

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 38/2012

[2013] SCSC 78

JILL NOURRICE

Plaintiff

versus

THE GOVERNMENT OF SEYCHELLES

First Defendant

THE COMMISSIONER OF POLICE

Second Defendant

Heard: 25 January 2013, 2 May 2013

Counsel: Mrs. Amesbury for plaintiff

Mr. Kumar for defendant

Delivered: 31 October 2013

JUDGMENT

Karunakaran J

[1] The Plaintiff in this action claims the sum of SR750, 000.00 from the Defendants namely: (i) the Government of Seychelles and (ii) the Commissioner of Police, jointly and severally, for loss and damage the plaintiff suffered resulting from a fault allegedly committed by the 1st

defendant through its servants the Seychelles Police Force - represented by the 2nd defendant, the Commissioner of Police. The 1st defendant is sued in vicarious liability for the fault allegedly committed by its servants. The Defendants denied liability contending that they never committed any fault to the detriment of the plaintiff.

[2] The plaintiff is a young woman - aged 25 - a resident of Le Niole, Mahé. She is single. She has two children of tender age. Both were fathered by her former boy-friend, one Christopher, who subsequently severed the relationship with her and went to live with another woman by the name Christina Lozaique. Because of the 'loss of boyfriend' issue, there occurred constant hostility between the plaintiff and the said Christina. They disliked each other and frequently engaged in altercations, whenever and wherever they met in public places. On many occasions they have argued and threatened violence against each other. They have gone to the police station complaining against each other's behavior, on several instances. The police officers were indeed familiar with the parties because of the repeated complaints received by them, from both parties. Later, their personal grudge and bitterness over the boyfriend dispute took a different dimension. It had affected not only the two individuals but also their family members and turned out to be a family feud.

[3] A sister of Christina by the name Barbara Lozaique also used to engage in altercations with the plaintiff, whenever seen in public places, in support of her sister Christina. According to the plaintiff, on the 29th November 2007 at 2p.m. she was going to get her child from La Rosiere School, at Hangard Street in Victoria. According to the plaintiff, while she was walking along, she saw the said Barbara, who then stared back at her and started to swear at her for no apparent reason, other than the fact that she had looked at her. The plaintiff paid no heed to the said Barbara and her husband who was accompanying her. The plaintiff then

proceeded to the cathedral and had in the meantime called on her mother to assist her, against the said Barbara and her husband who were following her to the cathedral as well.

- [4] The mother of the plaintiff reached the scene and questioned the said Barbara in support of the plaintiff. They, the plaintiff and her mother, both eventually returned home. The same evening, the plaintiff's mother received a call from WPC Anna Quatre of the Central Police Station, who conveyed the information that they had received a complaint and required the plaintiff to report to the police station. The plaintiff did not report to the police station despite the request, and subsequently, the police had to go to the plaintiff's residence to secure her. She was taken to the Anse Etoile Police Station and kept in custody. The next morning, she was released on bail, and after having given a statement under caution to the police.
- [5] According to the plaintiff, the arresting officer WPC Quarter did not provide any reasons for the arrest and subsequent detention in custody that night. Thus the plaintiff contends that the arrest and detention was illegal, amounting to a *faute* or fault in law. Moreover the plaintiff claims she suffered loss and damages in the sum of SR750,000/- as a direct result of the fault committed by the defendants. Hence she seeks for a judgment in her favour, accordingly.
- [6] On the other hand it is the case of the defendant that the arrest and detention by the police was lawful. The arresting officer WPC Quatre testified in essence, that the plaintiff was arrested on that particular night following a complaint made by the said Barbara, to the effect that the plaintiff had issued threats against her life. Furthermore, WPC Quatre testified that the sister of the said Barbara, i.e. Christina who had accompanied her sister while she made the complaint, had also made a threat against the life of the plaintiff. Therefore, the arrest of the plaintiff

was two-fold, in that, it was also protective custody. According to WPC Quatre, the complainant's sister, Christina, was also arrested for making such a threat and kept in the women's cell at the Central Police Station that night. These circumstances and reasons were conveyed to the plaintiff at the time of her arrest. In such circumstances, the defendants contend that the arrest and detention of the plaintiff was justified, necessary and legal.

[7] I carefully perused the pleadings, evidence on record including the documents adduced by the parties.

Only two questions arise for determination in this matter. They are:

1. *Did the police commit any "fault" in law in arresting and detaining the plaintiff that night?*
2. *Did the plaintiff suffer any loss or damage as a result of the said arrest and detention by the police?*

[8] Obviously, the plaintiff's action is based on "*faute*" or fault. Hence, the principles of law applicable to this case are that which found under Article 1382 (2) & (3) of the Civil Code of Seychelles. This Article reads thus:

(2) "Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be a positive act or omission.

"Fault may also consists of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest"

[9] I carefully perused the entire evidence including the documents adduced by the parties in this matter. I gave diligent thought to the submission

made by counsel on both sides. I also had the opportunity to observe the demeanour and deportment of the witnesses, while they deposed in court. First, on the question of credibility, I believe WPC Quatre in every aspect of her testimony. She appeared to be a truthful witness, further supported by the fact of her being employed by the Seychelles Police Force and having acted in her capacity as a police constable at the time the plaintiff was arrested and detained. I believe her testimony particularly, as to why and under what circumstances the plaintiff was arrested and detained upon the perceived threat to life. I believe her, in that the plaintiff required to be detained for the protection of her own life, and for having earlier made a threat to the life of her ex-boyfriend's partner, Christina. Furthermore, I believe her in her testimony, that she had explained the reasons for arresting and detaining the plaintiff when she did not report to the police station, and informing her of all her constitutional rights before recording her statement under caution.

[10] Having regard to the entire circumstances surrounding the case including the arrest and detention of the plaintiff for having been involved in the act of public nuisance and threatening violence, in my view, defendants did not commit **any error of conduct** which would not have been committed by a prudent person in the special circumstances in which the incident of the alleged arrest and detention was made by the police and the consequent damage allegedly suffered by the plaintiff. In answering the first question, I find that the defendant's acts do not constitute a **fault** in the eye of law under article 1382 (2) & (3) of the Civil Code of Seychelles. In fact, WPC Quatre, in the execution of her lawful duty, acted within the police powers conferred on her for the purpose of maintaining public peace, security and the prevention of crime.

[11] In the same token, neither the police nor the Government of Seychelles for that matter, in my judgment, did not commit any **error of conduct**

which would not have been committed by a prudent person in the special circumstances in which the incident of the threats to life occurred, which culminated in the arrest and detention of the plaintiff. The dominant purpose of the consequent arrest and detention, and later investigation by police were also not intended to cause any harm to the plaintiff nor done out of malice and so I find.

[12] Having thus considered the entire evidence on record, I find on a preponderance of probabilities that the defendant did not commit any unlawful act or fault in arresting or detaining the plaintiff. In answering the second question, I find that the plaintiff is exaggerating the episode and the entire situation and did not suffer any prejudice, loss or damage on account of the said arrest and detention by the police.

For these reasons, I dismiss the suit and make no order as to costs.

Signed, dated and delivered at Ile du Port on

D Karunakaran
Judge of the Supreme Court