

IN THE SEYCHELLES COURT OF APPEAL

ERIC DERJACQUES

APPELLANT

VERSUS

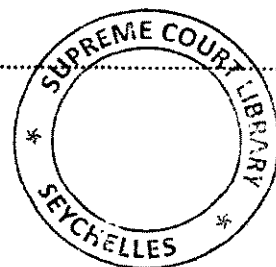
THE COMMISSIONER OF POLICE

RESPONDENT

Civil Appeal No. 17 of 1995

Before Goburdhun, P., Silungwe and Venchard, JJA.

Mr. A. Derjacques for the Appellant
Mr. G. Dodin for the Respondent



JUDGMENT OF THE COURT

The Appellant averred in his amended plaint that on 12 October 1993, a member of the Police Force, Patrick Libanotis, unlawfully arrested him and detained him at New Port, Victoria, and he claimed Rs. 80,000 as damages against the Respondent, as commettant of the police officer.

The Respondent traversed the allegation of unlawful arrest and detention and averred that the arrest and detention were justified in view of the unruly conduct of the Appellant at the Police Station. Mr. Dodin for the Respondent however conceded that as the Appellant had been detained beyond 24 hours, the subsequent detention for 2 hours was unjustified and that the Appellant was entitled to nominal damages.

The trial judge found in favour of the Respondent and considered that the "extra two hours beyond the 24 hours limit was acceptable as not being unlawful."

Mr. Derjacques, for the Appellant, submitted that the findings of fact of the trial judge were not justified and invited the Court to reject the findings. Mr.

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Dodin supported those findings but he reiterated the Appellant's entitlement to nominal damages.

The Appellant had been brought to the Police Station for an enquiry in connection with a case of larceny of an anchor. It would not have been improper for the Police to have detained him as it could be said that there was reasonable suspicion of his involvement in the larceny as he did not want to cooperate. The Police Officer however claimed that the arrest and detention were motivated by the disorderly conduct of the Appellant which constituted an offence against section 61 of the Police Act.

We appreciate that a person who believes that he is being bullied into giving a statement reacts violently and verbally abuses a policeman and that it is proper for the policeman to arrest and detain him. However, the detention must not be out of proportion to the nature of the offence which has led to the arrest and detention. In the present case, the evidence of the disorderly conduct was available and the detention beyond a certain time could not serve any purpose and was merely punitive rather than preventive. The Appellant, in our view should have been released if in fact he had been detained for his disorderly conduct: -

- (a) two or three hours after his initial detention if he had cooled down; or
- (b) at 1600 hours when the policeman went off duty; or
- (c) early in the evening before meal time; there was no justification to keep him in a cell overnight; or
- (d) early on the next morning following instructions for his release by a superior officer (last answer at page 81 of the Record).

The continued detention of the Appellant until the afternoon was excessive and is tantamount to an abuse of power. It was high handed of the policeman to flout those instructions and to maintain the Appellant in custody. Accordingly, even if the detention had initially been lawful, it became unlawful as from the time when the instructions to release the Appellant had been given.


Mr. Dodin submitted that the detention became unlawful after a lapse of 24 hours as section 18(5) of the Constitution makes provision that a detainee need only be brought to a court within 24 hours. This interpretation is, in our view,

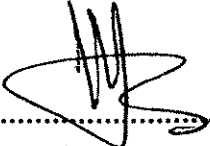
erroneous. The operative words are within 24 hours and not for 24 hours. On the other hand, that provision of the Constitution clearly envisages the release of the detainee before the lapse of 24 hours.


It is sad to note that no explanation whatsoever has been given for not releasing the Appellant in the morning and the continued detention lends support to the view that the primary purpose of the detention was to elicit a statement from him. We are further confirmed in this view by the evidence of -

- (a) defence witness Terry Dubignon in the third answer at page 65 of the record;
- (b) the policeman in the last answers at pages 68 and 69 of the record; and
- (c) the policeman in the fifth answer at page 70 of the record.

Appellate Courts are loathe to upset the findings of fact of trial judges. However, in the present case, there are many disturbing features and we feel constrained to reverse the findings of the trial judge. The appeal is allowed and we assess the damages at Rs. 10,000. We order accordingly with costs.


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H. Goburdhun P.


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A.M. Silungwe J.A.


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L.E. Venchard J.A.

Dated this 29... day of Feb. 1996.