

**Marie v Attorney-General
(2001) SLR 36**

Frank ALLY for the plaintiff
Ronny GOVINDEN for the defendant

Judgment delivered on 12 November 2001 by:

PERERA J: This is a delictual claim based on an alleged unlawful arrest and detention by police officers who were acting in their capacity as préposés of the Government of Seychelles. The plaintiff avers that on 27 June 1998, consequent to a dispute he had with a neighbour concerning an access road, police officers stationed at the Anse Royale Police Station questioned him and arrested and detained him in a cell at the police station. He further avers that his constitutional rights were not explained to him at the time of arrest or soon thereafter. He also avers that after he was released, no charges have been filed against him to date.

The defendants aver that the plaintiff was arrested as he was aggressive and prevented the police officers from exercising their duty to keep the peace, and that he was kept in detention only for one hour. The evidence in the case discloses that the plaintiff was taken to the Anse Royale Police Station by police officers on the orders of ASP James Savy, the Regional Commander of South Mahé. PC Barney Bristol, one of the officers who brought the plaintiff to the police station testified that he was ordered by ASP Savy to bring him if he refused to remove the obstructions on the access road. He stated that the plaintiff refused to remove the obstruction, and hence he was brought to the station where ASP Savy ordered him to place the plaintiff in a cell. He was in the cell for about one hour. He stated that when the plaintiff was brought to the station, he was neither angry nor aggressive.

L/Corp Gracia Bethew, another police officer who brought the plaintiff to the police station on the material day, testified that at the police station the plaintiff maintained that the land belonged to him. However ASP Savy ordered PC Bristol to search him and place him in a cell. She too stated that the plaintiff was in a cell for only about one hour. On being cross-examined, she stated that the plaintiff did not behave in a manner which warranted detention in a cell.

ASP Savy however testified that the plaintiff was locked up in a cell as he was aggressive, and that he was released after he became calm.

At the close of the case, counsel for the State submitted that liability has been established by the plaintiff, but to a limited degree. He submitted that on the basis of the plaintiff's own testimony, he was escorted to the police station. The plaintiff testified that he was taken to the police station when he was preparing to go to church around 4 pm that day.

An "arrest" can occur without any procedural formality. In *Holgate-Mohammed v Duke* [1984] 1 All ER 1056 Lord Diplock took the view that where a person is detained or restrained by a police officer, and he knows that he is being 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 the arrest is a continuing act, it starts with the arrester taking a person into his custody (by action or words restraining him from moving anywhere beyond the arrester'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, *Namasivayam v Gunawardena* (1989) 1 Sri LR 394, a person was arrested when he was travelling in 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.

In the present case, when the plaintiff was asked by the police officers to accompany them to the police station, the arrest commenced. According to ASP Savy, the plaintiff was kept in the cell from 4.17 pm to 4.50 pm.

On the basis that the arrest commenced around 4 pm and the detention ended around 5 pm on the same day, the plaintiff's right to liberty was affected for about one hour.

However I find that there was no lawful justification for such arrest and detention of the plaintiff in the circumstances of the case. Further, LC Bethew testified that the plaintiff was not informed of his constitutional rights. The State concedes that this makes the arrest and detention unlawful.

Article 18(10) of the Constitution provides that –

A person who has been unlawfully arrested or detained has a right to receive compensation from the person who unlawfully arrested or detained that person or from any other person or authority including the State, on whose behalf or in the course of whose employment the unlawful arrest or detention was made or from both of them.

In the case of *Gerard Canaya v. The Government of Seychelles* (unreported) CS 42/1999 this Court, inter alia, awarded R5000 for an unlawful arrest and detention for 18 hours. An award of R5000 was made by the Constitutional Court in *Noella Lajoie v Government of Seychelles* (unreported) Constitutional Case 1/1999) in similar circumstances.

In the case of *Paul Evenor v Government of Seychelles* (CS 357/1998) I awarded a sum of R20,000 as moral damages for fear and emotional stress while in detention at the Grand Police Army Camp, and for loss of civil rights of personality. In the present case however there is no evidence that the plaintiff was in any state of fear or emotional stress during his short incarceration. However I would accept that he suffered some loss of rights of personality as envisaged in article 1149 (2) of the Civil Code. Hence on a consideration of all the circumstances of this case, I award a sum of R15,000 to the plaintiff.

Judgment is accordingly entered in favour of the plaintiff in a sum of R15,000 together with interest and costs.

Record: Civil Side No 424 of 1998