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IN THE SUPREME COURT OF FIJI
Miscellaneous Proceedings
ACTION NO. 17 OF 1980

Between:

SHEIK LIAQUAT SAHEB s/o Jan Saheb — PLAINTIFF

- and -

R E G I N A M — DEFENDANT

Mr. S.M. Koya for the Plaintiff.

D E C I S I O N

The plaintiff seeks leave under Order 53 Rule 1(2) of the Rules of the Supreme Court to apply for an order of certiorari to remove to this Court and quash a conviction of the plaintiff by the Magistrate's Court Suva on the 23rd day of November, 1979 for 8 offences of larceny by a servant contrary to section 306(a)(i) of the Penal Code and 8 offences of Falsification of Accounts contrary to section 340(1) of the Penal Code.

The plaintiff, after the charges were explained to him, pleaded guilty to all the 16 offences referred to above and asked the Magistrate's Court to take into account 24 other offences making a total of 40 offences.

Section 290(1) of the Criminal Procedure Code does not permit of an appeal against conviction where an accused person pleads guilty and has been convicted on that plea.

The section is as follows :

" No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on such plea by a magistrates' court, except as to the extent or legality of the sentence."

Mr. Koya referred to R. v. Leyland Magistrates ex parte Hawthorn (1979) 1 All E.R. 209 in which case the applicant was granted an order of certiorari quashing his conviction by justices for driving without due care and attention. After the trial and conviction of the applicant, his solicitors received from the police the names of two fresh witnesses who had not been called as witnesses at the trial. It was held that certiorari would not lie to quash the decision of the justices in order to introduce fresh evidence, but the failure of the prosecution to notify the applicant of the existence of the two witnesses had prevented the justices from giving the applicant a fair trial, and, notwithstanding that the justices had not themselves been in error certiorari would nonetheless go to quash the conviction.

Another case Mr. Koya referred to was R. v. Recorder of Leicester ex parte Wood (1947) 1 All E.R. 928 a bastardy case where an order was quashed where an applicant gave material evidence which was believed and the appeal was allowed. The evidence was wholly untrue and the applicant was subsequently convicted of perjury.

A further case referred to by Mr. Koya was R. v. Turner (1970) 54 Cr. App.R. 352 where an accused was convicted on his plea of guilty. An appeal against conviction succeeded. The plea, because of plea bargaining, was held to be a nullity and a retrial was ordered.

In Turner's case it was held the accused did not have a free choice of plea. It was an unusual case of an accused pleading guilty to a charge of stealing his own car which was under lien to a repairer of it. The accused altered his plea after pressure was brought to bear on him

by his counsel. The appellate court believed that the accused thought his counsel was expressing the judge's views and changed his plea to guilty. A new trial was ordered.

A number of other cases involving plea bargaining referred to by Mr. Koya were appeals against sentence only and where sentences were varied.

Each plea bargaining case involved the trial judge's conduct in the case.

In the instant case the plaintiff alleges that because of fraud and pressure on the part of DSP. S.K. Singh, the police investigating officer, and a Mr. L.A. Williams of Williams Shipping Company, where the plaintiff used to work, he was induced to plead guilty to the 16 counts and to ask for 24 other offences to be taken into account. His plea he says was not a free one.

Mr. Koya referred to Halsbury 4th Edition Vol. 11 at p. 806 paragraph 1529 dealing with certiorari to quash orders of justices and read the following passage :

> "An order of certiorari is the appropriate remedy where the jurisdiction of justices is impunged, or where a conviction or order has been obtained by collusion, or, it would seem, by fraud, or where an error appears on the face of the proceedings, or where there has been a failure to comply with a statutory requirement that the defendant be asked whether he pleads guilty or not guilty. The issue of the order of certiorari in such a case is discretionary."

Mr. Koya's argument is that certiorari should lie to quash a conviction by a Magistrate's Court where a conviction has been obtained by the fraud or conduct of the police who investigated the offence and inducing an accused to plead guilty by pressure or threats.

It is one thing for a court to induce a plea of guilty by the improper conduct of a magistrate, or for the prosecution in a trial, where the accused pleads

not guilty, to act in such a way as to deny an accused a fair trial. It is however entirely another matter to seek to set aside a conviction after a plea of guilty, where the court has jurisdiction and has acted properly on the grounds that the police investigating the matter and/or others not involved in the prosecution have acted improperly and prevailed on the accused to plead guilty.

In my view, accepting at this stage what the plaintiff has alleged in his affidavit, this court has not the power to order certiorari in this case. If I am correct in my view it follows that leave must be refused.

In R. v. Campbell, ex parte Nomikos (1956) 2 All E.R. 280 the appellant applied by way of certiorari to quash a plea of guilty to the second of two charges on both of which he had pleaded guilty. It was held that although there were two charges there was only one offence but the court held that certiorari should not be granted.

Lord Goddard C.J. at p. 283 said :

> "Certiorari to quash always depends on jurisdiction".

Later on the same page he said :

> " Another ground for refusing certiorari in this case is that I know of no case where a plea of guilty has been entered and certiorari has been granted. No one can suggest that in this case the magistrate did anything wrong. She has filed an affidavit explaining exactly what happened. Competent counsel being before her and entering a plea of guilty for his client, she naturally proceeded to record a conviction and consider what penalty should be imposed. In my opinion it would be quite wrong to issue certiorari in this case after that has been done, and also in my view the court has no power to order certiorari in this case. Certiorari is always, it should be remembered, a discretionary remedy. Although in the history of that writ the courts were inclined at

one time rather to depart from the fact of its being a discretionary remedy. R. v. Stafford JJ., Ex p. Stafford Corpn. (1) ( 1940 2 K.B. 33), to which counsel for the applicant referred, shows that the Court of Appeal were, if I may say so, on the right lines in getting certiorari back to a matter of discretion. It may very often be that the facts are such that the discretion can be exercised in only one way, that is to say, it would not be a judicial exercise of discretion to decide against the person by whom the exercise of the discretion is sought. That is sometimes misunderstood. In this case the whole difficulty was caused by the deliberate entering of a plea of guilty on the part of the applicant. It may be that there is still a hope of the applicant getting back part of his money, but that must be done by an application for the bounty or mercy of the Crown. If it is pointed out to the responsible advisers to Her Majesty that the court has decided that there was only one offence here and not two offences and a petition is made for the return of the one penalty, it may be that the Crown will be pleased to order a return. That is not a matter for us, and we do not express any opinion whether that would be right in this particular case or not. It is true that two penalties have been inflicted. It is also true that it was entirely owing to the action of the applicant that they were.

For these reasons the application for certiorari must be refused."

Lord Goddard between 1951 and 1956 appears to have changed his views about certiorari where there has been a plea of guilty. In R. v. West Kent Quarter Seasons Appeal Committee Ex Parte Files (1951) 2 All E.R. 728 at p.732 he expressed (obiter) his views as follows :

"Whether or not there is any remedy if a man pleads guilty under some genuine misapprenhension, does not really fall for decision, but I am inclined to think that the remedy, if any, is certiorari, but it would certainly take a very strong case to give rise to it."

In R. v. Burnham Justices Ex Parte Ansorge (1959) 3 All E.R. 505 one conviction against the appellant

was quashed because the only express plea of guilty related to the second of two informations. The second conviction was allowed to stand because the magistrate had jurisdiction to enquire into the facts relating to the second information, so that certiorari for want of jurisdiction did not lie and if certiorari did lie, the court, as a matter of discretion, would not grant it in the circumstances of the case.

Lord Parker C.J. at p. 507 quoted with approval most of Lord Goddard's comments in Campbell's case which I have quoted above. He also said at the same page :

> "The matter, however, does not rest there because broadly speaking certiorari only lies where there is a lack of jurisdiction or where there is an error of law on the face of the record."

The plaintiff was not represented in the court below but the record discloses he is 28 years of age. The charge was read and explained to him and he elected trial in the Magistrate's Court and pleaded guilty to 16 counts and asked for 24 extra offences to be taken into account. The prosecution story was a detailed one and the plaintiff admitted the facts stated by the prosecution. The prosecutor was not the investigating officer DSP. S.K. Singh. The plaintiff made a strong plea for leniency. There is nothing in the Record to indicate that the plaintiff's pleas of guilty to 16 offences proceeded from fear, menace or duress. Had there been any indication that the pleas were not free and voluntary the magistrate would no doubt have refused to accept the plea and entered pleas of not guilty.

To grant an application for an order of certiorari to quash a conviction on facts such as are disclosed in the present application would in my view be contrary to precedent and would involve the court in

investigations into police inquiries and actions when an accused is dissatisfied with his sentence. Had the plaintiff pleaded not guilty and a confession improperly obtained from him was sought to be tendered by the prosecution it would have been open to the plaintiff to have objected to the introduction of the confession and the court would then have heard evidence and ruled on its admission.

Having pleaded guilty and the magistrate having jurisdiction which he has properly exercised and there being no error of law disclosed by the Record that must be the end of the matter so far as the conviction is concerned. The plaintiff could have appealed against the extent or legality of his sentence but he has withdrawn his appeal.

If DSP. S.K. Singh has acted in the manner that the plaintiff alleges he has, it is open to the plaintiff to complain to the Commissioner of Police who will no doubt enquire into the complaint.

Just as Lord Goddard C.J. felt in Campbell's case, where he suggested the applicant's remedy was to apply for the bounty or mercy of the Crown, so in this case, I am of the view that the plaintiff may so apply if his complaints against the police are found to be justified.

I do not consider this court would on the facts stated in the application grant an order of certiorari and that being so leave to apply for the order should be refused.

Leave is refused and the application is dismissed.

(R.G. KENMODE)

JUDGE

SUVA,

'5 JULY, 1980.