SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 141 OF 2001

IN THE MATTER OF THE SAINT VINCENT CONSTITUTION ORDER 1979
AND
IN THE MATTER OF THE APPLICATION BY PHILLIP MARK VAUGHAN FOR REDRESS PURSUANT TO SECTION 16 OF THE SAINT VINCENT CONSTITUTION ORDER 1979 FOR ALLEGED CONTRAVENTION OF THE RIGHTS GUARANTEED TO HIM BY SECTIONS 3(2) AND 5 OF THE SAINT VINCENT CONSTITUTION ORDER 1979

BETWEEN:

PHILLIP MARK VAUGHAN

Claimant

and

THE COMMISSIONER OF POLICE OF SAINT VINCENT AND THE GRENADINES
AND
THE ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES
AND
WILLIAM HARRY
DEPUTY COMMISSIONER OF POLICE
AND
LENROY BREWSTER
STATION SERGEANT OF POLICE

Respondents

Appearances:

Miss Nicole Sylvester and Mrs. Cheryl Mc.Sheen-Bailey for claimant
Mr. Grahame Bollers for the third and fourth-named respondents

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2001:October 24, November 14

JUDGMENT

ALLEYNE J.

[1] THE CLAIM: On June 18, 2001, the claimant/applicant filed an application pursuant to the inherent jurisdiction of the court for leave to issue writs of subpoena to compel the attendance of witnesses at the hearing of a Motion for committal for contempt. The application was for the following;

1. writ of *subpoena ad testificandum* in respect of Glenroy Bellingy, Clerk of the Kingstown Magistrates Court.

2. writ of *subpoena ad testificandum and subpoena duces tecum* in respect of Joel Jack, Airport Manager, E.T. Joshua Airport, Arnos Vale.

3. writ of *subpoena ad testificandum and subpoena duces tecum* in respect of Michelle Forbes, Air Traffic Control Officer at the said Airport.

4. an order that Lennox Harry, Police Station Sergeant, Bertie Pompey, Police Inspector, Patricia Martin, Permanent Secretary, Ministry of Foreign Affairs, Antonio John, Stenographer in the Attorney General's Chambers, Sylvina Jack, Records Clerk in the said Chambers, and Petrona Sealy-Brown, Crown Counsel in the said Chambers, do attend at the hearing of the Motion for committal to be examined on their several affidavits filed in the action on April 30, 2001.

5. alternatively, an order that the applicant be given leave to issue in respect of Martin a *subpoena ad testificandum and subpoena duces tecum*, and in respect of all others, *sugpoenas ad testificandum* to compel their attendance to be orally examined at the hearing.

[2] THE GROUNDS: The grounds of the application are that, the Crown being a party to this suit involving important issues of Constitutional Law, and the relevant proceedings being an application to commit two Police Officers, being servants of

the Crown, for contempt, there is a duty on the Crown to ensure that all available evidence is placed before the court in the interests of justice. It is argued that the testimony of the proposed witnesses is relevant to the issues, in that the witness Bellingy's testimony is relevant to the issue of notice of the order of the court to the fourth named respondent, and the witnesses Jack and Forbes's testimony is relevant to the issues surrounding the alleged removal of the claimant/applicant from St. Vincent and the Grenadines, which constitutes the alleged act of contempt.

[3] It is further argued, in respect of the witnesses Harry, Pompey, Martin, John and Sealy-Browne, whose affidavits have been filed in the suit by the Attorney General, that relevant evidence which they can provide should not be suppressed by the Crown. The applicant does not expect that any of these witnesses would voluntarily submit to examination. Learned Counsel for the applicant rightly pointed out that, the proposed witnesses being witnesses for the respondents, it would not be proper from the point of view of the ethical standards of practice for the applicant to interview the witnesses. In consequence, it is considered necessary to subpoena them to be examined or cross-examined before the court.

[4] THE ISSUES: Learned Counsel for the respondents opposes the application on the ground that an application to the court for committal for contempt is, as a matter of practice, to be supported by evidence on affidavit. Counsel argues that in such proceedings the court would not entertain an application for deponents to be cross-examined on affidavits filed prior to the institution of the contempt proceedings, where the main reason for or purpose of the cross-examination is to determine whether the witnesses have perjured themselves. Establishing perjury on the part of such witnesses does not advance the case, which has to be proved beyond a reasonable doubt, Counsel urged. Counsel cited the case of Re Lonrho plc and others [1989] 2 All ER 1100, dictum of the Appellate Committee of the House of Lords at page 1113 a

> "We entertained doubts as to whether, in summary proceedings for contempt, it would be appropriate to require deponents to submit to cross-examination on material contained in affidavits sworn in the course of other proceedings before the contempt proceedings were begun. Moreover, in the absence of any extraneous factor casting doubt on the evidence, we considered that cross-examination seeking to establish that the evidence was perjured was of doubtful propriety and could not, in any event, be expected to establish an affirmative case beyond reasonable doubt."

[5] Counsel submitted that the affidavits sought to be introduced, and the cross-examination, would not in any way establish the case for contempt, but seeks only to impugn the testimony of the witnesses. It would not advance the case.

[6] In relation to the application to subpoena the witnesses Bellingy, Jack and Forbes, Counsel says that the sole purpose is to embark on a fishing expedition to determine whether persons other than the third and fourth respondents had notice of the order so as to institute contempt proceedings against those persons. The court should not allow itself to be used as an instrument to entrap other persons. Counsel urged that all the issues that the applicant wishes to elicit by these subpoenas are addressed in Parnell Campbell's affidavit, the contents of which are not challenged, the respondents having not filed affidavits in reply.

[7] Rule 33 provides for the issue of witness summonses, and by R. 33.3, permission of the court is required in certain limited circumstances, none of which applies in the instant case. Ordinarily, therefore, the applicant would be free to issue witness summonses without the permission of the court. The assistance of the court would only be necessary where the summoned witness fails to attend, refuses to answer any lawful question or produce any document, or refuses to be sworn or to affirm. In such a case, where the summons is for appearance before an examiner, R. 33.10 can be called in aid. In other cases the court would enforce obedience to its summons as it would any other order.

[8] Rule 44 deals with the process for examination of judgment debtors, and Rule 45 deals with enforcement of judgments generally. Rule 45.6 deals specifically with the enforcement of judgments and orders requiring a person to do an act within a specified time, or not to do an act, while Rule 43.8 addresses the question of enforcement against a person who is not a party to the action. Rule 59.7 deals with enforcement against the Crown, and in paragraph (1) provides that Parts 44 to 53 do not apply to any order against the Crown. However, the instant proceedings are not civil proceedings under the Crown Proceedings Act, such as are contemplated by that Rule, but proceedings for enforcement of fundamental rights under the Constitution of St. Vincent and the Grenadines.

[9] The onus of proving a contempt lies on the person seeking to enforce the order. Learned Counsel for the respondent directed the court's attention to the case of Yianni v Yianni [1966] 1 All ER 231, a judgment of Cross J. referring to the rule that the judge should not call any evidence himself in civil proceedings unless the parties consent or at least do not object. The judge expressed that he was

> "satisfied that the general rule cannot apply to a committal motion. The contempt alleged here is a civil contempt: but if the party who has obtained the order, not having released the other party from compliance with it, alleges that it has been broken, then the matter has a quasi-criminal aspect, and I do not doubt that the court has power, in order to find out the truth of the matter, to serve subpoenas."

[10] Counsel sought to distinguish that case on the basis that the only real evidence was in the hands of a third party, whereas in the case under consideration, there is prima facie evidence, not hearsay, before the court. In those circumstances the court would not intervene to fortify the applicant's case by issuing summonses to additional witnesses.

[11] It is for the parties, not the court, to determine what evidence it wishes to produce in support of their respective cases, subject, of course to the law concerning relevance and admissibility, and to certain rules of court. Rule 29.1 confers on the court the power to control the evidence by giving appropriate directions. This

power, however, is not an absolute power to be exercised arbitrarily, but a management tool to enable the court better to achieve the overriding objective to deal with cases justly.

[12] CPR Rule 29.2 declares the general rule to be that any fact which needs to be proved is to be proved, at trial, by the oral evidence of the witness given in public, and, at any other hearing, by affidavit.

[13] At any hearing, it is for the court to rule on relevance and admissibility of any evidence proposed to be tendered. It would be inappropriate for me, at this stage, to exclude the evidence of any witness proposed to be called by a party without knowing what the proposed evidence is. The court cannot properly exercise any such power.

[14] On the other hand it is not for the court, subject to R. 29.1, either to order a particular witness to be called, or order that that witness be not called.

[15] The circumstances of this case do not require the court to exercise the Yianny power to summon a witness to supply evidence on behalf of the applicant, nor does it appear to me that the applicant needs the permission of the court to summon the witnesses Bellingy, Jack or Forbes, and the application for permission to do so is dismissed.

[16] As to the application for an order that the deponents Harry, Pompey, Martin, John, Jack and Sealy-Browne attend at the hearing to be cross-examined, or alternatively that permission be granted to issue summonses to compel the attendance of these deponents at the hearing for the said purpose, it is my view that I am bound by the decision in Lonrho, and that it would be an excess of the court's jurisdiction in these circumstances to make such an order. The applicant is therefore dismissed.

[17] The applicant must pay the costs of the third and fourth respondents, to be agreed or assessed.

Brian G.K. Alleyne
High Court Judge