

**THE HIGH COURT
JUDICIAL REVIEW**

2004 No. 678 J.R.

BETWEEN

EMAD MASSOUD

APPLICANT

**AND
JUDGE CORMAC DUNNE AND
THE DIRECTOR OF PUBLIC PROSECUTIONS**

RESPONDENTS

**AND
THE HIGH COURT**

2004 No. 679 JR

BETWEEN

GEHAN MASSOUD

APPLICANT

**AND
JUDGE CORMAC DUNNE AND
THE DIRECTOR OF PUBLIC PROSECUTIONS**

RESPONDENTS

Judgment of Mr. Justice John MacMenamin delivered the 17th day of February 2006.

1. These two judicial review proceedings raise an identical point in relation to the jurisdiction of the first and second named respondents in their respective capacities to deal with charges which were brought before the Dublin Metropolitan District Court on 22nd June, 2004.

The applicant in the first set of proceedings, Emad Massoud, is a medical doctor. He is charged with obtaining money by false pretences pursuant to s. 32 of the Larceny Act, 1916 as amended by s. 9 of the Larceny Act, 1990. It was alleged that he, together with his wife, the applicant in the linked proceedings, falsely made a claim on a critical illness insurance policy in her name on the basis that she had undergone surgery for breast cancer. The diagnosis of breast cancer was made following an analysis of breast tissue submitted for medical analysis. The insurer, Scottish Provident Ireland, paid a sum of €685,658.56 on foot of the policy. It is alleged that the breast tissue which was sent for examination did not belong to the applicant's wife but to her mother, and that the applicant arranged for his wife to undergo a surgical procedure so that it would appear as if she had had a lump removed from her left breast. The applicant is charged with having committed the offences of obtaining money by false pretences at the insurer's offices at 53 Fitzwilliam Square in the Dublin Metropolitan District.

2. On 22nd June, 2004 Detective Sergeant Declan Daly of the Garda Bureau of Fraud Investigation swore informations to arrest the applicant and his wife before Kilcock District Court. That District Court is the only court sitting in District Court Area No. 10 on that day. On foot of that information District Judge Sean McBride issued two warrants to arrest the applicant and his wife. The warrants were endorsed by Superintendent Devine at Ashbourne, Co. Meath. They were executed later that day at the applicants' home at Brownstown, Co. Meath. The applicant and his wife were taken to the Dublin Metropolitan District Court, in circumstances hereinafter described where they were charged and cautioned. They were then brought before the Dublin Metropolitan District Court where evidence of arrest, charge and caution was adduced and orders made remanding them on bail.

3. On 29th July, 2004, De Valera J. granted leave to the applicants, made *ex parte*, to apply for judicial review for an order of prohibition prohibiting the first named respondent from dealing or proceeding to deal with the matter; and leave also to apply for an order of prohibition prohibiting the second named respondent, its servants or agents, from dealing with or proceeding to deal with this matter. Similar relief was granted in relation to the second named applicant.

4. While the applicants relied on a broad number of grounds in their leave application, the essential case advanced can be summarised in this way.

On behalf of the applicant Mr. John Peart SC submitted that having obtained a warrant from District Judge McBride on 22nd June, 2004 at Kilcock District Court the applicant should have been brought before that court or some other court in that District and not brought to the Dublin Metropolitan District Court which is in a different and separate District Court district. The applicants contend that the Gardaí had no power or authority to transfer these matters to the Dublin Metropolitan District having obtained a warrant at Kilcock District Court. It is contended that the Gardaí, having opted to apply to Kilcock District Court made what was in effect an irrevocable election to proceed in Meath District No. 10 wherein the applicants reside. Thereafter it is contended that it is not open to the respondents to transfer these proceedings to the Dublin Metropolitan District Court and/or if the matter was perforce brought before the Dublin Metropolitan Court by statute the obligation on the District Judge sitting therein was thereafter to transfer the matter back before District Judge McBride in Area No. 10. The applicants also specifically refute the suggestion that there was any consent on the part of their legal advisors to there being brought before the Dublin Metropolitan District Court.

In order to explore the issues herein it is necessary now to deal with the evidence in some further detail.

5. In an affidavit sworn herein Detective Sergeant Daly states that having sworn information for the arrest of the applicants before Judge Sean McBride he thereafter attended at Ashbourne Garda Station where Superintendent Devine endorsed the warrant to him for execution. He then went to the home of the applicants at Woodview Brownstown Ratoath Co. Meath where he arrested the first named applicant on foot of a warrant issued in respect of him. Following this arrest he telephoned and spoke to the applicants' solicitor who he understood was instructed in the matter. He explained to Mr. Cormac O'Ceallaigh that he had arrested the first named applicant under warrant for the offence of false pretences and furnished to him details of the offence concerned. He also explained that Gehan Massoud (the applicant in the second set of proceedings) who was not present at her home was also to be arrested under warrants of the same offence. Since he was concerned that there was insufficient time available to bring Mr and Mrs Massoud before Kilcock District Court Detective Sergeant Daly explained to Mr. O'Ceallaigh that the offence concerned was alleged to have occurred within the Dublin Metropolitan District and that he could either bring the applicant before the Dublin Metropolitan District or before Kilcock District Court. Detective Sergeant Daly states that it was then agreed by Mr. O'Ceallaigh and himself that he would bring Mr and Mrs Massoud before the Dublin Metropolitan District as the offence was alleged to have been committed within that

District.

6. The deponent thereafter arrested the second named applicant on foot of the arrest warrant in his possession at 3.10 pm on 22nd June, 2004. The first named applicant made a number of telephone calls in order to secure the attendance of his surety at court that day. He informed the Detective Sergeant that a Dr. Nasir Mahmud who was a person who could act as a surety for the applicants was unavailable before 5 pm. Detective Sergeant Daly decided to bring both applicants to the Dublin Metropolitan District Court at Chancery Street in Dublin. They were charged and thereafter appeared in the Dublin Metropolitan District Court before District Judge Scally at District Court No. 44. The warrants of arrest were produced and District Judge Scally remanded both applicants on bail to the 29th June, 2004 following which Detective Sergeant Daly drove the applicants back to their residence in Ratoath. The respondent's contention is that the applicants were arrested on foot of a warrant issued by District Judge having jurisdiction to do so in a court area where they resided. They were then charged and brought before another judge of the District Court in the court area where the offence charged was alleged to have been committed namely the Dublin Metropolitan District.

7. In the course of submissions an issue arose relating to the telephone call which was stated to have taken place between the Detective Sergeant and Mr. O'Ceallaigh. It is contended in particular that Mr. O'Ceallaigh took it amiss that the issues raised in the course of the affidavit regarding the telephone call having been set out in affidavit form. In particular he did not concede that there had been any consent to the course of action adopted by the Detective Sergeant.

While of course I accept this contention as advanced on behalf of the applicant it must be said that in a subsequent affidavit sworn by Mr. O'Ceallaigh no criticism of any kind is made against the Detective Sergeant. In fact in that affidavit sworn on 10th November, 2004 (twelve days after that of the Detective Sergeant), Mr. O'Ceallaigh states that he believed from his conversation with the Detective Sergeant that he was entitled at law to bring the applicants before Dublin Metropolitan District. He states that he had no reason to doubt him or to question his authority. He believed he was simply notified out of courtesy and on the basis that he should know what is happening, and in order to enable him to attend. Mr. O'Ceallaigh states that he was not advised that the Detective Sergeant was acting on foot of a warrant obtained from Judge McBride at Kilcock District Court which warrant he now contends only entitled him to bring the applicant before District Judge McBride in his own district or in accordance with his order. Mr. O'Ceallaigh states that he was not asked to consent to jurisdiction and in all events could not bestow jurisdiction on the Dublin Metropolitan District as this is created by statute.

8. Mr. O'Ceallaigh accepts that he agreed that the applicants should be brought to the Dublin Metropolitan District but that he did not consent to any jurisdictional point nor was he asked, nor did Detective Sergeant Daly explain the purpose of the telephone call as now deposed to in his affidavit. The applicant's solicitor further contends that no information was imparted by the Detective Sergeant regarding the availability of Kilcock District Court or whether he could not reach that court in time nor did he ask in the circumstances to agree to jurisdiction in the Dublin Metropolitan District. Even if he had he would not have done so.

9. It is now necessary to deal briefly with the contents of the warrants which were issued in each case. It is common case that these were issued by District Judge McBride in District Court Area No. 10. Having recited the details of the alleged offence the warrant recites:

"This is to command you to whom this warrant is addressed to arrest the said (name of respective applicants) of Woodview Brownstone Ratoath Co. Meath and to bring him/her without delay before me or another judge to be dealt with according to law.

Dated 22nd day of June, 2004".

10. Submissions

The applicants case is now that the warrants which were employed are "now spent". However it is contended that the Gardaí having elected to proceed before the District Judge sitting in District Area No. 10 are not permitted in law to bring the applicants before the Dublin Metropolitan District. The precise motivation for their being brought to the Dublin Metropolitan District has not been shown to this court. It may have been a matter of convenience. It may have facilitated the Surety. Alternatively an issue may have arisen as to whether District Judge McBride was sitting in his own District Court at that point. Certainly one inference is that the Detective Sergeant for a number of reasons was seeking to facilitate the applicants by bringing them before the Dublin Metropolitan District Court.

11. It is accepted by the applicants that the warrants in question are now spent. Their validity is not now challenged in these proceedings. On behalf of the respondent Mr. Anthony Collins SC points out that, in any case, there is no evidence at all on the face of the warrants that they were issued under the s. 11(1)(i) of the Petty Sessions Ireland Act 1851 where, when a justice issues a warrant to arrest the arrested person should be brought before that justice or some other justice of the same county to answer the complaint made in the information. As can be seen from the face of the warrant this is not the position in the instant case. The applicants submit and I accept that the warrant in question complied with Order 16 of the District Court Rules 1997 which provides that:

"1. Where in the first instance a warrant is sought for the arrest of a person charging him or her with having committed an indictable offence, the complaint shall be made to a judge and shall be made by information on oath and in writing.

2. Having received such complaint the judge may issue a warrant if the offences stated to be committed, or if such *person resides* (emphasis added) within the Judge's district."

3. Order 17 Rule 2 of the District Court Rules 1997 then provides that:

"A person arrested pursuant to warrant shall on arrest be brought before a judge having jurisdiction to deal with the offence as soon as practicable."

This reflects s. 15(1) of the Criminal Justice Act 1951 as inserted by s. 18 of the Criminal Justice (Miscellaneous Provisions) Act 1997 which provides that:

"A person arrested to a warrant shall on arrest be brought as soon as practicable before a Judge of the District

Court having jurisdiction to deal with the offence concerned.”

12. The uncontested evidence before this court is that Detective Sergeant Daly arrested the applicants between 3 o'clock and 3.10 on 22nd June, 2004. He was informed that the surety was unavailable before 5 pm. In the circumstances it is contended (although not stated in evidence) that Detective Sergeant Daly would have been unable to bring the applicants before Kilcock District Court before close of business. In compliance with his statutory obligations, it is submitted the Detective Sergeant brought the applicants before the Dublin Metropolitan District Court. The respondents specifically point out that the Dublin Metropolitan District Court had jurisdiction to deal with the offences with which they were charged *because* the offences in question were allegedly committed within the jurisdiction of that court.

It might be contended that an issue of interpretation might arise between the provisions of s. 15(1) of the Criminal Justice Act 1951 as inserted by s. 18 of the Criminal Justice (Miscellaneous Provisions) Act 1997 (already cited) on the one hand and s. 11(1) of the Petty Sessions (Ireland) Act 1851 on the other hand.

While I do not think it is necessary on the facts to resolve this issue *prima facie* the provisions of s. 11(1) of the Petty Sessions (Ireland) Act 1851 was impliedly repealed by the latter provision which provides that a person arrested shall be brought as soon as practicable before a judge of the District Court *having jurisdiction* to deal with the offence concerned. On the particular facts of the instant case it seems to me that the issue does not arise in that it cannot be contested that the Dublin Metropolitan District did have such jurisdiction in the light of the fact that the alleged offences were stated to have been committed within the Dublin Metropolitan District.

13. Under Order 13 Rule 1 of the District Court Rules 1997 it is provided that (as in the case of a warrant) criminal proceedings shall be brought heard and determined either:

- (i) In the court area wherein the offence charged or if more than one offence is stated to have been committed within a judge's district any one of such offences is stated to have been committed
- (ii) In the court area wherein the accused has been arrested or
- (iii) In the court area wherein the accused resides or
- (iv) In the court area specified by order pursuant to the provisions of s. 15 of the Courts Act 1971.

The applicants submit that even if there were any illegality in the process whereby the applicant came before the Dublin Metropolitan District Court, which is not accepted, that court is not deprived of jurisdiction on foot of the well established jurisprudence which states that the jurisdiction of the District Court to embark upon any criminal proceeding is not affected by the fact, if it be the fact, that the accused person has been brought before the court by an illegal process (see the judgment of Keane J. as he then was in the case of *D.P.P. (Ivers) v. Murphy* [1999] 1 I.R. 98 at pp. 113-114, McGuinness J. in *D.P.P. (McTiernan) v. Bradley* [2000] 1 I.R. 420 Keane J. in *Killeen v. Director of Public Prosecutions* [1997] 3 I.R. and *The State (Attorney General) v. Fawsitt* [1955] I.R. 39 at p. 43). It is unnecessary to resolve this issue.

14. In any case as stated earlier I consider that the specific terms of the warrant demonstrate that it was not issued in purported reliance of s. 11(1) of the Petty Sessions (Ireland) Act 1851, that it was issued in accordance with law and that the law in question may be taken to include s. 15(1) of the Criminal Justice Act 1951 by s. 18 of the Criminal Justice (Miscellaneous Provisions) Act 1997.

15. This however does not conclude the matter. The applicants contend that the course of action which should have been adopted by the judge in the Dublin Metropolitan District is governed by s. 41 of the Courts and Court Officers Act 1995. This provides:

“Section 41. Section 79 of the Courts of Justice Act 1924 is hereby amended by the insertion of the following subsections:

(2) On the coming into operation of s. 41 of the Courts and Court Officers Act 1995, where a judge for the time being assigned to a District Court district is unavailable, any judge of the District Court may exercise jurisdiction subject to subs. (3) of this section in respect of such district in a criminal case in any place in the state.

(3) A judge of the District Court exercising jurisdiction under subs. (2) of this section shall not have jurisdiction to conclude the preliminary examination under the provisions of the Criminal Procedure Act 1967, unless that jurisdiction is exercised in the District Court district-

- (a) where the crime was committed or
- (b) where the accused resides or was arrested

(4) Where a person accused of a criminal offence is before a judge of the District Court in a district other than the district in which the crime has been committed or where the accused resides or was arrested, the judge may on his or her own motion or the application of the accused or the prosecution, transfer the case to the District Court district where the offence was committed or where the accused resides or was arrested.”

16. The applicants contend that there is no evidence here in relation to the unavailability of the District Judge assigned to District Court Area No. 10. They contend that in any case if the matter had to be brought before the District Court in the Dublin Metropolitan District the judge therein sitting should have confined himself to transferring the matter back before District Judge McBride. In so contending the applicants rely strongly on the case of *Shane Coates Applicant v. Judge Aidan O'Donnell and the Director of Public Prosecutions Respondents* [1997] I.R. at p. 417.

In that case the applicant was arrested and brought before the first named respondents sitting in Mullingar District Court Mullingar which was not in the District Court district in which the alleged crimes had been committed *or* in which the applicant had been arrested or resided.

16. Dealing with the issue of jurisdiction conferred by s. 41 of the Act of 1995 (i.e. (a) where the crime was committed or (b) where

the accused resides or (c) was arrested). Geoghegan J. stated at p. 421:

"I do not think that on any natural interpretation of the subsection the three lawful courts of jurisdiction can be treated disjunctively in the way (counsel) suggests so as to give rise to an interpretation that the Oireachtas merely intends that there could be a transfer from one of the three lawful venues for the exercise of jurisdiction to one of the others.

The true meaning of subs. (4) becomes clear in my view when one regards it as part of a new code or regime provided for by the amendments to s. 79 of the Act of 1924. If on a particular day there is no District Judge available for some reason in an appropriate district where it is intended to charge an accused, a judge in some other district can deal with the matter, but subs. (4) enables that judge to send it to the Judge of the district in which the case would have been commenced had such judge been available."

17. However a pivotal consideration in the case of *Coates* is set out in the last paragraph of Geoghegan J.'s judgment wherein he states

"I am therefore of the view that the first respondent never had jurisdiction to entertain these charges and that the defect cannot be cured by virtue of s. 41 of the Courts and Court Officers Act 1995".

But the essential point at issue, and upon which the decision in *Coates* hinged was that the respondent judge "never had jurisdiction save for the limited purposes of transferring the case to another of the districts where, under the Act, the jurisdiction could be exercised. In *Coates* the applicant was brought before a District Court in a district where the alleged crimes had not been committed, nor where he had been arrested nor resided. But this is far from the case here. In fact as is evident the allegations contained in the charges relate to matters which are stated to have occurred within the Dublin Metropolitan District itself, and therefore while the warrant may have been issued by District Judge McBride on the foot of residence, the Judges of the Dublin Metropolitan District simultaneously held jurisdiction in the instant case because of the place where the crimes were allegedly committed.

I do not accept that by swearing the information and obtaining the warrant before a judge in one district the respondent either irrevocably elects to bring the arrested party before that judge, or a peace commissioner in that district if a judge is not sitting, or confines himself to bringing the applicant before another district wherein the powers of such other judge are limited only to transferring the case back to the district in which the information were sworn. That would be the case if there was no other foundation for jurisdiction. But that is decidedly not the case here because of the identified location of the alleged offences which vested jurisdiction in the Dublin Metropolitan District. It is clear that the position in the instant case is therefore quite distinct from that which arose in the case of *Coates v. O'Donnell*.

18. It is difficult to avoid the conclusion that when this issue was raised in the District Court it was raised under a misconception that the power as exercised and of arrest under which the warrant was issued, were confined to the s. 11(1) of the Petty Sessions (Ireland) Act 1851; and that as a further misconception premised there on the only judge who the persons arrested could be brought before was the District Judge who issued the warrant or any other judge of that district. The true basis however which establishes jurisdiction on the facts of this case has been outlined earlier in the course of this judgment. In the circumstances the application for judicial review in these two cases must be declined.