

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, SAN FERNANDO

H.C.A. No. S-348 of 2001
H.C.A. No. S-841 of 2001 (POS)

BETWEEN

RAMJASS RAMLAKHAN

Plaintiff

AND

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

Defendants

AND

P.C. BRANCH NO. 12429

Before The Honourable Mr. Justice Geoffrey A. Henderson

Appearances:

Mr. E. Koylass SC and Mr. Ramsoondar for the Plaintiff

Mrs. Ali Khan for the Defendants.

JUDGMENT

1. Ramjass Ramlakhan was a school teacher and President of the Ghandi Seva Sangh Incorporation, the organization that maintained the Ghandi Ashram Temple, Todd Street, San Fernando. On 4th October, 1997 Police Constable Branch executed a warrant for the arrest Ramlakhan and charged him with the offence of unlawful and malicious

damage to five hundred and fifty (550) tiles, the property of Bissoon Ramnarine. With neither Constable Branch nor Ramnarine appearing at the Magistrate's Court no evidence was offered and the matter was dismissed. Ramlakhan brought this action against the Defendants claiming damages, including aggravated and or exemplary damages for malicious prosecution.

The Plaintiff's case as pleaded

2. 1.1 Pursuant to the Statement of Claim filed on 20th March 2001 (with amendments allowed at the trial of this action on 14th December 2009), the Plaintiff claims against the Defendants, damages, including aggravated and/or exemplary damages for malicious prosecution, interest, costs and further or other relief.
- 1.2 The facts relied on may be summarized as follows:
 1. The Plaintiff was at all material times a teacher at the Pleasantville Senior Comprehensive School and President of the Ghandi Seva Sangh Incorporation.
 2. The Second-named Defendant, was at all material times a police officer in the purported performance of his duties, as a servant/agent of the First-named Defendant.
 3. On 4th October 1999, the Second-named Defendant wrongfully caused the Plaintiff to be arrested and detained at the CID Office, San Fernando and thereafter at the San Fernando Magistrate's Court.
 4. On the said 4th October 1999, the Second-named Defendant maliciously and without reasonable and probable cause laid an information charging the Plaintiff and unlawfully and maliciously damaging the property of one Bissoon Ramnarine to the extent of \$2,725.50.
 5. The particulars of malice of the Second-named Defendant set out were:

- a. The Second-named Defendant knew/ought to have known he had no reliable evidence against the Plaintiff to implicate him in the commission of the offence.
 - b. He failed to conduct proper investigation before deciding to proceed with charging the Plaintiff.
 - c. Despite knowing there was no satisfactory evidence against the Plaintiff instituted and continued prosecution of the Plaintiff.
 - d. The Second-named Defendant was reckless as to the arrest/prosecution of the Plaintiff.
6. The Plaintiff was required to attend Magistrate's Court on several occasions until 25th April 2000 when the charge was heard and dismissed, ending the prosecution.
 7. The Plaintiff suffered loss and expense, including damage to reputation, mental anguish. Particulars of Special Damages are set out.
 8. On 4th October 1999, the Second-named Defendant and other police officers arrested the Plaintiff at his workplace while he was attending a staff meeting without producing a warrant, refused to allow him his right to a telephone call to communicate with his attorney, deliberately delayed processing the Plaintiff at the CID office to ensure that he would not be promptly brought before a Magistrate, as a result of which he was imprisoned in the holding bay at the Magistrate's Court with other hardened criminals without food or water.
 9. On the three occasions the matter was called at the Magistrate's Court, no one turned up to give evidence against the Plaintiff at any time.

The Defendants' case as pleaded

3. 1.3 The Defence was filed on 25th May 2001, and may be summarized as follows:-

1. On 4th October 1999, the Second Named Defendant, in company with two other police officers, lawfully and with reasonable and probable cause arrested the Plaintiff.
2. The Second Named Defendant had reasonable and probable cause to prefer the charge against the Plaintiff that the Plaintiff unlawfully and maliciously committed damage upon 550 tiles to the value of \$2,725.00, the property of one Bissoon Ramnarine contrary to section 45 of the malicious Damage Act, Chapter 11:06.
3. The charge was laid by the Second-named Defendant without malice and in the bona fide belief that he was discharging his duty as a police officer after reports were received from the said Bissoon Ramnarine that the Plaintiff on 28th April 1999 damaged the said tiles at Todd Street San Fernando, after receiving statements from the said Bissoon Ramnarine and after interviewing several persons and recording statements in support of the said charge, and after having carried out investigations into the complaint made and after having obtained a warrant for the Plaintiff's arrest after consideration of the above. A copy of the said warrant is contained in the Defendants' Bundle of Documents filed on 5th November 2009.
4. The said Bissoon Ramnarine attended Magistrate's Court on one occasion but on the other occasions on which the matter was called was out of the country and as a result the Magistrate dismissed the said matter for non appearance of the victim.
5. The Second Named Defendant lawfully obtained a warrant for the Plaintiff's arrest and lawfully executed it on the Plaintiff at the Principal's office, informing him of the report and showing him the warrant for his arrest.
6. The Plaintiff was duly informed of his right to an attorney and was allowed to make and did make telephone calls.

7. The Plaintiff was duly processed in accordance with standard procedure and then taken to Court and kept until the Magistrate heard the matter.
8. Save as to express admissions made in the Defence, all other allegations set out in the Statement of Claim were denied.

Issues

4. In order to succeed in a claim for damages for malicious prosecution, the Plaintiff must prove on the balance of probabilities the following constituent elements:

- (i) The law was set in motion against him on a charge for a criminal offence.
- (ii) He was acquitted of the charge or that the charge was otherwise determined in his favour.
- (iii) The Prosecutor set the law in motion without reasonable and probable cause.
- (iv) In setting the law in motion, the Prosecutor was actuated by malice.
- (v) The Plaintiff suffered damages.

5. There is no dispute regarding the first two constituent elements and as to the fifth, the Plaintiff need only prove that he suffered damages as a result of the prosecution brought against him, this damage being either to the Plaintiff's fame, person or property and thus satisfied by proof that he suffered expense in defending the criminal charge: per *Holt C.J. in Saville v. Roberts [1558 – 1774] ALL ER 456*. Therefore, the issues that fall for resolution are:

- (i) whether the Defendant had reasonable and probable cause to institute the prosecution for malicious damage, and if yes;
- (ii) whether the Defendant was actuated by malice in instituting the prosecution;
- (iii) if liable, whether there are aggravating circumstances justifying the award of aggravated damages;
- (iv) whether there is evidence of oppressive, arbitrary or unconstitutional action by the Defendant justifying the award of exemplary damages.

THE EVIDENCE

6. The Plaintiff testified on his own behalf and Police Constable Branch and Sergeant Teesdale gave evidence for the defence.

The Plaintiff evidence

7. The Plaintiff's evidence in chief in outline was as follows:

- (1) At around 9.00a.m.on the 4th October, 1999 Constable Branch and two other police officers came to Pleasantville Senior Comprehensive School, where he was employed as a teacher, and demanded that he step out of a staff meeting.
- (2) Having complied with Constable Branch's instruction, Ramlakhan in full view of the principal and other members of staff was arrested for the unlawful and malicious damage of the property of Bissoon Ramnarine. He insisted that he was not told that there was a warrant for his arrest. He felt embarrassed and humiliated.
- (3) He was taken to the Criminal Investigation Division, San Fernando where he sat for almost three hours in a charge room although under cross-examination he stated that he was unaware of what is called the charge room. Ramlakhan's insistence on his innocence was ignored and instead the police officers took a long time in processing and taking him to the San Fernando Court. During all this, not only was he never advised of his right to retain and instruct an Attorney at Law, his request for a telephone call to his Attorney at Law or family was refused. However, when cross-examined on this, not only did he admit that an Attorney at Law came to see him and that he was taken out of the room to speak with him, but also that he was represented at the San Fernando Magistrate's Court by another Attorney at Law.
- (4) Ramlakhan arrived at the Magistrate's Court just before twelve noon but his matter was not heard until after lunch, during which time he was kept in a holding bay that smelled badly and was overcrowded. When the matter was heard after lunch, bail was granted and then adjourned.

- (5) Ramlakhan testified that the matter came up on several occasions concluding with its dismissal on 25th April, 2000 as no evidence was ever led against him, there being no appearance by either of Police Constable Branch or Bissoon Ramnarine. He never saw either Branch or Ramnarine at the hearings.
- (6) The Police Officers knew or should have known that there was no reasonable grounds for his arrest and prosecution since the Ghandi Seva Sangh Incorporated is the lessee of the land at 40 Todd Street, San Fernando and that he offered to produce a copy of the Deed but that this was refused.
- (7) Regarding the tiles, Ramlakhan's evidence in chief was that the tiles were placed at the temple illegally and that he ordered their removal after giving oral notice to the owners. Under cross examination, Ramlakhan admitted that he knew Ramnarine but was unaware that he had purchased the tiles. (he had no discussions with him about the tiles or anything) When the organization took the decision to remove the tiles (at which point responsibility was handed over to the Secretary and Trustee), he spoke to the workmen who advised that they were employed by Ramnarine. In contrast with his evidence in chief he stated that he did not try to contact Ramnarine before the files were removed. He did not see any broken tiles at the temple but drove by after their removal but did not come out to inspect them.

The Defendant's evidence

8. Two witnesses gave evidence for the defence, Sergeant #12405 Glen Teesdale and #12429 Constable Wendel Branch. Additionally the Defendant's Bundle of Documents contained station diary extracts from the CID Office, San Fernando Police Station for 3rd May, 1999, 22nd September, 1999 and 4th October, 1999 and Warrant of Apprehension Number 5589 of 1999 dated 10th September, 1999 in respect of Ramlakhan.

9. The Defendant's witnesses gave their evidence in chief in the form of witness statements and were cross-examined. The Defendant's evidence essentially contained in the testimony of Constable Branch can be summarized as follows:

- (1) On 3rd May 1999 a man identifying himself as Bisson Ramnarine came to the CID Office, San Fernando Police Station and reported that someone, whom he knew by the name of Ramlakhan, damaged a quantity of tiles being stored at the Ghandi Ashram Temple, Todd Street and produced an original receipt. Ramnarine informed Branch that he was responsible for a tiling job at the temple and that the tiles were stored on the compound of the temple. These tiles were damaged and thrown out of the compound on to the roadway of the temple. An entry relative to this report, is contained in the Defendant's Bundle of Documents.
- (2) Based on this report Branch in the company of Ramnarine and a police photographer (whose name he could not recall), commenced enquiries by visiting the temple on the same day. On arrival at the temple, he observed a large quantity of red tiles which appeared to be broken, cracked and otherwise damaged, on the pavement in front of the temple. He instructed the photographer to photograph the damaged tiles and the photographer did so in his presence. Branch thus returned to CID Office, San Fernando and recorded a written statement from Ramnarine.
- (3) Branch conducted further enquiries and returned to the temple a few days later. He interviewed several persons whose information confirmed Ramnarine's allegation that the tiles were damaged by Ramlakhan. He recorded statements from some of these people. In cross examination, he indicated that he interviewed several workmen and one or two women at the temple. While he did not record statements from the women, he could not remember if he took statements from the workmen.
- (4) In so far as the tiles were concerned, Branch did not find out from the owners of the temple, whether they gave anyone permission to place tiles on their premises. When cross examined he was asked whether he

considered that the tiles were lawfully on the premises. He stated that one of the females (whose names he could not recall) indicated that they were responsible for the tiles on the compound for beautification work being done. This information came from what Branch described as a head member and he did not consider it prudent at the time to talk to the owner and he made no further enquiries; he accepted her at her word. Remarkably, he did not take statements as the persons were not interested in furnishing a written account of what they said.

- (5) Constable Branch went to Ramlakhan's house on at least two occasions in an attempt to get his response to the allegations made against him but was unable to meet with him. Constable Branch then obtained a warrant for Ramlakhan's arrest for malicious damage and this was based on Ramnarine's report and on the information given by the persons interviewed. Constable Branch was not successful in executing the warrant on the accused on 21st September, 1999 nor having spoken to him on the 24th September, 1999, persuading him to come to the CID San Fernando.
- (6) At around 9:00 a.m. on 4th October, 1999 Sergeant #12405 Teesdale, Constable #12429 Branch and #4039 Cayanne went to the Pleasanville Senior Comprehensive School. PC Branch had a warrant for the arrest of the accused. On the arrival, they went to the Principal's office and asked to speak with Ramlakhan. She left the office and returned with Ramlakhan.
- (7) A few minutes later Ramlakhan entered the office, where he was informed of the report made against him and of the warrant for his arrest. While initially behaving in a hostile manner, Ramlakhan was calmed and subsequently accompanied the officers back to the CID San Fernando. He drove his own car.
- (8) Before leaving the Principal's office, Ramlakhan said that he wanted to speak to his lawyer. He made two calls.

- (9) On arrival at the CID office, Ramlakhan was given a glass of water. He enquired whether his lawyer had arrived. His lawyer subsequently arrived. Ramlakhan's lawyer arrived while he was being processed, and Ramlakhan was allowed to speak with him.
- (10) After Ramlakhan was processed, he was taken to the San Fernando Magistrates' Court where he arrived at about 11:00 a.m., but by this time, the Court was on its luncheon break.

Analysis

Did the Defendants have reasonable and probable cause?

10. Reasonable and probable cause depends upon the information and belief of the Defendant. The classic definition of "reasonable and probable cause" is set out in **Hicks v Faulkner (1881) 8 QBD 167 at 171** and approved by the House of Lords in **Herniman v Smith [1938] 1 ALL ER 1 at 8**

"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."

11. Lord Darlin in **Glinski v Mc Iver [1962] 2WLR 832 at 857** expressed it this way:

"What is meant by reasonable and probable cause? It means that there must be cause... for thinking that the Plaintiff was probably guilty of the crime imputed: Hicks v Faulkner. This does not mean that the prosecutor has to believe in the probability of conviction: Dawson v Vandasseau (1863) 11 W.R. 516 at 518. The prosecutor has not gotten to test the full strength of the defence; he is concerned only with the question of whether there is a fit case to be tried.

12. The House of Lords in **O'Hara v Chief Constable of the Royal Ulster Constabulary [1997] 1 ALL ER 129** explained the requirements which comprise

“reasonable grounds for the suspicion which the officer has formed.” This decision was considered in Deosaran Palakdhari v AG CV 2007-1747 at paragraph 7. Lord Hope stated the following:

“This means that the point does not depend upon whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information, which was in the mind of the arresting officer. It is the arresting officer’s own account of the information which he had which matter, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information, which has been given to him anonymously, or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances.”

13. Having given careful consideration to the evidence of Ramlakhan, I am satisfied that there is evidence of absence of reasonable cause to call on the defence to answer. Ramlakhan was the President of the Ghandi Seva Sangh Incorporation, the owners of the Ghandi Ashram Temple. His evidence was that there was tile work being undertaken by some workmen, but as President, no one spoke to him about any beautification. To the best of his knowledge the organization did not purchase the tiles and instead through its executive at a meeting took the decision to have the tiles removed.

14. In determining whether Branch had reasonable and probable cause, I accept the Defendant’s submission that what is material is that the prosecuting officer should have an honest belief that there is a fit case to be tried against Ramlakhan that he probably committed the offence he charged Ramlakhan with, based on his knowledge at the time he laid the charge, however mistaken his knowledge of the actual facts may be. What is

relevant therefore is what operated in constable Branch's mind at the time he laid the charge against Ramlakhan and in determining this, the Court is required to consider his own account of what information he based his decision on to charge Ramlakhan. See also **O'Harra v Chief Constable of the Royal Ulster Constabulary [1997] 1 ALL ER 129.**

15. By his account, constable Branch was seized of the following information when the Warrant of Apprehension dated 10th September, 1999 was executed and the Information laid:

- (i) On 3rd May, 1999 Ramnarine made a report of malicious damage to property and an entry was made in the station diary.
- (ii) He commenced enquiries by visiting the temple, observed the broken tiles and had a police photographer take photos.
- (iii) A few days later he conducted further enquiries and interviewed several workmen and one or two women. No statements were recorded from these persons as they were not interested in providing written statements.
- (iv) One of the females indicated that they were responsible for having the beautification work done, but Branch did not consider it prudent at the time to interview the owners and made no further enquiries as he accepted her word.
- (v) His information was that Ramlakhan of Perry Street was the offender and that Ramnarine bore witness to the tiles being damaged.
- (vi) While he obtained a written statement from Ramnarine, none was tendered in evidence.

16. In determining whether police constable Branch had reasonable and probable cause, I have approached the information through the view of the ordinarily prudent and cautious person. Put another way, I must consider whether the ordinarily prudent and cautious person could be led, by the information, to the conclusion that Ramlakhan was probably guilty of the offence for which he was charged. In determining this issue, I

have reminded myself that the officer who lays the charge was not required to be convinced of the guilt of the Plaintiff, but only that he was probably guilty.

17. Ramlakhan was charged with committing malicious damage contrary to section 45 of the Malicious Damage Act, Chapter 11:06. A person is guilty of this offence where they unlawfully and maliciously commit damage, injury or spoil to or upon any personal property, provided the damage amounts to a sum exceeding five hundred dollars: **Section 45 of the Malicious Damage Act, Chapter 11:06.**

18. Where the word “unlawfully” is included in a statutory provision, this means without lawful justification or excuse. Generations of judges have so directed juries upon charges of statutory offences where those words occur: Archbold Criminal Pleading, Evidence and Practice 2008 Edn paragraph 17-44. A man is of course entitled to take measures to protect his own property, real or personal, from harm caused by, or by the use of property belonging to another whether animate or inanimate: Smith and Hogan Criminal Law 10th Edn, 707.

19. In my judgment, the ordinarily prudent and cautious person would not be led, by the information which was in the mind of Constable Branch, to the conclusion that Ramlakhan was probably guilty of unlawful and malicious damage to the tiles. In order to arrive at an opinion that a person is probably guilty of an offence, due consideration must be given to the constituent elements of the offence and in this case whether there was lawful justification. To hold the opinion that Ramlakhan was probably guilty of the offence would require the ordinarily prudent and cautious person to view the act as without lawful justification. However, in this case Constable Branch under cross examination admitted that he did not consider it prudent at the time to talk to the owner of the premises, he made no further enquiries and instead preferred to take the word of a person that he interviewed even though this person was not interested in providing a written statement. In my view the failure to pursue this line of investigation demonstrated that Constable Branch did not properly direct his mind to the issue of lawful justification before instituting the subject proceedings for had he done so, he

would have considered it necessary to interview the owners. Regrettably this was not done.

Was the Defendant actuated by Malice?

20. In addition to proof of absence of reasonable and probable cause for the prosecution, the Plaintiff must show that the Defendant was actuated by Malice in instituting the prosecution: per Mc Shine JA in Wills v Voison [1963] 6 WIR 50 at 67B. Malice for the purposes of malicious prosecution may be defined as “any wrong or indirect motive; and malice can be proved either by shewing what the motive was and that it was wrong, or by shewing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or improper motive to the prosecutor: Brown v Hawkes [1891] 2 QB 718 at 722, per Cave J.

21. Hasty action by the Defendant may not suffice as proof of malice. In Brown v Hawkes (ibid) Cave J commented as follows:

“It is said that the Defendant was hasty and intemperate... he may also have been hasty, both in his conclusions that the Plaintiff was guilty and in his proceedings; but hastiness in his conclusion as to the Plaintiff’s guilt, although it may account for his coming to a wrong conclusion, does not shew the presence of any indirect motive”

22. In certain circumstances, where the arresting officer made several unsuccessful attempts to contact the suspect before eventually laying the charge, it cannot be said that the arresting officer arrested on mere suspicion. In Cecil Kennedy v Woman Police Constable Morris and the Attorney General CA 87/2004, Sharma JA (as he then was) held

“On the evidence, a report was made, the accused, after several attempts, could not be contacted and the first Defendant/Respondent was therefore entitled to act as she did”

23. The judgment of Scott LJ in Dumbell v Roberts [1944] 1 ALL ER 326 referred to by Wooding CJ in Irish V Barry [1965] 8 WIR 177 is apposite. It reminds

investigating officers of their duty to make all presently practicable inquiries from persons present or immediately accessible who are likely to be able to answer their enquiries forthwith. Scott LJ said

“The principle of personal freedom that every man should be presumed innocent until proven guilty applies also to the police functions of arrest – in a very modified degree it is true, but at least to the extent of requiring them to be observant, receptive and open minded, and to notice any relevant circumstances which points either way, either to innocence or to guilt. They may have to act on the spur of the moment and have no time to reflect and bound there to arrest to prevent escape, but where there is no danger of the person who has... aroused their suspicion, that he is an offender attempting to escape, they should make all presently practicable enquiries from persons present or immediately accessible who are likely to be able to answer their enquiries forthwith. I am not suggesting a duty on the police to try to prove their innocence... but they should act on the assumption that their prime suspicion may be ill founded. The duty attaches particularly where slight delay does not matter, because there is no probability in the circumstances of the arrest... of the suspect running away... The duty attaches simply because of the double sided interest of the public in the liberty of the individual as well as in the detection of crime...”

24. On the facts of this case, on the basis that police constable Branch failed to make the relevant enquiries and from this absence of reasonable and probable cause, I have inferred the presence of malice. Malice may be inferred from want of reasonable cause where there was no honest belief in the guilt of the accused: **Harold Barcoo v The Attorney General HCA 1388 of 1989**. There was a duty on Constable Branch to interview the owners of the temple and in this case this ought to have included some member of their executive. In the intervening months between the date of the alleged offence and the date of Ramlakhan’s arrest, no such interview was conducted. This in my view was a serious omission in the investigation, and the omission from which I infer malice.

Damages

25. In his pleadings the Plaintiff claimed special damages, but as these were not proved in the trial no award has been made. As to the claim for General/Aggravated Damages, I have considered the matter in the round and determined as a whole what would be an appropriate award of damages including aggravated damages. I accept the evidence of Constable Branch that Ramlakhan was told of his rights. In arriving at an appropriate award I took into account the following matters that I found as a fact.

- (i) Ramlakhan was at the material time a school teacher and President of the Ghandi Seva Sangh Incorporation, positions of some prominence.
- (ii) On the morning of his arrest, he was attending a staff meeting with his colleagues, when he was called out by the principal to her office where he met the officers who told him of the report. He did not return to the staff meeting and instead left the school compound in the company of three police officers.
- (iii) Ramlakhan spent three hours sitting in the CID Office San Fernando, where he was photographed and finger printed.
- (iv) Ramlakhan was taken to the San Fernando Magistrates' Court just before the luncheon break and as his matter was not heard immediately, he was taken to the holding bay where he was kept for an hour. The holding bay was over crowded and smelly.
- (v) He suffered considerable inconvenience, distress, mental anguish and embarrassment.

Looking at the matter in the round \$45,000 is an appropriate award for damages to include aggravated damages. I considered whether exemplary damages were appropriate on the facts in this case and having done so consider that this is not an appropriate case for such an award.

Cost

26. I have looked at the pleadings and the issues raised thereon and I do not see anything complex so as to justify an order certifying both senior and junior counsel.

Disposal

27. Having considered the matter in the round and having regard to the evidence as a whole, I am persuaded that the Plaintiff has made out his claim having satisfied the appropriate standard of proof; on a balance of probabilities.

Accordingly, it is my Order that

- (i) There be judgment for the Plaintiff against the Defendants.
- (ii) That the Defendant pay the Plaintiff damages including an award of aggravated damages in the sum of \$45,000 plus interest at 9 percent per annum thereon from the date of the writ.
- (iii) That the Defendants do pay the Plaintiff's cost certified fit for counsel to be taxed in default of agreement.

Dated this 13th day of July, 2010.

Geoffrey Henderson
Judge