

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

SUB-REGISTRY, SAN FERNANDO

H.C.A No. S-2253 of 2003

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC
OF TRINIDAD AND TOBAGO ("THE CONSTITUTION") ENACTED
AS THE SCHEDULE TO THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD
AND TOBAGO ACT, CHAPTER 1.01

AND

IN THE MATTER OF THE FUNDAMENTAL RIGHTS AND FREEDOMS
GUARANTEED AND ENSHRINED BY CHAPTER 1 OF THE CONSTITUTION

AND

IN THE MATTER OF THE ACTION AND/OR DECISION OF HER WORSHIP
MRS. A. DEONARINESINGH, MAGISTRATE OF TRINIDAD AND TOBAGO
AT THE SIPARIA MAGISTRATES' COURT ON WEDNESDAY THE 25TH DAY OF
JUNE 2003 TO REMAND AND DETAIN THE APPLICANT TO THE ST. ANNS HOSPITAL,
ST. ANNS, PORT OF SPAIN

AND

IN THE MATTER OF AN APPLICATION FOR REDRESS PURSUANT TO SECTION
14 OF THE CONSTITUTION AND ORDER 55 OF THE RULES OF THE SUPREME
COURT OF JUDICATURE ACT, 1975 BY RAJDATH BHIM BEING AN INDIVIDUAL
WHO ALLEGES THAT PROVISION OF CHAPTER 1 OF THE CONSTITUTION INCLUDING
THE PROVISIONS OF SECTIONS 4 (A), (B), (C), (D), AND (G) AND 5 (2) (A), (B), AND (H)
THEREOF HAVE BEEN, ARE BEING, OR ARE LIKELY TO BE CONTRAVENED IN RELATION
TO HIM BY REASON OF THE DECISION AND/OR ACTION OF HER WORSHIP
MRS. A. DEONARINESINGH, MAGISTRATE OF TRINIDAD AND TOBAGO AT THE SIPARIA
MAGISTRATES' COURT ON WEDNESDAY THE 25TH DAY OF JUNE 2003 TO REMAND AND
DETAIN THE APPLICANT TO THE ST. ANNS HOSPITAL, ST. ANNS PORT OF SPAIN

BETWEEN

RAJDATH BHIM

Applicant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

Before The Honorable Justice David C Harris

Appearance:

Mr. Ramesh L. Maharaj SC leads Ms. Vijaya Maharaj for the Plaintiff

Mr. Mitra Bhimsingh instructed by Ms. Sharma for the Defendant

DECISION

1. The Applicant in this matter challenged the legality of the decision of a Magistrate in earlier Court proceedings to have him sent to the St. Ann's Hospital, St. Ann's for psychiatric observation and report on the 25th of June 2003. The Applicant was detained for 14 days until his release on the 9th of July 2003. The Applicant, in this constitutional action, sought several declarations and reliefs concerning the unconstitutionality and illegality of the Magistrate's said decision and consequent order.
2. The parties arrived at an agreed pre-trial position with respect to the liability of the Respondent. The issue left to be determined, was that of the quantum of damages to be paid by the Respondent to the Applicant for his unlawful and unconstitutional fourteen day detention at, no less, the well known and perhaps even legendary, mental institution – The St. Anns Hospital in Trinidad and Tobago ("St Ann's"). To this end the parties entered into further discussions with a view to settling the Quantum of Damages. Regrettably, no settlement was arrived at. At the request of the parties, the Court at a Case Management Conference in July of 2011, gave directions for the Applicant and Respondent to file written submissions on 'quantum', pending settlement on the quantum. The last submissions were filed in November, 2011.
3. The evidence in this matter is contained in the Affidavits of the Applicant, Rajdath Bhim, one Mintee Bhim and Armina Mohammed – Deonarinesingh ('the Magistrate').

THE FACTS¹

4. The Applicant, Mr. Rajdath Bhim had made an application for a Protection Order and/or interim protection order; by way of summons No. 2874/03 in pursuance of the Domestic Violence Act 1999, against his wife Mrs. Mintee Bhim.
5. On the 25th of June 2003 when the Applicant and his wife appeared before Her Worship Mrs. A. Deonarinesingh the Magistrate in the Siparia Magistrates' Court, the Magistrate advised the Applicant's wife to make an application for a protection order and stood down the matter to facilitate this. Whilst the matter was stood down the Applicant's wife made an application to the Justice of the Peace for a protection order.

¹ This is a substantial reproduction of the "undisputed evidence relevant to quantum of Damages taken from pp 3 – pp5 of the written submissions filed on behalf of the Applicant on September 25th 2011.

6. When the matter was called again at 11:00 am of the same day, the Magistrate asked both the Applicant and his wife certain questions and then ordered the Applicant to be sent to St. Ann's for 14 days.
7. The Applicant was then handcuffed by two police officers and taken to the Siparia Police Station where he was placed in a cell with two other prisoners for about three hours. He was then placed in a prison van together with other prisoners and taken to St. Ann's.
8. Upon arrival at St. Ann's, the Applicant was medically examined by a doctor who advised the Applicant that nothing was wrong with him².
9. The Applicant was then placed in an enclosed room with burglar proofing together with about 50 prisoners. During his imprisonment the Applicant was made to share the same toilet and bathroom with other inmates who were either insane or who were on criminal charges. He had to associate on a daily basis with these prisoners and he said he was in constant fear for his safety.
10. During the 14 days the Applicant was incarcerated at St. Ann's, he slept on a concrete floor as there were no available beds and mattresses.
11. Whilst the Applicant was a prisoner at St. Ann's he was further examined on three occasions by one Dr. Bassant Chandan Bissessar, Asst, Registrar, Forensic Unit, St. Ann's Hospital as well as one on occasion by one Dr. Iqbal Ghany, Consultant Forensic Psychiatrist. Both doctors after consultation and examination of the Applicant professionally concluded that he was of sound mind and recommended that he be released immediately. The report prepared by Dr. Bissessar dated 2nd July 2003 is annexed to the affidavit of the Applicant filed on the 17th December, 2003.
12. The Applicant was incarcerated at St. Ann's for 14 days until his release on the 9th of July 2003.
13. On the 9th of July when the matter was again called before the said Magistrate and upon inquiry about the Applicant's presence the Applicant's wife informed the Court that the Applicant was not brought down from St. Ann's and that the doctors had

² There is no medical evidence to the contrary.

ordered his immediate release. The Magistrate, after reading a document before her, ordered the release of the Applicant and adjourned the matter to the next day i.e. 10th July 2003.

14. The Applicant was released at 6:00 pm on the 9th July 2003 and appeared before the Court on the following day 10th July 2003. On this day both the Applicant and his wife, with the leave of the Court, withdrew their respective applications.

THE LAW

15. There is fundamentally no dispute between counsel for the respective parties as to the law. That is to say³:

- (i) The Court can order monetary compensation where there has been a contravention of a constitutional right consisting of a deprivation of liberty otherwise than by due process of law. The Applicant can be compensated for consequential damages for distress, inconvenience and loss of earnings. (See Maharaj v The Attorney General (No. 2) (1978) 30 WIR 310, see comments of act lord Diplock pp 321 j)).
- (ii) In assessing these Damages the Court is directed to consider and weigh in the balance and maintain a sense of proportion, with other awards of damages for deprivation of liberty. Counsel for the Applicant submits without meaningful opposition, that the common law measure of damages is often a useful guide in assessing damages for breaches of constitutional rights. (See Jorsingh v The Attorney General (1977) 52 WIR 501 at 510 para. B); see also Mark John Jones v Moor Kenny Mohammed, Commissioner of Police HCA 19/1998 per Breaux J)
- (iii) The length of the unlawful imprisonment is a significant factor in assessing damages for wrongful imprisonment. (See Josephine Millette v Sherman Mc Nicholls C.A. CIV. No. 14 of 2000 at pg 5)
- (iv) The extent and continued persistence and effect of the suffering and distress of an Applicant in the particular circumstances of the case is a factor which affects the quantum of Damages (See Crane v The Attorney General and others C.A. CIV. No. 181/1997).

³ See the written submissions of counsel for the Applicant filed in this matter.

- (v) The Court has the power to make an additional award over and above the compensatory award for infringements of constitutional rights – vindicatory award (Lord Nicholls at para. 19 Attorney General of Trinidad and Tobago v Ramanoop (2005) UKPC 15; (2006) 1 AC 328; See also the Privy Council in Merson v Cartwright & The Attorney General of Bahamas (P.C. Appeal No. 61 of 2003; (2005) UKPC 38).
- (vi) The award of monetary compensation of any category, is discretionary (See comments of Neilson J.A. in David Lakhan v The Attorney General C.A. 154A/1997 at pp 13).
- (vii) There is a fundamental difference between actions founded on trespass and actions brought under the Constitution for deprivation of liberty, in that the measure of damages is not the same. The award of monetary compensation is at the Courts discretion (See the **Maharaj case** above)

16. In arriving at a compensatory award, the Applicant has asked the Court, in the context of the law, to consider the awards and circumstances underpinning the awards, in several decided cases. The awards range from the sum of \$20,000.00 for loss of liberty for two hours and fifty minutes, (Adesh Maharaj v The Attorney General of Trinidad and Tobago S-788 of 1998); to \$90,000.00 for case of liberty for five days. (Shah Mohammed v Attorney General); \$80,000.00 for loss of liberty for approximately six hours (Alphie Subiah v The Attorney General of Trinidad and Tobago P.C. No. 39 of 2007), \$145,000.00 for loss of liberty for 132 days (Josephine Millette v Sherman Mc Nicholls C.A. CIV No. 14 of 2000).
17. Having regard to the above mentioned cases and in particular, the case of Guerra v The Attorney General HCA 1717 of 2001, which was decided some 10 years ago in respect of approximately a 7 day period of detention and having regard to the passage of time, the devaluation of the Trinidad and Tobago dollar and to the remarks of the Privy Council in the **Subiah Case** (supra) the Plaintiff submitted that the sum of \$250,000.00 (plus interest) is an appropriate sum to be awarded to the Claimant in general and aggravated damages in the instant case. Counsel for the Plaintiff noted that the Respondent has already accepted that the decision of the Respondent was unconstitutional and illegal on the grounds that the decision infringed the Applicant's constitutional rights as guaranteed by Sections 4 (a) – (d) and (g) and 5 (2) (a), (2) (c) (i)

and (2) (h) of the Constitution resulting in the deprivation of the Applicant's liberty for a period of 14 days.

18. The counsel for the Applicant submitted further, that the Applicant has suffered great distress and inconvenience in aggravated circumstances. He was detained at a mental institution for 14 days and he has suffered unconstitutional deprivation of his liberty. He was taken from the Magistrate's Courts in handcuffs to a prison in a prison van along with other prisoners, he was medically examined at the Institution on more than four (4) occasions and advised that nothing was wrong with him. He was nevertheless placed in an enclosed room with burglar proofing along with 50 other prisoners and he was required to share the same toilet and bathroom with other inmates who were either insane or on criminal charges. He had to sleep on a concrete floor for the entire period. He was in constant fear for his safety. There can be doubt, contends counsel for the Applicant, that the Applicant in this case endured trauma and suffering as a result of the decision of the Respondent. None of this evidence was disputed by the Respondent.

19. The Respondent contests the Applicants suggested quantum. For the state's part, it has set out a series of awards and pertinent circumstances in support of its position that the award ought to be limited to the compensatory sum in the range of \$85,000.00 - \$125,000.00.⁴

20. It is submitted by counsel for the Respondent, that these cases establish that there is no discernable trend in rationalizing the awards made. This Court is not entirely in agreement with this observation. Counsel for the Respondent notes that a longer period of detention does not automatically result in a substantial award nor does the opposite hold true as regards a shorter period of detention. What seems to be a consistent factor, he contends, is that all the circumstances of a particular case must be taken into account,

⁴ Felix Hyndman v. The Attorney General & Anor. HCA T71/1996, Hassanali Yalali v The Attorney General HCA 1616/1996; Jennelyn Guerra v. The Attorney General HCA 1717/2002; Anneson Stanislaus v. The Attorney General HCA 1785 of 2000; Perry Mathew v. The Attorney General HCA 3342/2004; Steve Dyer v. The Attorney General CV 2007-02202 per Ventour J.; Kedar Maharaj v. The Attorney General CV 2009-001832; Uric Merrick v. The Attorney General HCA 4213/2007; Charran Francis v. The Attorney General HCA 518/2003; Steve Singh v. The Attorney General CV. 2007-04155 per Rajkumar J., Alphonsus Mondesir v. The Attorney General HCA 1903/1997.

with the length of detention being one of those factors. The Court substantially agrees with this last proposition. Additionally, the distress and inconvenience suffered must also be given due consideration. The cases also speak of maintaining a sense of proportion with previous awards and importantly, as in the **Alphie Subiah case**, of increasing the awards to reflect the changes in the value of money⁵.

21. Additionally, counsel for the Respondent submits that when looking at these precedent cases for guidance, consideration should be given to the reason for the imprisonment. It is also submitted that different consideration should be given to cases where the imprisonment is unlawful at the outset as opposed to where it is initially or lawfully justified and subsequently becomes unlawful. This is so, contends counsel for the Respondent, because the factors which may affect distress and inconvenience would come into play at different times. (See: Charran Francis and Uric Merrick at fn 4 above, where the imprisonment was as result of a genuine mistake).

22. Counsel for the Respondent contends that the facts of this case are not that the Applicant was not the recipient of deliberate or reckless behavior on the part of the Respondent. His initial incarceration was within the lawful exercise of the Magistrate exercising her judicial discretion under S. 13 of the Mental Health Act. There is also no dispute that there was interaction between the Claimant and the Magistrate. (See paragraph 6 of the Claimant's affidavit and paragraphs 4 of 11 of the affidavit of Armina Mohammed – Deonarinesingh). The purpose of the detention contends counsel for the Respondent, was not meant to be punitive to the Claimant.

23. The Applicant also gave evidence of the indignity of being detained in conditions that were less than ideal. Further he shared a room with approximately 50 other persons and was fearful for his safety; this was compounded by having to sleep on a mattress on the floor. There is no evidence that he was the victim of physical abuse or violence. During the period of his incarceration the Applicant and his family held family sessions with the doctors and established the cause of the Applicant's behavior.

CONCLUSION

24. I further accept the observation of the Counsel for the Respondent that the Hon. Magistrate initially acted lawfully, pursuant to her powers and judicial discretion under

⁵ See the Written final submissions of the Respondents filed in this matter.

S.13 of the Mental Health Act⁶. The issue in this case is what happened thereafter. It is a short consideration though. The unassailable evidence of the Applicant, is that he was examined and assessed to be of sound mind no less than four times during his stay at the institution. This included a medical examination upon his arrival at the institution⁷. On none of these occasions was he released or taken to the Court within a reasonable time to seek his release. Nor, it appears, was he afforded an opportunity to initiate his own release. How much evidence does a Court need to conclude that committal to a mental hospital for assessment runs against the very source of one's integrity and social standing in society, resulting in inconvenience and extreme distress and humiliation? It is surely likely that for as long as the Applicant remains in the living memory of others; reference to his sojourn to the Mental Hospital and the conjecture that it spawns will remain. I can put it no simpler. The system was entirely insensitive to the protection of this citizen's rights and humanity. On each of the four occasions that a doctor determined the Applicant's mental state as not warranting his further detention, the state failed the Applicant, by unlawfully permitting his further detention at the institution.

25. I find that there existed sufficient deliberate and systematic action and inaction leading to the circumstances that the Applicant ultimately found himself, which would lead to the award of vindictory damages. The serial lack of an appropriate response to each of the doctor's findings on the Applicant's mental state, in my view aggravated the State's breach and its effect on the Applicant. The breach of the rights of the Applicant in the circumstances of this case and the effect of the breach on him, considering other awards in their own respective and peculiar time(s,) causes of action and factual matrix, is sufficiently egregious in my view to attract the compensatory damage award of \$180,000.00 and an additional award of vindictory damages in the sum of \$30,000.00 and I so award.

26. For the reason provided above, **IT IS HEREBY ORDERED:**

- (i) By consent; Judgment on Liability, for the Applicant;
- (ii) The Compensation award in the sum of \$180,000.00 and a Vindictory award of \$30,000.00 to be paid by the Respondent to the Applicant, with interest at the rate of

⁶ See paras 11 and paras 13 of Her Worship's Affidavit filed in this matter.

⁷ See para 11 of the Applicant's Affidavit filed on the 17th December 2003.

6% per annum from the 9th day of July 2003 to Judgment and at the rate of 12% per annum from the date of the said substantive Judgment Order until full satisfaction;

(iii) The Applicant's Costs Certified fit for Senior Counsel to be taxed in default of agreement between the Parties.

DAVID C HARRIS
HIGH COURT JUDGE
JANUARY 26TH, 2012