

(6)

THE SEYCHELLES COURT OF APPEAL

In the matter between:

WAVEL RAMKALAWAN

APPELLANT

VERSUS

RÉPUBLIC

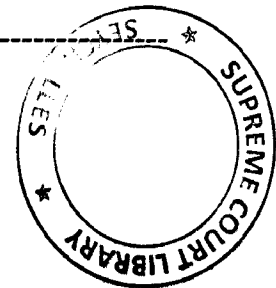
RESPONDENT

(Rep. by the Attorney General)

SCA No. 21 of 2001

[Before: Ayoola, P. Silungwe and De Silva JJ.A.]

*Mrs. A. Georges for the Appellant
Mr. A. Fenando for the Respondent*



JUDGMENT OF THE COURT

(Delivered by De Silva, J.A.)

The appellant was charged before the Magistrate's court with assault occasioning actual bodily harm in contravention of and punishable under section 236 of the Penal Code. It was alleged that he had assaulted one Barry Faure, a member of the National Assembly within the precincts of the National Assembly on the 11th November 1997. The appellant himself was a member of the National Assembly. Consequent upon this incident, the National Assembly resolved to appoint a "committee" to investigate the alleged assault and to report its findings and make recommendations to the House. The National Assembly having debated the report of the "committee" took disciplinary measures against the appellant. It is common cause that the appellant was called as a witness before the "committee" and was questioned in regard to his participation in the incident.

When the appellant appeared before the Magistrate's court on the 12th November 1998 in respect of the charge of assault referred to above, he moved the court to stay the criminal proceedings on the ground that in terms of section 15(3) of the National Assembly (Privileges Immunities and Powers) Act he was entitled to such stay of proceedings. The Learned Magistrate refused his motion for the reason that the certificate produced was signed by Mr. Bibi, chairman of the "committee, at a time when he was *"functus officio"*. On appeal this view was clearly affirmed by this Court. It is relevant to note that the finding was *"the certificate issued by Mr. Georges Bibi, the former chairman of the committee, was null and void and of no effect whatsoever, for lack of capacity."* In other words, it was a worthless document and cannot be used for any purpose whatsoever.

On 17th November 2000 the appellant made an application to the present Speaker of the National Assembly for the issue of a certificate under section 15 of the Act. The appellant in his letter to the Speaker stated, among other matters, *"...On appeal to the Court of Appeal that court, while agreeing with the other courts that Mr Georges Bibi was 'functus officio', nonetheless stated that I was entitled to a certificate and the same could be issued under your hand..."*. The Speaker by letter dated 5th January 2001 declined to issue a certificate under section 15 of the Act.

The above facts, which are not in dispute, form the background for the appellant's petition to the Constitutional Court which is the subject matter of the appeal before us. It is necessary to set out paragraphs 13, 14, 15 and the "prayer" to the petition in order to appreciate the true basis of the petition filed before the Constitutional court.

Paragraph 13 *"The exercise by the Speaker of his powers to issue the said certificate is not subject to the jurisdiction of any court. The petitioner is thus bound by the decision of the Speaker not to issue him with a certificate". (This averment was admitted by the respondent in the defence).*

Paragraph 14 *"By operation of the provisions of section 15 of the Act, the petitioner, if able to produce a certificate to the effect that he was required to answer questions put to him by a committee of the Assembly, and that he answered them fully and faithfully, would be afforded a stay of the criminal proceedings against him".*

Paragraph 15 *"By reason of the refusal of the Speaker to issue the petitioner with the said certificate, the petitioner has been deprived of his right to have the criminal proceedings in respect of the charge against him stayed. The trial of the petitioner on the said charge will thus not amount to a fair trial and his continued trial without the possibility of canvassing a stay of the proceedings which, but for the Speaker's decision would have been open to him, contravenes article 19 of the Constitution".*

Prayer *"The petitioner therefore prays this Honourable Court to declare:*

That his trial for the offence of assault occasioning actual bodily harm contravenes the Seychellois Charter of Fundamental Human Rights and Freedoms per article 19 of the Constitution;

That the refusal of the Speaker of the National Assembly to issue the petitioner with a certificate that he was required to answer questions put to

him by a committee of the Assembly, and that he answered them fully and faithfully contravenes the Seychellois Charter of Fundamental Human Rights and Freedoms per article 19 of the Constitution and denies him a fair trial”.

Perera J considered the prayers in the petition and concluded, “*The alleged contravention of Article 19 is based on the ‘refusal of the Speaker to issue the certificate’ and the consequent continuance of the trial before the Magistrate’s court.*” Juddoo J in the course of his judgment stated, “*The core determination before this court is whether the right of the petitioner to a fair trial, as a party charged before the Magistrate’s court, has been infringed. This in turn, raises the issue whether the petitioner is entitled to the statutory right for the proceedings instituted against him before the Magistrate’s court to be stayed by virtue of the operation of section 15 of the Act...*”

Section 15 reads thus:

15(1) Every witness before the Assembly or an authorized committee who shall answer full and faithfully any questions put to him by the Assembly or such committee to its satisfaction shall be entitled to receive a certificate stating that such witness was upon his examination so required to answer and did answer any such question.

(2) Every certificate under subsection (1) shall, in the case of a witness before the Assembly, be under the hand of the Chairman, and in the case of a witness before a committee, be under the hand of the chairman thereof.

(3) On production of such certificate to any court of law, such court shall stay any proceedings, civil or criminal, except for a charge under section 102 or 122 of the Penal Code, against such witness for any act or thing done by him before the time and revealed by the evidence of such witness, and may, in its discretion, award to such witness the expenses to which he may have been put.

On a reading of section 15, it is clear that sub-section (3) confers the right to a stay of proceedings in a court subject to the condition that a certificate issued under sub-section (2) is produced before the court. The certificate will be issued subject to the decision of the "committee" pursuant to the provisions of subsection (1). The wording of subsection (1) puts it beyond doubt that it is the "committee" and the "committee" alone which is vested with the authority to determine whether the conditions postulated are satisfied. It is a decision made by the "committee" appointed by the National Assembly. It is a purely internal matter which relates to proceedings of the "committee" appointed by the National Assembly and is therefore not justiciable. Any attempt by a court to review such decision would clearly amount to a usurpation of the powers and privileges of the "committee", as stated by Juddoo J. The Speaker in his letter of 5th January 2001 stated *inter alia*, "*on a reading of the Report of the Committee of Inquiry it cannot be said that you answered fully and faithfully questions put to you to their satisfaction*".

The position therefore is that the certificate was refused, *inter alia*, on the ground that the committee was not satisfied that the conditions

postulated in subsection (1) were met. Without a right to a certificate, there cannot be a right to immunity from prosecution. In the absence of a right to immunity from prosecution, there cannot be a right to use immunity as a defence. Without the right to use immunity from prosecution as a defence, there cannot be a contravention of the Fundamental Right to a "fair trial".

For these reasons the appeal fails and is dismissed but without costs

E.O. AYOOLA
PRESIDENT

A.M. SILUNGWE
JUSTICE OF APPEAL

G.P.S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 5 Day of December 2003