

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 51/2014

Appeal from Magistrates Court Decision CS 206/2013

[2016] SCSC 72

FRANCIS BONIFACE

Appellant

versus

THE ATTORNEY GENERAL OF SEYCHELLES

First Respondent

THE COMMISSIONER OF POLICE OF THE POLICE FORCE OF SEYCHELLES

Second Respondent

Heard: 23rd November 2015.
Counsel: Mr Anthony Derjaques for Appellant
Mr Hemanth Kumar Muninadhan for Respondents
Delivered: 11 March 2016.

JUDGMENT

McKee J

- [1] This is an appeal against the judgment of a magistrate in exercise of the civil jurisdiction of the magistrates court [hereinafter referred to as “the court”].
- [2] I have had the opportunity of reading the Notes of Proceedings and the Judgment of the Magistrate.
- [3] CIRCUMSTANCES OF THE CASE.
- [4] The Appellant, Mr Francis Boniface, fifty five years of age, lives at Anse Boileau and was, at the time, employed at the Ephilia Hotel in the agricultural department. On 8th July 2013 around 3.30pm the Appellant was a passenger in a bus with fellow employees of the hotel who had all completed their work for that day. When the bus reached Grand Anse it was stopped by a group of police officers, including police officer Bistoquet.

- [5] Officer Bistoquet and the other police officers had received instructions to trace a man with surname “Savy”, who had a connection with the hotel, in respect of enquiries relating to an offence of a sexual nature. Bistoquet did not know Savy by sight. Officer Bistoquet entered the bus. The Appellant was seated close to the door of the bus. It was the evidence of Officer Bistoquet that he asked the Appellant to provide his name since he was looking for a particular person. The Appellant, in his evidence, stated that he was only asked for his name. In any event the Appellant refused to provide his name to the police officer. It is fair to say that most, if not all, of the remaining employees provided their names to police officers. As a result of his refusal the Appellant was told to leave the bus, which he did. There then followed a further confrontation between the Appellant and police officers with the Appellant still refusing to provide his name. The incident outside of the bus came to a close when the Appellant was put in a police vehicle and transported to Anse Boileau Police Station. It was the evidence of Officer Bistoquet that, following his arrival at the police station, the Appellant was informed that he was under arrest for failing to provide his name to a police officer. The Appellant was detained in a cell overnight but released the following morning when another police officer gave a positive identification of the Appellant. The police authorities took no further action against the Appellant.
- [6] The Appellant initiated a civil claim for damages against the Commissioner of Police and the Attorney General of Seychelles [the Defendants]. He sought damages in the amount Rs 100,000 alleging false arrest, unlawful detention and a failure by the police authorities to tell him the reasons for his arrest and detention. Following the consideration of the evidence by the magistrate, it was held that no fault attached to the Defendants through their vicarious responsibility for the actions of their servant or agent, namely police officer Bistoquet, and the action was dismissed.
- [7] It is against this decision of the magistrate that the Appellant now appeals.
- [8] In coming to a decision the magistrate found that Officer Bistoquet had given truthful evidence, the Appellant had given an exaggerated version of what had occurred that day and the Appellant had brought suspicion upon himself by refusing to give his name to the police officers. Furthermore the police officer had not committed any error of conduct in following the procedure that he did and as such was not in breach of section 1382 of the Civil Code of Seychelles. The magistrate found that the Appellant had obstructed Officer Bistoquet in the due execution of his duty.
- [9] FINDINGS.
- [10] In my opinion this matter turns on whether the arrest of the Appellant by Officer Bistoquet was lawful.
- [11] The magistrate differentiated between the evidence of Officer Bistoquet and the Appellant. In my opinion there is no great divergence in the two versions given as to what occurred within the bus save that while Bistoquet stated in evidence that he asked

the Appellant for his name and stated that he was “looking for someone”, the evidence of the Appellant was that he was only asked to provide his name, which he refused to do. However I can see no evidence that Officer Bistoquet mentioned the name “Savy” to the Appellant. In any event, when the Appellant failed to give his name he was told to get off the bus, which he did. The Appellant again refused to divulge his name. The Appellant was then placed in a police vehicle and transported to Anse Boileau Police Station where he was told he was under arrest and detained overnight but released the following morning when another police officer properly identified him. Throughout the material period of time the Appellant did not provide Officer Bistoquet or any other police officer with his name.

[12] On arrival at Anse Boileau Police Station it was the evidence of Officer Bistoquet that the Appellant was formally arrested for failing to provide his name to a police officer.

[13] My first comment would be that the arrest of the Appellant was not effected at the Anse Boileau Police Station but at the point in time when he was detained outside of the bus and placed in the police transport. I refer to the case *Cesar Marie v Attorney General* Civil Side No 424 of 1998 and the final paragraph on page 2 and following on at page 3 which reads as follows, “An arrest can occur without any procedural formality. In *Holgate Mohammed v Duke* [1984] 1 AER 1056 – Lord Diplock took the view that where a person is detained or restrained by a police officer and he knows that he is detained or restrained, that amounts to an arrest of him even though no formal words of arrest were spoken by the officer. Lord Griffith in further clarifying this concept in the case of *Murray v Ministry of Defence* [1988] LRC [Const] 519 stated “It should be noted that the arrest is a continuing act; it starts with the arrestor taking a person into custody [by actions or words restraining him from moving anywhere beyond the arrestor’s control] and it continues until the person so arrested is either released from custody or having been brought before a magistrate is remanded in custody by the Magistrate’s Judicial Act”. In a Sri Lankan case similar to the present case **[and I would suggest is similar to the case before me]** *Namasivayam v Gunawardena* [1989 1 SLR LR 394 a person was arrested while travelling on a bus. The police officer admitted the incident but stated that he did not arrest that person but only required him to accompany him to the police station for questioning, and released him after recording a statement. The Supreme Court held that when the police officer required him to accompany him to the police station, that person was, in law, arrested as he was prevented by that action from proceeding on his journey in the bus. Hence, whenever a person is deprived of his liberty of movement, he is under arrest”.

[14] I accept that while at the Anse Boileau Police Station the Appellant was informed of the reason for his arrest. Officer Bistoquet informed the Appellant that he was being arrested because he refused to give his name and he is not allowed to refuse to give particulars to a police officer. It is worthy of note at this stage that Officer Bistoquet did NOT inform the Appellant that he was arrested for obstructing a police officer in the due execution of his duty contrary to section 18[c] of the Criminal Procedure Code.

- [15] The delay in advising the Appellant of the reason for his arrest is not fatal. I refer to Article 18[3] of The Constitution which reads as follows “A person who is arrested or detained has a right to be informed at the time of arrest or detention or[my underlining] as soon as practicable thereafter, in, as far as practicable, a language that the person understands, of the reason for the arrest or detention..... Article 18[3] goes on to state that the arrested person is also to be advised of his right to remain silent, a right to be defended by a legal practitioner of the person’s choice and in the case of a minor, a right to communicate with the parent or guardian. The Appellant stated in evidence that his constitutional rights were not explained to him but Officer Bistoquet said in evidence that he asked the Appellant to contact his relative or lawyer and said that other police officers ”did the other procedures”. In the light of this evidence it appears possible that the Appellant was advised of his rights. In any event that issue is not central to this matter.
- [16] I find that Officer Bistoquet arrested the Appellant at the Anse Boileau Police Station for failing to provide his name when asked to do so by a police officer. Officer Bistoquet may well have had in mind section 20[1] of the Criminal Procedure Code. It has the marginal note “Refusal to give name and address” and reads as follows:
- [17] “When any person who in the presence of a police officer has committed or has been accused of committing a non-cognisable offence refuses on demand of such officer to give his name and residence, or gives a name and residence which such officer has reason to believe to be false he may be arrested by such officer in order that his name and residence may be established”.
- [18] A non-cognisable offence is defined in section 2 – the interpretation clause – of the Criminal Procedure Code. A “non-cognisable offence” means “an offence for which a police officer may not arrest without a warrant”.
- [19] It is also of value to consider the corresponding definition in the interpretation clause of a “cognizable offence”. A “cognizable offence” means “any offence for which a police office may in accordance with the third schedule or under any law for the time being in force, arrest without warrant”.
- [20] I consider also section 25[2] of the Police Force Act and section 18[c] of the Criminal Procedure Code.
- [21] Section 25[2] of the Police Force Act reads as follows, “It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances, to detect and bring offenders to justice, and[my underlining] to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient grounds exist”.

- [22] Section 18[c] of the Criminal Procedure Code reads as follows, “Any police officer may, without an order from a judicial officer and without a warrant, arrest any person [again, my underlining]who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody.”.
- [23] The underlying principle is that an arrested man is entitled to be told what is the act for which he is arrested [R v Fred [No 1]1974 SLR 6].In my opinion Officer Bistoquet is bound by the words used at the time of the arrest, namely that the Appellant was arrested for failing to provide his name. It follows, in my view, in order to succeed, that there must be compliance with the provisions of section 20[1] of the Criminal Procedure Code before the arrest is lawful.
- [24] The Appellant was never informed at the time of his arrest that he was arrested for obstructing a police officer in the due execution of his duties and was in breach of section 18[c] of the Criminal Procedure Code. In the judgment the magistrate seems to have made a finding that Officer Bistoquet had arrested the Appellant for this particular charge. With the greatest respect to the magistrate, this is not the case. This Appellant was arrested for failing to provide his name to Officer Bistoquet.
- [25] Section 20[1] of the Criminal Procedure Code envisages two possible scenarios which must be present **before** a police officer can demand the name and residence or address of a person and, in the event of a refusal, arrest that person Firstly, it is when the person has committed a non-cognisable offence in the presence of the police officer, or secondly, when in the presence of the police officer the person has been accused of committing a non-cognisable offence.
- [26] In the present matter there was no evidence either during the initial confrontation in the bus, nor later outside of the bus, nor during his transportation to the police station nor at the police station that the Appellant had committed or been accused of committing a non-cognisable offence in the presence of Officer Bistoquet. Consequently, in my view, Officer Bistoquet was not entitled to rely on the provisions of section 20[1] of the Criminal Procedure Code to justify the arrest of the Appellant when he refused to give his name to the officer.
- [27] Officer Bistoquet cannot rely on section 18[c] of the Criminal Procedure Code. The Appellant was not informed that he was arrested for obstructing a police officer in the due execution of his duty.
- [28] Consequently Officer Bistoquet could not rely on section 25[2] of the Police Force Act since he was not legally authorized to apprehend the Appellant and insufficient grounds existed for his apprehension.
- [29] In my view there is no need to refer to section 1382 of the Civil Code of Seychelles.

- [30] In my opinion Officer Bistoquet fell into error by founding his arrest wholly on the refusal of the Appellant to provide his name on request. So far as I am aware there is no such criminal offence in Seychelles.
- [31] Consequently I find that the arrest of the Appellant by Officer Bistoquet was unlawful.
- [32] It follows that the Appeal succeeds and I set aside the judgment in the lower court.
- [33] The Appellant is entitled to receive compensation under the provisions of Article 18[10] of The Constitution.
- [34] There is little doubt, in my view, that this whole episode was conducted with some ill-feeling on both sides. To an extent the Appellant was the author of his own misfortune by taking the stand he did. He failed to keep in mind that a citizen has a general duty to assist the police authorities in carrying out their duties.
- [35] I find that the Respondents in this appeal are vicariously liable for the acts and default of their servant and agent, Officer Bistoquet. If I had found that the police officer was entirely to blame for the outcome of this incident I would have awarded damages of Rs 30,000. However I find that the Appellant is 50% to blame for the development of this incident and its eventual outcome.
- [36] I award damages to the Appellant in the sum of RS 15,000.
- [37] There will be Judgment in favour of the Appellant against the First and Second Respondents jointly and severally for the sum of RS15,000.
- [38] Mr Derjaques appeared for the Appellant [and original Plaintiff] under the Legal Aid Scheme and hence there will be no Order for Costs.

Signed, dated and delivered at Ile du Port on 9 March 2016.


C McKee
Judge of the Supreme Court

