

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No: CV2017-02511

Between

**JAMOL DUNBAR**

Claimant

And

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Defendant

**Before the Honourable Mr. Justice R. Rahim**

Date of Delivery: April 2, 2019

Appearances:

Claimant: Mr. L. Merry

Defendant: Ms. R. Jacob instructed by Ms. R. Ragbir

## JUDGMENT

1. By Claim Form filed on July 7, 2017 the claimant seeks damages inclusive of aggravated and exemplary damages for false imprisonment and malicious prosecution. He also seeks special damages in the sum of \$19,000.00. The claimant who is a Jamaican National was arrested on August 11, 2014 for the offence of robbery with aggravation. On August 12, 2014 the claimant was charged with the offence of robbery with aggravation and on April 25, 2017 the charge against him was dismissed. The claimant claims that the police officers who arrested him on August 11, 2014 had no reasonable and probable cause to suspect that he had committed the offence of robbery with aggravation so that his entire detention was unlawful.

### THE CASE FOR THE CLAIMANT

2. The claimant gave evidence for himself. He currently works as a customer service representative with Bright Ideas Design Centre Ltd. He resides at Caratal Street, Gasparillo. In August, 2014 he was living in an apartment on St. Julien Road, Princes Town. At that time he was employed by Persad's Wholesale but he was on loan to Persad's Grocery in New Grant. Throughout August, 2014 the claimant kept his hair short.
3. On August 8, 2014 the claimant limered for the entire evening at Illusions Bar ("the bar") which was about a two minute walk from his apartment. He did not leave the bar until after midnight. The bar is owned by Sheldon Parris ("Parris") and it has always had fully operational CCTV security cameras.

4. The following evening, August 9, 2014, the claimant heard from his girlfriend that the BBQ establishment on Petit Café junction named R and D Burger Hut was robbed. The claimant was familiar with R and D Burger Hut because he had eaten there on prior occasions. He was also familiar with the lady who owned the establishment, a middle-aged woman of East Indian descent named Ms. Persaud.
  
5. At approximately 1:30 pm on August 11, 2014 the claimant was at work at Persad's grocery when he observed the manager talking to three men of East Indian descent dressed in civilian clothing. The manager then called the claimant over and told the men in his presence "*this is him*". One of the men identified himself to the claimant as a police officer and asked the claimant his name and he replied "*Jamol*". The claimant later learnt that the man who spoke to him was Acting Corporal Ramdial Regimental Number 13845 ("*Corporal Ramdial*"), and that one of the other men was Police Constable Sukram Regimental Number 16257 ("*PC Sukram*"). He did not know the name of the third man.
  
6. Corporal Ramdial then told the claimant that he is the person they were looking for and one of the other men began searching the claimant very aggressively. The search was conducted inside the grocery in the full glare of customers and the claimant's co-workers. The claimant felt very scared at that time but also embarrassed to be searched at his workplace in front of all those people.
  
7. After the search was completed the officers took his wallet and phone and one of the officers told him that he was the person who robbed "*the BBQ place on the Petit Café junction*". The officers never cautioned the claimant or informed him of his rights and privileges. The claimant did not

respond to the allegation made by the officer because he was in shock and fearful at the time.

8. Whilst still inside the grocery and in the full glare of customers and his co-workers, the claimant was handcuffed behind his back. He was then led out by the officers to a marked X-trail police vehicle wherein he was placed in the back of the vehicle. Once again, the claimant was extremely embarrassed at the time and fearful of what was about to happen to him.
9. After the police vehicle drove off, the officers began questioning the claimant about the robbery. He told them that he did not know anything about the robbery. The officers enquired of his whereabouts on the night of August 8, 2014, and he told them that he was at the bar and that they could contact Parris, the owner, who would confirm his (the claimant's) whereabouts. The claimant also informed the officers of what he was wearing that night and that there was CCTV footage which would show that he was at the bar all night up to after midnight.
10. The officers then asked the claimant about his salary and he told them that he was not really employed by the grocery but rather by the wholesale division of Persad's. Corporal Ramdial who was driving stated that they would check out the claimant's story and they immediately drove to the wholesale division of Persad's located at St. Julien Village. When they arrived, the claimant was left in the vehicle so that he could not see who the officers spoke to. Upon returning to the vehicle, the officers informed the claimant that that his story checked out.
11. Corporal Ramdial then told the claimant that "*all ya fucking Jamaican only come here to rob and tief*". In response, the claimant told Corporal

Ramdial that he works every day, seven days a week, and that he does not rob anybody.

12. Subsequently, the officers proceeded to the Princes Town Police Station where the claimant was taken into an office and his handcuffs were removed. Whilst he was there an officer who he later learnt to be Police Constable Seekumar Regimental Number 18039 (“PC Seekumar”) came into the office and Corporal Ramdial told PC Seekumar in his presence that he (Seekumar) was “*taking the case*”. PC Seekumar then left. Cpl. Ramdial, PC Sukram and the other East Indian officer who was present at the claimant’s workplace then began to further question him about the robbery. The claimant continued to tell them that he was at the bar on the night in question and that he did not rob anybody. At that time, the officers did not caution the claimant or inform him of his rights to an attorney or to contact anybody.

13. When the officers had finished questioning him, one of the officers (the claimant could not recall which one), took him by the arm and walked him out of the office. When he reached around the charge room area, the officer pulled his arm and made him turn. Consequently, the claimant looked in the direction that the officer was making him face and he observed Persaud (the owner of the burger hut) sitting in the civilian waiting area. The claimant testified that Persaud looked directly at him and their “eyes made four”. She then nodded her head and the officer pulled him away. He then heard one of the other officers say “*the lady say is him*”. The claimant was thereafter taken to the cell.

14. Later that day, the claimant was taken by the police on two searches, one at his apartment and one at a location where he used to reside at Petit

Café Trace. Nothing was found on the searches. The claimant was then returned to the station where he remained in a cell for the night of August 11, 2014. The cell at the station was dirty with litter and smelled disgusting. The claimant slept on a cold concrete bench because there was no bed or mattress provided for him. He could not brush his teeth because there was no running water and he had no toothbrush. The toilet in the cell was a hole in the ground which was full of faeces and could not be flushed from inside the cell. He was terrified for the entire night because he had no idea when he would be released. He testified that his distress was compounded by the fact that he knew that he did not commit the robbery and that he was being set up by the police.

15. The next day, August 12, 2014, the police conducted an identification parade. The claimant testified that the other men on the parade did not look anything like him. That most of the men were much older and some of them were much darker than him. The claimant was the lightest person on the parade. After the procedure was completed, the claimant was told that he was positively identified.

16. Consequently, he was charged with robbery with aggravation (Information No. 2926/2014) and on the next day, that is, August 13, 2014, he was taken to the Princes Town Magistrates court. He appeared before the Magistrate at approximately 10:00 am and was denied bail because the Magistrate indicated that she needed information from Interpol since he is foreign national. He was detained at the Maximum Security Prison ("the prison") in Arouca where he remained until his release on October 16, 2014. Whilst he was granted bail on August 28, 2014 he was unable to access the bail which was \$10,000.00 to be approved by the Clerk of the Peace since he did not have the means to do so at the time.

17. The claimant testified that the conditions at the prison were extremely unpleasant. His cell contained a toilet which flushed but he had to defecate in front of his cell mates which was very embarrassing. The food at the prison was also terrible and he was constantly being served spoiled food. He would also find long strands of hair and flies in the food. He had a lot of trouble sleeping because he was extremely worried that he would not make bail. Also, he could not believe that he was being set up for a robbery that he had nothing to do with. He alleged that he lost fifteen pounds during his incarceration.

18. He appeared in the Magistrates court on thirteen occasions in respect of the charge. During his court appearances, he was provided disclosure by the prosecution from time to time. On one such occasion, he was provided with a copy of the prosecution's summary of evidence.<sup>1</sup>

19. The claimant subsequently received disclosure of the following witness statements;

- i. Witness statement of Persaud dated August 11, 2014;
- ii. Witness statement of PC Seekumar dated August 14, 2014;
- iii. Witness statement of PC Sukram dated August 30, 2014;
- iv. Witness statement of Inspector Pooran dated January 10, 2017.<sup>2</sup>

20. The claimant testified that it was untrue as alleged by PC Seekumar in his witness statement that in August, 2014 he had a "*short twisted hairstyle*". According to the claimant, that was a complete fabrication since at that time he kept his hair so short that it was not able to be twisted.

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<sup>1</sup> A copy of the prosecution's summary of evidence was attached to the claimant's witness statement at "J.D.1".

<sup>2</sup> Copies of the witness statements were annexed to the claimant's witness statement at "J.D.2".

21. The claimant' attorneys at the Magistrates' court demanded disclosure of certain pertinent information from the prosecution which the prosecution failed to disclose. In particular, the prosecution failed to disclose the identification parade form and the contents of the first description given by the witness, Persaud.
  
22. On April 5, 2017 the claimant attended the Princes Town First Magistrates' Court. His lawyer indicated to the court that the defendant had been demanding disclosure of the witness statements, first description and ID parade form and that they had not received same. The prosecutor stated that defendant would receive disclosure before the next date of hearing. Subsequently, the claimant's lawyer exchanged email addresses with the complainant, PC Seekumar who was present in court.
  
23. Thereafter, the lawyer informed the claimant that at 9:10 pm on April 9, 2017 PC Seekumar emailed him five documents which were all copies of station diary extracts. At 9:49 pm, the lawyer responded to him and demanded disclosure of the ID parade forms and witness statements on or before April 11, 2017.<sup>3</sup>
  
24. The lawyer further informed the claimant that he received subsequent emails from PC Seekumar in which witness statements were disclosed but that a copy of the ID parade form was never received.

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<sup>3</sup> A copy of the emails were annexed to the claimant's witness statement at "J.D.3".



25. On April 25, 2017 Persaud entered the witness box and indicated that she was no longer interested in proceeding with the matter. As such, the charge against the claimant was dismissed.<sup>4</sup>
26. In respect of the information and endorsements, the claimant has been shown an endorsement for the date April 5, 2017 which recorded the following: *“Disclosed – Copy of ID Parade form”*. On that date Mr. Boyer held for Mr. Merry. The claimant testified that Mr. Boyer had on April 5, 2017 made a demand for the ID parade form which had never been disclosed. As such, it was the testimony of the claimant that the ID parade form was not disclosed on April 5, 2017 since even at the claimant’s trial, they were not in possession of that document. The first time the claimant ever saw the purported ID parade form is when it was disclosed by the defendant in this claim.
27. After his release from prison, the claimant spoke to Parris who informed him that the police never visited the bar to investigate his alibi nor did they ever request the CCTV footage from the bar for the evening of August 8, 2014. This is hearsay evidence and so the court gave no weight to this evidence.
28. The claimant testified that he incurred significant legal fees in respect of the Magistrates’ Court proceedings. Initially, he retained Ms. Adana Bain to represent him in the preliminary stages of the proceedings at a cost of \$4,000.00 and later retained Mr. Merry to deal with the trial at a cost of \$20,000.00. Mr. Merry later reduced his fee to \$15,000.00 because the

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<sup>4</sup> The claimant obtained a copy of the Magistrate’s Case Book extract dated May 19, 2017 and the Information and Endorsements for Inf No. 2926/2014, copies of which were attached to his witness statement at “J.D.4”

trial ended on the first day. Despite that Mr. Merry and other attorneys who appeared on his behalf had to take instructions from the claimant over the course of several meetings and also conducted legal research in preparation for the trial.

29. The claimant was unable to obtain a receipt or invoice from Ms. Bain despite his best attempts to do so. He did however obtain an invoice from Mr. Merry.<sup>5</sup>

30. The claimant testified that every time he appeared in court to answer the charge, his name was called out in public. He also had to take time off from work to attend court and to attend his Attorney's offices. All his coworkers were aware that he was charged with robbery and it was very embarrassing for him. Further, he was terrified that he would be wrongly convicted and forced to return to jail for something he did not do.

#### The cross-examination of the claimant

31. The claimant has been in Trinidad since 2013. He did not have a valid work permit in August, 2014 at which time his work hours at Persad's grocery were 8:00 am to 8:00 pm. He worked seven days a week and was paid \$250.00 per day. He rented the apartment at St. Julien Road with two other Jamaican nationals.

32. On August 8, 2014 the claimant left work at about 8:00 pm. He arrived at the bar after 9:00 pm and left the bar between 1:00 am and 1:30 am. After leaving the bar, the claimant went straight to his apartment. Whilst at the

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<sup>5</sup> A copy of Mr. Merry's invoice dated November 26, 2015 was attached to the claimant's witness statement at "JD 5".

bar, he had a couple drinks with his friend who was one of the guys he was renting with him. That friend and the claimant left the apartment together, were together for the entirety of the time they spent at the bar and returned to the apartment together.

33. Parris had told the claimant that the CCTV cameras in the bar were functional. The claimant admitted that he does not know much about CCTV cameras. As mentioned above, this is hearsay evidence and so no weight was attached to same.

34. The claimant has not been to the burger hut since he began residing at the apartment on St. Julien Road. When he bought food at the burger hut, he usually went on the weekend. He did not buy food from the burger hut during the weekend of August 8 to August 10, 2014. Persaud never told the claimant she was the owner of the burger hut. He assumed that she was the owner because when he visited the hut, she was the one who appeared to be in charge. When he bought food from the hut, he would normally engage in casual conversation with Persaud and her daughter. As such, he was familiar with Persaud in terms of recognizing her by face.

35. When the officers went to the grocery on August 11, 2014 they did not identify themselves to the claimant or show him their identification cards. The officers did not tell the claimant that they were assisting in a report of a robbery of the hut, that he fit the description of the suspect or that it was their intention to arrest him on enquires. They told him that he was the one who robbed the hut. The claimant repeated that he was not informed of his rights and privileges.

36. On arrival at the station, the claimant was not taken to the cells. At the station, the officers questioned the claimant. PC Seekumar did not question the claimant about the robbery. He also did not inform the claimant as to why he was there. Whilst being questioned, the claimant told the officers that he had no idea about the robbery. The officers asked the claimant personal questions. They also had his phone and was going through his photographs on his phone and asking questions about the photographs. The officers also asked him questions which were not related to the robbery.
37. After being questioned, the claimant was taken to the cells. On his way to the cells, he saw Persaud. Persaud and the claimant made eye contact with each other and she shook her head. The claimant did not hear Persaud say the words "*officer that is the man*". At that point in time, the claimant was not aware that Persaud had made a report against him.
38. On August 12, 2014 when Inspector Pooran visited the claimant in the cell, he (Inspector Pooran) did not identify himself to the claimant. Inspector Pooran was with Justice of the Peace, Jeewan Changoor ("*JP Changoor*"). Inspector Pooran informed the claimant that he was going to be placed on an ID parade. Inspector Pooran further informed the claimant that he would be lined up with some other men to be pointed out if he was the one who committed the robbery. Inspector Pooran did not ask the claimant if he wanted someone present to represent him. Corporal Ramdial asked the claimant if he wanted someone to be present to represent him. In response to Corporal Ramdial, the claimant said he would like his girlfriend to be present. The claimant agreed to the ID parade. The officers told him he could choose not to go on the parade but that if he knew he was not guilty, he should go on the parade.

39. He was removed from the cell by Inspector Pooran and taken to a room with a mirror where the ID parade was held. Whilst in that room, Inspector Pooran introduced JP Changoor and the claimant's girlfriend to the claimant over the intercom. There were eight persons inclusive of the claimant in the ID parade. The claimant was number eight. The claimant was not informed that he could object to the other persons being on the ID parade. Persaud identified the claimant during the ID parade. He heard Persaud say number eight through the intercom.

40. After the ID parade, he was charged by PC Seekumar. PC Seekumar did not caution the claimant. The claimant was then fingerprinted and served with a Notice to Prisoner. Subsequently, he was placed back into the cell.

#### **THE CASE FOR THE DEFENDANT**

41. The defendant called four witnesses, PC Seekumar, Corporal Ramdial, Corporal Sukram and Inspector Pooran.

#### **The evidence of PC Seekumar**

42. PC Seekumar has been a police officer for the past eight years. He is currently attached to the Marabella Police Station, Southern Main Road, Marabella. His duties include foot patrol, mobile patrol, charge room duties and investigations.

43. In August 2014, he was attached to the Princes Town Police Station. On or about 11:50 pm on August 8, 2014 he was in the Princes Town district on mobile patrol driving a marked Trinidad and Tobago Police Service motor vehicle PCY 8493 in the company of Police Constable Brown Regimental

Number 8388 (“PC Brown”). While on patrol, PC Seekumar received a report from the wireless command Centre that there was robbery at R&D Burger Hut (“the burger hut”) at Petit Café Junction, St. Julien Princes Town. PC Brown and PC Seekumar responded to the report by proceeding to the burger hut.

44. At the burger hut, PC Seekumar met the victim, Della Persaud (“Persaud”), who is the owner of the burger hut. Persaud indicated to him that she was robbed on that said date, August 8, 2014, at approximately 11:45 pm by two men of African descent. Persaud told him that she was in the process of closing her burger hut together with her daughter when she was approached by two men who were her regular customers. One of the men was about five feet six inches tall and the other about six feet tall. She also told him that they robbed her of a quantity of money which were sales from that said day, her driver’s permit, bank card and her Identification Card all amounting to \$3,400.00. Persaud further indicated that the men both escaped by foot along the Petit Café road in a southerly direction.

45. PC Seekumar along with PC Brown then proceeded to make checks in the area for the alleged persons however, their attempts proved futile. Upon arrival at the Princes Town Police Station (“the station”), PC Seekumar made an entry in the station diary with respect to the report made by Persaud and the investigation he conducted.<sup>6</sup>

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<sup>6</sup> A copy of the station diary day duty extract page 100 paragraph 2 dated August 9, 2014 was attached to PC Seekumar’s witness statement at “B.S. 1.”

46. On August 11, 2014, Persaud went to the station and gave a statement to Police Constable Ballantyne Regimental Number 17916 (“PC Ballantyne”).<sup>7</sup>
47. On August 11, 2014, PC Seekumar was on duty at the station when he was informed by Corporal Ramdial and Corporal Sukram that they arrested and detained a suspect for the robbery of the burger hut. Corporal Ramdial and Corporal Sukram further informed him that the claimant was the suspect involved in the said robbery. PC Seekumar then stated to the officers that he was taking the case. Consequently, PC Seekumar was the investigating officer in the matter.
48. PC Seekumar went to the cell in which the claimant was detained and identified himself by showing to the claimant his Trinidad and Tobago Police Service Identification Card. The claimant was thereafter taken out of the cell and placed in an enclosed room where he was interviewed by Corporal Sukram and PC Seekumar. PC Seekumar informed the claimant about the robbery at the burger hut. PC Seekumar also informed the claimant that he was investigating the robbery and that he had some information which led him to believe that he (the claimant) was a suspect in the robbery. PC Seekumar then cautioned the claimant by informing him of his rights and privileges. The claimant made no reply and gave no further information while being interviewed. An entry was made in the station diary in relation to the interview.<sup>8</sup>

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<sup>7</sup> A copy of the statement of Persaud was attached to PC Seekumar’s witness statement at “B.S. 2.”

<sup>8</sup> A copy of the station diary day duty extract page 113 and 114, paragraph 17 dated August 11, 2014 was annexed to PC Seekumar’s witness statement at “B.S. 3.”

49. The claimant was then escorted by PC Seekumar and another officer back into the cell pending an Identification Parade. When the claimant was being escorted back to the cell, he was pointed out by the victim, Persaud, as the person who robbed her. Persaud was in the reception area of the station when PC Seekumar was transporting the claimant back to the cells. The CID interview room is located on the southern side of the station and the prisoner cells are located on the northern side of the station. The reception area is located between the CID interview room and the cells. To get to the cell, PC Seekumar had to pass through the reception area with the claimant. That was where Persaud saw the claimant and then pointed to the claimant. She shouted out to PC Seekumar in a loud tone of voice, "*Officer that is the man.*" PC Seekumar did not respond to Persaud's comment. He continued walking to the cell with the claimant.

50. During the course of his investigations and interview, PC Seekumar learnt that the claimant resided in an apartment on St. Julien Road, Princes Town. At about 5:15 pm on August 11, 2014 a search warrant was obtained and a search was conducted on the claimant's apartment situated at St. Julien Road, Princes Town.<sup>9</sup>

51. On arrival at the claimant's address in the claimant's presence, PC Seekumar read out the search warrant for firearms and ammunition which he had in his possession. PC Seekumar along with a party of officers searched for arms and ammunition and the items that were stolen during the robbery, however, nothing mentioned in the search warrant was found. The claimant remained silent throughout the exercise. The police officers present were Corporal Ramdial, Corporal Sukram, Police

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<sup>9</sup> A copy of the search warrant dated August 12, 2014 was annexed to PC Seekumar's witness statement at "B.S. 4."



Constable Pullchan Regimental Number 14750, Police Constable Dookie Regimental Number 17649, Police Constable Narine Regimental Number 17941, Woman Police Constable Thomas Regimental Number 7414 and Police Constable Brown Regimental Number 8388. On return to the station an entry was made into the station diary with respect to the search conducted.<sup>10</sup>

52. On August 12, 2014, Inspector Pooran conducted an Identification Parade in the presence of JP Changoor, the claimant's girlfriend, Heather Hamilton ("Hamilton") and the victim, Persaud.<sup>11</sup> PC Seekumar was not present at the identification parade as he was the investigating officer.

53. Thereafter, PC Seekumar was informed by Inspector Pooran that the identification parade was positive. That the victim, Persaud positively identified the claimant during the identification parade. PC Seekumar received instructions to charge the claimant for the offence of robbery with aggravation. He then cautioned the claimant by informing him of his legal rights and privileges to which he made no reply. Thereafter, PC Seekumar formally charged the claimant for the offence of robbery with aggravation. He read out and served to the claimant the original copy of the Notice to Prisoner to which the claimant accepted and remained silent.<sup>12</sup> PC Seekumar then took the finger print impression of the claimant at the station.<sup>13</sup>

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<sup>10</sup> A copy of station diary day duty extract page 114 paragraph 18 dated August 11, 2014 was annexed to PC Seekumar's witness statement at "B.S. 5."

<sup>11</sup> A copy of the identification parade form dated August 12, 2014 was annexed to PC Seekumar's witness statement at "B.S. 6."

<sup>12</sup> A copy of the Notice to Prisoner dated August 12, 2014 was annexed to PC Seekumar's witness statement at "B.S. 7."

<sup>13</sup> A copy of the station diary day duty extract page 123 at paragraphs 46, 49 and 50 dated August 11, 2014 was annexed to PC Seekumar's witness statement at "B.S. 8."

54. On August 13, 2014 the claimant was taken to the Princes Town Magistrates' Court by PC Seekumar in the company of Police Constable Dick Regimental Number 15923 and Police Constable Mohess Regimental Number 18820.<sup>14</sup>
55. The claimant was denied bail by the Magistrate pending further tracing from his national country through Interpol as he was a national of Jamaica. Acting Sergeant Corrapse Regimental Number 12639 in company with Kaem Victor an Immigration Officer arrived at the station Cell Block with a detention order for the claimant as the claimant had to be kept until his legal status could have been verified.<sup>15</sup>
56. The claimant was then remanded into custody, searched and loaded in vehicle registration number TCL 5610 and taken to the Golden Grove Prison in Arouca.<sup>16</sup>
57. PC Seekumar gave a witness statement in the matter to Sergeant Ishmael who was the Court Prosecutor.<sup>17</sup> When the matter was called at the Magistrates' court, PC Seekumar attended periodically. He was absent on a few occasions as he was on injury leave.

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<sup>14</sup> A copy of the Princes Town police station cell block station diary day duty extract page 141 paragraphs 5, 7 and 8 dated August 13, 2014 was annexed to PC Seekumar's witness statement at "B.S. 9."

<sup>15</sup> A copy of the Princes Town police station cell block station diary day duty extract page 142 paragraphs 20 and 21 dated August 13, 2014 was annexed to PC Seekumar's witness statement at "B.S. 10."

<sup>16</sup> A copy of the Princes Town police station cell block station diary day duty extract page 142 paragraphs 23 and 24 dated August 13, 2014 was annexed to PC Seekumar's witness statement at "B.S. 11."

<sup>17</sup> A copy of witness statement dated August 14, 2014 was annexed to PC Seekumar's witness statement at "B.S. 12."

58. According to PC Seekumar, disclosure of the summary of evidence, the victim's and police officers' statements, diary extracts and the identification parade form were made to the claimant's attorney at law via emails. PC Seekumar emailed those documents on April 9, 2017 to Mr. Boyer who held for Mr. Merry in the matter. By a second email dated April 9, 2017 Mr. Boyer demanded that PC Seekumar forward the ID parade form. By email dated April 11, 2017 PC Seekumar attached and forwarded the ID parade form. By a subsequent email dated April 22, 2017 PC Seekumar further attached and forwarded documents in response to Mr. Boyer's demand.
59. The trial of the matter was scheduled to take place at the Princes Town Magistrates' Court on April 25 2017. However, prior to the trial, PC Seekumar spoke to the victim, Persaud and she informed him that she no longer wished to proceed with the matter. PC Seekumar was instructed by Sergeant Ishmael who was the Court Prosecutor that Persaud should attend the trial and indicate that in the witness box to the Magistrate.
60. On April 25, 2017 Persaud attended the Princes Town Magistrates' Court for the trial. The claimant was present. Persaud entered the witness box when she was called and indicated to the court that she did not wish to proceed with the matter. She further indicated that due to the length of time that had passed it was difficult for her to remember what happened. Thereafter, the Magistrate dismissed the matter. PC Seekumar was not present inside the courtroom on the date of the trial. He was standing outside. The Prosecutor then informed him of what was said inside the courtroom.

## The cross-examination of PC Seekumar

61. PC Seekumar agreed that the only evidence against the claimant in the robbery case was the identification evidence of Persaud. PC Seekumar further agreed that as the identification evidence of Persaud was uncorroborated, he had to treat that evidence with care. He disagreed that the circumstances in which Persaud observed the claimant was difficult circumstances.
  
62. PC Seekumar was referred to the witness statement of Persaud dated August 12, 2014. In that statement, Persaud stated that *"The incident from when I first saw the guy to when he grabbed my bag was about ten seconds"*. Notwithstanding the aforementioned, PC Seekumar disagreed that the opportunity to observe the assailant was poor. PC Seekumar agreed that Persaud did not state in her witness statement that she had known either of the two attackers prior to the night of the incident.
  
63. PC Seekumar accepted that it was not stated in the Defence that Persaud stated on August 8, 2014 that the two men were regular customers of hers. It was also not recorded in the station diary and Persaud's witness statement that the two men were her regular customers. According to PC Seekumar, he recalled being told by Persaud on the night in question that the two men were regular customers of the hut.
  
64. PC Seekumar disagreed that the description given by Persaud was very weak. He agreed that the first description given by a witness in identification cases is extremely important. He was referred to the station diary extract dated August 9, 2014. In that extract, the claimant was described as being of African descent sporting a short rasta hairstyle,

about five feet six inches tall, medium built and wearing a red t-shirt and khaki pants. PC Seekumar testified that the aforementioned was a strong description. He however agreed that there are many African males who could be described as wearing a short Rasta hairstyle. He further agreed that he did not have any facial features of the assailant, any distinguishing marks, the skin colour or the age of the assailant.

65. PC Seekumar is five feet seven inches in height. He testified that at the material time, the claimant was not shorter than him. PC Seekumar agreed that when he meet with the claimant in the enclosed room, the claimant was not sporting a shirt Rasta hairstyle and it was not twisted. He testified that the claimant's hair was loose. That the claimant was sporting a short afro hairstyle.

66. PC Seekumar was then referred to the witness statement he gave in the Magistrates' court dated August 14, 2014. In that statement, PC Seekumar stated that the claimant had a short twisted hairstyle. PC Seekumar agreed that in the criminal matter, he intended to tell the Magistrates' court that when the claimant was arrested he had a short twisted hairstyle which was consistent with the description given by Persaud. He however disagreed that he intended to lie in the criminal matter because it would have assisted the prosecution's case.

67. PC Seekumar would have made arrangements for Persaud to visit the station on August 11, 2014 to give her statement. PC Seekumar saw Persaud at the station at between 11:00 am and 1:00 pm. From the time PC Seekumar learnt about the claimant's arrest, he knew that an ID parade would have had to take place. When he met the claimant in the enclosed

room, he told the claimant that he would be placed on an ID parade. The claimant made no objections.

68. Whilst the claimant was being moved from the enclosed room to the cells, he was handcuffed. PC Seekumar was holding the claimant. PC Seekumar testified that he is not aware that it is highly inappropriate and unfair for a witness to be permitted to see a suspect prior to an ID parade. He then testified that he is aware that once an ID parade is in issue, the witness and suspect are supposed to be kept apart from each other. It was his testimony that he did not know that Persaud was in the charge room. When Persaud identified the claimant on August 11, 2014 same was not recorded in the station diary. PC Seekumar informed Inspector Pooran and Corporal Sukram of Persaud's identification of the claimant whilst the claimant was being taken back to the cells. PC Seekumar denied that he arranged the identification of the claimant by Persaud on August 11, 2014.

69. PC Seekumar testified that he did not have a search warrant to search the claimant's prior residence located at Petit Café. He denied searching the claimant's prior residence at Petit Café. He was then referred to station diary extract dated August 11, 2014 page 114, paragraph 18. In that extract, the following was stated;

*"PC SEEKUMAR also reported that in the company with the other Police Officers went to 62 Petit Café Road Indian Walk in possession of a Search Warrant in favour of JAMAL ANDRE DUNBAR at the said address and upon arrival met one KYLE CAMBELL of a Jamican National and Chevon Barrette a national of Jamaica. PC SEEKUMAR read the warrant aloud to JAMAL ANDRE DUNBAR (2) CHEVON BARETTE (3) KYLE CAMPBELL and enquired from them if any thing illegal of anything mentioned in the warrant was at the said premises and they indicated no. PC Seekumar in the company*

*with the other Police Officers conducted a systematic search and nothing mentioned on the search warrant was found...”*

70. PC Seekumar then testified that he went with the officers to Petit Café but remained in the vehicle. That he searched one place which was located at St. Julien Road and had one search warrant.

71. PC Seekumar never went to the bar. He never asked the claimant where he was on August 8, 2014. PC Seekumar indicated that he did ask the claimant to participate in an interview and that he did interview the claimant.

72. PC Seekumar testified that he was aware that there were other witnesses to the robbery. He agreed that Persaud’s daughter, Renissa Persaud (“Renissa”) was a witness to the robbery and that she gave information that she observed the men whilst they were committing the robbery. He accepted that the males witness’ name was Cyril Ascevero (“Ascevero”). He further accepted that Ascevero said he saw the faces of the men and could have identified them. PC Seekumar did not know that there were going to be three witnesses attempting to identify the claimant on the ID parade. Inspector Pooran did not inform PC Seekumar that Renissa and Ascevero did not identify the claimant during the ID parade.

73. When PC Seekumar spoke to the claimant he realized that the claimant was Jamaican. Persaud did not tell PC Seekumar that the person who robbed her had a Jamaican accent.

## The evidence of Corporal Ramdial

74. Corporal Ramdial has been a police officer for approximately twenty-one years. He is currently attached to the Southern Division Task Force at the Marabella Police Station, Southern Main Road, Marabella. His duties include arresting suspects relative to reports of crimes, patrols, supervision of subordinates and general policing.
75. In August 2014, he was attached to the Princes Town Police Station. He was then attached to the Criminal Investigations Department at the station. On August 9, 2014 during the hours of 12:00 am to 3:00 am, Corporal Ramdial was on patrol in the Princes Town District driving a Trinidad and Tobago Police Service vehicle registration number PCY 6682 in company with Police Constable Mohammed Regimental Number 16740, Corporal Sukram, Police Constable Ballantyne Regimental Number 17946 ("PC Ballantyne") and Police Constable Moses Number 17964.
76. A report of robbery with aggravation was made at the station sometime earlier that night in which the victim was Persaud. While on patrol, efforts were made to locate the suspects involved in the robbery.<sup>18</sup>
77. On August 11, 2014 Corporal Ramdial had certain information in respect of the report which occurred on August 8, 2014 at Petite Café Junction Princes Town with regards to a suspect. He had a conversation with Corporal Sukram informing him of the report of the robbery. Corporal Sukram together with PC Ballantyne and Corporal Ramdial then left on

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<sup>18</sup> A copy of station diary day duty extract page 100, paragraph 3 dated August 9 2014 was annexed to Corporal Ramdial's witness statement at "D.R. 1."



enquiries relative to the said information. Corporal Ramdial was dressed in plain clothes.

78. On or about 1:45 pm on that day, Corporal Ramdial in the company of Corporal Sukram and PC Ballantyne arrived at Persad's Supermarket at New Grant Junction Princes Town where Corporal Ramdial met the suspect, the claimant. Corporal Ramdial together with Corporal Sukram and PC Ballantyne approached the suspect and they identified themselves to him as police officers by showing to him their Trinidad and Tobago Police Service Identification Cards. Corporal Ramdial then informed the suspect that he was assisting in a report of robbery with aggravation which occurred on August 8, 2014 at Petite Café Junction Princes Town and also that he had certain information relative to the said report. Corporal Ramdial also informed the suspect that he fitted the description of a suspect relative to the report and that it was his intention to arrest him on enquiries relative to the report.

79. Corporal Ramdial then cautioned the claimant under Rule 2 of the Judges Rules and informed him of his legal rights and privileges to which he made no requests. Corporal Ramdial then arrested the claimant. The claimant was searched and nothing illegal was found on him. He was then placed in handcuffs behind his back for safety reasons which was the normal police procedure. The claimant was placed in the back seat of the unmarked police vehicle and taken to the station.

80. During the journey from the Supermarket to the station, the suspect was not interviewed or asked any questions whatsoever, by Corporal Ramdial or any officer present. Corporal Ramdial testified that at no time was he unprofessional or used obscene language towards the claimant.

81. Neither Corporal Ramdial, nor any other officer in his presence asked the claimant about his salary, nor did they go to any other establishment to verify the employment of the claimant, or speak to any person to ascertain the claimant's employment credentials. At no time did the claimant inform Corporal Ramdial or any other police officer in his presence that on August 8, 2014 he was at the bar, or what he was wearing that night. The claimant further did not inform Corporal Ramdial that there were CCTV cameras at the bar.

82. On arrival at the station, the claimant was handed over to the charge-room personnel for safekeeping. An entry in the station diary was made with respect to the investigations carried out earlier that day.<sup>19</sup>

83. Also, on arrival at the station Corporal Ramdial did not see the victim of the robbery, Persaud whilst the claimant was being handed over to the charge-room personnel. Corporal Ramdial did not hear anyone say anything about the identification of the claimant being made by the victim. At no time did he, nor any other officer in his presence, walk out into the charge-room area and held onto the claimant's arm and turn him around for anyone to look at him.

84. Corporal Ramdial assisted in the search being carried out by and at the claimant's apartment or a place he resided in Petite Café. Corporal Ramdial along with a party of officers searched for arms and ammunition and the items that were stolen during the robbery, however, nothing

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<sup>19</sup> A copy of station diary day duty extract page 112 and 113 paragraph 15 dated August 11, 2014 was annexed to Corporal Ramdial's witness statement at "D.R. 2."

mentioned in the search warrant was found. The claimant who was also present during the search, remained silent throughout the exercise.<sup>20</sup>

#### The cross-examination of Corporal Ramdial

85. When the claimant was arrested at Persad's grocery, there were persons around. Corporal Ramdial denied searching the claimant aggressively.

86. Corporal Ramdial testified that he could not recall the claimant mentioning anything about a bar he (the claimant) was at on August 8, 2014. Corporal Ramdial never asked the claimant where he was on August 8, 2014. Corporal Ramdial neither went to the bar nor obtained any CCTV footage from the bar. He testified that even if the claimant had an alibi, he would first arrest the claimant so that in the event the alibi does not pan out, the claimant would already be in custody.

87. Corporal Ramdial agreed that it is entirely inappropriate for a witness to be permitted to identify a suspect prior to an ID parade. He further agreed that if a witness was permitted to identify a suspect prior to an ID parade same would render the ID parade worthless. Corporal Ramdial was not informed that Persaud identified the claimant prior to the ID parade.

88. Corporal Ramdial recalled that there was a search at one place and that there was one search warrant.

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<sup>20</sup> A copy of station diary day duty extract page 114 paragraph 18 dated August 11, 2014 was annexed to Corporal Ramdial's witness statement at "D.R. 3."

### The evidence of Corporal Sukram

89. Corporal Sukram has been a police officer for the past fifteen years. He is currently attached to the Mon Repos Police Station, Naparima/Mayaro Road, San Fernando. His duties include general supervision of personnel attached to the charge room. Some of his evidence was the same as Corporal Ramdial's evidence and as such there was no need to repeat same.
90. In August, 2014, he was attached to the Criminal Investigations Department ("CID Office") at the Princes Town Police Station.
91. On 11, 2014, Corporal Ramdial informed Corporal Sukram that he had certain information with regards to a suspect for the robbery namely that the suspect was of African descent, about five feet six inches tall, medium built, brown in complexion with a short twisted hairstyle and that the suspect worked at the Persad's Supermarket, New Grant Junction in Princes Town.
92. At the station, the handcuffs were removed from the claimant and he was taken to the CID office which was an enclosed room, by Corporal Sukram, Corporal Ramdial and PC Ballantyne. Corporal Sukram together with Corporal Ramdial then summoned PC Seekumar, who was the investigating officer in the matter. Corporal Ramdial then introduced PC Seekumar to the claimant. PC Seekumar in Corporal Sukram's presence identified himself to the claimant by way of his Trinidad and Tobago Police Service Identification Card and Corporal Sukram again, also identified himself to the claimant.

93. In Corporal Sukram's presence, PC Seekumar informed the claimant of the report that he was investigating and of the information in his possession of the report. PC Seekumar then informed the Claimant that he fitted the description of the suspect given by the victim. PC Seekumar then told the claimant of his intention to place him on an ID parade and asked him whether he had any objections and cautioned him. The claimant remained silent and gave no further information while being interviewed. An entry was made to in the station diary in relation to the interview.<sup>21</sup>

94. Following the aforementioned, PC Seekumar then took the claimant to the cells. Corporal Sukram assisted in the search being carried out by and at the claimant's apartment.

95. Sometime on August 14 2014, Corporal Sukram had a conversation with PC Seekumar who informed him that the claimant was positively identified in an identification parade by the victim of the robbery and was charged for the offence of robbery with aggravation on the said day.

#### The cross-examination of Corporal Sukram

96. Corporal Sukram testified that the description of African descent, five feet six inches tall, medium built, brown in complexion with a short twisted hairstyle could fit many males in Trinidad. He however disagreed that in terms of narrowing down someone, the description was not very helpful. He agreed that it would have assisted if Persaud had given an age and facial features.

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<sup>21</sup> A copy of the station diary day duty extract page 113 and 114 paragraph 17 dated August 11, 2014 was annexed to Corporal Sukram's witness statement at as "K.S. 3."

97. Corporal Sukram agreed that the robbery case against the claimant rested on whether the witness could have identified the claimant. When Corporal Sukram met with the claimant at Persad's grocery, the claimant's hair was like an afro.
98. Corporal Sukram testified that Corporal Ramdial told him that the suspect worked at Persad's grocery. Corporal Sukram testified that he could not recall going to the claimant's place of work after the claimant was arrested. The claimant never had any conversations with Corporal Sukram. The claimant was not asked where he was on August 8, 2014. Corporal Sukram stated that no one in his presence asked the claimant if they could conduct an interview with him.
99. PC Seekumar did not inform Corporal Sukram that Persad had identified the claimant prior to the ID parade. Corporal Sukram testified that if a witness identifies a suspect prior to an ID parade, there would be no need for an ID parade.
100. Corporal Sukram denied conducting a search at any other location which the claimant once resided. He testified that there was only one search warrant.

#### The evidence of Inspector Pooran

101. Inspector Pooran has been a police officer for the past twenty-nine years. He is currently attached to the Belmont Police Station, Belmont Circular Road, Belmont. He has been an Inspector of Police for four years. His duties include supervision of investigations for road traffic accidents, all criminal offences, road exercises, operations into search and seizure of illegal items, ensure that patrols are done regularly, management of

resources at the station, conducting of identification parades and any other duties assigned to him by his seniors.

102. In August, 2014, he was attached to the Princes Town Police Station. On or about 10:00am on August 12, 2014, he was at the station. He was the identification parade officer. He had a conversation with PC Seekumar who gave him certain information that he had to conduct an ID parade. It is the usual procedure that an ID parade would be conducted by an Inspector of Police of any rank above.

103. Shortly thereafter, Inspector Pooran went to the cells of the station where he saw the claimant. He identified himself to the claimant as a police officer by showing him his Trinidad and Tobago Police Service Identification Card. Inspector Pooran was in company of JP Changoor who also identified himself to the accused by showing him his Identification Card.

104. Inspector Pooran informed the claimant that he had information that PC Seekumar was investigating a report of robbery which occurred at the burger hut on August 8, 2014 and that the claimant was a suspect in the matter. Inspector Pooran cautioned the claimant to which he made no reply.

105. Inspector Pooran further told the claimant that it was his intention to place him on an ID parade in that matter in which a witness would be called to see if that witness could identify anyone in connection with the robbery. Inspector Pooran then left the cell area leaving the JP Changoor and the claimant to speak with each other.

106. Inspector Pooran told the claimant that the ID parade would be held in a room fitted with a one way mirror which would allow the witness to see him and the other persons forming the line without being seen. Inspector Pooran further told the claimant that he had the right to refuse being placed on the ID parade. The claimant however agreed to take part in the ID parade. That conversation took place in presence of JP Changoor while the claimant was in the cell before the ID Parade began.

107. Inspector Pooran also told the claimant that he should have someone, be it a relative, his attorney or a friend of his choice, present at the holding of the ID parade as his representative or in the absence of such person, Inspector Pooran would have a Justice of the Peace represent him. The claimant elected to have his girlfriend, Hamilton represent him. Inspector Pooran therefore contacted Hamilton who arrived at the station shortly thereafter.

108. On or about 5:45 pm on August 12, 2014, Inspector Pooran conducted the ID parade in an enclosed room at the station. The claimant was placed on the ID parade.<sup>22</sup>

109. The room in which the ID parade was held is fitted with a one way mirror that allows the Inspector conducting the ID parade, the witness and the suspect's representative to see the persons forming the parade line without them being seen. The room is well illuminated with electrical lighting and is also equipped with an intercom system that affords communication between persons on both sides of the mirror. There are

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<sup>22</sup> A copy of the Id parade form dated August 12, 2014 was annexed to Inspector Pooran's witness statement at "L.P. 1".



also the numbers one to eight printed boldly and consecutively on the floor on the side of the room where the persons forming the lines stand.

110. Before conducting the ID parade, Inspector Pooran tested the intercom system by speaking to the suspect and it functioned well. He also introduced the suspect to his representative, Hamilton and to JP Changoor.

111. Inspector Pooran oversaw the ID parade and ensured that the persons who were selected as part of the ID parade matched the claimant's physical description in respect of his height, age, race, skin complexion and clothing. The ID parade consisted of eight men including the claimant. The other seven persons forming the ID parade were of similar physical description as the claimant in age, size, complexion, height and race. The claimant was of brown complexion, slim built, approximately five feet eight inches tall, wearing a blue jeans and blue jersey. All of the men on the ID parade were similarly dressed.

112. Before conducting the parade, Inspector Pooran informed the claimant of his rights and privileges in that he could have objected to anyone of the persons forming the line and he could change his clothes with any one of them. Inspector Pooran also informed the claimant that he should stand at any position in the line that he wished. The claimant made no requests and stood at position number eight.

113. When the parade was formed, Inspector Pooran called the name Ms. Della Persaud and heard the name being relayed outside the room. Shortly after, he heard a knocking on the door on the side of the room where he was situated. He inquired as to who it was and a voice answered,

*"Della Persaud."* He then allowed the witness to open the door and come in. Thereafter, he identified himself to the witness as a Police Inspector and introduced her to the Justice of the Peace and the claimant's representative, Hamilton. Both Hamilton and JP Changoor made no objections as to the other men who were on the ID parade together with the claimant after the formation of the ID parade.

114. Inspector Pooran informed Persaud about her purpose for being there. He asked her to relate briefly the incident which caused her to be attending the ID parade on the intercom system for the benefit of the persons on the ID parade and she did so loudly. Inspector Pooran then told her that the person who committed the offence may or may not be on the ID parade. He further told her to look along the line of men and if she saw any of the persons, she could identify the person by calling the number at his feet.

115. Persaud looked along the line of men on the ID parade and in a loud tone of voice said, *"Number 8"*. Inspector Pooran then allowed her to leave the room. He informed the claimant that the witness positively identified him in the ID parade and cautioned the claimant. The claimant made no reply.

116. Inspector Pooran then dismissed the ID parade and subsequently had a conversation with PC Seekumar and gave him certain information that the claimant was positively identified by Persaud. An entry was made in the station diary with regards to the identification parade being held.<sup>23</sup>

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<sup>23</sup> A copy of the station diary day duty extract pages 220, 221, 222 and 223 paragraph 20 dated August 12, 2014 was annexed to Inspector Pooran's witness statement at "L.P. 2."

117. Inspector Pooran was not aware about the events that took place which led to the arrest and detention of the claimant nor was he aware about what happened with regard to the claimant being charged.

118. He gave a witness statement to the complainant, PC Seekumar as he was the investigating officer in this matter.<sup>24</sup>

#### The cross-examination of Inspector Pooran

119. Inspector Pooran agreed that the ID parade form is an important document. He was referred to the ID parade form annexed to his witness statement and dated August 12, 2014. In that form it was not stated that Persad stated number eight in a loud tone of voice. At the question “how suspect dressed (from head downwards)” all that was stated was “blue jeans”. Inspector Pooran testified that his failure to fill out the names and numbers of the police officers that were present at the ID parade was an oversight on his part.

120. To the back of the ID parade form, there is space to be filled out in relation to the witnesses called. Inspector Pooran testified that he could not recall whether he conducted three id parades in relation to the claimant. He was referred to station diary extract dated August 12, 2014 page 221, paragraph 20 wherein it was stated that “*...Ag. Insp. Pooran called the name RENISSA PERSAUD... Shortly after Ag. Insp. Pooran heard a knocking on the door... He enquired who it was and a voice answered RENISSA PERSAUD... the witness looked along the line of men and said I do not see the person...*”

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<sup>24</sup> A copy of witness statement dated January 10, 2017 was annexed to Inspector Pooran’s witness statement at “L.P. 3”.

121. Inspector Pooran agreed that if there are three witnesses to an ID parade and two of the witnesses did not identify the suspect, he would inform the investigating officer of same.

122. Inspector Pooran agreed that it is highly inappropriate to permit a witness to view a suspect prior to an ID parade. He further agreed that the ID parade is worthless if a witness is allowed to see suspect prior to the ID parade. Inspector Pooran was not informed that Persaud had identified the claimant prior to the ID parade.

### **ISSUES**

123. It is undisputed that the claimant was arrested, charged and the charge was determined in his favour. Aside from the main issues of law, there are certain disputes of fact which must be resolved, these are as follows;

- i. Whether Persaud informed PC Seekumar that the men who robbed her were her regular customers;
- ii. Whether the claimant fitted the description given by Persaud;
- iii. Whether the claimant was informed of his legal rights and privileges at the time of his arrest, or at any time thereafter during his detention;
- iv. Whether the police officers made xenophobic remarks to the claimant while he was being transported to the police station;
- v. Whether the claimant was observed and identified by Persaud while the claimant was in custody immediately prior to the identification parade.
- vi. Whether two searches were conducted at two different locations in respect of the claimant;

124. The main issues of law for determination by this court are as follows;

- i. Whether the arrest of the claimant was lawful;
- ii. Was there reasonable and probable cause to charge the claimant;
- iii. If not, was the police complainant actuated by malice;
- iv. Whether the claimant falsely imprisoned from August 11 to August 13, 2014; and
- v. Whether the claimant is entitled to damages including aggravated and exemplary damages.

#### Issues of fact

125. In ***Horace Reid v Dowling Charles and Percival Bain***<sup>25</sup>, Lord Ackner delivering the judgment of the Board stated that where there is an acute conflict of evidence, the trial judge must check the impression that the evidence of the witnesses makes upon him against (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions.

Issue 1 - *Whether Persaud informed PC Seekumar that the men who robbed her were her regular customers*

#### The submissions of the defendant

126. PC Seekumar indicated in his witness statement and under cross-examination that Persaud informed him that the men who committed the robbery were her regular customers. PC Seekumar acknowledged that

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<sup>25</sup> Privy Council Appeal No. 36 of 1897 at page 6.

Persaud did not include that information in her witness statement that she gave on August 11, 2014 which was two days after the robbery had occurred. According to the defendant, that was information that Persaud gave to PC Seekumar on the night of the robbery as he together with another officer responded to the robbery on August 8, 2014.

#### The submissions of the claimant

127. PC Seekumar stated for the first time in his witness statement in these proceedings that on the night of the robbery Persaud told him that the robbers were her regular customers. That fact was not pleaded in the defence, it was not contained in PC Seekumar's criminal statement, Persaud's criminal statement or in any station diary. The claimant submitted that it was highly improbable that such an important fact would be inadvertently left out of the station diary, criminal statements and pleadings, but that PC Seekumar would recall it almost four years later when preparing his witness statement for these proceedings.

#### Findings

128. The court finds that the evidence that the assailants were regular customers of Persaud was of utmost importance in the criminal case. It goes directly to the correctness of the identification. It is reasonable to accept that if the assailants were customers and Persaud knew that she would have said it at the first opportunity, in her first description and it would be recorded in the station diary as being part of that description but even more it would have found its way into her criminal statement. Neither has occurred. As such, the court does not believe PC Seekumar when he says this in his evidence in chief. The court further finds that PC Seekumar has attempted to deceive the court as his contention was

neither supported by any station diary extract nor was it pleaded. The court agrees with the submission of the claimant it is highly improbable that such an important fact would be inadvertently left out of the station diary, criminal statements and pleadings, but that PC Seekumar would recall it almost four years later when preparing his witness statement for these proceedings. It is an attempt to justify the reasonable and probable cause to charge given what occurred prior to the identification parade (which is dealt with later on).

Issue 2 - *Whether the claimant fitted the description given by Persaud*

The submissions of the defendant

129. The defendant submitted that the victim had given a description of the men who robbed her on the night of the incident and also a few days later when she made an official report. The description received from the victim was that one of the men was approximately five feet eight inches tall, brown skin, medium built, with short twisted hairstyle. According to the defendant, the description of the claimant by the victim was not a vague one. The description of the one of the persons who committed the robbery is in comparison to that of the claimant. The defendant further submitted that the only discrepancy was the hairstyle of the claimant upon his arrest and that of the person who committed the robbery.

130. During cross-examination, PC Seekumar indicated to the court that upon seeing the claimant after he was arrested, the claimant's hair was loose and not twisted and/or in a short Rasta hairstyle as in the description given by Persaud. PC Seekumar stated that the claimant hair was loose like a short afro style when he saw the claimant in the police station.

Counsel for the claimant then asked PC Seekumar to look at the claimant's hairstyle on the date that the trial took place. On that day, the claimant had a low cut hairstyle. PC Seekumar indicated that the claimant had longer hair when he was brought to the police station on August 11, 2014.

131. During cross-examination, Corporal Sukram indicated to the court that the claimant had a short afro like hairstyle on the day that Corporal Ramdial arrested him.

132. The defendant submitted that the claimant's hair at the time of the robbery on August 8, 2014 was in fact consistent with that of the description given by Persaud. That the claimant had a short twisted hairstyle or a short Rasta hairstyle. On August 11, 2014 the claimant had a different hairstyle as indicated by both PC Seekumar and Corporal Sukram during cross-examination.

133. According to the defendant, the claimant may have changed his hairstyle during the course of the weekend from twisted to loose. The defendant submitted that it was possible that the reason he may have changed his hairstyle was so he would not have been identified for the robbery of the burger hut which took place two nights ago. The defendant further submitted that the court should accept that the claimant did change his hairstyle over the weekend of August 8, 2014 to August 11, 2014 from a twisted hairstyle to that of a loose afro hairstyle as he is of African Descent. Moreover, the defendant submitted that the claimant does fit the description given by Persaud as he is approximately five feet eight inches tall, his skin is brown in complexion and he is of a medium built man.



### The submissions of the claimant

134. The claimant submitted that in respect of his evidence, he was generally cooperative and forthright with his answers. That there was nothing in his demeanor that suggested that he was trying to mislead the court.

135. The claimant pleaded that he kept his hair short at the time of his arrest. None of the defendant's witnesses gave an account of the claimant's description at the time of his arrest in their witness statements in these proceedings. According to the claimant, the content of his statement of case specifically stated that he did not match the description given by Persaud, which required the defendant's witnesses to include details of his actual description in their statements.

136. For the first time during cross-examination PC Seekumar alleged that the claimant had an afro style haircut. The defendant disclosed a station diary entry made on the date after the claimant's arrest (August 12, 2014) which was relevant to an unrelated robbery. In that extract suspect No. 2 is described as having a "*low haircut*" and according to the extract, the claimant was informed by the investigating officer that he "*fitted the description of suspect No. 2*". Accordingly, the claimant submitted that PC Seekumar's evidence was inconsistent with the records in the station diary which suggested that the claimant's hair was low at the time. More importantly, it is inconsistent with PC Seekumar's statement in the criminal proceedings, in which he stated that at the time he met with the claimant on August 11, 2014 the claimant had a short twisted hair style.

137. Corporal Sukram also for the first time under cross-examination stated that the claimant had a “*short afro like hairstyle*” on the day of arrest. In his witness statement in the criminal proceedings PC Sukram stated: “*On arrival (at Persad the Food King Supermarket) I met a man of African descent about 5 feet 6 inches tall, medium built with brown complexion and short rasta hairstyle attired with a white T-shirt and blue jeans pants.*”

138. The claimant submitted that his hairstyle was particularly important given the generality of the other descriptors given by Persaud of the assailant. As such, the claimant submitted that the fabrication by both Corporal Sukram and PC Seekumar of evidence to the effect that he had a short twisted, or Rasta hairstyle would have been particularly detrimental to the defence at the criminal trial.

139. The claimant further submitted that it was highly unlikely to be coincidental that both witnesses shifted from stating that he had a short twisted or Rasta hairstyle, to stating that he had an afro hairstyle at this trial. That it was far more likely that the consistency of their account during cross-examination in this matter was as a result of collusion and a deliberate attempt to mislead this court.

### Findings

140. The court finds that the description given of the assailants by Persaud was a generic description. The description which was recorded in the station diary extract of August 9, 2014 was as follows;

*“...two men of African descent (1) sporting a short rasta hair style-about 5’ 6” tall-medium built-wearing a red T-Shirt-khaki pants (2) about 6’ tall – slim built-wearing white T-shirt...”*

141. In her statement dated August 12, 2014 Persaud described the assailants as follows;

*“...I saw a man of African descent, about 5 feet 8 inches tall, medium built, brown skin, with short twisted hairstyle and another of African descent, about 6 feet 2 inches tall, thin, dark brown in complexion wearing a cap...”*

142. It clear from the evidence of PC Seekumar and Corporal Sukram that at the time of the claimant’s arrest, he did not have a short twisted hairstyle. PC Seekumar stated that the claimant’s hair was loose like a short afro style and Corporal Sukram indicated to the court that the claimant had a short afro like hairstyle on the day that Corporal Ramdial arrested him. During cross-examination, PC Seekumar was referred to the witness statement he gave at the Magistrates’ court dated August 14, 2014 wherein he stated that the claimant had a short twisted hairstyle. PC Seekumar agreed that in the criminal matter, he intended to tell the Magistrates’ court that when the claimant was arrested he had a short twisted hairstyle which was consistent with the description given by Persaud. He however disagreed that he intended to lie in the criminal matter because it would have assisted the prosecution’s case. The admission and denial are nothing short of astounding and have had the effect of erasing all credibility on the part of Seekumar in the court’s view. It is clear that his evidence in material issues cannot be believed.

143. The defendant has asked the court to find that it is plausible that at the time of the robbery the claimant’s hairstyle was consistent with the

description given by Persaud and that it is reasonable that the claimant may have changed his hairstyle so that he would not have been identified for the robbery of the burger hut. To so find, the court will be engaging in the realm of speculation.

144. Notwithstanding his hairstyle, the court finds that the claimant could have matched the description given by Persaud but as the description was of a generic nature, the description could have been applicable to hundreds and perhaps thousands of people. So that in essence information of prior knowledge by Persaud was at the time crucial to any decision to prosecute.

Issue 3 - *Whether the claimant was informed of his legal rights and privileges at the time of his arrest, or at any time thereafter during his detention*

The submissions of the defendant

145. The claimant claimed in his witness statement and under cross-examination that he was never informed of his legal rights and privileges by Corporal Ramdial. The defendant's evidence was that at the time of arresting the claimant, Corporal Ramdial cautioned him and informed him of his legal rights and privileges. That was supported by station diary extract dated August 11 2014.

146. The defendant submitted that there is a presumption of regularity in favour of Corporal Ramdial as a public officer in the performance of his official duties as a police officer.<sup>26</sup> That the claimant has failed to adduce

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<sup>26</sup> See *Mohanlal Bhagwandeem v Attorney General of Trinidad and Tobago* PCA No. 45 of 2003 at paragraphs 20, 21, 22.

sufficient evidence to rebut that presumption. The only evidence presented to this court was the claimant's bare allegation that he was not informed of his constitutional rights at the time of his arrest. As such, the defendant submitted that this court should apply the presumption of regularity to these facts and accept the evidence of Corporal Ramdial that the claimant was in fact informed of his legal rights and privileges.

### Findings

147. The court agrees with the submissions of the defendant that the claimant failed to adduce sufficient evidence to rebut the presumption of regularity. That the only evidence presented to this court was the claimant's bare allegation that he was not informed of his constitutional rights at the time of his arrest. As such, the court finds that the claimant was informed of his legal rights and privileges at the time of his arrest and during his detention.

### Issue 4 - *Whether the police officers made xenophobic remarks to the claimant while he was being transported to the police station*

148. The claimant testified that on the way to the station on August 11, 2014 Corporal Ramdial told him that "*all ya fucking Jamaican only come here to rob and tief*". In response, the claimant told Corporal Ramdial that he works every day, seven days a week, and that he does not rob anybody.

149. Corporal Ramdial testified that during the journey from the Supermarket to the station, the claimant was not interviewed or asked any questions whatsoever, by him or any officer present. He further testified that at no time was he unprofessional or used obscene language towards the claimant.

## Findings

150. The court is not satisfied that it is more likely than not that Corporal Ramdial made xenophobic remarks to the claimant while he was being transported to the police station. There appeared to be no reason to have done so and the weight of the evidence lies in favour of this having not occurred.

Issue 5 - *Whether the claimant was observed and identified by Persaud while the claimant was in custody immediately prior to the identification parade*

### The submissions of the defendant

151. The defendant submitted that it was its evidence that the victim, Persaud went to the station on August 11, 2014 to give a statement with regards to the robbery of her burger hut which occurred on August 8, 2014. During cross-examination, PC Seekumar indicated that he had made arrangements for Persaud to attend the station on August 11, 2014 to give her statement. PC Seekumar also stated that he saw Persaud at around lunchtime during the hours of 11:00 am to 1:00 pm.

152. In the claimant's witness statement, he stated that after being questioned by the officers, he was taken out by an officer and upon reaching a certain point in or around the charge room area, the said officer pulled his arm and made him turn facing a direction where he observed Persaud who was seated in the civilian waiting area. The claimant further stated that Persaud looked directly at him and nodded her head. He then heard an officer say, "*The lady say is him.*"

153. In PC Seekumar's statement, he indicated that he was the officer escorting the claimant from the office where he was interviewed, back to the cells which was located on the opposite side of the police station after the civilian waiting area. That would have required PC Seekumar to walk from the interview room to the civilian waiting area and onwards to the cells. PC Seekumar stated that while he was escorting the claimant to the cells, Persaud saw the claimant as they passed alongside the civilian waiting area and shouted, "*Officer that is the man.*"

154. The defendant submitted that the architectural design of the police station is one where after conducting an interview in the proper interview room and on transporting or escorting the prisoner to the cells, one would have had to pass through the public waiting area to get to the cell. That the court should not speculate that the victim was advised by the police officers at the station to linger around after giving her statement to identify the claimant. According to the defendant, based on the evidence it can be asserted that the victim was at the station giving a statement which would have had to be a typed written statement which would obviously have taken some time to complete. As such, she would have been waiting on the administrative processing of her statement which would have required her to wait in public waiting area. The defendant submitted that the court should not speculate that that process is a short one bearing in the mind the state of the victim as she would have been recalling traumatizing events where she was robbed at gun point whereby she and her family were put in danger.

155. The defendant submitted that the claimant made eye contact with Persad whereby she nodded which could have been for various reasons namely that she recognized the claimant and her way of nodding was to

acknowledge him as they knew each other. According to the defendant, the court should accept that that was the reason why Persaud on seeing the claimant nodded.

156. During cross-examination, the claimant indicated that he did not know that Persaud had made a report against him. The defendant submitted that that was highly unbelievable as he must have had some idea of that mainly because he indicated under cross-examination and in his witness statement that he is familiar with Persaud as he regularly went to the burger hut with his Jamaican friends to buy food. The claimant also stated under cross-examination that he heard of the robbery of the burger hut on the evening of August 9, 2014 from his girlfriend.

157. The defendant submitted that even though the victim and the claimant saw each other and made eye contact before the ID parade was held, same did not prejudice the ID parade as it was established that the claimant and Persaud knew each other. The defendant further submitted that the identification parade was done in accordance with the TTPS Standing Orders.

#### The submissions of the claimant

158. According to the claimant, as a matter of common sense it was obviously unfair to a suspect to permit a witness to observe or identify him prior to the holding of an ID parade. The claimant submitted that to permit a witness such an opportunity is contrary to the Judges Rules on ID Parades which states that an identification officer shall not allow a witness to *"see any member of the parade before actually attending the parade"*. The claimant further submitted that it is also well established at common



law that a witness ought not to be aided in their ability to recognize a suspect prior to a parade being held. In *The State v Mohammed Khalil*<sup>27</sup>, Luckhoo CJ stated as follows at page 51;

*“...If a potential witness is shown the person to be identified singly in circumstances to indicate, as in this case, that the police suspected that person, the witness would be much more likely, however fair and careful he might be, to assent to the view that the man he was shown corresponded to his recollection, and when this happens courts will, in the absence of other evidence, be inclined to set aside a conviction as being unjust and unsafe. It is essential that a witness's recollection of the physical appearance of the person previously observed under incriminating circumstances should, as far as possible, be unaided. The very object of a parade is to make sure that the ability of the witness to recognise the suspect has been fairly and adequately tested, and every precaution should be taken to exclude any suspicion of unfairness or risk of erroneous identification through the witness's attention being directed specifically to one "suspected person" instead of equally to all persons on parade. It is quite wrong to suggest to the witness that the prisoner was believed by the authorities to be the offender. Nothing should be done to influence or affect the recollection of the witness and thus destroy the value of his or her evidence of identity.”*

159. According to the claimant, it was highly improbable that a police officer would not be aware of the impropriety of permitting such a pre-parade identification. As such, PC Seekumar must have been aware of the need to ensure that Persaud did not have the opportunity to observe the claimant on the day of his arrest.

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<sup>27</sup> (1975) 23 WIR 50

160. The claimant submitted that the defendant's explanation for the impermissible identification, namely that it was a result of the architectural design of the police station does not bear the slightest scrutiny. That given that PC Seekumar was aware of Persaud's presence at the station, if he was in fact attempting to ensure that no observation of the claimant could take place, he could have done a number of things such as asking Persaud to leave the station for a moment, placing her in an enclosed office or simply having an officer stand with her while she faces the other direction as he walks past with the claimant. No explanation was given by PC Seekumar for his failure to take such measures.

161. According to the claimant, PC Seekumar's account of the pre-parade identification was also highly improbable. He accepted that while he was walking the claimant back to the cell area he would not have been walking slowly, and Persaud would have had only a side view of the claimant walking past. She would not have been expecting them to walk past at that moment. He alleged that in those circumstances Persaud pointed at the claimant in the middle of the police station and shouted loudly "*Officer that is the man*". PC Seekumar admitted in cross-examination that nothing would have prevented Persaud from quietly indicating to him at a later stage that she saw the suspect.

162. The claimant submitted that the following evidence supports his contention that the pre-parade identification was deliberately arranged by PC Seekumar and that he was aware that the identification was improper;

- i. No note of the identification was made in the station diary;

- ii. No mention of the identification was made in any witness statements in the criminal matter, including Persaud's and PC Seekumar's;
- iii. PC Seekumar failed to inform the identification officer (Inspector Pooran) of the identification, which was highly improbable in all the circumstances unless he was trying to conceal the identification;
- iv. PC Seekumar stated that he did not inform Corporal Ramdial, who was the most senior officer dealing with the case and who was present at the station at the time, which was highly improbable in all the circumstances unless he was trying to conceal the identification;
- v. PC Seekumar alleged that he informed Corporal Sukram, but Corporal Sukram denied that in cross-examination.

163. The claimant submitted that it was noteworthy that the defendant in its submissions appeared to prefer his version on this matter, namely that Persaud did not shout out to PC Seekumar but merely nodded. That the defendant tried to downplay the fact that Persaud only nodded, but failed to take into account that on PC Seekumar's evidence under cross-examination the claimant was handcuffed behind his back and being held by PC Seekumar, which clearly would have alerted Persaud to the fact that he was a suspect.

164. According to the claimant, if his account is accepted, then there was clear evidence that the pre-parade identification was orchestrated, since on his version his arm was pulled so that he faced Persaud, and after she nodded an officer stated "*the lady say is him*".

165. The claimant submitted that the fact that the pre-parade identification was left out of the station diary and the witness statements in the criminal matter strongly suggests that PC Seekumar intended in the criminal matter to either withhold and/or deny the fact that the said identification took place. The pre-parade identification was not referred to in any of the documents disclosed by the prosecution prior to the criminal trial.

### Findings

166. It is pellucid upon an examination of the evidence that the claimant was observed and identified by Persaud while in custody immediately prior to the identification parade (ID parade). It is a basic principle that a witness should not be permitted to observe a suspect prior to an ID parade and that the witness to the parade must be kept separate and apart from the suspect. This is the duty of the investigator. It is also the duty of the Inspector to ensure that the separation is maintained and it is no excuse to say that the Inspector's function is limited only to the happenings at the ID parade itself. The court finds that it is highly improbable that an officer would not have known the importance of this cardinal principle contained in the Rules relating to Identification Parades.

167. The object of an identification parade is to test the ability of the witness to identify the person seen on a previous occasion from amongst others of similar height build etc, and to provide safeguards against mistaken identification.<sup>28</sup> As such, to permit a witness to observe a suspect prior to an ID parade can render the object nugatory and any purported identification unreliable because it means that the witness'

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<sup>28</sup> Criminal Bench Book, Chapter 10, page 92

ability to identify the suspect has been tarnished by her previous sight of the suspect. This is especially the case where the suspect is handcuffed and obviously in custody.

168. The court further finds that the observation and identification of the claimant by Persaud prior to the ID parade was not accidental. That PC Seekumar would have known of Persad's presence in the station and upon reaching the charge room area, he purposefully pulled on the claimant's arm causing him to face in the direction Persaud was seated so that Persaud could have had the opportunity to observe and identify the claimant. The court takes judicial notice that this is an old and well-known trick used by police officers years ago especially in the circumstance where the quality of the original identification by the witness is poor.

169. The court agrees with the claimant's submissions that the following evidence supports that the pre-parade identification was deliberately arranged by PC Seekumar and that he was aware that the identification was improper;

- i. No note of the identification was made in the station diary;
- ii. No mention of the identification was made in any witness statements in the criminal matter, including Persaud's and PC Seekumar's;
- iii. PC Seekumar failed to inform the identification officer (Inspector Pooran) of the identification, which was highly improbable in all the circumstances unless he was trying to conceal the identification;
- iv. PC Seekumar stated that he did not inform Corporal Ramdial, who was the most senior officer dealing with the case and who was present at the station at the time, which was highly improbable in

all the circumstances unless he was trying to conceal the identification;

- v. PC Seekumar alleged that he informed Corporal Sukram, but Corporal Sukram denied that in cross-examination.

170. The defendant has asked the court to find that when Persaud made eye contact with the claimant and nodded, she could have done so for various reasons namely that she recognized the claimant and her way of nodding was to acknowledge him as they knew each other. This is disingenuous for two reasons. Firstly, such a finding would go against the defendant's case which was that Persaud saw the claimant whilst PC Seekumar was escorting him to the cells and shouted, "*Officer that is the man.*" Secondly, there was no evidence that at that time it was known that Persaud and the claimant knew each other.

171. It was clear on the evidence that the claimant's assertion that he was familiar with Persaud was not known to PC Seekumar at the time of the claimant's arrest and charge. This was evidenced by the fact that PC Seekumar during cross-examination stated that it was a case of identification of a stranger and nowhere in the criminal witness statements was there any mention of Persaud and the claimant being familiar with each other. For the first time in these proceedings PC Seekumar stated that on the night of the robbery Persaud told him that the persons who robbed her were regular customers. The court found the evidence was incapable of belief because it was not pleaded, it was not contained in any of the criminal witness statements and it was not contained in any contemporaneous station diary entry.

Issue 6 – *Whether two searches were conducted at two different locations in respect of the claimant*

The submissions of the claimant

172. According to the claimant, the contemporary documents, namely the police station diaries, are consistent with his version of events. The court was asked to consider that before the station diary extracts had been disclosed, the claimant pleaded that there had been two searches conducted at two different locations on the evening of his arrest, namely at his apartment at St. Julien Road and at his previous residence at Petit Café Trace. The defendant denied that in its defence. However, the station diary extracts support the claimant's version.

173. In cross-examination, PC Seekumar confirmed that the police were only in possession of one search warrant on the night in question, namely the warrant to search "*Naparima Mayaro Road, St. Julien Village, Princes Town*" which was attached to his witness statement. PC Seekumar during cross-examination continued to deny that he had conducted two separate searches on the night in question. At first he completely denied that there was a second search, and then when informed of the content of the diary extract he stated that he may have remained in the police car while the search was conducted, but he did not conduct a second search. According to the claimant, PC Seekumar's evidence in relation to the searches was inconsistent with the station diary extract. The claimant submitted that the record in the station dairy extract proved that an unauthorized search was conducted by PC Seekumar and other police officers who entered the premises at Petit Café Road without lawful authority.

## Findings

174. It is pellucid from the station diary extract dated August 11, 2014 page 114, paragraph 18 that on the evening of the claimant's arrest, the police officers conducted two searches, one at St. Julien Village, Princess Town and another at 62 A Petit Café Road Indian Walk. During cross-examination, when PC Seekumar was referred to this extract, in an attempt to extricate himself having realized that the station diary stated that two searches were in fact conducted, he testified that he conducted one search at one place and accompanied the officers to Petit Café but remained in the vehicle. The station diary extract was completely inconsistent with PC Seekumar's testimony as in the extract it specifically stated that at Petit Café, PC Seekumar read the warrant aloud and then he in the company of other officers conducted a systematic search.

175. Consequently, the court finds that the claimant's version is to be believed as the written entry in the station dairy supports the fact that two searches were conducted. Further, the court was only supplied with one search warrant which was for the search conducted at St. Julien Village, Princess Town. The court therefore finds that it is reasonable to believe that the officers conducted a search at 62 A Petit Café without a warrant given the fact that PC Seekumar, Corporal Sukram and Corporal Ramdial all testified that only one search was conducted and that there was only one search warrant, but they have attempted, unsuccessfully to hide that fact.

## **ISSUES OF LAW**

Issue 1 - *Whether the arrest of the claimant was lawful*



## Law

176. **Halsbury's Laws of England Volume 84A (2013)** at paragraph 487 provides as follows;

*"A constable may arrest without a warrant:*

*(1) anyone who is about to commit an offence;*

*(2) anyone who is in the act of committing an offence;*

*(3) anyone whom he has reasonable grounds for suspecting to be about to commit an offence; and*

*(4) anyone whom he has reasonable grounds for committing an offence.*

*If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.*

*If an offence has been committed, a constable may arrest without a warrant anyone who is guilty of the offence and anyone whom he has reasonable grounds for suspecting to be guilty of it."*

177. **Section 3(4) of the Criminal Law Act Chapter 10:04** provides as follows;

*"Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence."*

178. **Section 46(1)(d) and (f) of the Police Service Act chapter 15:01**, also empowers a police officer to arrest without a warrant in the following circumstances;

*"46. (1) A police officer may arrest without a warrant-*

...

*(d) a person in whose possession anything is found which may reasonably be suspected to have been stolen or who may reasonably be suspected of having committed an offence with reference to such thing;*

...

*(f) a person whom he finds in any public or private place or building and whom he suspects upon reasonable grounds of having committed or being about to commit an offence.”*

179. The onus of establishing reasonable and probable cause for an arrest is on the police.<sup>29</sup>

180. Narine JA in **Nigel Lashley v The Attorney General of Trinidad and Tobago**<sup>30</sup> at paragraph 14 stated as follows;

*“...The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information Page 21 of 40 including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: O’Hara v. Chief Constable (1977) 2 WLR 1; Clerk and Lindsell on Torts (18th ed.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”*

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<sup>29</sup> See *Dallison v. Caffery* (1964) 2 All ER 610 at 619 D per Diplock LJ. 72.

<sup>30</sup> Civ Appeal No 267 of 2011

### The submissions of the defendant

181. The defendant submitted that at the time of arresting the claimant, Corporal Ramdial had a reasonable suspicion that the claimant had committed the robbery at the burger hut. That suspicion was based on the following factors;

- i. On August 8, 2014 at approximately 11:50pm, officers at the station received report that a robbery had just taken place at the burger hut at about 11:45pm;
- ii. On August 11, 2014, Persaud who is the owner of the burger hut, visited the station and gave a statement to PC Ballantyne of the robbery that took place on August 8, 2014. Persaud gave a description of the men who robbed her. One of the men was approximately five feet six inches tall, medium built, had brown skin in complexion and had a short twisted hairstyle. The second man was six feet two inches tall, thin, had dark brown skin in complexion and wore a cap during the robbery.

182. It was the defendant's evidence that PC Seekumar in company with another officer, PC Brown responded to the report of the robbery. PC Seekumar and PC Brown were on mobile patrol in the Princes Town district, when they received the report from the wireless command Centre. On arrival, PC Seekumar met Persaud who indicated that she was robbed by two men of African descent, about five minutes before the police officers arrived. Persaud told PC Seekumar that she together with her daughter were in the process of closing her business when she was approached by two men who were her regular customers. One of the men was about five feet six inches tall and the other about six feet tall. Persaud

also told the police officers that the two men robbed her of a quantity of money which were sales from that said day, her driver's permit, bank card and her Identification Card. Persaud further informed the officers that both men escaped by foot along the Petit Café road in a southerly direction. PC Seekumar and PC Brown then proceeded to make checks in the area for the alleged persons however, their attempts proved unsuccessful.

183. On August 9, 2014 during the hours of 12:00 am to 3:00 am, Corporal Ramdial together with Corporal Sukram and three other officers were on mobile patrol in the Princes Town District when Corporal Ramdial received certain information about the report of the robbery at the burger hut. With that information whilst on patrol, efforts were made by Corporal Ramdial and the other officers present, to locate the suspects involved in the said robbery. Their attempts were also unsuccessful.

184. On August 11, 2014, Persaud visited the station and gave a statement to PC Ballantyne. Persaud indicated that on August 8, 2014 she was robbed by two men of African descent. She then gave a description of the said men describing that one of the men was approximately five feet eight inches tall, medium built, had brown skin in complexion and had a short twisted hairstyle. The second man was six feet two inches tall, thin, had dark brown skin in complexion and wore a cap during the robbery. Persaud further stated to PC Ballantyne that the shorter of the two men held on to an object in his jersey and said that he had a gun. One of the men took her belongings and then made their escape on foot along the Petite Café road in a southerly direction. This statement was recorded and attached to the witness statement of PC Seekumar.

185. Later on the said day, August 11, 2014, Corporal Ramdial received certain information about the report of the robbery with regards to a suspect. Corporal Ramdial then left the Princes Town Police Station in company with Corporal Sukram and PC Ballantyne on enquires relative to the report. They proceeded to the Persad's Food King Grocery where they met the claimant who was employed there. Corporal Ramdial together with Corporal Sukram and PC Ballantyne all dressed in plain clothes, exited the unmarked TTPS police vehicle and approached the claimant whom he suspected to be one of the men who robbed the burger hut. Corporal Ramdial, Corporal Sukram and PC Ballantyne and identified themselves to the claimant as police officers by showing to him their TTPS Identification Cards.

186. Corporal Ramdial then informed the claimant that they were assisting in a report of robbery which occurred on August 8, 2014 at Petite Café Junction Princes Town and also that he had certain information relative to the said report. The defendant submitted that the description was what was in the mind of Corporal Ramdial when he arrested the claimant as he formed a reasonable belief that the claimant was the suspect as the description received from the victim was that one of the men was approximately five feet eight inches tall, brown skin, medium built, with short twisted hairstyle. Corporal Ramdial also informed the claimant that he fitted the description of a suspect relative to the said report and that it was his intention to arrest him on enquiries relative to the said report. Corporal Ramdial then cautioned the claimant by informing him of his legal rights and privileges to which the claimant made no response. The claimant was arrested and then searched whereby nothing illegal was found on him. The claimant was then handcuffed and

then placed in the back seat of the unmarked police vehicle and taken to station.

187. Consequently, the defendant submitted that Corporal Ramdial had an honest belief and a suspicion that the claimant had committed the robbery at the burger as he had received information regarding the claimant's description. That Corporal Ramdial therefore had reasonable and probable cause to arrest the claimant and it was not his duty to determine the validity of any defence he may have had as that was for the court to determine. The defendant further submitted that Corporal Ramdial acted with due authority and in accordance with the law in arresting the claimant based on the information he had available to him.

188. The defendant relied on the case of **Harold Barcoo v Attorney General of Trinidad and Tobago**<sup>31</sup> wherein section 3(4) was adjudicated upon. In Harold Barcoo, the plaintiff claimed damages for wrongful arrest, false imprisonment and malicious prosecution arising out of an arrest by police officers. In that matter, Justice Mendonca (as he then was) had to determine whether or not the defendant had reasonable cause to suspect the plaintiff of having stolen firearms. At page 6 of the dictum, His Lordship cited the case of *Dallison v Caffery*<sup>32</sup> wherein Lord Diplock stated as follows;

*“The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause. Where that test is satisfied, the onus lies on the*

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<sup>31</sup> H.C.A. No. 1388 of 1989

<sup>32</sup> [1964] 2 All ER 610 at 619

*person who has been arrested or prosecuted to establish that his arrestor or prosecutor did not in fact believe what ex hypothesi he would have believed had he been reasonable...”*

189. In **Dallison v Caffery** (supra) the defendant, police officer, arrested, detained, charged and prosecuted the plaintiff for the offence of theft. At the time of charging the plaintiff, the defendant had available to him the following facts namely, a positive identification of the plaintiff and an alibi put forward by the plaintiff. The defendant was not present when the plaintiff was positively identified but he was so informed by his senior officer, a police detective inspector. The plaintiff claimed that he was innocent and that at the time of commission of the alleged offence he was working in company with another person whose proper name he did not know. In the course of the defendant’s investigations the plaintiff’s house was also searched but no evidence relevant to the offence was found. At the trial the prosecution offered no evidence and the plaintiff was acquitted. The plaintiff then filed an action against the defendant for false imprisonment and malicious prosecution. The judge held that the defendant had reasonable and probable cause for charging the plaintiff and the said action was dismissed. The plaintiff appealed.

190. In delivering judgment in the **Dallison v Caffery** (supra), Lord Denning held that the trial judge was correct in rejecting the plaintiff’s claim for false imprisonment. His Lordship noted that the plaintiff willingly cooperated with the defendant in all that was done and he cannot complain of it as false imprisonment. It was also held that the evidence known to the defendant that the plaintiff was positively identified as the perpetrator of the offence afforded him reasonable cause to suspect that

the plaintiff had committed the crime and the following was stated at page 618 para. H,

*“True it is that the plaintiff was innocent all the time, but that is no reason for making a police officer liable when he has only done his duty in investigating a crime.”*

191. Further, at page 618 paragraph I of the Dallison dictum (supra) Lord Justice Diplock noted that it was a common ground in that case that a felony had in fact been committed. His Lordship noted that it was in the public interest that felons should be caught and punished and the following was stated,

*“At common law a person who acts honestly and reasonable in taking steps to serve this public interest commits no actionable wrong.”*

192. Lord Justice Diplock also stated the following at page 619 paragraph D;

*“Where a felony has been committed, a person, whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts which he himself knows or of which he has been credibly informed at the time of the arrest make it probable that the person arrested committed the felony. This is what constitutes in law reasonable and probable cause for the arrest.”*

193. The defendant further relied on the case of **Holgate-Mohammed v Duke**<sup>33</sup> wherein the House of Lords had to determine the validity of an arrest and in particular, whether a detective constable had reasonable

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<sup>33</sup> [1984] All ER 1054



cause for suspecting that the appellant had stolen jewelry. The appellant was arrested under section 2(4) of the Criminal Law Act 1967 (U.K.) which is identical to the Trinidad and Tobago provision of section 3(4). Lord Diplock held that to determine whether the constable had reasonable cause to suspect the appellant to be guilty of the offence, the test to be applied is an objective test of reasonableness. In that matter it was held that where a constable had reasonable cause for suspecting that a person had committed an arrestable offence he could exercise the power of arrest under section 2(4) and use the period of detention to establish whether his suspicions were justified and also to seek further material evidence, rather than having to make all practicable inquiries before exercising the power of arrest.

194. Holgate-Mohammed (supra) was applied in the case of **Shannon Smith v Attorney General of Trinidad and Tobago**<sup>34</sup> wherein Justice Mendonca (as he then was) stated as follows at page 11;

*“The inquiry is not limited to whether the arresting officer believed he had reasonable grounds to make the arrest but whether the existing facts and information available to the Police at the time of the arrest gave them reasonable cause to suspect the person to be guilty of the offence.”*

195. Moreover, the defendant relied on the case of **Mc Ardle v Egan**<sup>35</sup> wherein the issue which arose was whether a police officer was justified in arresting a person without a warrant if at the time of arrest he has reasonable and probable cause to suspect that the person arrested is guilty of having committed a felony. In deliberating upon this issue Lord Wright stated as follows at page 613 para. H – I;

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<sup>34</sup> H.C.A S-1522 of 1996

<sup>35</sup> [1933] All ER 611

*“It has to be remembered that police officers, in determining whether or not to arrest, are not finally to decide the guilt or innocence of the person arrested. Their functions are not judicial, but ministerial, and it may well be that if they hesitate too long when they have a proper and sufficient ground of suspicion against an individual, they may lose an opportunity of arresting him, because in many cases steps have to be taken at once in order to preserve evidence. I am not saying that as in any way justifying hasty or ill-advised conduct. Far from that, but once there is what appears to be reasonable suspicion against a particular individual, the police officer is not bound, as I understand the law, to hold his hand in order to make further inquiries if all that is involved is to make assurance doubly sure.”*

196. The defendant also relied on the case of **Lennox Phillips and others v The Director of Public Prosecutions and the Attorney General**<sup>36</sup> wherein Chief Justice Clinton Bernard (as he then was) outlined the role of the police in executing arrests. At pages 27 to 28 of the dictum His Lordship held as follows;

*“Once he entertains a reasonable suspicion that a serious infraction of the law has been committed by any person, a police officer has both the power and the duty for the preservation of the peace that is to say for the proper maintenance of law and order to apprehend suspected offenders and to bring them before the Courts. For this purpose he may effect the suspect’s arrest with or without a warrant. Of course, he is not expected to act rashly; but in pursuance of his functions it is no part of his duty to determine guilt or innocence. It is, as a matter of law, no concern for him as to whether a person has a defense or plea available to him such as, for example, self-defense, provocation, accident ... A police officer is not*

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<sup>36</sup> Civil Appeal No. 140 of 1990

*normally a trained lawyer and, in any event, in his decision to charge an offender, qua police officer it is no part of his business or function to go into or determine the validity of any defense or plea. His duty is to prosecute and not, strictly speaking as I said, to determine any time prior or up to the time of arrest and charge the question of the suspect's guilt or innocence which is a matter for the Courts to decide."*

#### The submissions of the claimant

197. The claimant submitted that the court is firstly required to determine what information Corporal Ramdial had in his possession at the time of the arrest, and then consider whether a reasonable man, possessed of that information, would believe that there was reasonable and probable cause to arrest the claimant. That information which is not actually known to the arrestor at the time of arrest is immaterial for the purposes of determining reasonable and probable cause.<sup>37</sup>

198. According to the claimant, as the arrestor bears the burden of justifying the arrest, the defendant was duty bound to put before the court evidence of the specific information and the source of that information which was in possession of Corporal Ramdial when he decided to arrest the claimant. The claimant submitted that both the content of the information and its source is relevant to the court's determination of its sufficiency to cause a reasonable man to believe there was cause to arrest.

199. According to the claimant, the defendant in its submissions stated that the arrest of the claimant was based solely on the physical description

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<sup>37</sup> See *Dallsion v. Caffrey*

given by Persaud, namely *“five feet 6 inches tall, medium built, brown skin in complexion and a short twisted hairstyle”*.

200. In his witness statement, Corporal Ramdial simply stated that he had *“certain information...with regards to a suspect”* but he did not state the content of the information or the reasons why that information led him to believe that he had cause to arrest the claimant. As such, the claimant submitted that the witness statement of Corporal Ramdial does not provide sufficient information for the court to be satisfied about the precise information that was possessed by him, where the information came from and whether it was sufficient to justify the arrest.

201. The claimant submitted that if it is assumed that the information was limited to the description from Persaud (as is submitted by the defendant), then that clearly was not sufficient information on which to arrest the claimant, or any other person for that matter. The claimant further submitted that it was accepted by the defendant’s witnesses that the claimant did not have a *“short twisted hairstyle”* at the material time, so that the only remaining descriptors were a generic height, build and skin complexion. According to the claimant, those descriptors alone were not sufficient to provide reasonable and probable cause to arrest.

202. The claimant relied on the case of ***Terrence Calix v. AG***<sup>38</sup> wherein the description of the suspect in possession of the arrestor was as follows;

*“The criminal was about 5 feet 6 inches tall; he had a fair complexion with “a sort of Chinese looking, flat face”. His hair was uncombed. His hairstyle was described as “natty” or “rasta-ish”. He had discoloured fingers with*

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<sup>38</sup> HCA S-1332/2001

*yellowish or reddish fingernails. The criminal also had a foul body odour and was of medium build.*"<sup>39</sup>

203. Aboud J found that the arresting officer did have sufficient evidence to arrest the claimant for the following reasons;

*"In my view, Corporal Monsegue had reasonable and probable cause to arrest the plaintiff on 6 December 1998. He fit the physical description of the criminal given by Ms. Forbes and Mr. Noel. He had a similar hairstyle; he was of mixed descent with a fair complexion and had some element of Chinese ancestry. Most importantly, his fingers and fingernails were discoloured yellow or red, and he had bad body odour. He gave his address as Ransome Street, San Juan (but he was found living in the abandoned shed - as the evidence before me later revealed - for over eight years). He lived in an area proximate to the vicinity of the crime, and also proximate to that part of the coastline experiencing a series of unsolved rapes."*<sup>40</sup>

204. Consequently, the claimant submitted that the description given by Persaud was unhelpful and could not without more provide any basis for reasonable suspicion against the claimant or anyone else. That Corporal Ramdial did not state in his evidence that he had information that the suspect worked at Persad's Supermarket and even if he did, unless the source of that information was given it would not allow this court to properly analyse whether the information was sufficient. According to the claimant, if the officer cannot reveal the source because it was from a confidential informant then he needed to say so but that it was not sufficient simply to say "*I had certain information*".

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<sup>39</sup> Para 4

<sup>40</sup> Para 9

205. PC Sukram stated for the first time in his witness statement in these proceedings that he had information from Corporal Ramdial that the suspect worked at Persad's Supermarket. That fact was not contained in the pleadings (rather, in the defence it was alleged that Persaud informed PC Ballantyne of the suspect's place of work but PC Ballantyne was not called as a witness by the defendant and no explanation was given for said failure), it was not contained in any of the criminal witness statements, including Persaud's, and it was not mentioned in any station diary. Even more curiously, Corporal Ramdial who was called as a witness for the defendant did not mention having ever received that information or relaying it to Corporal Sukram. As such, the claimant submitted that it was highly improbable that such an important fact would be inadvertently left out of the station diary, criminal witness statements and pleadings, but that Corporal Sukram would recall it almost four years later when preparing his witness statement for these proceedings.

### Findings

206. Corporal Ramdial was the arresting officer. The court therefore examined the information which was in the mind of Corporal Ramdial at the time of the arrest (the objective test) to determine whether same amounted to reasonable grounds for suspicion. The court then went on to consider the genuineness of the belief of that officer (the subjective test).

207. According to the evidence of Corporal Ramdial, a report of robbery with aggravation was made at the station in which the victim was Persaud. While on patrol, efforts were made to locate the suspects involved in the robbery. Corporal Ramdial testified that on August 11, 2014 he had certain information in respect of the report which occurred on August 8, 2014 at

Petite Café Junction Princes Town with regards to a suspect. That he had a conversation with Corporal Sukram informing him of the report of the robbery. Corporal Sukram together with PC Ballantyne and Corporal Ramdial then left on enquiries relative to the said information.

208. On August 11, 2014 at about 1:45 pm on that day, Corporal Ramdial in the company of Corporal Sukram and PC Ballantyne arrived at Persad's Supermarket at New Grant Junction Princes Town where Corporal Ramdial met the suspect, the claimant. Corporal Ramdial together with Corporal Sukram and PC Ballantyne approached the suspect and they identified themselves to him as police officers by showing to him their Trinidad and Tobago Police Service Identification Cards. Corporal Ramdial then informed the suspect that he was assisting in a report of robbery with aggravation which occurred on August 8, 2014 at Petite Café Junction Princes Town and also that he had certain information relative to the said report. Corporal Ramdial also informed the suspect that he fitted the description of a suspect relative to the report and that it was his intention to arrest him on enquiries relative to the report.

209. Corporal Ramdial then cautioned the claimant and informed him of his legal rights and privileges to which he made no requests. Corporal Ramdial then arrested the claimant. The claimant was searched and nothing illegal was found on him. He was then placed in handcuffs behind his back for safety reasons which was the normal police procedure. The claimant was placed in the back seat of the unmarked police vehicle and taken to the station.

210. It was incumbent upon Corporal Ramdial to state the content of the certain information he was in possession of or the reasons why that

certain information led him to believe that he had cause to arrest the claimant. As such, the court finds that the witness statement of Corporal Ramdial did not provide any evidence for the court to be satisfied about the certain information that was possessed by him, where the information came from and whether it was sufficient to justify that he had reasonable and probable cause to arrest.

211. If it is assumed that the information which led Corporal Ramdial to arrest the claimant was limited to the description from Persaud, then the court finds that the generic description given by Persaud was not sufficient information to provide reasonable and probable cause to arrest the claimant. It meant that the only way to distinguish the claimant from the average man of that description was if Persaud had said she had prior knowledge of the claimant. As found above, the court does not believe that Persaud told PC Seekumar that the assailants were regular customers of hers.

212. Further, Corporal Ramdial did not testify that Persaud had told him that one of the assailants worked at the grocery. PC Sukram testified in his witness statement that he had information from Corporal Ramdial that the suspect worked at grocery. However, that alleged fact was not contained in the pleadings (in the defence it was alleged that Persaud informed PC Ballantyne of the suspect's place of work but PC Ballantyne was not called as a witness by the defendant and no explanation was given for said failure), it was not contained in any of the criminal witness statements, and it was not mentioned in any station diary.

213. Additionally, as mentioned above Corporal Ramdial did not mention ever having received that information or relaying same to



Corporal Sukram. As such, the court does not believe that Persaud told Corporal Ramdial or any other officer that one of the assailants worked at the grocery since it is highly improbable that such an important fact would be inadvertently left out of the station diary, criminal witness statements and pleadings, but that Corporal Sukram would recall it almost four years later when preparing his witness statement for these proceedings.

214. Consequently, the court finds that the arrest of the claimant was unlawful.

#### Issue 2 –Reasonable and probable cause

215. It is settled law that the question of whether there was reasonable and probable cause involves both subjective and objective tests. In ***Manzano v The Attorney General of Trinidad and Tobago***<sup>41</sup>, Mendonca JA delivering the decision of the court set out both the subjective and objective elements of reasonable and probable cause as follows;

*“22. What is reasonable and probable cause in the context of the tort of malicious prosecution was defined in Hicks v Faulkner (1881-1882) L.R. 8Q.B.D 167 (which received the unanimous approval of the House of Lords in Herniman v Smith [1938] A.C. 305) as follows: “...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. 23. It is*

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<sup>41</sup> Civil Appeal No.151 of 2011

*readily apparent from that definition that reasonable and probable cause has both a subjective element and an objective element. Reasonable and probable cause must appear objectively from the facts but also must exist in the mind of the defendant.”*

#### The submissions of the defendant

216. The defendant submitted that the existence of reasonable and probable cause is a question of fact and that the court ought to consider the facts known to PC Seekumar which led to the charge of the claimant. Prior to charging the claimant, PC Seekumar had obtained evidence that on the night of August 8, 2014 the victim made a report of a robbery of her business establishment and a description of the persons who committed the robbery. According to the defendant, from all the facts and circumstances of this case, the information collated during his investigations and the positive identification of the victim of the robbery during the identification parade, PC Seekumar formed the bona fide belief that the claimant had committed the offence and upon receipt of instructions from his senior officers, he charged the claimant.

217. The defendant submitted that PC Seekumar’s concern was to see whether there was a proper case to be laid before the court and not to determine whether the witnesses were telling the truth or what defences the claimant intended to set up.<sup>42</sup> That PC Seekumar was not a trained legal mind to determine legal issues of the law. All that was required of him was to ensure that there was a proper case to be laid before the court. As such, the defendant submitted that PC Seekumar had reasonable and

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<sup>42</sup> See CV 2011-00187 Denish Kallicharan v The Attorney General of Trinidad and Tobago para 24 and Glinski v Mclver (1962) 1 All E R 696 at 758.

probable cause to charge the claimant for robbery with aggravation contrary to section 24 (1)(a) of the Larceny Act Chapter 11:12.

The submissions of the claimant

218. The claimant submitted that he has three bases for his malicious prosecution claim; 1) fabrication of evidence by the police, 2) failure to conduct proper investigations, and 3) failure to disclose evidence.

219. The claimant relied on the case of ***Terrence Calix*** (supra) wherein that claimant brought an action for malicious prosecution on the ground that the police had conducted an unfair identification parade. More particularly, it was alleged that the parade was unfair because the identification officer failed to ensure that the other persons on the parade resembled the claimant and no Justice of the Peace was present. The court at paragraph 16 found that the identification officer made honest and diligent efforts to carry out his duties and acted with bona fides and professionalism so that the court accepted the identification officer's evidence on the make-up of the parade and the presence of the JP. In any event the judge found that the charging officer had no knowledge of the alleged unfairness since he was not involved in the holding of the parade.<sup>43</sup>

220. The claimant submitted that in this case the charging officer, PC Seekumar caused unfairness by permitting the witness to view him prior to the conduct of the parade. That based on the evidence it was clear that he did not act with professionalism, but rather attempted to rig the parade and then conceal his dishonest actions from the claimant's

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<sup>43</sup> See paragraph 18

attorneys and the criminal court. The claimant further submitted that unlike in Terrence Calix, the actions of PC Seekumar were deliberate and were aimed at destroying the safeguards to which he was entitled by law. The claimant also submitted that in this case, unlike in Terrence Calix, there was also independent evidence of fabrication not relating to the parade, namely the fabrication of the claimant's description at the time of arrest.

221. The claimant further relied on the decision of Boodoosingh J in **Mark Blake v. AG**<sup>44</sup> which also concerned a malicious prosecution claim brought on the basis of an unfair identification parade. The alleged deficiency in the parade was that the same eight men were used on the claimant's parade that were used on a parade conducted a few minutes prior with a different suspect. The court found that the practice was clearly unfair. Further, the court held that the absence of any other evidence against the claimant (apart from the identification evidence) was sufficient to constitute lack of reasonable and probable cause from which malice could be inferred.

222. According to the claimant, in this case, as in **Mark Blake** supra, there was no other evidence against him apart from the identification evidence of Persaud so that if the parade was unfair, there was clearly no reasonable and probable cause to charge.

223. The claimant submitted that PC Seekumar failed to conduct reasonable investigations. The learned authors of Clerk and Lindsell on Torts<sup>45</sup> state as follows;

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<sup>44</sup> CV2010-03388

<sup>45</sup> 20<sup>th</sup> Edition, par 16-38

*“...it would be obviously absurd to make a defendant liable because matters of which he was not aware put a different complexion upon the facts which in themselves appeared a good cause of prosecution. But neglect to make reasonable use of the sources of information available before instituting proceedings may be evidence of want of reasonable and probable cause and also malice.”*

224. According to the claimant, if his version is accepted, it is clear that the police officers were provided with a specific alibi by him which required thorough investigation. As such, the claimant submitted that the failure to visit the bar, attempt to obtain CCTV coverage and/or interview Parris was clear evidence that the police officers never intended to conduct a fair investigation, but rather were hell bent on charging him for the robbery.

225. The claimant relied on the case of **Murphy v R**<sup>46</sup> wherein the following was stated at paragraph 19;

*“Disclosure provides an accused with the only basis upon which he can actively and properly defend himself”. In cases of disputed identification there is a heightened need to ensure that proper disclosure is made to the defendant given the risks of mistake inherent in visual identification.*

226. The claimant further relied on the case of **Chief Constable of North Yorkshire v Audsley**<sup>47</sup> wherein Keene J at page 12 stated that failure by police officers to disclose material to the defence “*could properly form the*

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<sup>46</sup> [2002] UKPC 3 at par 19

<sup>47</sup> [2000] Lexis Citation 1977

*basis for an allegation that the prosecutor had no honest belief in the guilt of the accused”.*

227. According to the claimant, the disclosure failures in the instant case were inexcusable. The first description was an item of disclosure that was imperative to enable the defendant to challenge the identification evidence, since the defendant was entitled to put before the court any *“discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance”*.<sup>48</sup>

228. The claimant pleaded that the first description given by Persaud to the police was demanded by defence counsel at the criminal trial but was never disclosed. The defendant pleaded that the first description given by Persaud was recorded by PC Seekumar and was similar to the description given by Persaud in her witness statement. The claimant submitted that nowhere in PC Seekumar’s witness statement in these proceedings does he state that he recorded Persaud’s first description, which was given to him on the night of the robbery. Nor was a copy of the contemporaneous note of the first description disclosed in these proceedings. All that was provided was an extract from a station diary entry made at 2:30 am on the morning following the robbery.

229. The claimant submitted that contrary to what was pleaded by the defendant, the first description given by Persaud on the night of the robbery was not similar to the description in her witness statement. According to PC Seekumar, on the night of the robbery Persaud described her assailants to him as *“two men of African descent... who were her regular customers. One of the men was about 5 feet 6 inches tall and the*

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<sup>48</sup> See *Turnbull v R*, cited in *Murphy supra* at par 19.

*other about 6 feet tall*". In the witness statement the description was *"I saw a man of African descent, about 5 feet 8 inches tall, medium built, brown skin, with short twisted hairstyle and another also of African descent, about 6 feet 2 inches tall, thin, dark brown complexion wearing a cap."* As such, the claimant submitted that on the night in question Persaud gave a different height, was unable to state the colour of skin, the build and the hairstyle. In addition, on the night in question she allegedly stated that the men were her regular customers which was not included in her witness statement.

230. The claimant submitted that the failure to disclose the ID parade form to the claimant at the criminal trial affected his counsel's ability to mount a proper defence to the identification parade evidence. The claimant further submitted that the failure to disclose the pre-parade identification and the two failed identifications to the claimant at the criminal trial was so egregious that that alone was sufficient to satisfy this court of both lack of reasonable and probable cause and malice. According to the claimant, the withholding of that information was clearly extremely prejudicial to the defence's case and can only be explained as a deliberate attempt to conceal facts harmful to the prosecution's case.

231. According to the claimant, the defendant argued in its submissions that the ID parade was not prejudiced because the claimant and Persaud knew each other. The evidence of the claimant was that he was familiar with the burger hut because he had eaten there on previous occasions and that he was also familiar with the lady who owned the establishment. During cross-examination, the claimant clarified that he had visited the burger hut a few times the year before when he lived inside the trace at Petit Café but that he had not been there since. Given that the robbery

took place in the month of August, 2014, that meant that he had not visited the establishment for at least eight months.

232. According to the claimant that information (namely the claimant's assertion that he was familiar with Persaud) was not known to PC Seekumar at the time of charging, and therefore was not relevant to the question of whether there was reasonable and probable cause. The claimant submitted that it cannot be disputed that during the conduct of his investigations, and in considering whether to charge the claimant, PC Seekumar did not consider Persaud and the claimant to be persons who were known to each other. That was evidenced by the following;

- i. Under cross-examination PC Seekumar was specifically asked whether this was a case of recognition or identification of a stranger, and he stated that it was a case of identification of a stranger;
- ii. Under cross-examination PC Seekumar stated that all the evidence which he relied upon to determine whether a charge should be laid against the claimant was contained in the criminal witness statements. Nowhere in the criminal witness statements was there any mention of Persaud and the claimant being familiar with each other;
- iii. PC Seekumar for the first time in his civil witness statement stated that on the night of the robbery Persaud told him that the persons who robbed her were regular customers. That part of PC Seekumar's evidence was incapable of belief because it was not pleaded, it was not contained in any of the criminal witness statements and it was not contained in any contemporaneous station diary entry. The statement was so important that it was



highly improbable that it would not have been mentioned previously if it had in fact been made. It was more likely that it was invented by PC Seekumar in an attempt to bolster the defendant's case;

- iv. If the court accepts that the statement was in fact made by Persaud, it was clear that Persaud subsequently backtracked on that particular allegation, since;
  - a) It was not contained in her detailed witness statement which was given two days later.
  - b) It was not in PC Seekumar's criminal witness statement.
  - c) If PC Seekumar was proceeding on the basis that Persaud and the claimant were well known to each other, no identification parade would have been held, since the evidence of the claimant being identified on a parade in those circumstances would have been positively misleading.<sup>49</sup>

233. According to the claimant, it was obvious that he could not be the "regular customer" referred to by Persaud, since it was not in dispute that the claimant is a Jamaican national which would have been known to Persaud given his accent, yet Persaud failed to describe the regular customer as being Jamaican or as having an accent.

234. The claimant submitted that given that the case concerned identification of a stranger, it was imperative that an identification parade be held to test the ability of the witness to identify the suspect. That this was not a case in which the witness had provided the police with a complete identification by name or description and there was no evidence

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<sup>49</sup> See John v. State [2009] UKPC 12 at par 15.

that it was the description provided by Persaud which enabled the police to apprehend the claimant. According to the claimant, this was a case on the opposite extreme, in that the description was so bare that it is impossible that it provided the police any assistance at all.

235. The claimant submitted that having already decided that an identification parade needed to be held, PC Seekumar denied the claimant the opportunity of a fair identification parade at which it was possible that Persaud would have failed to identify him (as the other two witnesses did). That had that occurred it was obvious that the claimant would have never been charged. According to the claimant, it is one thing to charge a suspect in an identification case where no identification parade has been held at all, but quite another to charge where the witness has failed to point out the suspect on a parade or pointed him out in circumstances where the police have dishonestly assisted the witness.

### Findings

236. For there to have been reasonable and probable cause in respect of both the subjective and objective elements of the test, PC Seekumar must have had an honest belief that on the information available to him at the time of the charge, there was a case fit to be tried both as a matter of his subjective belief and further that must have been the case as a matter of objective assessment by this court.

237. As found above, it was clear on the evidence that Persaud did not say that she knew the claimant before and that the generic description of the assailants could have matched many individuals. As such, the court finds that the only evidence which could have implicated the claimant for the robbery of the burger hut would have come from the ID parade. It was

clear that it was only after Persaud positively identified the claimant at the ID parade that the claimant was charged for the offence of robbery with aggravation. However, the fact that the claimant was caused by PC Seekumar to be identified prior to the ID parade by Persaud rendered the ID parade unfair and weightless. Further, as seen in the station diary, Renissa was called and could not identify anyone. Inspector Pooran stated that he would have told the investigator that Renissa did not identify the claimant. As such, the court finds that Inspector Pooran did inform PC Seekumar that Renissa did not identify the claimant.

238. Consequently, having regard to the fact that ID parade was unfair, PC Seekumar could not have had an honest belief that there was a case fit to be tried. Further, a reasonable man having knowledge of the facts that the PC Seekumar did at the time he instituted the prosecution, would not have had a reasonable belief in the claimant's guilt. In fact to the contrary he would have had serious doubts given the circumstances. Hence the reason to attempt to bolster the case.

### Issue 3 – Malice

#### Law

239. Mendonça JA in the Court of Appeal decision of ***Sandra Juman v The Attorney General***<sup>50</sup> at paragraph 25 in treating with the issue of malice stated as follows;

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<sup>50</sup> Civil Appeal No. 22 of 2009

*“Malice must be proved by showing that the police officer was motivated by spite, ill-will or indirect or improper motives. It is said that malice may be inferred from an absence of reasonable and probable cause but this is not so in every case. Even if there is want of reasonable and probable cause, a judge might nevertheless think that the police officer acted honestly and without ill-will, or without any other motive or desire than to do what he bona fide believed to be right in the interests of justice: Hicks v Faulkner [1987] 8 Q.B.D. 167 at page 175.”*

240. In the Privy Council case of **Williamson v Attorney General of Trinidad and Tobago**<sup>51</sup>, Lord Kerr stated the following in relation to malice at paragraphs 11 to 13;

*“[11] ...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) 18 JP 713, 23 LJ Ex 328, 10 Exch 352, 356 per Alderson B and Gibbs v Rea [1998] AC 786, 797D, [1998] 3 WLR 72, 1 OFLR(ITELR) 719. The wrongful motive involves an intention to manipulate or abuse the legal system Crawford Adjusters Ltd (Cayman) v Sagicor*

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<sup>51</sup> [2014] UKPC 29

*General Insurance (Cayman) Ltd [2013] UKPC 17, [2014] AC 366 at para 101, [2013] 4 All ER 8; Gregory v Portsmouth City Council [2000] 1 AC 419; 426C, [2000] 1 All ER 560, [2000] LGR 203; 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, 60 LJQB 332. 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.”*

241. Further, in the Privy Council decision of **Sandra Juman v The Attorney General of Trinidad and Tobago**<sup>52</sup>, Lord Toulson at paragraph 18 had the following to say about malice;

*“The essence of malice was described in the leading judgment in Willers v Joyce at para 55: “As applied to malicious prosecution, it requires the claimant to prove that the defendant deliberately misused the process of the court. The most obvious case is where the claimant can prove that the defendant brought the proceedings in the knowledge that they were without foundation ... But the authorities show that there may be other instances of abuse. A person, for example, may be indifferent whether the allegation is supportable and may bring the proceedings, not for the bona fide purpose of trying that issue, but to secure some extraneous benefit to which he has no colour of a right. The critical feature which has to be proved is that the proceedings instituted by the defendant were not a bona fide use of the court’s process.”*

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<sup>52</sup> [2017] UKPC 3

242. Further, Mendonça JA in Manzano supra stated the following at paragraph 47;

*“The proper motive for a prosecution is a desire to secure the ends of justice. So in the context of malicious prosecution a defendant would have acted maliciously if he initiated the prosecution through spite or ill-will or for any other motive other than to secure the ends of justice. It follows therefore that even if a claimant cannot affirmatively establish spite or ill-will or some other improper motive, he may still succeed in establishing malice if he can show an absence of proper motive.”*

#### The submissions of the defendant

243. The defendant submitted that the claimant was charged based on a report made by the victim of the robbery, Persaud. That pursuant to PC Seekumar’s investigations whereby he obtained various statements, the positive identification of the claimant by the victim in the identification parade and other information that created a reasonable suspicion that the claimant was at the burger hut on the night of August 8, 2014 and participated in the robbery of the said establishment. Accordingly, the defendant submitted that there was absolutely no evidence whatsoever that PC Seekumar or any of the other police officers fabricated the charge against the claimant as pleaded by the claimant. That there was no logical reason for the officers to fabricate any evidence against the claimant as they did not personally know the claimant neither have either of the officers encountered the claimant in a previous matter.

244. According to the defendant, evidence of fabrication cannot be simply implied but rather, the claimant is obliged to adduce cogent

evidence to support such a finding.<sup>53</sup> In Wayne Carrington supra, Justice Gobin noted the following at paragraph 7;

*“Where the allegation is that the police concocted a case, the discrepancies must be such that they point to a serious lack of credibility.”*

245. The defendant submitted that the claimant has failed to adduce even an iota of evidence to suggest that PC Seekumar fabricated the evidence or the charge against him. The defendant further submitted that there was no malice or ill will on the part of PC Seekumar when he charged the claimant and Corporal Radmial and Corporal Sukram when they arrested the claimant. As such, the defendant submitted that PC Seekumar was not actuated by malice in charging and prosecuting the claimant. That he carefully conducted his investigations, submitted his findings for further instructions and properly charged the claimant for robbery with aggravation.

#### The submissions of the claimant

246. The claimant submitted that his case is that PC Seekumar and PC Sukram fabricated evidence against him, namely they falsely stated that he had a twisted or Rasta hairstyle on arrest and deliberately tainted the identification parade. According to the claimant, the concept of him having to provide cogent evidence of fabrication by police officers has been followed in subsequent decisions.<sup>54</sup>

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<sup>53</sup> See Wayne Carrington v The Attorney General of Trinidad and Tobago CV 2007-03211 at paragraph 5.

<sup>54</sup> See Richard Caesar v. AG, CV2016-00134 at par 75

247. The claimant submitted that the reasoning in Wayne Carrington supra was based on a misinterpretation of Re H and others<sup>55</sup> which was propagated in a number of subsequent English decisions. The claimant further submitted that the matter was however clarified in two Supreme Court decisions namely Re B (Children)<sup>56</sup> and Re J<sup>57</sup>. That it is now accepted that there is no general rule that the more serious an allegation the more cogent the evidence that is required to prove it.

248. In Re B, Baroness Hale of Richmond stated the following at paragraph 72;

*“As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog.”*

249. In Re J, Baroness Hale stated as follows at paragraph 35;

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<sup>55</sup> (1996) AC 563

<sup>56</sup> [2008] UKHL 35

<sup>57</sup> [2013] 1 AC



*“...As was apparent in In re B, until that case was decided, the opinion of Lord Nicholls in In re H [1996] AC 563 had frequently been misinterpreted so as to require a higher standard of proof where the allegations made were serious. The nostrum had taken hold that “the more serious the allegation, the more cogent the evidence needed to prove it”: In re B [2009] AC 11, para 64. Reference had been made to In re H in two House of Lords cases which were concerned with two quite different statutes: see B v Chief Constable of Avon and Somerset Constabulary [2001] 1 WLR 340 (concerning sex offender orders) and R (McCann) v Crown Court at Manchester [2003] 1 AC 787 (concerning anti-social behaviour orders). These had led to suggestions that in care proceedings there was a “heightened standard of proof” and even that the difference between the criminal and civil standards was “largely illusory”. Those suggestions were firmly rejected by the Court of Appeal in In re U (A Child) (Department for Education and Skills intervening) [2005] Fam 134, and equally firmly by the House of Lords in In re B”.*

250. The claimant submitted that the fact that an allegation is so serious that it is likely to visit severe adverse consequences on the defendant is not a proper reason for requiring cogent evidence in proof of the said allegation. In so submitting, the claimant relied on the case of **R v Life Sentence Review Comrs**<sup>58</sup> wherein Lord Brown stated as follows at paragraph 47;

*“If the evidence satisfies a tribunal charged with deciding questions on the balance of probabilities that an allegation made against A is more likely than not to be true – notwithstanding whatever unlikelihood there may be in A having acted as alleged given the serious adverse consequences to*

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<sup>58</sup> [2008] UKHL 33

*him likely to result from so acting – then, in my judgment, it would be quite wrong for that tribunal to decide the question in A's favour merely to save him from the serious consequences of a finding against him – for example, to save a bank manager from a finding of dishonesty.”*

251. The claimant submitted that, unfortunately, serious police misconduct is not uncommon nor improbable in this jurisdiction. That in any event, in this case there was clear evidence that the police lied in their criminal witness statements and the defendant has admitted that the claimant was pointed out by Persaud prior to the identification parade. The claimant further submitted that both of those facts suggested that the police misconduct in this particular case was not improbable in the least.

252. The claimant submitted that in cases of deliberate fabrication of evidence malice is easily inferred. In so submitting, the claimant relied on the text of **Clerk and Lindsell on Torts**, wherein the learned authors stated as follows at paragraphs 16 to 52;

*“The absence of belief in the defendant’s mind as to the merits of the case...will probably afford strong evidence of malice; so also any lack of good faith in his proceedings, any indication of a desire to concoct evidence or procure a conviction at any cost.”*

253. The claimant further submitted that the court can take into account the lack of proper investigations in determining whether there was a malicious motive and that the fact that malice can often be inferred from lack of reasonable and probable cause.

## Findings

254. Malice may be inferred from the absence of reasonable and probable cause. The lack of reasonable and probable will not equate to malice in every case. It is well established that the proper motive for a prosecution is a desire to secure the ends of justice.

255. This is one of the few cases to have come before this court in which malice could not have been clearer. PC Seekumar deliberately misused the process of the court in an effort to make someone accountable for the robbery. PC Seekumar would have engineered evidence in such a manner as to have sufficient to charge the claimant. But all the evidence was tainted because of his purposeful actions. It therefore cannot be said that he had an honest belief that the claimant was guilty of the offence of robbery with aggravation. Therefore malice may be inferred since it can be said that the prosecution against the claimant was initiated for some other motive than to secure the ends of justice. Upon an examination of the evidence of PC Seekumar, the court finds that there was no evidence to lead it to believe that PC Seekumar had an honest belief in the guilt of the claimant to charge him.

256. Consequently, the court finds that on the balance of probabilities the claimant has demonstrated that in the circumstances of this case malice should be inferred from the lack of reasonable and probable cause. As such, the court finds that claimant was maliciously prosecuted and so he is entitled to damages.

## Law

257. In **Chandrawatee Ramsingh v The Attorney General of Trinidad and Tobago**<sup>59</sup>, Their Lordships of the Privy Council stated that whether or not the continued detention of a person is justified depended on all the circumstances of the case. At paragraph 16 Lord Clarke (reading the judgment of the court) stated as follows;

*“...the respondent must show that the whole period of detention was justified. However, while it would be wrong in principle to hold that, because the initial arrest was justified it follows that the subsequent detention was also justified, it is important to consider the subsequent detention in light of the arrest.”*

258. In the case of **Adesh Maharaj v The Attorney General of Trinidad and Tobago**<sup>60</sup>, Pemberton J (as she then was) in determining whether a person’s detention was excessive, stated as follows at paragraph 6;

*“...It is clear that it is not enough for the Respondent to say that because a person has been charged, then any period of detention before he is told of his right to bail is reasonable and lawful. If there is to be a detention beyond a reasonable period, there must be good reason for so doing. If there is good reason then the period would not be excessive and no claim for damages for false imprisonment can stand.”*

259. The court having found that the claimant’s arrest was unlawful, he was falsely imprisoned from August 11 to August 13, 2014.

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<sup>59</sup> (2012) UKPC 16

<sup>60</sup> S788 of 1998

## Issue 5 - Damages

### General Damages

260. Damages in cases of malicious prosecution and false imprisonment are awarded under the three following heads;

- i. Injury to reputation- to character, standing and fame.
- ii. Injury to feelings- for indignity, disgrace and humiliation caused and suffered.
- iii. Deprivation of liberty- by reason of arrest, detention and/or imprisonment.<sup>61</sup>

261. In **Thaddeus Bernard v Quashie**<sup>62</sup>, de la Bastide C.J. stated the following in relation to aggravated damages;

*“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and include what is referred to as aggravated damages, that is, damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received. Under this head of what I have called ‘mental suffering’ are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages I think that practice should be discontinued.”*

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<sup>61</sup> See Thadeus Clement v the Attorney General of Trinidad and Tobago Civ. App. 95 of 2010 at paragraph 12, per Jamadar JA

<sup>62</sup> CA No 159 of 1992

262. The claimant was arrested on August 11, 2014. On August 13, 2014, he was taken to the Princes Town Magistrates court and was denied bail because the Magistrate indicated that she needed information from Interpol since he is foreign national. He was detained at the prison in Arouca where he remained until his release on October 16, 2014. Whilst he was granted bail on August 28, 2014 he was unable to access the bail which was \$10,000.00 to be approved by the Clerk of the Peace since he did not have the means to do so at the time.

263. The claimant testified that the conditions at the prison were extremely unpleasant. His cell had a toilet which flushed but he had to defecate in front of his cell mates which was very embarrassing. The food at the prison was also terrible and he was constantly being served spoiled food. He would also find long strands of hair and flies in the food. He had a lot of trouble sleeping because he was extremely worried that he would not make bail. Also, he could not believe that he was being set up for a robbery that he had nothing to do with. He lost fifteen pounds during his incarceration.

264. On April 25, 2017 Persaud indicated that she was no longer interested in proceeding with the matter. As such, the charge against the claimant was dismissed.

#### The submissions of the defendant

265. The defendant submitted that there is no contention that the period of detention was two days. The defendant further submitted that the following cases would be of assistance to the court in deciding the measure of damages the claimant would be entitled to in respect of his claim;

- i. **Attorney General of Trinidad and Tobago v Kevin Stuart**<sup>63</sup> - the Court of Appeal awarded the sum of \$50,000.00 together with interest and costs to the respondent for false imprisonment for a period of 33 hours (including aggravated damages).
- ii. **Indra Samuel and PC Ali and the Attorney General**,<sup>64</sup> Donaldson-Honeywell J – the claimant was awarded damages for false imprisonment in the sum of \$45,000.00 inclusive of aggravated damages for the period from around midday on May 8, 2010 to the time of her release on May 10, 2010.
- iii. **Radhika Charan Khan a/c Radica Charan Khan v Attorney General of Trinidad and Tobago**<sup>65</sup> – Dean-Armorer J awarded the claimant the sum of \$50,000.00 in general damages for malicious prosecution. The claimant was in custody for one day and three hours having been charged under Section 24 (1)(b) of the Larceny Act.
- iv. **Deosaran Palakdhari v the Attorney General of Trinidad and Tobago**<sup>66</sup> – Dean-Armorer J awarded the claimant the sum of \$10,000.00 in general damages for malicious prosecution arising out of a charge for the possession of a firearm. The claimant was deprived of his liberty for three nights and two days.
- v. **Lennon Richardson and Jason Alleyne v the Attorney General of Trinidad and Tobago**<sup>67</sup> – Dean-Armorer J awarded the sum of \$40,000.00 in general damages inclusive of aggravated damages, to each claimant for detention of approximately two days.

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<sup>63</sup> Civ. App P162 of 2015

<sup>64</sup> CV 2014-00608

<sup>65</sup> CV 2011-03987

<sup>66</sup> CV 2007-01747

<sup>67</sup> CV 2007-2686

### The submissions of the claimant

266. The claimant submitted that he is firstly entitled to be compensated for his false imprisonment prior to being brought before the Magistrates' Court (a period of approximately two days) and secondly, on his claim for malicious prosecution, he is entitled to compensation for the entire duration of his detention while on remand up to his eventual release from prison on October 16, 2014 (a period of approximately 65 days).

267. According to the claimant, the following factors are relevant in determining quantum;

- i. He was arrested in full view of customers and co-workers;
- ii. All his co-workers were aware that he was charged with robbery;
- iii. The conditions in which he was held both at the police station and at prison were deplorable;
- iv. The charge against him was a serious one which carried a maximum sentence of ten years in prison;
- v. The charge was hanging over his head for approximately two years and eight months;
- vi. The claimant is a foreign national; and
- vii. The police officers deliberately fabricated evidence against the claimant.

268. The claimant submitted that the sum of \$250,000.00 in general damages for false imprisonment and malicious prosecution, including aggravated damages is a reasonable award. In so submitting, the claimant relied on the following cases;



- i. **Anisha Raffick v AG**<sup>68</sup> Mohammed J– the claimant was charged with possession of cocaine. The charge was before the court for two years. The court found that the charge was fabricated. The claimant spent twelve days in custody and was awarded \$220,000.00 for false imprisonment and malicious prosecution and \$20,000.00 in exemplary damages.
- ii. **Michael Douglas v AG**<sup>69</sup>, Rahim J – the claimant was charged with being a member of a gang and spent forty-five days in custody. The charge was before the court for a little over one month. The claimant was awarded \$200,000.00 in general damages for malicious prosecution and \$30,000 in exemplary damages.
- iii. **Keon Quow v AG**<sup>70</sup>, Donaldson-Honeywell J - the claimant was charged with being a member of a gang and spent thirty-five days in custody. The charge was before the court for a little over one month. The claimant was awarded \$200,000.00 in general damages for malicious prosecution and \$30,000 in exemplary damages.
- iv. **Harridath Maharaj v AG**,<sup>71</sup> Seepersad J– the claimant was charged with the relatively minor offence of felling trees. The charge was before the court for three years. The claimant was detained for six or seven hours at the police station. He was awarded \$185,000.00 in general damages for malicious prosecution and \$65,000.00 in exemplary damages.

## Findings

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<sup>68</sup> CV2017-01077

<sup>69</sup> CV2015-02892

<sup>70</sup> CV2015-02893

<sup>71</sup> CV2011-04213

269. The court finds that the claimant is entitled to be compensated for his false imprisonment prior to being brought before the Magistrates' Court (a period of approximately two days) and on his claim for malicious prosecution. He is also entitled to compensation for the entire duration of his detention while on remand up to his eventual release from prison on October 16, 2014 (a period of approximately sixty-five days).

270. Having regard to the evidence before the court and the awards in similar cases the court will make an award of \$230,000.00 in general damages for wrongful arrest, false imprisonment and malicious prosecution inclusive of an uplift for aggravation.

#### Exemplary damages

271. Exemplary damages are awarded in cases of serious abuse of authority. The function of exemplary damages is not to compensate but to punish and deter. The case of *Rookes v Barnard*<sup>72</sup> established that exemplary damages can be awarded in the following three types of cases;

- i. Cases of oppressive, arbitrary or unconstitutional action by servants of the Government;
- ii. Cases where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff; and
- iii. Cases in which exemplary damages are expressly authorized.

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<sup>72</sup> (1964) AC 1129

272. The defendant submitted that this is not an appropriate case for the award of exemplary damage. That when the evidence of the claimant is examined, the conduct of the respective police officers does not warrant an award of exemplary damages. The defendant further submitted that the claimant would be adequately compensated by an award for general damages if the court sees it necessary.

273. The claimant submitted that in cases involving deliberate fabrication of evidence, the court has a duty to deter the relevant conduct by granting awards of exemplary damages that adequately reflect the court's distaste. The claimant relied on the case of **Mustapha Ghanny v AG**<sup>73</sup> wherein Rajkumar J (as he then was) stated at paragraph 116 that the court cannot effectively signify its displeasure by a "token award" of exemplary damages. In **Mustapha Ghany** supra an award of \$60,000.00 was made in exemplary damages and in **Harridath Maharaj** supra an award of \$65,000.00 was made by Seepersad J.

274. The claimant submitted that in this case the sheer scale of the fabrication, which included falsifying and concealing evidence calls for a particularly high award of exemplary damages. According to the claimant, an award of \$65,000.00 would be reasonable.

275. The claimant submitted that in the current climate where reported abuses against foreign nationals is on the increase, it is particularly important for the court to signal its distaste for the advantageous manner in which the police officers dealt with the claimant. The claimant further submitted that he falls into a vulnerable class of persons who are often unable to seek assistance from family or friends who are abroad. That the

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<sup>73</sup> CV 2015-01921

xenophobic remarks made to the claimant were evidence of the fact that he was discriminated against by the police officers which must be strongly discouraged.

### Findings

276. The court agrees with the submissions of the claimant that this is a suitable case for an award of exemplary damages. The actions of Corporal Ramdial in arresting the claimant without reasonable and probable cause and the actions of PC Seekumar in charging the claimant even though he knew he had tainted the ID parade and subjecting the claimant to unsanitary prison conditions and deprivation of his liberty were arbitrary, oppressive and unconstitutional. The court finds that in the circumstances of this case an award of \$30,000.00 in exemplary damages is reasonable.

### Special damages

277. Special damages must be specifically pleaded and proven.<sup>74</sup> The claimant testified that he incurred significant legal fees in respect of the Magistrate's Court proceedings. Initially, he retained Ms. Adana Bain to represent him in the preliminary stages of the proceedings at a cost of \$4,000.00 and later retained Mr. Merry to deal with the trial at a cost of \$20,000.00. Mr. Merry later reduced his fee to \$15,000.00 because the trial ended on the first day. Despite that Mr. Merry and other attorneys who appeared on his behalf had to take instructions from the claimant over the course of several meetings and also conduct legal research in preparation for the trial.

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<sup>74</sup> See *Grant v Motilal Moonan Ltd* (1988) 43 WIR 372 per Bernard CJ and reaffirmed in *Rampersad v Willies Ice Cream Ltd*. Civ App 20 of 2002.

278. The claimant was unable to obtain a receipt or invoice from Ms. Bain despite his best attempts to do so. He did however obtain an invoice from Mr. Merry. That invoice was for \$20,000.00.

279. In **The Great Northern Insurance Company Limited v Johnson Ansolà**<sup>75</sup>, Mendonca JA stated as follows at paragraph 97;

*“...it seems clear that the absence of evidence to support a plaintiff’s viva voce evidence of special damage is not necessarily conclusive against him. While the absence of supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff’s claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed in such cases, the Court should be slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reason.”*

280. The court finds there would be no doubt that the claimant would have incurred legal fees to retain Attorneys at law to represent him at the criminal proceedings. The claimant has not produced a receipt from Ms. Bain who initially represented him in order to prove that the sums were paid but the evidence is credible, plausible and essentially unchallenged. The court will therefore award the sum of \$4,000.00 paid to Ms. Bain. The court will also allow the fees which were paid to Mr. Merry in the sum of \$15,000.00.

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<sup>75</sup> Civil Appeal No: 121 of 2008

## Interest

281. The defendant submitted that the interest rate on general damages should be 2.5% per annum from the date of service of the claim to the date of the decision and that the interest rate on special damages should be 1.25% per annum from the date of detention to the date of decision. In so submitting, the defendant relied on the following two cases.

282. The case of **Jefford and Another v Gee**<sup>76</sup> wherein it was held as follows;

*“That in general, interest rates on special damages should, ordinarily, be awarded on the total sum of the special damages from the date of the accident until the date of trial, at half the appropriate rate of interest allowed on the general damages; and that no interest rate should be awarded on damages in respect of future earnings and that interest should be awarded on damages for pain and suffering and loss of amenities at the appropriate rate from the date of service of the writ to the date of trial.”*

283. The case of **The Attorney General of Trinidad and Tobago v Fitzroy Brown and others**<sup>77</sup> wherein it was held by the Honorable Chief Justice that the interest rate was to be calculated at 2.5% per annum for general damages.

284. The claimant accepted that interest on general damages should be 2.5% per annum.

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<sup>76</sup> [1970] 2 Q.B. 130 CA Civ

<sup>77</sup> CA 215 of 2012

## DISPOSITION

285. The order of the court is as follows;
- i. The defendant shall pay to the claimant general damages for false imprisonment and malicious prosecution inclusive of an uplift for aggravation in the sum of \$230,000.00 with interest thereon at the rate of 2.5% per annum from the date of filing of the claim to the date of judgment.
  - ii. The defendant shall pay to the claimant exemplary damages in the sum of \$30,000.00.
  - iii. The defendant shall pay to the claimant the sum of \$19,000.00 as special damages with interest thereon at the rate of 1.25% per annum from the date of arrest to the date of judgment.
  - iv. The defendant shall pay to the claimant the prescribed costs of the claim.

Ricky Rahim  
Judge