NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M-42 OF 1997

CORAM: THE HON. MR. JUSTICE PANTON, J
THE HON. MR. JUSTICE SMITH, J.
THE HON. MR. JUSTICE G. JAMES, J.

REGINA V. THE RESIDENT MAGISTRATE
AND CORONER FOR THE
PARISH OF CLARENDON

- Exparte Maung Maung -

Mr. F. Phipps Q.C., Mr. E.B. Johnson and Ms. K. Phipps for Applicant.

Mr. D. Reece for Director of Public Prosecutions

Miss Llyle Armstrong for Attorney General.

HEARD: July 15 and 18, 1997

SMITH, J.

Between the 20th January, 1997 and the 26th February, 1997 an inquest was held touching the death of one Novelette Chambers.

This inquest was presided over by His Honour Mr. Courtnay Day, the Coroner for the parish of Clarendon. Eight jurors were empanelled to hear the case.

By a majority of 7 to 1 the jury found the applicant Dr. Maung, Dr. Myint and Sister Bloomfield "prima facie responsible for the offence of manslaughter in respect of the death of Novelette Chambers."

The applicant was arrested and bailed in the sum of $100,000.00 to attend the Clarendon Circuit Court on 2nd April, 1997. Thus it is clear that the matter is now before the Clarendon Circuit Court.

On the 24th day of April, 1997 leave was granted to the applicant to apply to the Full Court for Certiorari. The reason given by the applicant for the delay is that he was awaiting the advice of his relatives in Burma who are sponsoring his defence.

The grounds on which the Order for Certiorari is sought are:

(i) That the verdict as recorded did not reflect the decision of the jury.

(ii) The said Inquisition was contrary to natural justice.

(iii) Evidence was insufficient to support the verdict.

(iv) Failure by the Coroner to poll the jury to determine whether minority of jurors was more than two.

(v) The Inquisition does not state:

(a) the particulars of the findings of the jury as to how she came by her death; nor

(b) the offence for which the applicant and others were to be charged.

Before us Mr. Phipps mounted an attack against the Inquisition itself. He argued that the Inquisition is defective in substance in that it fails to indicate the particulars relating to the circumstances of the death of Novelette Chambers, when and where she died, the cause of death and in what way Dr. Maung, Dr. Myint and Sister Bloomfield were responsible and what charge was to be preferred against them. He pointed out that the full names of the jurors did not appear on the Inquisition.

Mr. Reece conceded that the Inquisition is defective but argued that the defects are formal and not sufficient ground for quashing the Inquisition.

We are clearly of the view that these defects are of substance.

The question is whether or not this court should exercise its common law jurisdiction to quash the Inquisition or should leave it to be dealt with by the court before which the applicant is criminally charged.

A Coroner's Inquisition charging an offence is like an indictment. The party charged has the same right on arraignment to demur and to apply to have the Inquisition quashed as he would have if arraigned on an indictment.

Certiorari is a discretionary remedy, and will not, save in exceptional circumstances, be given where equally appropriate remedies are available. See **Preston v. I.R.C.** (1985) 2 All E.R. 327 at 330 and at 337, **R. V. Chief Constable of Merseyside** (1986) 1 All E.R. 257.

In this case the applicant was committed to the Clarendon Circuit Court. He appeared before that Court in April, 1997, and is remanded on bail to return to that court.

We think that the desirable procedure would have been for the applicant to seek to quash the Inquisition before his appearance in the Circuit Court, or on arraignment there.

We are of the view that he was fortunate in the circumstances to have obtained leave at the time he did, to come to this Court bearing in mind the provisions of S.564C of C.P.C. However, having come to the conclusion that the Inquisition is defective in substance, we would not wish to see the applicant further burdened with the task of presenting the same arguments again before another Court of equal jurisdiction.

Accordingly we are of the view that the proper thing to do is to exercise our discretion and quash the Inquisition at this stage.

The application is therefore granted.

There will be no order as to costs.

Panton, J - I agree

James (G), J. - I agree