

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO.: HBC 489 OF 2006

BETWEEN:

CHANDAR DEO SINGH

PLAINTIFF

A N D:

GEORGE MAR

FIRST DEFENDANT

A N D:

THE COMMISSIONER OF POLICE

SECOND DEFENDANT

A N D:

THE ATTORNEY GENERAL OF FIJI

THIRD DEFENDANT

Mr. R. Prakash with Ms J. Jattan for the Plaintiff

Mr. S.D. Turaga with Mr. S. Raramasi for the Defendants

Dates of Hearing: 9th, 10th and 15th August 2007

Date of Judgment: 28th September 2007

JUDGMENT

- [1] Chandar Deo Singh, a taxi driver, was arrested by two police officers on the evening of 10th January 2002 at Muanikoso Settlement, Nasinu for criminal trespass and assault. He was taken to Nasinu Police Station,

locked up in the police cell for 19 hours, interviewed and then released. He has not been charged for any offence to date.

- [2] He claims that his arrest was wrongful and without any reasonable cause. He further claims that upon his detention in the police cell a Rolex wristwatch worth \$700.00 was taken by police and not returned to him upon release. He also claims breach of his constitutional rights as he alleges that his treatment by police was inhumane, cruel and degrading. His reasons are that he was stripped off his clothes except his shorts, before being locked in a urine reeking cell. He says he was wet and cold and police would not allow him change of dry clothes or to allow him to get his medicine for heart ailment.
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- [3] The defendants say that his initial arrest was justified because he was assaulting one Satya Nand in Satya's own home. They also allege that he was held in the cell for his own safety and to give him time to sober up from his drunken state. The defendants allege that police did not take any Rolex watch from the plaintiff.
- [4] Before I embark on the discussion of issues, I make certain observations. First, the trial took place some five years seven months after the event when recollections by witnesses and the protagonists would be difficult. Secondly, the plaintiff and the defendants' versions present a sharp contrast, hence there is the question of credibility. Thirdly, this is a civil trial and the standard of proof is on balance of probability.
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- [5] I have to decide the following issues :
- (a) Whether the initial arrest of the plaintiff by the police was for reasonable and probable cause.
 - (b) Whether the plaintiff's treatment by police after arrest contravened his rights under the Constitution.
 - (c) Did the police fail to return items seized from the plaintiff?

(d) What if any damages are to be awarded to the plaintiff.

Issue (a) - Was the initial arrest for reasonable and probable cause?

- [6] The burden of proof of lawfulness of an arrest is upon the police : Eshug baya Eleko v. Officer Administering the Government of Nigeria – (1931) A.C. 662 at page 670 Lord Atkin stated *“no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a court of justice”*. It is not for the plaintiff to show that his arrest was unlawful.
- [7] According to the plaintiff, on 10th January 2002, he went twice to the house of his friend Satya Nand. He went firstly at 8.00 a.m. and again at 5.00 p.m. He says he went as he was invited to attend Satya's daughter's birthday. This suggests that he was not trespassing but was there on invitation. Hence his presence at Satya's house was lawful.
- [8] He told the court that there was a commotion about 5.30 p.m. between Satya and his wife which resulted in Satya chasing his wife around the house. According to him both Satya and his wife had fallen down. When the police arrived, he stated he was standing outside the house. Satya's wife pushed Satya and he fell down. He told the court police came to him and asked him to go to the police station. He said that he told George Mar that the couple were fighting.
- [9] PW2 Maywan told the court that he had gone to visit his brother in law on 10th January 2002 in the vicinity of Satya's house. He said he saw a man and woman quarrelling and a crowd had gathered. He did not see the plaintiff throw a punch at anybody.
- [10] The defendants called three witnesses to show that the arrest was lawful. DW3 Satya Nand told the court about plaintiff and him coming to Suva, buying and drinking gin and then going home. They had some problem which was reported to police but then the two reconciled. He stated that

Chandar Deo returned to Satya's home. The witness gave him food. The plaintiff while eating punched Satya on the nose. He asked his daughter to call the police. He got up. The plaintiff came from behind and punched him. The impact pushed him towards the door. At the door the plaintiff kicked him and he fell on the step. The police had arrived by this time. Police helped him up. He denied having any argument with his wife or chasing his wife around the house.

[11] The defendant George Mar stated that he went to Satya's house following receipt of a report through Radio Telephone that a fight was in progress at Vatudina. He went with a special constable Manoa. He stated that as he reached close to Satya's house, he saw Satya kneeling down and holding both sides of door to steady himself. He saw Chandar Deo punching him and then kicked him out the door.

[12] Chandar Deo asked George Mar to take Satya from there. He questioned Satya who told the police that it was his house, so he then arrested Chandar Deo.

[13] Manoa Vuki who was the driver of police vehicle told the court that he saw the plaintiff punching Satya. He also stated that this was his second visit to the area. Earlier that day he had gone there with Nakul, another police officer. This would confirm Satya's story that he and Chandar Deo had a problem earlier that day too.

Statutory powers of police:

[14] The function of the police force is to maintain law and order, to preserve peace and to protect life and property – Section 5 of the Police Act Cap 85. The duty of a police officer includes prevention of commission of offences and public nuisance and to apprehend anyone whom he is legally authorized to apprehend and for which apprehension sufficient ground exists. Additionally Section 21(b) of the Criminal Procedure Code enables a police officer to arrest without a warrant any person *“who commits an*

offence in his presence", words which have been held to mean "a person who is justifiably suspected of committing an offence" – Director of Public Prosecution v. Singh (1997) FJCA 4.

Common law powers of police:

[15] Under common law too a police officer has powers to arrest if there is violence or likelihood of immediate violence being committed. The English Court of Appeal in R. v. Howell 1981 3 ALL ER 383, at 389 explained the concept as follows :

"there is a breach of peace whenever harm is actually done or likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, an unlawful assembly or other disturbance. It is for this breach of peace when done in his presence or the reasonable apprehension of it taking place that a constable or anyone else, may arrest an offender without warrant."

The above proposition of law was affirmed by the House of Lords in R. (Laporte) v. Chief Constable (2007) 2 ALL ER 529. The relevant portion of the headnote reads :

"Every constable, and also every citizen, enjoyed the power and was subject to the duty to seek to prevent, by arrest or other action short of arrest, any breach of peace occurring in his presence."

The above decision being of the highest Court of England is of great persuasive authority.

Analysis of facts:

- [16] Mr. Prakash submitted that the defence version of events has inherent contradictions. There are some contradictions between the evidence of various witnesses. Satya Nand stated that he accompanied the police to the police station while the two police officers did not state that. However, no specific questions were asked of the officers if Satya Nand had accompanied them. There were also some inconsistencies in the manner in which the plaintiff was taken from the scene to the police station – whether his feet were touching the ground or not and how he was put in the police vehicle. Maywan stated that the couple were quarrelling. He said the police stopped the fight. George Mar's version is the only fight he saw and stopped was that between Chandar Deo and Satya. Maywan also told the court that he asked the couple to stop fighting and they told him to mind his own business. However, this assertion does not appear logical as Satya considered the matter serious enough so he asked his daughter to call the police. Calling police assumes matters have become serious. Satya must be in fear to have asked for police assistance. Police also confirm receiving a call about a fight in progress. I disbelieve Maywan when he says the couple were fighting or that Chandar Deo did not throw any punch. He is a taxi driver who knew the plaintiff for twelve years and I have reservations about his impartiality.
- [17] The material facts are that the police received a report of a fight. They went to the scene and saw an assault in progress. George Mar was put through a very thorough and searching cross examination by Mr. Prakash. He remained steadfast that he witnessed the actual assault by the plaintiff. He knew that to arrest a citizen was a serious matter but he had to arrest seeing what the plaintiff was doing and having learnt that Satya Nand did not want the plaintiff at his house. He had no choice. A crowd had gathered. This crowd no doubt would also observe the reaction of the police. If he had gone away that would amount to dereliction of his duty and also result in erosion of public confidence in the police.

[18] Mr. Prakash further submitted that there was no evidence of complaint from Satya Nand nor was the plaintiff charged. He stated if what the police officer stated was true then the plaintiff should have been charged. What Mr. Prakash is raising here is more relevant for a criminal trial for assault. Simply because there was no complaint does not mean that no assault took place. As this court stated in Mahen Chand v. Commissioner of Police & Attorney General – HBC 198 of 2004 at page 5.

“Simply to conclude from the fact that another officer has decided not to lay charges, that detention is unlawful is a dangerous premise in itself. It would prove counterproductive to effective performance by police of their duties. It would on the other hand, cause or place undue pressure on police to charge those where for one reason or another they feel charge was not warranted. Such reasons could be that the offence was trivial, parties had reconciled or evidence they considered was insufficient to prove guilt beyond doubt. It would lead to unnecessary prosecution of people and wastage of public funds on matters like witness expenses and great deal of police time, efforts and attention being diverted to such matters.”

[19] I have no doubt in my mind that George Mar and Manoa Vuki both witnessed an assault by the plaintiff. It was a serious assault of man being beaten in his own house. Satya Nand said he went to hospital. Such an act warranted an immediate arrest. I conclude that the police had reasonable ground to arrest the plaintiff.

(b) Whether plaintiff's treatment after arrest was in contravention of his Constitutional rights.

[20] The plaintiff pleaded that he was deprived of liberty contrary to Section 23 of the Constitution. That section contains exceptions. One of the

exceptions is if a person is reasonably suspected of having committed an offence. Clearly in light of my findings earlier, this exception applies.

[21] Secondly, the plaintiff has pleaded Section 25 of the Constitution. This section provides that every person has the right to freedom from torture of any kind and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.

[22] In his statement of claim the plaintiff states that he was wet and cold and that he was locked in the cell in only his shorts. His plea for any clothes was denied; he also says that he is a heart patient and was refused to take his tablets.

[23] A detention of a person by police after arrest must be conducted in a dignified and respectful manner. The detainees must be able to communicate with the police about their special needs. In this case the plaintiff had been locked in the cell without his shirt. Satya Nand stated that the plaintiff had taken off his shirt while sitting inside the house. He may well have kept the shirt over his shoulders. Having taken his shirt from him, it was incumbent upon the police to ask him if he wanted to wear it at night or at any time during the remainder of nineteen hours. The cell was not very far and no great effort would be required to make such an enquiry. The plaintiff I also believe was a heart patient. His medical records show that. It was a serious medical condition. I am of the view that he did ask for his tablets but no one took his request seriously. Fortunately for him, his tablets were brought to him by one Satish a couple of hours later. I do not believe that the plaintiff was wet. George Mar said he did not get wet. Also people were standing outside watching and that was unlikely to happen if it was raining. However, this does not detract from the fact that there was breach. The plaintiff made no mention of cell being wet with urine and no blankets being provided in his statement of claim. He appeared to have added these on during his testimony simply to exaggerate his predicament thereby trying to maximize the damages.

[24] Thirdly, the plaintiff pleads Section 27 of the Constitution. His statement of claim says he was not told about the reason for his arrest and not being promptly released or given an opportunity to consult a solicitor.

[25] He was arrested in the process of assaulting another person. The reason for arrest would have been obvious to him. George Mar stated that he told the plaintiff he was arresting him.

[26] The plaintiff was not charged for any offence. He was interviewed. He was not charged because the police did not have the medical certificate of Satya Nand nor a statement from him. The decision not to charge him was made after nineteen hours. The police could have lawfully detained him for a longer period while they went around looking for the medical certificate and taking Satya Nand's statement. However, they released the plaintiff and acted properly in doing that. There is no breach in respect of this.

c) Were the plaintiff's items returned to him?

[27] A number of items were taken from the plaintiff. The plaintiff says all items except a Rolex watch were not returned to him. This watch was given to him as a birthday gift by his younger brother who runs a shop in Nadi. I believe the plaintiff that his Rolex watch was taken by police and not returned to him. What happened to it is not known. It is impossible to say on evidence adduced as to what happened to the watch or who was responsible for its loss. However, that is not a significant fact for outcome of this case. The police took his watch so they were duty bound to return to him. If they failed to return the watch, they should pay for its loss.

d) What damages is the plaintiff entitled to for breach of his constitutional rights?

[28] While the police have powers to arrest, detain, interview and charge people in respect of whom there is reasonable cause for suspicion, yet these powers must be carried out within the framework of the constitution or

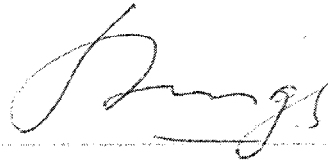
other legislative powers police have. Damages for breaches of constitutional rights in proper cases can be awarded by courts. One of the objectives of the Bill of Rights remedy is *“to vindicate the right and not to punish the perpetrator”* : Minister of Immigration v. Udompum (2005) NZLR 128. On occasions declarations that someone’s right has been breached or an order to cease an existing breach will fulfil the objectives. However, there may be cases where an award of damages is justified. This award of damages should not be too low as that *“would diminish the respect for essential policies which underpin the legislation Were it otherwise police; for example, may be prepared to run the risk of paying small amounts of compensation, so they can continue to employ practices of law enforcement that infringe constitutional rights”* : The Proceedings Commissioner for Human Rights v. Commissioner of Police & The Attorney General of Fiji – ABU 3 of 2006. The above case also emphasized that damages should be awarded according to costs and values prevailing in Fiji and not mimic awards made in other jurisdictions.

[29] The two breaches which I find would result in some measure of damages are breach of inherent dignity in keeping the plaintiff in the cell stripped of his shirt. It would also have caused physical discomfort to the plaintiff. It also amounts to degrading treatment. Add to this is the fact that the police paid no attention to attend to the plaintiff’s plea for his medication. I am of the view that these acts were not due to ill will or spite but probably due to lack of adequate training of police in this aspect and human rights in general. In the context of this case I grant the plaintiff a sum of \$1,000.00 for these breaches.

[30] I also declare that the plaintiff was not advised promptly that he had the right to consult a solicitor of his choice. For breach of this right I grant no damages.

Conclusion:

[31] Accordingly the plaintiff is awarded \$700.00 for special damages and \$1,000.00 for his breach of constitutional rights. I therefore enter judgment for the plaintiff in the sum of \$1,700.00 together with costs summarily fixed in the sum of \$2,500.00. I award interest at five percent per annum on the \$1,700.00 from 10th November 2004 when the writ of summons was filed in the Magistrates Court, but the action later transferred to the High Court.



[Jiten Singh]

JUDGE

At Suva

28th September 2007