SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 130 OF 2001

BETWEEN:

ALISON PAUL — Applicant

and

MICHELLE FRANCIS
FOSTER SCOTT
THE ATTORNEY GENERAL of SAINT VINCENT AND THE GRENADINES — Respondents

Appearances:

Victor Cuffy for the Applicant
Jaundy Martin for the Respondents

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2001: July 12, 24 and 31
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JUDGMENT

[1] WEBSTER, J. *(acting)*. By an amended Notice of Motion filed on the 11th April, 2001, the Applicant applied under the Constitution of Saint Vincent and the Grenadines for redress against the Respondents arising out of a search of her person by the First Respondent, and her travelling bag and handbag by the Second Respondent, at the Arnos Vale Airport on the 7th January, 2001. The Notice of Motion is supported by affidavits by the Applicant and of Garry Milosevich. When the matter first came on for hearing on the 10th May Counsel for the Respondents applied for an adjournment to prepare and file evidence opposing the Motion. The Respondents were given leave to file evidence in reply by the 24th May, and the hearing was adjourned to the 31st of May. On the 24th May the First and

Second Respondents filed affidavits in reply in which they agreed that the searches of the Applicant's person and property were carried out on the 7th January, but denied that such searches were illegal or unconstitutional. The Applicant filed an affidavit in reply on the 13th June and the matter was then ready for trial. At the resumed hearing on the 19th of June learned Counsel for the Respondents raised a preliminary objection to the Court hearing the Applicant's Motion on the ground that other means of redress for the alleged wrongs were available to the Applicant under the Common Law. The hearing was adjourned to the 5th July to give Counsel for the Applicant time to prepare a response to the objection. The objection was heard on the 12th and 24th July.

[2] Learned Counsel for the Respondents relied on section 16 of the Constitution, the relevant portion of section 16 of which reads as follows

> "(1) If any person alleges that any of the provisions of section 2 to 15 inclusive of this Constitution has been or is being or is likely to be contravened in relation to him,… then, without prejudice to any other action with respect to the same matter that is lawfully available, that person … may apply to the High Court for redress.
>
> (2) The High Court shall have original jurisdiction -
> (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
> (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,
> and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of the provisions of section 2 to 15 (inclusive) of this Constitution.
>
> Provided that the High Court may decline to exercise its powers under this subsection if it satisfied that an adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law".(My emphasis)

Subsection 1 gives a person with *locus standi* the right to apply to the High Court for redress in the event of a breach of any of the detailed fundamental rights and freedoms in sections 2 to 15 inclusive, and subsection 2 gives the High Court original jurisdiction to try such breaches. The proviso to subsection 2 gives the High Court a discretion to refuse to exercise its powers under the section where adequate means of redress are available to the applicant under any other law in the State.

[3] Counsel for the Respondents referred to and relied on the case of Attorney General of Grenada v Selwyn Aban W.I.R., a decision of the Eastern Caribbean Court of Appeal on appeal from the High Court of Grenada. The claim for redress in that case arose out of the treatment of the applicant while he was detained by the police. The unanimous decision of the Court was delivered by Satrohan Singh J.A. At page 3 of the judgment the Learned Justice of Appeal said :

> "The issues disclosed in the Affidavits refer to (1) wrongful detention; (2) false imprisonment; and (3) detinue or conversion. They are all torts for which the Common Law provides adequate means of redress. For the Respondent to remove himself from seeking this ordinary Common Law redress and to invoke the special constitutional rights to redress under section 16, he has to show something more than a mere grievance emanating from the ordinary Common Law torts. He has to show some sort of emergency or urgency in his situation or something else whereby it can be said that the ordinary Common Law suit would not provide adequate means of redress. If this is not shown then he ought not to invoke section 16 and any attempt on his part to do so may amount to a misuse of his rights under that provision of the Constitution."

Later in his judgment the Learned Justice of Appeal referred to the case of Kemrajh Harrikissoon v Attorney General (1979) 31 WIR 348, a decision of the Privy Council on appeal from the Court of appeal of Trinidad and Tobago, and quoted from the speech of Lord Diplock at page 349 as follows:

> "The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the Court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom"

[4] The principle to be derived from the judgment of Satrohan Singh J.A. is that if a person can obtain redress for wrongs committed against him under the ordinary law, the proper way of

proceeding is to pursue that other remedy and not apply to the High Court under section 16 of the Constitution unless there is

> "…some sort of emergency or urgency in his situation or something else whereby it can be said that the ordinary Common Law suit would not provide adequate means of redress" (per Singh JA supra).

[5] Learned Counsel for the Respondents submitted that the evidence in the case discloses issues relating to false imprisonment and assault and battery, which are torts for which the Common Law provides adequate remedies, and the Applicant has not shown that there are special circumstances within the meaning of the guidelines set out by Singh, JA why the Court should hear her application pursuant to the special procedure provided by section 16 of the Constitution. I agree entirely.

[6] Learned Counsel for the Applicant responded by submitting that in addition to the circumstances set out in by Singh, JA in the Aban's case, the Court can have regard to the way that the case between the parties has been conducted in exercising its discretion under the Proviso. He supported this submission by reference to the case of Kevin Lucas v Myrtle Jack and The Attorney General of Saint Vincent and the Grenadines (SVG Civil Appeal No. 6 of 1999 – unreported) in which the Court of Appeal took a somewhat different approach. The Appellant, a student at the Stubbs Primary School, was flogged with a leather strap by the First Respondent, an assistant teacher at the school. He brought proceedings under the Constitution of Saint Vincent and the Grenadines for a declaration that the "flogging" contravened his right not to be subjected to inhuman and degrading punishment guaranteed by section 5 of the Constitution. When the case went on appeal the Court of Appeal gave their decision on the premise that the Learned Trial Judge had found that the Appellant had effective remedies under the ordinary law of the land, and had declined jurisdiction under the Constitution. However, it appears from page 11 of the written judgment delivered by the Trial Judge that he found that the Appellant was entitled to apply for redress under the Constitution because the alternative remedy under the Regulations made under the Education Ordinance did not provide an effective remedy. And at page 10 he found that the punishment of the Appellant did not reach to the level of breaching the provisions of section 5 of the Constitution. Accordingly, he

dismissed the motion (page 12). Counsel for the Applicant relied heavily on this case and in particular the following passage in the Chief Justice's judgment:

> "However, it is not mandatory to decline jurisdiction. The relief prayed for included prayers for a declaration of unlawfulness and for an order for compensation. It is true that the process of the court could be abused by the unnecessary initiation of constitutional proceedings where the proper course would be an action for damages. However, the parties and the evidence are before the court, and the full process has been completed, time has elapsed, costs have been incurred, I can see no justification in directing that a procedural default should require the entire process to be duplicated. Such a duplication will produce an approximately similar result, but only after much more time has elapsed and much more costs expended. I also think that no rationale could be given to the litigants with which they could relate. I have considered the ends of justice would be well served if the real issue in dispute between the parties could be resolved without the time consuming, costly and demanding and purely technical exercise of instituting fresh proceedings, because the evidence before the court is sufficiently comprehensive on the dispute in issue between the parties to allow adjudication."

He also relied on the Chief Justice's reference to section 20 of the Supreme Court Act which provides:

> "The High Court and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them under this Act, shall, in every cause or matter pending before the court, grant, either absolutely or on such terms and conditions as the court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided"

The Court of Appeal allowed the appeal, declared that the punishment of the Appellant was inconsistent with the Regulations, and awarded damages to the Appellant.

[7] Counsel for the Applicant submitted that the case of Lucas v Jack and the AG allows me to consider the way in which the case has been conducted in exercising my discretion under the proviso. This may be correct, but I am mindful of the fact that the proceedings in Lucas v Jack were more advanced than this case in that the trial was actually completed, and that the Trial Judge had exercised his discretion to hear the application as a constitutional motion. The passages of the Chief Justice must therefore be viewed in that context, and against the background of the line of authorities ending with Aban's case that suggest that

the special jurisdiction in the Constitution should only be resorted to when there are special circumstances as outlined by Singh, JA.

[9] It would have been better if the Respondents had taken the objection when the application first came on for hearing, and thereby save time and costs. The costs thrown away will be partly addressed in the order for costs that I will make. For the purpose of exercising my discretion I find that the Applicant has effective alternative remedies, and that there are no special circumstances in this case within the meaning of the test laid down by the Court of Appeal in AG v Aban. The delay and additional expense is regretted, but I am constrained by the preponderance of legal authorities that apply to this situation to uphold the objection and dismiss the Motion.

[10] The Respondents will have their costs up to and including the first day of the hearing on May 10, 2001, and the Applicant will have her costs for all subsequent hearings.

Paul Webster
High Court Judge (*Ag.)*