

**DHARMENDRA ROY PRASAD (f/n KAMPTA PRASAD) v RUSIATE RYLAND and 2 Ors (Civ App 02 of 2007)**

HIGH COURT — APPELLATE JURISDICTION

5 SINGH J

30 August, 25 September 2007

10 **Practice and procedure — arrests — whether there was a wrongful arrest and deprivation of liberty — whether the bench warrant was lawful — Criminal Procedure Code (Cap 21) — Crown Proceedings Act (Cap 24) s 3(5) — Magistrates Courts Act ss 50, 65, 65(2).**

**Transport — offences — exceeding speed limit — receipt issued under a different name — claim for damages — Land Transport Act s 92.**

15 The Appellant was issued a traffic infringement notice for exceeding the speed limit that required him to attend the court unless he paid the fine within 21 days from the date the notice was issued. He paid in time but his receipt indicated the payee client name as Courier Documents Parcels and it did not show for what the fine was paid. The traffic case was filed in the Magistrates Court and the Appellant did not appear before the court. A  
20 bench warrant was issued for his arrest. The Appellant was arrested and placed in a cell for about an hour but was later released when the receipt was produced. The Appellant sought damages for wrongful arrest and deprivation of liberty against the police which was dismissed on the ground that, under s 50 of the Magistrates Courts Act, a police officer  
25 must obey orders made by the magistrate and that a police officer cannot be sued in a civil court for executing a warrant. On appeal, the Appellant argued that the bench warrant was unlawful since he paid the fixed penalty in time.

**Held** — (1) Where a magistrate is protected against a civil suit for making an order, but the police officer who executes the order is not, is contrary to common sense and does not stand to good reason.

30 (2) The court ruled that the magistrate acted within his judicial capacity since there was no evidence before the magistrate to show that the Appellant already paid the fine when the bench warrant was issued. Hence the bench warrant was not unlawful.

Appeal dismissed.

**Cases referred to**

35 *James Satish Bachu v Commissioner of Prisons and Ors* HBC369 of 2003; [2007] FJHC 115; *Nirmala Wati v A Hussain & Co Ltd and Anor* [1986] 32 FLR 1; *Percy v Hall* [1997] QB 924; [1996] 4 All ER 523; [1997] 3 WLR 573; *R v Governor of Brookhill Prison* [2001] 2 AC 19; [2000] 4 All ER 15; [2000] 3 WLR 843, cited.

A. *Sen* for the Appellant

40 H. *Rabuku* for the Respondents

[1] **Singh J.** On 10 January 2004 the Plaintiff Dharmendra Prasad was issued with a traffic infringement notice pursuant to the provisions of the Land Transport Act for exceeding speed limit. The traffic infringement notice issued to the Plaintiff required him to attend the court on 3 February 2004 unless he paid the  
45 fine within the stipulated time of 21 days from the date of issue of notice. He says he paid the fixed penalty of \$80 to the Land Transport Authority on 14 January 2004 so he had paid it in time.

[2] A receipt issued by the Land Transport Authority dated 14 January 2004 was issued. It shows the payee client name as Courier Documents Parcels not the  
50 Plaintiff. It does not show for what the fine was paid but that only goes to show carelessness on part of the Land Transport Authority.

[3] However traffic case being Case No 76 of 2004 was filed in the Magistrates Court regarding the offence of Exceeding Speed Limit. The Defendant did not appear in court on 3 February 2004 so the learned magistrate issued a bench warrant for his arrest. The first Respondent arrested the Plaintiff pursuant to the  
5 warrant and took him to the police station. He was locked in the police cell for just over an hour. He was later released when the receipt was produced.

[4] The Plaintiff claimed for damages for wrongful arrest and deprivation of liberty. The learned magistrate dismissed the Plaintiff's claim on the grounds that  
10 under s 50 of the Magistrates Courts Act a police officer must obey orders made by the magistrate and that a police officer cannot be sued in a civil court for executing a warrant.

[5] The issue in this case is can a police officer be held liable for wrongful arrest if he arrests a person pursuant to a bench warrant issued by a judicial officer. This  
15 issue involves looking at the law on false imprisonment.

[6] The tort of false imprisonment involves the infliction of bodily restraint which is not expressly or impliedly authorised by law. The Plaintiff does not have to prove fault on part of the Defendant. It is a tort of strict liability: *R v Governor of Brookhill Prison* [2001] 2 AC 19 at 28; [2000] 4 All ER 15 at 20; [2000] 3  
20 WLR 843. It is for the Defendant to justify arrest: *James Satish Bachu v Commissioner of Prisons and Ors* HBC369 of 2003; [2007] FJHC 115.

[7] The justification provided by the Defendants is that the police officer acted under lawful authority in that is he was carrying out the statutory duty imposed  
25 upon a police officer to obey orders given by a magistrate. A bench warrant is an order by a magistrate to arrest a person. The police officer could not refuse to obey it or go behind the issuing of the warrant to check upon its lawfulness. Here the order to arrest was given by a magistrate. The opinion or judgment to issue a warrant is interposed between the charge and the arrest. A judicial officer  
30 namely in this case a magistrate acted according to his own judgment; he is not the agent of the prosecuting authority or the police. The prosecutor merely asks for a warrant. The magistrate in his own deliberate judgment decides whether to issue it or not.

[8] Section 50 of the Magistrates Act provides:  
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All police officers are hereby authorized and required to obey the warrants, orders and directions of a magistrate in the exercise of his criminal jurisdiction, and so far as such obedience may be authorized and required by any Act in that behalf, of his civil jurisdiction.

40 Additionally s 65(2) of the same Act provides an immunity from civil suit to those bound by law to execute lawful warrants or orders of a magistrate. Section 65(2) provides:

45 No officer of any court or other person bound to execute the lawful warrants or orders of any such magistrate, justice of the peace or other person acting judicially shall be liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same.

[9] The Plaintiff's argument is that the bench warrant issued by the magistrate was unlawful. The submission is that since the Plaintiff had paid his fixed penalty,  
50 he could not be subject to any other process. However, there was nothing before the court seized of the matter that the penalty had been paid to the Land Transport

Authority. As such the magistrate was entitled to order a bench warrant against the Plaintiff pursuant to the provisions of the Criminal Procedure Code (Cap 21) to secure his attendance in court.

5 [10] The Plaintiff is relying on the authority of *Nirmala Wati v A Hussain & Co Ltd and Anor* (1986) 32 FLR 1. That is a case against the complainant itself for making a baseless complaint to police which led to Wati's arrest and detention at a police station. The police were not parties to that action nor were the police required to justify the arrest and detention of Wati.

10 [11] Section 65 of the Magistrate Courts Act must be considered in its entirety. It would be contrary to common sense that while a magistrate is protected against a civil suit for making an order, a police officer who executes that order should be held liable in a civil suit. That does not stand to good reason. One can hardly expect a police officer to question the legality of orders given by a magistrate.

15 [12] I had invited counsels to look at s 3(5) of the Crown Proceedings Act (Cap 24) which protects the state for acts of judicial officers done in the discharge of their judicial function. Section 3(5) provides:

20 No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connexion with the execution of judicial process.

25 [13] The bench warrant was issued by the learned magistrate acting in his judicial capacity within his jurisdiction. The Plaintiff was arrested pursuant to it. This section would therefore provide protection to the Attorney-General against such a claim.

30 [14] A point of interest on the defence of lawful authority to a claim of false imprisonment was discussed in *Percy v Hall* [1997] QB 924; [1996] 4 All ER 523; [1997] 3 WLR 573, a decision of the English Court of Appeal. The court held that a Defendant in a false imprisonment claim can rely on defence of lawful authority even though the legal enactment under which he acted was declared invalid. The Plaintiffs there had made a claim in false imprisonment and argued that the by-laws under which they had been arrested were void due to uncertainty. The Court of Appeal held that the by-laws were not void. However Simon Brown LJ went on to say that even if the by-laws were ruled to be void, the arrests would not be tortious provided the Defendants reasonably believed that the Plaintiffs were committing an offence against the by-laws.

40 [15] I have my sympathies for the Plaintiff. It is indeed unfair for a person to be left without a redress even though he/she has been deprived of his liberty. An incident like the one before me was bound to happen given the provisions of the Land Transport Act regarding traffic infringement notices. Section 92 of the Act requires a traffic infringement notice to be placed before the court within 7 days of issue but it gives a person 21 days to pay the fixed penalty at the LTA Office. If the Land Transport Authority fails, as in this case, to notify the court, then a situation like the present is likely to occur. Given the volume of infringement notices issued by LTA officers, the likelihood of such occurrences recurring cannot be ruled out. It may well be that time to file infringement notices in court should be increased to 21 days as by that time the Land Transport Authority would know who has paid the penalty and who has not.

50 [16] The appeal however is dismissed in view of the fact that the Plaintiff was arrested pursuant to the order of a magistrate acting in his judicial capacity and the various statutory provisions referred to above provide the police and the

Attorney-General a measure of protection against a civil suit arising out of such an act. Appeal is dismissed with costs fixed at \$400 to be paid in 14 days.

*Appeal dismissed.*

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