

THE STATE

v

CHEW PUI QI

[HIGH COURT, 1995 (Pain J), 28 July]

B Appellate Jurisdiction

Crime-procedure-whether failure to supply an interpreter amount to an abuse of the process of the Court sufficient to warrant staying the proceedings.

C Following repeated failures by the Court to provide the services of an interpreter the Magistrate discharged the accused. HELD: the failure was administrative and not the fault of the parties. It was insufficient to warrant the termination of the proceedings.

Cases cited:

- Connelly v DPP* [1964] AC 1254
D *DPP v Humphrys* [1977] AC 1
Hunter v Chief Constable of the West Midland Police 1982 AC 529
Moevao v Department of Labour [1981] NZLR 464
R v Croydon Justices ex parte Dean (1994) 98 Cr. App. R 76
R v Derby Crown Court ex parte Brooks (1985) 80 Crim. App. R 164

E Appeal against acquittal by the Magistrates Court.

D. Tuiqereqere for Appellant
 Respondent in Person

Pain J:

F This is an appeal by the State against the dismissal of four charges against the Respondent in the Magistrates Court.

On the 2nd February 1994 the Respondent was involved in a motor accident. On the 19th April 1994, charges were laid against him of Careless Driving, Failing to display a Learners Permit, Carrying a Passenger when driving on a Learners Permit and Failing to have a licenced driver for instruction when driving on a Learners Permit.

G The Respondent first appeared in the Magistrates Court on the 24th May 1994. He is Chinese and does not speak English. He was not represented by Counsel. The case was adjourned until the 7th June 1994 and the Magistrate noted that an interpreter was to be obtained. Thereafter the case was adjourned on four

further occasions without an interpreter being present. The Respondent was represented by Counsel. On two of those adjournments the Magistrate again noted that an interpreter was to be obtained. No pleas were entered by the Respondent.

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Finally on the 24th August 1994, all parties appeared but still no interpreter was present. Counsel for the Respondent submitted that the Respondent should be discharged as the failure to provide an interpreter over a period of three months amounted to abuse of process. The Magistrate acceded to this request and the record states:

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“Counsel for Defences application is granted on the grounds advanced by him. Accused is discharged under Section 201 Criminal Procedure Code.”

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The State appealed on the ground that this order of the Magistrate was wrong in law.

The Respondent appeared at the hearing today. An interpreter, Mr. March, was also present. Through Mr. March the nature of the proceeding was explained to the Respondent. He advised that he did not wish to engage Counsel or make submissions on the hearing of the appeal. He left it to the Court to determine whether the case should be remitted back to the Magistrates Court for hearing.

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Counsel for the Appellant advanced two grounds in support of the appeal.

1. The Magistrate had no power to discharge the Respondent under Section 201 of the Criminal Procedure Code because that can only be invoked on an application by the Prosecutor for withdrawal of the complaint.
2. The circumstances did not amount to abuse of process. Counsel relied on the R v Derby Crown Court ex parte Brooks (1985) 80 Crim. App. R 164 and submitted that the Prosecution had not manipulated or misused the process of the Court and had not been responsible for any undue delay. The prosecution was at all times ready to proceed and the Magistrates Court registry had been responsible for arranging the attendance of an interpreter.

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The first thing to be noted is that the Magistrates Court is created by statute and subject to few exceptions, is bound to act strictly in accordance with the provisions of the statute. Part VI of the Criminal Procedure Code lays down the procedure for trials in the Magistrates Court. Where both parties appear, the Court can either proceed with the case (Section 200) or adjourn the hearing (Section 202). A Magistrate has no statutory power to discharge a defendant if he is dissatisfied with some particular matter. In the present case Section

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THE STATE v CHEW PUI QI

201 of the Criminal Procedure Code could not be invoked because it only applies to a withdrawal of the complaint by the Prosecutor.

- A This statutory requirement upon the Magistrate to either hear the case or adjourn the hearing is subject to the power of the Court to stay proceedings which amount to an abuse of the process of the Court. This is not an inherent jurisdiction. A Magistrates Court has power to regulate its own proceedings and prevent an abuse of its process.
- B The case of R v Derby Crown Court ex parte Brooks (supra) relied on by Counsel for the Appellant, certainly states that it may be an abuse of process if there is delay or manipulation or misuse of the rules or procedure by the prosecution. That did not occur in this case. The prosecution was always ready to proceed and it was the fault of the Court Registry that no interpreter was available.
- C However the concept of abuse of process may be wider than that in England. See for instance Hunter v Chief Constable of the West Midland Police [1982] AC 529, Connelly v DPP [1964] AC 1254 and R v Croydon Justices ex parte Dean (1994) 98 Cr.App. R 76. In this last mentioned case the prosecution of a person who had received a promise that he would not be prosecuted was held to be an abuse of process. In New Zealand a more restricted view has been taken and "the focus is on the misuse of the Court process by those responsible for law enforcement. It is whether the continuation of the prosecution is inconsistent with the recognised purposes of the administration of criminal justice and so constitutes an abuse of process of the Court." (Moevao v Department of Labour [1981] NZLR 464 in which the Court of Appeal held that a Magistrate had no jurisdiction to examine the exercise of a decision to prosecute).
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Whatever the limits of the power to stop the prosecution may be, it is clear that it is an "extreme step" (Maevao v The Department of Labour (supra) which should only be used "in most exceptional circumstances". (DPP v Humphrys [1977] AC 1). An essential concern is the due administration of criminal justice under the law. It is not simply a question of unfairness to the defendant. The proper administration of justice involves fairness to both the prosecution and the defendant. There needs to be such manifest unfairness that to proceed with the hearing would be an abuse of the process of the Court.

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- G In the present case, neither the prosecution nor the respondent were at fault in the Magistrates Court. Both had been ready to proceed with the hearing. The failure to obtain an interpreter was the fault of the Court. The Magistrate had a statutory duty to proceed with the hearing and was in a position to give specific directions to the Registry. The problem could and should have been remedied by the Court administration. Furthermore the delay, in the context of daily proceedings in the Magistrates Court, was not inordinate. It may have

been inconvenient for the respondent but there was no suggestion of any prejudice to him. There were not circumstances of such an exceptional nature as to warrant the court taking the extreme step of stopping the proceedings. The administration of justice in this particular case was being delayed but there had not been such interference with the processes of the court as to amount to abuse of process.

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For these reasons I find that the learned Resident Magistrate was in error when he discharged the accused and the appeal must succeed.

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The prosecution is entitled to have the case determined in the Magistrate Court. The Respondent has not even pleaded to the charges. In the circumstances the proper course is to remit the case back to the Magistrates Court for the hearing to proceed. The Court must ensure the attendance of an interpreter which is the Respondent's right under Section 11 (2) (f) of the Constitution.

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Accordingly I make the following orders:

1. The order made in the Magistrates Court on the 24th August 1994 discharging the Respondent on all four charges is quashed.
2. The case is remitted back to the Magistrates Court for hearing.

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(Appeal allowed.)

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