

IN THE COURT OF APPEALSUPREME COURT CIVIL APPEAL No. 27/79

BEFORE: The Hon. Mr. Justice Henry, J.A.
The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Carberry, J.A.

DESMOND GRANT et al v. DIRECTOR OF PUBLIC PROSECUTIONS

Appellants represented by Mr. I. Ramsay, Mr. H. Hamilton,
Mr. P. Atkinson, Mr. K. Knight, and
Miss N. Linton.

D.P.P. represented by Mr. I. Forte with Mr. H. Downer.

12th December, 1979

HENRY, J.A.:

We consider it desirable at this stage to give our decision in this appeal and to indicate broadly the basis of that decision. We propose later on to set out in writing and in greater detail our reasons.

Dealing first with the question of pre-trial publicity we are of the view that on the evidence presented the applicants established that at the time of filing of the motion there was a likelihood that the adverse publicity would have a prejudicial effect on the minds of potential jurors. We are not however satisfied that the likelihood is that the minds of such potential jurors would be so indelibly prejudiced that the means available to a trial court (in particular the challenge of jurors and the warning by the trial judge to jurors to put aside prejudice) would be ineffective to ensure a fair hearing by an impartial tribunal. Contravention of Section 20(1) of the Constitution being the failure to afford an accused person a fair hearing by an impartial tribunal, we are not therefore satisfied that there is likely to be such a contravention in respect of the appellants.

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In any event on a plain grammatical interpretation of Sections 20 and 25 of the Constitution it cannot be said that the provisions of Section 20 "have been or are being contravened", that is that the appellants have not been or are not being afforded a fair hearing by an impartial tribunal. The allegation clearly relates to the likelihood of contravention, that is that the appellants are not likely to be afforded a fair hearing by an impartial tribunal.

Accordingly, by virtue of the Judicature (Constitutional Redress) Rules, 1963, the proceedings ought to have been brought by writ of summons and not by notice of motion.

We agree with the court below that the presumption of innocence is not evidence in favour of the accused person but merely means that the prosecution must prove their case beyond reasonable doubt. This presumption cannot be rebutted prior to the trial, and can only be rebutted by evidence at the trial.

We also agree with the court below that the Director of Public Prosecutions has a right to prefer an indictment in the circuit court ex officio and without prior resort to a preliminary enquiry.

Finally, we are of the view that the essential nature of these proceedings is an allegation that the judicial system is likely to fail in its obligation under the Constitution to afford to the appellants a fair hearing by an impartial tribunal. The Judiciary or the Judicial system is itself an arm of the state. The proceedings, at least in so far as they allege contravention of section 20 of the Constitution, therefore involve an allegation against the state itself and as such were properly brought against the Attorney General. We are therefore of the view that the court below fell into error in dismissing

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the Attorney General from the proceedings in limine.

We however agree with the decision of the court below that the motion be dismissed, and accordingly the appeal against that decision is dismissed.

On the question of costs gentlemen?

MR. FORTE: M'lord, we would like to apply for costs.

MR. RAMSAY: M'lord, this is clearly a matter of the greatest public importance, and with far-reaching implications. It is right, in our view, that it should have been brought, and your lordships, while we made our submissions, found it worth your while to consider these points in their broadest scope. Accordingly, this might very well bear on the question of costs, because where a matter is brought which is in the highest public interest, then no costs ought to be awarded. In any event, m'lords, in the peculiar circumstances of this case, it is hardly -- shall I put it another way, 'it beats the air', so to speak.

HENRY, J.A.- Were costs awarded in the court below?

MR. RAMSAY: Yes, m'lord, but no submission was made as I now make it.

MR. HAMILTON: I endorse, m'lord.

HENRY, J.A. - We agree with the submissions made by Mr. Ramsay.

Accordingly, we will make no order as to costs.

We wish to make it clear before we leave this matter that our decision must not be regarded as any licence for publications of the nature of which complaint has been made in these proceedings. Comment has been made by the judges in the court below and we expect that due regard will be paid to those comments, and to the sanctions which may be imposed where any such publicity amounts to contempt of court.

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