation. I had numerous times emailed the Commissioner to follow up on the progress but none had been given till today. That recently my house was subject to robbery and I even did identified the suspect but the police are failing to take any action.*
11. *That the Police Commissioner has forwarded all the emails to me which talked about my being attacked. However these emails were forwarded to me after I was subject to attack and discharged from the hospital. These emails were sent to Commissioner by the Attorney General of Fiji and was forwarded the emails from FBC CEO.*
12. *That on these basis I made the complaint to police in Lautoka for Aiding and Abetting against the Attorney General and FBC CEO.*
13. *That I have provided with various emails which basically confirms that these person described in paragraph 3 above were liable for my torture and degrading treating with the Fiji Police Force.*
14. *That after receiving this same emails from an unknown person both Mr. Aiyaz and Mr. Riyaz Saiyad Khaiyum had failed to act with due diligence where they were sitting with that piece of information and did not do things which a reasonable person will do in these circumstances. Furthermore all these emails were forwarded to me by the Commissioner of Police.*
15. *That the 1st and 2nd Defendant is just delaying without any lawful excuse to lay the charges against both of them for Aiding and Abetting with that piece of information.* ***Annexed herein and Marked as Referred to as letter B is a copy of the said emails that was forwarded to both of them.***
16. *That furthermore I have also taken advice from Legal Aid Lautoka Office that these two persons could be charged for Aiding and Abetting but nothing has been done.*
17. *That I made numerous complaints regarding this issue where the police just complete their diary entry but failed to take any step forward. Station diary numbers are SD 171, 173. That after confrontation with one of the Police Officers I was told that this number has been put into a report and was regarded as closed.*
18. *That I was also chased by the Officers named Sergeant Jiten and the lady Officer with the badge number 4887 from the police counter at the Lautoka Police Station.*
19. *That in the circumstances hereto mentioned I pray for the order in terms of the Notice of Motion.*

ATTORNEY-GENERAL'S ARGUMENT

16. Mr. Chauhan highlights in his submissions that Singh had only lodged a complaint to the Fiji Police Force on 11 November 2018 and then, barely five weeks later on 18 December 2018, he filed the current application. He submits that it is premature for Singh to be making this application considering that the Police needs time to investigate. I extract and reproduce below the relevant transcription of Mr. Chuhan's argument in court.

> *"However if we can note that the application was filed for judicial review for police (The Fiji Police Force) for not acting or investigating the alleged complaint made by the Applicant. And the Applicant actually has not given time or reasonable sufficient time for the police to investigate this matter my Lord. In any event the Fiji Police Force would take thorough investigation. Conduct investigation; see every evidence, if there is sufficient evidence being produced by the Applicant whatever he is alleging. And they will conduct their investigation and they will come to a conclusion whether they should lay charge or they may not lay charge. And the police will then forward the file to the DPP for further actions if the charges should be laid or should not be laid. However in this case the Applicant has not given sufficient time to the Applicant to do neither of this and not even after 30 days he has filed for a judicial review".*

17. Singh responds that he had lodged his complaint in 2015 and that he was merely following up in 2018.

ISSUES

18. The issue in this case is much more fundamental then how Mr. Chauhan has argued it in Court. In my view, the basic issue invites is whether any decision made by the police in their investigation of any given complaint is open to judicial review?

DISCUSSION

19. There are many reasons why the Police may refuse to investigate or even prosecute any given claim. Perhaps there is insufficient evidence to warrant further action.

Perhaps, the police has formed the view that an investigation is not worth their limited budget and resources.

20. The public has an interest in ensuring that the Police is fearless, and acts with despatch, in their investigations and prosecution of a crime.

21. This public interest imposes upon the police a positive public law duty to enforce the criminal law. In Fiji, that is espoused in the provisions of the Police Act 1965. However, that public law duty, in some respects, does not necessarily translate to a corresponding positive civil law duty to any individual member of the public.

22. Accordingly, at the most general level, the common law affords the police some level of insulation from civil liability for any decision not to investigate a complaint or not to prosecute a matter.

23. The philosophy is that, if police were to be exposed to civil liability in these aspects of their function, it will lead to their adopting a *"defensive"* approach in their investigation and suppression of crime. This will inhibit and restrict their freedom to make operational decisions in the combatting of crime.

24. Lord Steyn in **Brooks v Commissioner of Police for the Metropolis and others**: HL 21 Apr 2005 explains the policy thus at paragraph 30:

> *A retreat from the principle in **Hill** would have detrimental effects for law enforcement. Whilst focusing on investigating crime, and the arrest of suspects, police officers would in practice be required to ensure that in every contact with a potential witness or a potential victim, time and resources were deployed to avoid the risk of causing harm or offence. Such legal duties would tend to inhibit a robust approach in assessing a person as a possible suspect, witness or victim. By placing general duties of care on the police to victims and witnesses the police's ability to perform their public functions in the interests of the community, fearlessly and with despatch, would be impeded. It would, as was recognised in **Hill**, be bound to lead to an unduly defensive approach in combating crime.*

25. In **Hill v. Chief Constable of West Yorkshire** (1988) 2 ALL E.R. 238, the plaintiff had sued the Chief Constable for negligence in failing to apprehend her daughter's murderer before she was murdered. The House of Lords held that the police did not owe a general duty of care to individual members of the public to identify and apprehend an unknown criminal, even though it was reasonably foreseeable that

harm was likely to be caused to a member of the public. The House of Lords said that even if such a duty did exist, public policy required that the police should not be liable in damages for negligence.

26. Lord Keith, at page 240, said there are instances where a police officer may be liable in tort to a person injured as a direct result of his act or omission[i]. However, while the common law and statute impose on the police a public duty to enforce the criminal law, the police retain the discretion as to the manner in which that duty is to be discharged, how available resources should be deployed, whether a particular line of inquiry should or should not be followed, and even whether or not certain crimes should be prosecuted.

> *By common law (and statute) police officers owe to the general public a duty to enforce the criminal law : see :* ***R. v. Metropolitan Police Commissioner ex-p Blackburn (1968) 1 ALL E.R.763****. That duty can be enforced by mandamus, at the instance of one having title to sue. But as that case shows, a chief officer of police has a wide discretion as to the manner in which the duty is discharged. It is for him to decide how available resources should be deployed, whether particular lines of inquiry should or should not be followed, and even whether or not certain crimes should be prosecuted ... So the common law, while laying on chief officers of police an obligation to enforce the law, makes no specific requirements as to the manner in which the obligation is to be discharged. That is not a situation where there can readily be inferred an intention of the common law to create a duty towards individual members of the public.*

27. How available resources should be deployed in an investigation, and whether a particular line of inquiry should or should not be followed, are matters of policy and discretion, which, traditionally, the Courts would not question:

> *"Potential existence of such liability may in many instances be in the general public interest, as tending towards the observance of a higher standard of care in the carrying on of various different types of activity. I do not, however, consider that this can be said of police activities. The general sense of public duty which motivates police forces is unlikely to be appreciably reinforced by the imposition of such liability so far as concerns their function in the investigation and suppression of crime. From time to time they make mistakes in the exercise of that function, but it is not to be doubted that they apply their best endeavours to the performance of it. In some instances the imposition of liability may lead to the exercise of a function being carried on in a detrimentally defensive frame of mind. The possibility of this happening in relation to the investigative operations of the police cannot be excluded. Further it would be reasonable to expect that if potential liability were to be imposed it would be not uncommon for actions to be raised against police forces on the ground that they had failed to catch some criminal as soon as they might have done, with the result that he went on to commit further crimes. While some such actions might*

involve allegations of a simple and straightforward type of failure - for example that a police officer negligently tripped and fell while pursuing a burglar - others would be likely to enter deeply into the general nature of a police investigation, as indeed the present action would seek to do. The manner of conduct of such an investigation must necessarily involve a variety of decisions to be made on matters of policy and discretion, for example as to which particular line of inquiry is most advantageously to be pursued and what is the most advantageous way to deploy the available resources. Many such decisions would not be regarded by the courts as appropriate to be called in question, yet elaborate investigation of the facts might be necessary to ascertain whether or not this was so. A great deal of police time, trouble and expense might be expected to have to be put into the preparation of the defence to the action and the attendance of witnesses at the trial. The result would be a significant diversion of police manpower and attention from their most important function, that of the suppression of crime. Closed investigations would require to be reopened and retraversed, not with the object of bringing any criminal to justice but to ascertain whether or not they had been competently conducted. I therefore consider that Glidewell L.J., in his judgment in the Court of Appeal in the present case [1988] Q.B. 60, 76, was right to take the view that the police were immune from an action of this kind."

28. In **R v Metropolitan Police Commissioner ex-p Blackburn** (1968) 1 ALL E.R.763., Lord Denning MR emphasized the same points above, and said that even whether an arrest should be made and a prosecution pursued, are matters of policy and discretion:

'Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police of the Metropolis, or the chief constable, as the case may be, to decide in any particular case whether inquiries should be pursued, or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his force and the concentration of his resources on any particular crime or area. No court can or should give him direction on such a matter. He can also make policy decisions and give effect to them, as, for instance, was often done when prosecutions were not brought for attempted suicide.'

. . And 'No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement is on him. He is answerable to the law and to the law alone.'

The decision as to the offence for which a person is to be prosecuted is a matter for the prosecuting authority, which has a wide discretion in the matter.

29. In **Brooks v Commissioner of Police for the Metropolis and others**: HL 21 Apr 2005, the House of Lords (Lord Bingham of Cornhill, Lord Nicholls of Birkenhead,

Lord Steyn, Lord Rodger of Earlsferry, Lord Brown of Eaton-under-Heywood) reiterated the policy that, while police officers should treat victims and witnesses properly and with respect, to convert that ethical value into general legal duties of care on the police towards victims and witnesses would be going too far.

> *The discharge by the police of their public duties cannot be constrained or limited by the fear that in carrying out those duties police officers may be found to be liable to suspected criminals, victims or bystanders, because that will impede the discharge of those duties. If it were otherwise, policing would become unduly defensive and therefore inefficient, and, as a consequence, members of the community would be put at risk. Lord Steyn said: 'Whilst focusing on investigating crime, and the arrest of suspects, police officers would in practice be required to ensure that in every contact with a potential witness or a potential victim time and resources were deployed to avoid the risk of causing harm or offence. Such legal duties would tend to inhibit a robust approach in assessing a person as a possible suspect, witness or victim.' and 'But the core principle of Hill's case has remained unchallenged in our domestic jurisprudence and in European jurisprudence for many years. If a case such as the Yorkshire Ripper case, which was before the House in Hill's case, arose for decision today I have no doubt that it would be decided in the same way. It is, of course, desirable that police officers should treat victims and witnesses properly and with respect. But to convert that ethical value into general legal duties of care on the police towards victims and witnesses would be going too far. The prime function of the police is the preservation of the Queen's peace. The police must concentrate on preventing the commission of crime, protecting life and property'*

30. The New Zealand Court of Appeal in **Divya Sathyan v Police Commissioner of Wellington** [2016] NZCA 532 had to consider an appeal against a High Court decision which had struck out Sathyan's plea for an order of mandamus to direct the Commissioner of Police to investigate complaints made to the police by Ms Sathyan, and for associated compensation.

31. Ms. Sathyan was a victim of cyber-abuse. She reported hacking of her telephone and email accounts to the police for investigation. She alleges that the police have not investigated her complaint. She also approached the Privacy Commissioner, the Office of the Ombudsman and the Government Communications Security Bureau and consulted a number of computer technical experts. She claims to have borrowed large sums of money to pay for these experts and has become heavy in debt. She sought an order of mandamus directing the Commissioner to perform *"his statutory duty to investigate her complaint"*. She also sought compensation for business loss and other financial losses allegedly caused by the Commissioner's failure to perform that statutory duty. The Commissioner applied to strike out the

claim on the ground that it disclosed no reasonably arguable cause of action. The Commissioner argued it is settled law that the courts do not involve themselves in reviewing the Commissioner's decisions as to the allocation of police resources to the investigation of complaints.

32. At paragraphs [11] to [14], the New Zealand Court of Appeal dismissed the appeal and in the process, noted that it is settled law that the courts will not compel the police to commence an investigation into a particular incident or incidents:

> *[11] Ms Sathyan wishes to argue on appeal that the Judge's decision to strike out her claim is inconsistent with the Crimes Act 1961 and with her rights under the Privacy Act 1993 and the Human Rights Act 1993. She says it is inconsistent with other cases in which the writ of mandamus was issued to compel performance by members of the Executive of their statutory duties and with the decision in **Blackburn**. Finally, Ms Sathyan argues that the judgment "overrides the basic human rights principles guaranteed under the Universal Declaration of Human Rights" and her rights under the New Zealand Bill of Rights Act 1990.*
> *[12] We are satisfied that the merits of Ms Sathyan's proposed appeal are very weak. We understand Ms Sathyan's argument to be that a failure to investigate her complaint constituted a breach of the Crimes Act, the Privacy Act and the Human Rights Act and was therefore a breach of statutory duty. But, as submitted for the Commissioner, the judgment striking out Ms Sathyan's claim reflects a straightforward and correct application of settled case law. It is well established that the courts will not compel the police to commence an investigation into a particular incident or incidents. Ms Sathyan relies upon the **Blackburn** decision, but it was in that case that Lord Denning MR said:13*
>
> > *Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police of the Metropolis, or the chief constable, as the case may be, to decide in any particular case whether inquiries should be pursued, or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his force and the concentration of his resources on any particular crime or area. No court can or should give him direction on such a matter.*
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> *[13] As to the argument that the judgment "overrides the basic human rights principles under the Universal Declaration of Human Rights" or Ms Sathyan's rights under the New Zealand Bill of Rights Act, the judgment involves the correct application of settled legal principles. We are satisfied also there is nothing in that settled law which is itself a breach of the rights guaranteed to Ms Sathyan under either the Declaration or the New Zealand Bill of Rights Act. The judgment is simply an application of the law to her case.*
> *[14] For these reasons we consider that Ms Sathyan's proposed appeal has no realistic prospect of success so that it is not in the interests of justice to extend the time to appeal.*

COMMENTS

33. Mr. Singh has made some very serious allegations in his application to seek leave for judicial review of the Police delay in investigating his complaint. At this point, it is unclear whether or not the Police has made a decision to investigate his complaint, let alone, whether or not the Police has made a decision to prosecute.

34. At the heart of Mr. Singh's case, or proposed case, is an allegation that he was assaulted by a group of *i-taukei* men. It is unclear to me whether or not he is able to identify them.

35. I accept that this court has powers to issue a writ of mandamus to order any public authority to do some specific act which that body is obliged under law to do, and which is in the nature of public duty.

36. The police has a public duty under section 5 of the Police Act 1965 to prevent and detect crime and to enforce the criminal law, which includes the investigation and prosecution of crime.

> *Functions of Force*
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> *5. The Force shall be employed in and throughout Fiji for the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the enforcement of all laws and regulations with which it is directly charged; and shall be entitled for the performance of any such duties to carry arms.*

37. However, while the common law and the Police Act 1965 may impose on the police that public duty to enforce the criminal law, the police still retains a discretion as to the manner in which that duty is to be discharged, how available resources should be deployed, whether a particular line of inquiry should or should not be followed, and even whether or not certain crimes should be prosecuted (**Hill v. Chief Constable of West Yorkshire**).

38. That the police should retain that discretion is grounded on some very strong public policy reasons, which I have outlined above.

39. That same public policy underpins the decision of the New Zealand Court of Appeal in **Divya Sathyan** to dismiss an appeal of the High Court's refusal to grant a mandamus to compel the Police to investigate a complaint about an alleged breach of a right to privacy guaranteed under the New Zealand Bill of Rights.

40. It is the same public policy reason which compels me to grant order in terms of the application to strike out Mr. Singh's application.

41. Mr. Sigh has an alternative. If he knew the identities of the men who assaulted him, and if they were police officers as he appears to insinuate, he could have pursued a civil claim for personal injuries against the same officers as well as, vicariously, the Commissioner of Police.

42. There is ample case law authority that the policy which prevents the Court from interfering with the police investigatory and prosecutorial prerogative, does not apply in cases where the police has committed a tort. However, Mr. Singh may yet be precluded from filing such a claim as he may already be caught under the Limitation Act.

ORDERS

(i) The application seeking leave to issue judicial review proceedings against the Commissioner of Police and the Attorney-General is struck out as disclosing no reasonable cause of action.

(ii) Costs to the respondents which I summarily assess at $800-00 (eight hundred dollars only).

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Anare Tuilevuka
JUDGE
Lautoka

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[i] As Lord Keith said:

*"There is no question that a police officer, like anyone else, may be liable in tort to a person who is injured as a direct result of his acts or omissions. So he may be liable in damages for assault, unlawful arrest, wrongful imprisonment and malicious prosecution, and also for negligence. Instances where liability for negligence has been established are **Knightley v Johns** [1982] 1 WLR 349 and **Rigby v Chief Constable of Northamptonshire** [1985] 1 WLR 1242. Further, a police officer may be guilty of a criminal offence if he wilfully fails to perform a duty which he is bound to perform by common law or by statute: see **R v Dytham** [1979] QB 722, where a constable was convicted of wilful neglect of duty because, being present at the scene of a violent assault resulting in the death of the victim, he had taken no steps to intervene.*