

IN THE HIGH COURT OF FIJI

At Suva

Civil Jurisdiction

CIVIL ACTION NO. 521 OF 1996

Between :

HARISH MAHENDRA SINGH Plaintiff

- and -

THE COMMISSIONER OF POLICE First Defendant

MOSES DRIVER Second Defendant

ATTORNEY GENERAL Third Defendant

Counsel : Ms. Prem Narayan for the Plaintiff
Mr. S.D. Turaga for the Defendants

Date of Hearing : 16th, 17th and 24th November, 2006

Date of Judgment : 19th January, 2007

JUDGMENT

- [1] The events concerned in this case took place in February 1995. Eleven and a half years passed before this matter came to trial. There are some documents from the time in question which assist. However, for the most part I have to judge this case upon the oral evidence.

- [2] This case was struck out for want of prosecution in July 2005. It was restored upon application of the plaintiff and was brought to trial. The plaintiff Mr. Harish Mahendra Singh in his supporting affidavit blamed his previous firms of solicitors for the delays. On the face of the documents before me there appears to be much support for this position.
- [3] In February 1995 Harish Singh was in dispute with the company Automart Limited over a vehicle. As a result of that dispute Automart seized a vehicle from the plaintiff. I pass no comment as to whether that seizure was lawful or not. By way of response Harish Singh with the assistance of another, and he says on the advice of his lawyer, seized a vehicle belonging to Automart Limited. His position was simply that if Automart returned his vehicle then he would return Automart's. These facts are not disputed.
- [4] However, Automart reported the "theft" of their vehicle to the police. The police carried out an investigation and subsequently charged Harish Singh and the other person with the theft of Automart's vehicle. They were subsequently acquitted at trial.
- [5] On 24th of October 1996 Mr. Singh filed proceedings against Automart and the police for breaches of his constitutional rights concerning arrest, charge, right to a solicitor and similar matters. Automart were later dismissed from these proceedings.
- [6] The Commissioner of Police and Attorney General deny these claims. In effect, they say that Mr. Singh's rights had been observed, that the investigation was conducted properly, that Mr. Singh's evidence was not reliable and the documents from the time if anything point in support of the defendants' version of events.
- [7] I have heard the evidence of Harish Singh and his wife Pauline Singh for the plaintiff. I have the evidence of Suresh Singh, Inspector Adi Sen and

Deputy Commissioner Moses Driver for the defendants. I have an agreed bundle of documents dated the 7th of June 2006 and a supplementary list of documents for the defendants dated 21st of August 2006. Both parties put in closing written submissions. It must be noted that these events took place when the 1990 Constitution was in force. That was replaced by the 1997 Constitution. Nothing turns on this fact.

[8] This case hinges upon the credibility and reliability of the witnesses. In this regard, the few available documents from the time provide useful cross-checks when assessing the witnesses.

[9] There is a fundamental difference between the plaintiff's version of events and that of the defendants. The plaintiff states that he only went on one occasion, 14th February 1995, to the police station, gave an interview, was charged, kept overnight and bailed the next day by a court. The defendants state that Mr. Singh was first interviewed on the 13th of February 1995 concerning the allegation of theft of a motor vehicle. He was asked its whereabouts and agreed he knew them but would not disclose where the vehicle was. He then went home and returned to the police station on the 14th of February. There was a further interview and then he was charged, detained overnight and placed before a court the next morning.

[10] After a few weeks or months recollections of honest and reliable witnesses will begin to vary. After eleven and a half years inevitably there will be large variations of recollection and loss of accurate recall of not just detail, but salient events.

[11] However, even after this time, one would expect Mr. Singh to recollect how many times he had been to the police station. The police investigation diary (document 3, defendants' supplementary list) appears to be a genuine document compiled by the defence witness Adi Sen at or soon after the time of the events it records. That document shows

clearly that Mr. Singh came to the police station on two occasions, namely 13th and 14th of February.

- [12] The record of 14th of February at 1330 states "from crime office I rang to Harish Singh and asked him to call in police station and he will be interviewed further". The record then shows that he attended voluntarily at 1630 hours. This was not a matter of Mr. Singh being arrested and taken to the police station without the opportunity to consult with a lawyer or to ask for one to be present when he went to the police station.
- [13] The record of the interview on the 13th of February is not before the court. There is a typed copy of what appears to be an interview conducted a day or so before 14th February. It is dated "02/12/94". However, the record of the 14th of February is before the Court. That shows that Mr. Singh was informed at the beginning of the interview of why he was at the police station and that he was cautioned.
- [14] The interview commenced at 1635 hours. It was a handwritten interview for both questions and answers. At 1810 hours the record shows that "Mr. Raza (Mr. Singh's lawyer) rang and he spoke to Harish Singh for three minutes. 1815 hours interview recommenced and he was reminded about the caution" and the caution was set out again. This record of interview was signed by Mr. Singh.
- [15] It is clear from this record that Mr. Raza, the plaintiff's lawyer, was aware that he was at the police station and that Mr. Singh was allowed to consult with him.
- [16] It is also pertinent to note that at the beginning of the interview he gave answers to the questions posed. When the officer started asking him about matters central to the investigation Mr. Singh replied "no comment". He continued to respond "no comment" after his consultation with Mr. Raza.

[17] The investigation diary for 13th of February for 1345 hours reads "at 203 Rang Avenue I have visited the house of Harish Singh where I met him. I asked him if he can come with me to police station for interview in regards to car taken by him from Automart Limited. He requested me that he will see me at police station by 2.00 p.m.

"1410 hours at Central Police Station Harish Singh called in to see me. ASP Satish Prasad spoke to him.

"1441 hours at Crime Office Central Police Station I have interviewed Harish Mahendra Singh under caution Judges Rules No. 2. ... During the interview Harish Mahendra Singh Mr. Raza called in to see him.

"1720 hours at Crime Office I completed the interview of Harish Singh and I informed ASP Prasad about the case. ... ASP Santa Prasad released Harish Singh ... ASP Santa Prasad called Harish Singh to come and see him next morning to sort out about the car."

[18] I consider the evidence of Harish Singh in detail. It is clear that he was very angry at the behaviour of Automart Limited. It would appear that when his vehicle had been seized he attempted to follow proper legal procedures and indeed obtained a court order which, when served, the manager of Automart threw on the floor and disregarded.

[19] Mr. Singh states it was on the advice of his lawyer that he, Mr. Singh, used a subterfuge to take and hold a vehicle of Automart in retaliation. It would appear that Mr. Singh's lawyer was interviewed in this regard also.

[20] Mr. Singh's principal complaints are that he was given no option but to attend the police station, he was kept there for several hours against his will and was repeatedly asked nothing more than 'where is Automart's car'. It was made clear to him that he could not leave, even though this was not explicitly stated to him, he says he was refused contact with a

lawyer, he states he is and was asthmatic and had no opportunity to contact his wife or he dived his inhaler.

[21] Mr. Singh is clear in his mind that he only went to the police station on the one occasion. He states he was not properly charged. He makes complaints about being kept in a very small cell with two others and that later two drunk and violent men were also placed in the same cell. He states that the whole episode affected his health. He also avers that the magistrate made it clear, the following morning, that he would not get bail unless he informed the police of the whereabouts of the Automart vehicle.

[22] Mr. Singh's wife Pauline gave supporting evidence. She told about the seizure of their vehicle by a "bailiff" acting on behalf of Automart. She stated she had no contact from her husband for the day he was at the police station. No one told her where he was. She stated he suffers from asthma and that she did go to the police station with his medication. She waited till late and try to see him but was refused. She left his inhaler for them to pass to him. There were quite a few police there. She returned later that evening with their lawyer Mr. Raza. But she was not allowed to see him that evening.

[23] I accept that Mr. Singh was angry at the way he had been treated by Automart, the way they seized the vehicle from him and their apparent disregard when he followed proper legal procedures. On his version of events Mr. Singh was not receiving good legal advice once the court's order had been ignored by Automart. However, that could not in law give Mr. Singh the right to seize by a subterfuge, a vehicle belonging to Automart. Whilst the reporting of a "theft" of a vehicle by Automart by Mr. Singh might well have been disingenuous, it was a formal complaint to the police and one upon which it was proper for and indeed incumbent upon them to act.

[24] Where the evidence of Mr. Singh differs from that of the defence witnesses, I prefer that of the defence witnesses. The documents made at or about the time are clearly consistent with the defence version of events and inconsistent with that of the plaintiff. There is nothing on the face of those documents to suggest that they are other than genuine and made at or about the time. The inconsistency as to the number of times Mr. Singh went to the police station for interview is of importance even given the length of time ago that these events happened. Further, it is pertinent that Mr. Singh exercised his right to make no comment at various times, signed the second record of interview as correct, has not suggested the use of any duress or force, that Mr. Raza appears to have been involved in these matters on both the 13th and the 14th February and, in particular, on the latter day actually spoke to Mr. Singh during the course of that second interview. Further, Mr. Singh's wife was aware where he was or Mr. Singh had had the opportunity on both days to tell her where he was going. She was able later to bring medication to the police station and also his inhaler.

[25] Again on the face of the documents and the oral evidence of the defence it would appear that a proper assessment was made as to whether Mr. Singh should be charged and if so whether he should be bailed or brought before the court on the following morning. Both those decisions were reasonably available on the face of the documents before the senior officer who made them. Mr. Singh was taken to court the next day. No complaint is made vis-à-vis the magistrate and the granting of bail.

[26] I do not under estimate that this whole matter must have been a very unpleasant experience for Mr. Singh, as it is with most people who are not used to being interviewed at the police station and kept in a cell overnight. However, I find I am not able to place sufficient reliability on the evidence of Mr. Singh to make a finding in his favour as far as the

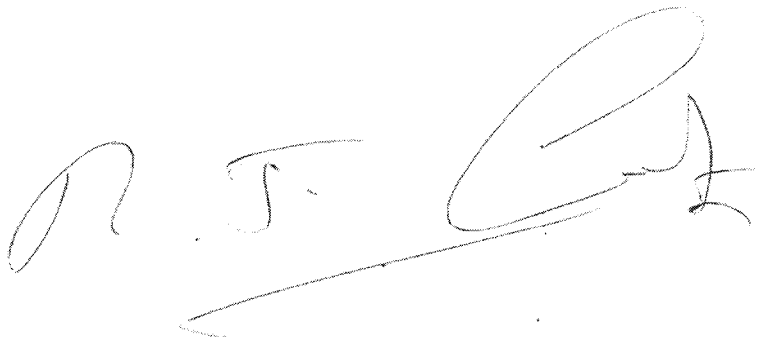
circumstances in which he was kept at the police station and in the cell overnight, nor in relation to the provision of his medication.

[27] I accept the evidence of Suresh Singh. His evidence was uncontroversial and dealt with the seizure of the Automart vehicle. I also accept the evidence of acting Inspector Adi Sen. Whilst there are some inconsistencies and omissions in his evidence it was consistent with the documents and the course of events. In particular, it would appear from his evidence that Mr. Raza, the plaintiff's lawyer, was involved in this case from before the time when Mr. Singh first went to the police station on the 13th of February. He particularly referred to the second interview being suspended as Mr. Raza, who had called in, could see the plaintiff. He states he was not present at that consultation. He said a meal was not served on the 13th of February as the defendant came in after 2.00 p.m. and left before 6.00 p.m. He did not offer any water and was not asked for water. He stated that there were other investigations going on in relation to this case and other persons being interviewed. He stated that having conducted the second interview he consulted with Moses Driver, the Assistant Police Commissioner. It was Mr. Driver's decision to charge and withhold bail. He states meals were given and that the responsibility after charge was that of the duty officer. It was accepted by the defence that the record of custody of Mr. Singh could not be found.

[28] I have considered also the evidence of Deputy Commissioner Moses Driver. I accept that evidence. It was suggested in cross-examination to Mr. Driver "you have grog sessions on a Friday evening at Automart". He responded "never known the man until that day. This is totally false." He denied Dinesh Patel of Automart was a personal friend. I accept what Mr. Driver says in this regard. Further, there is simply no other evidence whatever to support this suggestion.

[29] Counsel for both parties have placed before me a number of authorities and legal submissions. It must be pointed out that there has been a failure, particularly on the part of the plaintiff's lawyers, to grasp from an early stage the legal elements and courses of action which are pertinent in cases of this kind. However, I need not address these in detail given my findings upon the evidence.

[30] Accordingly this action is dismissed. I will hear the parties on costs.

A handwritten signature in black ink, appearing to read 'R.J. Coventry', written in a cursive style. The signature is positioned above the printed name and title.

(R.J. Coventry)

JUDGE