

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2014 – 00120**

**BETWEEN**

**SAFRALI SURAJ**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Mr Justice Ronnie Boodoosingh**

**Appearances:**

Ms S. Singh and Ms L. Ramtahal for the Claimant

Mr R. Chaitoo and Ms N. Ferriera instructed by Ms K. Redhead for the Defendant

**Date:** 5 October 2016

**JUDGMENT**

1. The claimant says he was unlawfully arrested and charged on 20 October 2007 and maliciously and without reasonable and probable cause prosecuted until 15 January 2010 when the case of burglary against him was dismissed. He gave evidence alone in support of his claim.

2. The defendant says the police properly charged him based on having reasonable and probable cause. Two police officers gave evidence in support. These were PC Nicholas and PC Ramdial.
  
3. In **Trevor Williamson v The Attorney General of Trinidad and Tobago [2014] UKPC 29** the Board of the Privy Council set out the relevant law:

“11. In order to make out a claim for malicious prosecution, it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute significant challenge by way of proof. It has to be shown that there was no reasonable or probable cause for the launch of the proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements. Secondly, malice must be established. A good working definition of what is required for proof of malice in the criminal context is to be found in *A v NSW* [2007] HCA 10; 230 CLR 500, at para 91:

“What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law - an ‘illegitimate or oblique motive’. That improper purpose must be the sole or dominant purpose actuating the prosecutor”

12. An improper and wrongful motive lies at the heart of the tort, therefore. It must be the driving force behind the prosecution. In other words, it has to be shown that the prosecutor’s motives is for a purpose other than bringing a person to justice: *Stevens v Midland Counties Railway Company* (1854) 10 Exch 352, 356 per Alderson B and *Gibbs v Rea* [1998] AC 786, 797D. The wrongful motive involves an intention to manipulate or abuse the legal system *Crawford Adjusters Ltd (Cayman) v Sagicor General Insurance (Cayman) Ltd* [2013] UKPC 17, [2014] AC 366 at para 101, *Gregory v Portsmouth City Council* [2000] 1 AC; 426C; *Proulx v Quebec* [2001] 3 SCR 9. Proving malice is a “high hurdle” for the claimant to pass: *Crawford Adjusters* para 72a per Lord Wilson.

13. Malice can be inferred from a lack of reasonable and probable cause – *Brown v Hawkes* [1891] 2 QB 718, 723. But a finding of malice is always dependent on the facts of the individual case. It is for the tribunal of fact to make the finding according to its assessment of the evidence.

14. On the question of reasonable and probable cause, or the lack of it, a prosecutor must have ‘an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed’: Hicks v Faulkner (1878) 8 QBD 167, 171 per Hawkins J, approved by the House of Lords in Herniman v Smith [1938] AC 305, 316 per Lord Atkin. The honest belief required of the prosecutor is a belief not that the accused is guilty as a matter of certainty, but that there is a proper case to lay before the court: Glinski v McIver [1962] AC 726, 758 per Lord Denning.”

4. The claimant, in his witness statement, said on 20 October 2007 about 9 am he was at home. Police officers came to his home. They told him to kneel down. They pointed a gun at him. He was handcuffed outside his home. The police did not identify themselves to him nor did they tell him of his rights. He said he had known two of the police officers before. These were PC Nicholas and Sergeant Billy. One of the officers questioned him. He asked him where he had been the night before. He replied that he was at home. The officer told him he was giving trouble and he was “charged and lock up”.
5. While he was being questioned, 3 officers went into his home. They did not produce any search warrant. One of them found \$270.00 on a shelf over his bed. This was PC Ramdial. The officer put it in a plastic cup and placed the cup under his stove. This was crop money he got from his garden. He asked PC Nicholas for his money. But the officer told him where he was going he would not need that.
6. He was taken down to the Moruga Police Station. PC Ramdial came in with a clear plastic bag with a white substance in it and told him, “this is yours, I’m giving you this. You’re gonna get charged for that”. He was handcuffed to an iron safe and had to stand. When he was tired he had to stoop. He told PC Ramdial he was lying and setting him up. Other officers came and told PC Ramdial to leave him for later.
7. After 4 pm he was charged for something. He was so upset he did not read it. He was later transported to Princes Town Police Station. He was placed in a dirty cell smelling of urine and faeces. He had to sleep on the floor with others in the cell.
8. He was denied a phone call. On 22 October 2007 he was taken to the Magistrates’ Court. He was not told of his constitutional rights. He was charged with breaking into the dwelling

house of Mariam Singh on 20 October 2007 with intent to steal and that he did steal the sum of \$500.00. He was granted bail but could not access it until 11 January 2008 when the bail condition was changed to allow him own bail.

9. He says there was no reasonable cause for his arrest and prosecution; they had no sufficient evidence; the sum of \$500.00 was not found on him; PC Ramdial changed the date later on to 19 October 2007; the police failed to conduct proper investigations; they acted rashly; PC Ramdial failed to give a proper assessment of the evidence before charging him; they failed to take any statement from him; they were spiteful and acted with malevolence; there was no evidence.
10. Further, he alleged that PC Nicholas was involved in a relationship with Mariam Singh who was the virtual complainant. He said the charge was brought so PC Nicholas could have a better relationship with the father of Mariam Singh. Mariam Singh's father and him were involved in altercations over a boundary dispute. They had shared a pond and he was denied access to it. The Singhs destroyed his crops. Mariam Singh's brother, Dhaniram, physically abused him. Dhaniram told him he had friends in high places and threatened him he could put him away for life. Many police officers including PC Ramdial often visited the home of Dhaniram and Mariam Singh as they were friends. Dhaniram also gave crops to the police officers and he knew many of the Princes Town police officers from his job in Princes Town at the Regional Corporation.
11. He said the Magistrate dismissed the case after it was called 18 times when the complainant failed to appear. He said he suffered losses.
12. These were very serious allegations made against the police officers. In cross examination he said it was PC Nicholas who had put money in the cup. He was not charged with the possession of the white substance which he believed to be drugs. This was because he got on badly in the police station making a lot of noise about what PC Ramdial was up to. He said he was told it was Dhaniram who made a complaint against him. He said he would see PC Nicholas going into Mariam's house. By relationship he meant they were friends. He said neither Nicholas nor Mariam had told him they were in a relationship. It was his business to know these things. He said the relationship was a casual one. He had had an employee/ employer relationship with Dhaniram. He had previously been charged with manslaughter about 15 years or so before and with possession of marijuana about 5 years before.

13. Both police officers strenuously denied the allegations made against them. They indicated in their witness statements that they were both present on 20 October 2007 when a report of a burglary was made by Dhaniram and Mariam Singh. This was that about 1.30 am on the said date that Mriam had awoken and put on the lights to see the claimant, who they knew as “Shaffie”, in the house. She called this out to her father. They had locked up the house previously. They had known him before for 15 years. The place was well lit. He had worked for Dhaniram before and they had no problems with him before. The claimant left the house and she realised that some market money in the sum of \$500.00 which was on the kitchen counter was missing. A statement was taken from Mariam Singh by PC Nicholas who attached it to his witness statement. PC Nicholas denied he is or was ever in a relationship with Mariam. The statement from Mariam was taken about 9:00 am on 20 October 2007.
  
14. PC Ramdial said he went to the home of the claimant but neither PC Nicholas nor Sergeant Billy was in the party. He told him of the report made by the Singhs. He told him of his rights. They searched his place and found \$270.00 but he did not put this in any cup under the stove. They took the claimant to the police station and he was told again of the allegation. He denied it. He did not want to give an interview to them. He later charged him for burglary. He said he was not friends with Dhaniram nor Miriam. He had proceeded on vacation from June 2009 to the middle of 2010. When the matter was called in January 2010 he was on vacation. He was contacted by the court prosecutor. He immediately proceeded to the Magistrates’ Court. However, by the time he appeared the matter was already dismissed.
  
15. Both officers were cross-examined. PC Nicholas said he knew Dhaniaram and Mariam before but he never had a relationship with them. He took a statement from her. He wrote down what she reported. He did not question her. He did not find what she was saying to be curious. He denied he was at the claimant’s home at the time he was arrested. He knew PC Ramdial about 6 months before. He did not know of any dispute between the claimant and Dhaniram. To the court he said he knew Dhaniram and Mariam as vendors by the side of the road living in the same district.
  
16. PC Ramdial said this was his first encounter with the Singhs. He had known PC Nicholas a few months before. It was the senior officer in the police station who directed him to investigate. He did not find anything in the report or the statements to be strange. He had taken a statement from Dhaniram. He did not investigate whether there was bad blood between the Singhs and the claimant. He relied on the reports made by the Singhs. He said at the scene he did not notice any broken windows. But burglary had to do with entering. The Singhs had reported that they had secured their home. To the court he said the claimant did not tell him of the dispute with the Singhs.

17. It is easy to make up allegations which are sometimes difficult to refute. The claimant did not call any witnesses who could support his contention that the police officers, especially PC Nicholas was in a relationship with Mariam Singh, the virtual complainant. There ought to have been others who would know of this in the village.
  
18. The police officers denied the allegations made against them. They did so categorically and without wavering from their witness statements or the pleadings. I preferred the evidence of the police officers to that of the claimant. I found the claimant's allegations of collusion against PC Nicholas to be unsubstantiated and unsupported. He wavered on this during his cross-examination. He gave no evidence that he told anyone at the Moruga Police Station about the feud he had with the Singhs. I found no reason to accept that PC Ramdial knew of the Singhs beforehand such that he would act to do their bidding or that he would collude with PC Nicholas to further their interests. The records of the police station presented to the court support the assertion that a report was made which the police acted on. I accepted in that context that PC Ramdial was detailed by Corporal Jagroo to investigate the report. I find that a report was made to the Moruga Police Station and that the police officers commendably acted on it and swiftly brought a charge against the claimant.
  
19. What PC Ramdial relied on was a report made by two persons against a person whom the two persons knew. As far as he was concerned they were credible citizens making a report against someone else. While no doubt the police officers could have spoken to villagers or try to look for other evidence such as fingerprints, there remained a report supported by statements made by persons. An investigation need not be perfect for the purposes of laying a charge, but that, in any event, is a matter relating to proving the case. Based on what he had there was sufficient evidence to place before the court. The word of two credible witnesses who know an accused is sufficient to prove a case of burglary.
  
20. Counsel for the claimant cross-examined the police officers suggesting that the case as contained in Mariam's statement was implausible. Counsel suggested Mariam's report was not logical. She points to the police not finding the sum of \$500.00 at the claimant's home. The officers found nothing strange about the case. A thief may not keep the loot close to him especially if he has been recognised. A police officer does not necessarily have to be convinced of every aspect of the case. Some assertions may seem odd. But unless these make the version incredible or unworthy of belief or unworthy of serious consideration, a police officer is entitled to act on what was said to him. Each case must turn on its own facts. Where allegations made against a suspect are indeed incredible, that will be a proper case for a police officer to be especially cautious. He may have to conduct further investigations. He may have to test the story. He may have to question the virtual

complainant further. He may have to look for other evidence. He may have to delay laying the charge. He may have to weigh up the competing versions with greater care.

21. In this case I accept, based on the evidence of the defendant, that PC Ramdial had an honest belief that the accused was guilty of a crime sufficient to advance to the court. He found nothing incredible or strange about the report. I found he confronted the claimant about it who denied the allegation. He was entitled in those circumstances to lay the charge and put the case he had before the Magistrate. The fact that he did so quickly should not be held against him.
22. It has also been raised that the failure of the police officer to attend court on as many occasions as he was absent suggests malice. I do not agree that that is the case here. The officer was partly on vacation leave. He did make an attempt to attend when he got word that that the matter was for trial but he was late. In any event the case could have been proved without his evidence. This finding, of course, does not condone the failure of the police officer to attend court and prosecute his case. It would be a stretch, on the basis of the failure of the police officer to attend court, without more, to impute malice to his conduct.
23. Police officers must do better than they do to ensure they are present when their cases are for hearing, or failing which, that they tender, beforehand, a proper explanation for their inability to attend. Too many cases fall by the wayside because police complainants do not attend court. This lackadaisical approach does nothing for the public confidence in the police service. It ultimately discourages citizens from reporting crimes.
24. The result is that the claimant has not proved his claim. It is dismissed. The claimant must pay the defendant the costs of the claim in the sum of \$14,000.00.

Ronnie Boodoosingh

Judge