GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 21 OF 1996

BETWEEN:

DR. C.V. RAO **APPELLANT**

and

ERIC LAMPINSTEIN
RESPONDENT

Before: The Hon. Mr. C.M. Dennis Byron **Chief Justice [Ag.]**
The Hon. Mr. Satrohan Singh **Justice of Appeal**
The Hon. Mr. Albert N. J. Matthew **Justice of Appeal [Ag.]**

Appearances: Mr. Lloyd Noel for the Appellant
Mr. James Bristol for the Respondent

1998: February 26

JUDGMENT

SINGH, J.A.

This is an appeal from a decision of St. **Paul J.** of October 2 1st, 1996, wherein he fined the appellant $5,000.00 for contempt of court, on a motion filed by the respondents, for an Order that the appellant, the Dean of Students of the St. George's University, be committed to Her Majesty's Prisons for his contempt in "aiding and abetting the St. George's University in taking disciplinary action against the respondent and thereby interrupting and continuing to interrupt the academic and related studies of the plaintiff at the defendant's institution notwithstanding an order dated the 1st March, 1995 made in an intended action between the parties, which intended action, Suit No. 94 of 1994, of which Dr. Rao in his capacity as Dean of Students of the defendant had notice, he having been served

personally with a copy of the said Order on the 6th March, 1995."

The appeal raises at least five different issues. Mr. Noel for the appellant firstly argued that the learned trial judge did not use the correct standard of proof when he determined the motion. He submitted the correct standard of proof to be beyond reasonable doubt. We agree with this. A motion for contempt partakes of the nature of a criminal charge. A defendant is liable to be punished for it. He may be sent to prison. The rules as to criminal charges should be applied to such proceedings. [See **Comet Products (UK) Ltd v. Hawkex Plastics Ltd (1971) 2 WLR 361].** However, we do not agree that the judge used an incorrect standard of proof. The learned judge in our view, used a standard of proof that was greater than that prescribed by law. He said he was left in no doubt. In our view, that meant he was absolutely satisfied, rather than being merely satisfied beyond a reasonable doubt. There is no merit in this argument.

The next two issues were concerned with the service of the injunctive order on the appellant, and the issue whether or not the appellant was an aider and abettor of the St. George=s University School of Medicine when he allegedly committed the act of contempt.

OWe have already dealt with these issues in a judgment delivered by this Court on December 11, 1995 in a related matter between the same parties: **Civil Appeal No. 11 of 1995**

Grenada. We therefore consider these matters to be *res judicata* and we do not propose to pronounce on them again.

Another issue addressed by Mr. Noel, was concerned with a certain alleged procedural irregularity with respect to the service of the injunctive order on the St. George's University. The irregularity alleged was that the order was not personally served on the said University. Learned Counsel referred to the case of **Ramdat Sookraj v.Comptroller of Customs (1992) 48 WIR 163** where George C in the Court of Appeal of Guyana, following what was said by **Lord Greene M.R.** in **Gordon v. Gordon (1946) 1 A.E.R. 247 at p.250,** said:

> "The fact that a party admits that he has not complied with a mandatory order of court that has been made against him, does not amount to an admission that must necessarily result in punishment for contempt or in an order for attachment. Nor is the tentative view of counsel on his behalf that he may be guilty of contempt sufficient, for in his defence the alleged contemnor is entitled to take advantage of any procedural irregularities that may be available to him in order to avoid the consequences of his failure to comply."

We agree with and adopt this pronouncement of the law.

Ramdat Sookraj was a case that dealt with a principal offender like the St.George=s University, where in our jurisdiction 066 (2)(a) would have required personal service of the injunctive order on the said St. George's University. However, these proceedings do not concern the principal offender, they concern an aider and abettor As we said in our

judgment in December, 1995, the law as to service of the order on the principal offender is different to the law as it relates to service on an aider and abettor. The provisions of 066 R7(2)(a) do not apply to an offending aider and abettor. In his case, personal service is not essential. The Common Law applies and the requirement is mere knowledge of the injunctive order.

We do not propose to decide the issue of any procedural irregularity with respect to the service of the injunctive order on the St. George's University. We consider it irrelevant to our consideration of this appeal. Such irregularity of the service, if present, would avail only the principal contemnor, and only for him to avoid the consequences of his failure to comply. It did not make him sinless of the offence. Also, the irregularity would not make the order a nullity as submitted by Mr. Noel. It would remain a valid order commanding compliance.

Given these circumstances, we do not agree with the submission of learned Counsel for the appellant that because the principal offender can avoid the consequences of his failure to comply, that an aider and abettor cannot suffer those consequences. The principal's dismissal from punishment would have been a dismissal only because of the procedural irregularity. This ground of appeal fails.

The final issue was whether the Injunctive Order was served late on the appellant, in the sense that it was served after the event that it was intended to prevent had already

occurred. In our view, the second limb of the injunctive order answers this submission in favour of the respondent. We repeat here what was said by us in our December, 1995 judgment at p. 9 “From Dr. Rao’s affidavit, it is clear that he was perfectly well informed of the restraining order and its contents thereof at least before he sent the final letter of expulsion.

For all these reasons, we conclude that there is no merit in the appeal and it is dismissed with costs to the respondent to be taxed if not agreed. We also dismiss the cross-appeal. We can find no justifiable reason to interfere with judge’s discretion on the penalty imposed on the appellant. Mr. Bristol for the respondent was asking in the cross-appeal for a harsher penalty.

.....
SATROHAN SINGH
Justice of Appeal

I concur

.....
C.M. DENNIS BYRON
Chief Justice (Ag.)

I concur

.....
ALBERT N.J.MATTHEW
Justice of Appeal (Ag.)