

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 7 of 1977

BETWEEN: GEORGE WALTER Applicants/Appellants
 SYDNEY PRINCE
 DONALD HALSTEAD

AND

THE COMMISSIONER OF POLICE Respondent

Before: The Honourable Sir Maurice Davis, Q C - Chief Justice
 The Honourable Mr. Justice Peterkin
 The Honourable Mr Justice Renwick (Acting)

Appearances: Dr. F. Ramsahoye for Appellants
 G. Watt with him

T. Hosein for Respondent
S. Charles with him.

1978; June 5 and 9

J U D G M E N T

DAVIS C.J. :

This is an appeal against the dismissal with costs by Bishop J of a motion brought by the Appellants under Section 15 of the Constitution of Antigua which sought the following relief:

- "(a) a declaration that the rights of the applicants under Section 8 of the Constitution of Antigua have been and are being infringed by the maintenance of criminal charges against them as are mentioned and referred to in the Schedule hereto;
- (b) a declaration that the applicants may not be tried for the said offences by reason of their having been denied the protection of Section 8 of the Constitution of Antigua and that any trial of the said offences will be unconstitutional, null void and of no effect;
- (c) an order dismissing the said charges for want of prosecution and for failure to grant the applicant a fair hearing within a reasonable time by an impartial court established by law

/(d)

- (d) damages and/or compensation as appropriate redress consequent upon the violation of the rights of the applicants under Section 8 of the Constitution of Antigua and an order that the said damages and/or compensation be determined upon due inquiry after the hearing and determination of this motion;
- (e) such further or other relief as the circumstances may require in terms of Section 15 of the Constitution of Antigua;
- (f) costs."

The Schedule disclosed 12 charges - eleven against Donald Halstead and one against George Walter and Sydney Prince jointly.

Section 8(1) of the Constitution of Antigua reads,

"Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law "

The grounds upon which the Appellants relied were:

- "1. The applicants have been denied a fair trial within a reasonable time by an independent and impartial tribunal Court of Law
2. The preliminary inquiry into the charges against the applicants ought to have been held on or before the 23rd May 1977;
3. The refusal of the prosecution to proceed with and the refusal of the Chief Magistrate to hear the charges on the 23rd May 1977 was improper and amounted to a denial of the guarantee and protection enjoyed by the applicants under Section 8 of the Constitution;
4. The refusal of the Chief Magistrate to dismiss the charges on the 23rd May 1977 and his Order that the charges be heard on the 7th July 1977 were unconstitutional;
5. The Chief Magistrate without power or authority in law intervened to postpone the date of hearing of the preliminary inquiry to July 1977 and to assume the conduct of the hearing of each charge to the detriment of the applicants and as a result of the said intervention the hearing of the charges by Mr Satrohan Singh who on the 19th April, 1977 had fixed the date of hearing for the 23rd May 1977 did not take place."

The learned trial judge held that Section 8 does not refer to proceedings at preliminary inquiries and so the Appellants could not be heard to say that the events which occurred amounted to a contravention of the protection given in Section 8 to persons charged with

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criminal offences. This Court has, however, in Appeal No. 5 of 1977 held that the fundamental rights guaranteed by the Section do apply to preliminary inquiries. The question therefore which falls to be considered in this Appeal is whether there was an infringement of the Constitution when on the 23rd May 1977 the Magistrate failed to hear the charges, or, put another way, whether the adjournment to the 7th July 1977 was a denial of the right to a fair hearing within a reasonable time.

Briefly the facts are that the Appellants were arrested on 21st February 1977 and taken before the Magistrate who granted them bail on the same day. They applied for an adjournment and the matter was adjourned to 1st March 1977 when they again sought an adjournment. The matter was adjourned to 8th March, 1977, and further, by consent, to 15th March 1977. It was again adjourned by consent to 22nd March 1977, and then to 5th April 1977, without objection, for a date to be fixed. On 5th April 1977, the Prosecution asked for a date in July but this was objected to, so the matter was adjourned to 12th April 1977, then to 14th April 1977, and again to 19th April 1977. On 19th April 1977, the matter was adjourned to 23rd May 1977. The Appellants consented to this adjournment. They were being represented by counsel from abroad, and it suited them. Indeed, no objection was taken to any of the adjournments mentioned above.

On 23rd May 1977, counsel for the prosecution applied for an adjournment to a date after 30th July 1977 as he was engaged at the Criminal Assizes. This was objected to, and after hearing both sides the Chief Magistrate, having refused to dismiss the charges, adjourned them to 7th July 1977. He has given as a reason in his affidavit the fact that he did not consider 23rd May 1977, to be a convenient date as there was a backlog of cases to be heard.

It has been submitted on behalf of the Appellants that they were entitled to a hearing on the 23rd May 1977, and that a denial of a

/hearing... .

hearing on that day was a Constitutional infringement. Also, that it was a further infringement to deny them a hearing until 7th July 1977. Counsel argued that there was an interference in the process of Justice when the cases were taken out of the hands of the Magistrate who had fixed them for the 23rd May 1977, and went so far as to suggest that even an adjournment to the 24th May would have been a denial of their rights. I should mention here that Section 45 of the Magistrates Code of Procedure Act permits any Magistrate to hear the matter.

Counsel for the Respondent in his submission pointed out that the various adjournments up to the 23rd May were not objected to, and that some of them were actually granted in order to accommodate the Appellants. He further submitted that the reason given by the Magistrate for the further adjournment to 7th July 1977, was a legitimate reason the reasonableness of which rested on the question of the state of his list of cases. The learned Magistrate had stated in his affidavit that there was a backlog of cases to be heard and there has been no imputation by the Appellants of mala fides on his part. I agree with learned counsel for the Respondent. The learned trial judge has not found that there was any bias on the part of the Chief Magistrate. Unfortunately, the learned trial judge has made no finding on the issue of unreasonable delay, but in my view this Court is in a position to do so. In my judgment the argument that an adjournment for a mere 6 weeks later violated the constitutional rights of the Appellants is without merit. Had the preliminary inquiry proceeded on 23rd May the case could not come to trial before the September Assizes, and proceeding with it on the 7th July would produce the same result.

Accordingly, I would dismiss this appeal and in the circumstances of this case where the learned judge failed to make a finding on the issue of unreasonable delay I would make no order as to costs.

/(Sir Maurice Davis).....

(Sir Maurice Davis)
CHIEF JUSTICE

I agree

(N.A. Peterkin)
JUSTICE OF APPEAL

I also agree

(J.D.B. Renwick)
JUSTICE OF APPEAL (Acting)