

DHURBARRYLALL A. v BHADAIN R & ORS

2014 SCJ 93

Record No. 1122

THE SUPREME COURT OF MAURITIUS

[Court of Civil Appeal]

In the matter of:-

A. Dhurbarrylall

Appellant

v

- 1. R. Bhadain**
- 2. The Independent Commission Against Corruption**
- 3. The Commissioner of Police**
- 4. The State of Mauritius**

Respondents

In the presence of:-

M.R. Kurmally

Co-Respondent

JUDGMENT

This is an appeal against an interlocutory judgment of the learned trial Judge who upheld a plea *in limine* on behalf of the four respondents, then defendants, and dismissed an action for damages by the plaintiff, now appellant, against them on the ground that there had been non-compliance with the provisions of the Public Officers Protection Act.

The appellant's plaint complained of the acts and doings of the first respondent, who was then the Chief Investigations Officer of the second respondent, as well as of the police officers posted at the second respondent. It was averred first, that on 12 December 2002, these police officers had asked the appellant to attend the office of the

second respondent where he was asked to make a false accusation against a colleague and, upon his refusal, was abused by the first respondent and detained for some four hours and, secondly, that on 17 December 2002, the police officers posted at the second respondent arrested him and he was detained in police cell until 23 December 2002. It was also averred that the second, third and fourth respondents were the “*commetants*” of the first respondent and the other police officers.

The plaint itself was lodged in the Registry of the Supreme Court on 17 December 2004 and on that very day itself served on the third and fourth respondents whilst service on the second respondent was effected on 20 December 2004. There was no service on the first respondent but he did put in an appearance on the returnable date.

The record also shows that prior to the institution of those proceedings, a notice *mise-en-demeure* was deposited at the Registry of the Supreme Court on 17 November 2004 for service on the respondents. There was no service on the first respondent as a wrong address was given. But service of the notice was effected on the third and fourth respondents on 17 November 2004 itself and on the second respondent on the 18 November 2004.

Now, section 4 of the Public Officers Protection Act provides as follows –

4. Limitations of actions

(1) *Every civil or criminal action, suit, or proceeding, by a person other than the State, for any fact, act or omission, against a –*

- (a) *public officer in the execution of his duty;*
- (b) *person engaged or employed in the performance of any public duty; or*
- (c) *person acting in aid or assistance of the public officer or person mentioned in paragraphs (a) and (b),*

shall, under pain of nullity, be instituted within 2 years from the date of the fact, act, or omission which has given rise to the action, suit, or other proceeding.

(2) (a) *No civil action, suit or proceeding shall be instituted, unless one month’s previous written notice of the action, suit, proceeding and of the subject matter of the complaint, has been given to the defendant.*

(b) No evidence shall be produced at the trial except of the cause of action as specified in the notice.

(c) In default of proof at the trial that the notice under paragraph (a) has been duly given, the defendant shall be entitled to judgment with costs.

.....

It is not disputed that no notice was served on the first respondent. Accordingly we take the view that the plaint *quoad* him was properly dismissed with costs.

Before addressing the issue raised on appeal in relation to the other respondents, it is important that we state what are the acts complained of. It is clear that any action in respect of the act of 12 December 2002 would fall foul of the provisions of section 4 of the Public Officers Protection Act. In any event, the act of 12 December 2002 was not specified in the notice. So that the learned trial Judge could only refer to the alleged illegal arrest and detention of the appellant on 17 December 2002 – and not the date on which he was released, that is, 23 December 2012 – as giving rise to the appellant’s action. That action has in terms of section 4(1) of the Public Officers Protection Act to be instituted within 2 years from that date. Moreover, one month’s previous notice of the action had to be given to each of the respondents in terms of section 4(2)(a) of the Public Officers Protection Act.

It is appropriate that we reproduce section 38 of the Interpretation and General Clauses Act. It reads as follows –

38. Computation of time

(1) In computing time for the purposes of any enactment or document –

- (a) where the time limited for the doing of an act expires or fails on a Saturday or a public holiday, the act may be done on the following day that is not a public holiday;*
- (b) where there is a reference to a number of days between 2 events, whether expressed by reference to a number of clear days or “at least” a number of days or otherwise, the days on which the events happen shall be excluded in calculating the number of days;*

- (c) *where an act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day is a Saturday or a public holiday, the act or proceeding may be considered as done or taken in due time if it is done or taken on the following day that is not a public holiday;*
- (d) *where there is a reference to a period of time specified to run from a given date, the period of time so specified shall be calculated so as to include the given day.*

(2) Where no time is prescribed or allowed within which an act or thing is required to be done, that act or thing shall be done without unreasonable delay, and as often as due occasion arises.

Pursuant to section 38(1)(d) above, the period of 2 years has to be calculated so as to include the date of 17 December 2002. That period of 2 years accordingly ended on 16 December 2004. It is not disputed that the plaint with summons was only lodged at the Registry of the Supreme Court on Friday 17 December 2004. There is no evidence that 16 December 2004 was a public holiday. Accordingly, the plaint was lodged outside the prescribed period and fell foul of the provisions of the Public Officers Protection Act.

But there is more. When it comes to the prior written notice, we take the view that it is section 38(1)(b) of the Interpretation and General Clauses Act that is applicable. So that there should have been one full month between the date of the service of the notice on each respondent and the lodging of the plaint on 17 December 2004. Again, the learned Judge was right in holding that the service of the notice on each of the second, third and fourth respondents has fallen foul of the provisions of the law.

In view of what we have said above, the appeal is dismissed with costs. We can only add that the appellant has only himself to blame for such a state of affairs, especially given the fact that the Director of Public Prosecutions advised no further action against him (contrary to the averment of the first respondent that the Director of Public Prosecutions advised disciplinary proceedings) and he was reinstated in his post of customs officer.

The matter will be mentioned on Tuesday 06 May 2014 before the Master and Registrar for the necessary amendments to be effected in relation to the appellant's claim against the co-respondent, as directed by the learned trial Judge.

**K.P. Matadeen
Chief Justice**

**P. Fekna
Judge**

27 March 2014

Judgment delivered by Hon. K.P. Matadeen, Chief Justice

**For Appellant : Mr U.K. Ragobur, Attorney-at-Law
Mr N. Proag, of Counsel**

**For Respondent No. 1 : Mr P. Chuttoo, Attorney-at-Law
Mr D. Ng Sui Wa, of Counsel**

**For Respondent No. 2 : Mr S. Sohawon, Attorney-at-Law
Mr P. Bissoonauthsing, of Counsel**

**For Respondents Nos. 3:
and 4 : State Attorney
Ms S. Gareeboo, Senior State Counsel**

**For Co-Respondent : Mr B. Sewraj, Attorney-at-Law
Mr Z. Mohamed, of Counsel**