Neutral Citation Number: [2005] IEHC 370

THE HIGH COURT

[2005 No. 308 JR]

BETWEEN

SEAN RONAN

APPLICANT

AND

DISTRICT JUDGE JOHN COUGHLAN AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

Judgment of Quirke J. delivered on the 16th day of November, 2005

1. By order of the High Court (Gilligan J.) dated the 22nd March, 2005, the applicant was granted leave to apply by way of judicial review for certain declaratory and other reliefs including an order of certiorari quashing an order made by the first named respondent on the 10th March, 2005, at a sitting of the District Court in the Dublin Metropolitan District. The order sought to be impugned was an order purporting to remand the applicant on bail subject to conditions which included:

> (a) a condition requiring the applicant to remain within his home in Ballyfermot, Dublin 10 and observe a curfew between the hours of 3.00 pm and 7.00 am daily and
>
> (b) a condition requiring the applicant to remain at all times within the area of Ballyfermot, Dublin 10.

FACTUAL BACKGROUND

2. The applicant was arrested on 10th March, 2005, and brought to Store St. Garda Station where he was charged with an offence contrary to the provisions of s. 4 of the Criminal Justice (Public Order) Act, 1994. The offence was alleged to have occurred on O'Connell St. on the same day.

3. The applicant was detained overnight in custody because the Gardaí discovered that there was a bench warrant outstanding in respect of the applicant.

4. The warrant related to another prosecution pursuant to the provisions of the Criminal Justice (Public Order) Act 1994.

5. On 10th March, 2005, the applicant was brought before the first named respondent at District Court No. 44 in the city of Dublin.

6. No objection was made on behalf of the prosecuting authorities to the grant of bail to the applicant. No request was made on behalf of the prosecuting authorities for the imposition of conditions as to bail. The first named respondent was made aware of the existence of the outstanding bench warrant in respect of the applicant.

7. Although an application for bail appears to have been made on behalf of the applicant no evidence was adduced before the first named respondent in respect of that application. The unchallenged evidence in these proceedings is that the first respondent:

> *"…having looked at the charge sheets and remarked that the defendant was getting drunk on O'Connell St…proceeded immediately to remand the applicant on his own bail of €100 but imposed two conditions…".*

8. They were as follows;

> 1. That the applicant should observe a curfew at his home in Ballyfermot Dublin 10 between the hours of 3.00 pm and 7.00 am everyday and
>
> 2. That the applicant should remain at all times and in all circumstances within the area of Ballyfermot, Dublin 10.

9. The two conditions imposed form the basis of the applicant's claim for relief in these proceedings.

10. The applicant was remanded to appear at the District Court on 7th April, 2005, on bail and subject to those conditions.

11. On 16th March, 2005, the applicant's solicitor re-entered the matter before the first respondent. He requested the first respondent to exercise the discretion conferred upon him by the provisions of s. 6(3) of the Bail Act, 1997, to vary the conditions of bail imposed upon the applicant by reason of their severity and the limitations which they were imposing upon the applicant.

12. The first named respondent upon discovering that the applicant was unable to attend court by reason of the bail conditions imposed refused to vary his order observing inexplicably that the applicant was *"a very lucky man"*.

THE RELIEF SOUGHT

13. The applicant seeks an order of *certiorari* quashing the order of the first named respondent made on 10th March, 2005, on the grounds *inter alia* that the order was made in excess of or without jurisdiction and contrary to the principles of fair procedures and natural and constitutional justice.

DECISION

14. It is unnecessary to reaffirm that every person charged with the commission of a criminal offence enjoys the presumption of innocence.

15. It is based upon that presumption that the principles which govern the right of an accused person to bail have been developed and defined by the courts. Those principles, are in the main, to be found in the case of *The People (Attorney General) v. O'Callaghan*

[1966] I.R. 501.

16. Some provisions of the Bail Act, 1997 may also be applied by the courts in determining whether an accused person should be granted bail.

17. The evidence adduced in support of this application has disclosed that in deciding whether or not to grant bail to the applicant the first respondent did not consider any of the principles which applied to bail applications or any provisions of the Bail Act 1997.

18. The unchallenged evidence adduced on behalf of the applicant discloses that he simply *"…looked at the charge sheets and remarked that the defendant was getting drunk on O'Connell St."*

19. Although it was brought to the attention of the first respondent that there was an outstanding bench warrant in existence in respect of the applicant the first respondent did not refuse bail or impose conditions on the grant of bail on the ground that the existence of the warrant comprised evidence that the applicant was unlikely to appear in order to answer the charge preferred against him.

20. The respondent did not suggest that bail should be refused or conditions imposed on the grounds that the applicant was likely to interfere with witnesses or evidence or that bail should be refused or conditions imposed by reason of any provision of the Bail Act, 1997.

21. Instead, for reasons which were not explained and which appear inexplicable, the first respondent purported to grant bail to the applicant but imposed upon the grant conditions which were so restrictive that they came close to comprising a refusal to grant bail and did in fact comprise an unwarranted, unlawful and unnecessary restriction upon and interference with the applicants constitutional right to liberty.

22. The bail purportedly granted by the first respondent to the applicant was subject to two conditions that is:

> 1. That the applicant should observe a curfew at his home in Ballyfermot, Dublin 10 between the hours of 3.00 pm and 7.00 am everyday and,
>
> 2. That the applicant should remain at all times and in all circumstances within the area of Ballyfermot, Dublin 10.

23. The effect of condition (1) above was to confine the applicant to one household in west Dublin for a period of sixteen hours of every day.

24. The effect of condition (2) was to confine the applicant at all times and in all circumstances to a comparatively small area in the city of Dublin. Under no possible circumstances could condition (2) above have been required either:

> (1) because the court was concerned that the applicant might not appear to answer the charges preferred against him or,
>
> (2) because of any risk that the applicant might interfere with witnesses or,
>
> (3) in order to accommodate any of the objectives identified in the Bail Act, 1997.

25. Condition (1) above could not have been imposed by reason of an apprehension by the Court that the applicant might interfere with witnesses. There was no evidence which could possibly support such an apprehension. Neither could a condition have been imposed in order to accommodate any of the objectives of any of the provisions of the Bail Act, 1997.

26. On the evidence adduced in these proceedings condition (1) was not imposed by the first respondent by reason of any apprehension that the applicant might not appear to answer the charges preferred against him. Had it been imposed on that ground it would have comprised an unduly severe restriction which would have been wholly unwarranted by any evidence before the District Court at the time of imposition.

27. However, as I have indicated, the evidence adduced in these proceedings has disclosed that the decision of the first respondent to impose the conditions which he imposed, was based upon considerations other than the principles which should have been applied to an application for bail.

28. It follows from the foregoing that I am satisfied that the order made by the first respondent on 10th March, 2005, was made in excess of jurisdiction.

29. Mr. O'Higgins B.L. has argued on behalf of the Director of Public Prosecutions that the applicant is estopped from challenging the decision because he elected to pursue the statutory remedy afforded to him by s. 6(3) of the Bail Act, 1997.

30. That provision provides as follows:

> "Where an accused person is admitted to bail by a court on his or her entering into a recognisance subject to one or more of the conditions referred to in sub-s. (1)(b), that court may, on the application to it in that behalf at any time by the accused person, if it considers it appropriate to do so, vary (whether by the alteration, addition or revocation of a condition) a condition."

31. Mr. O'Higgins says that since the applicant applied pursuant to s. 6(3) of the Act of 1997, on the 16th March, 2005, to the first respondent for a variation of the conditions imposed upon the grant of bail he accepted the validity of the order made on 10th March, 2005, acquiesced in the statutory process which enabled the variation of that order and cannot now be seen to impugn the order.

32. Alternatively Mr. O'Higgins argues that the applicant had the option of pursuing an appeal to the High Court which would have enabled him to obtain the relief which he seeks in these proceedings speedily and without expense or inconvenience.

33. He says that the discretionary relief of *certiorari* ought to be refused by this court on that basis.

34. He has relied upon a number of authorities in support of his contention including *Burns v. District Judge Early and the Director of*

Public Prosecutions (Unreported (Ó Caoimh J.) High Court 5th September, 2002), *R v. Williams and Justices of Swansea Ex Parte Phillips* [1914] 1 K.B. 608., *Thomas v. University of Bradford* [1992] 1 ALL E.R. 504 and in particular *Buckley v. Kirby* (Unreported (Geoghegan J.) Supreme Court 18th July, 2000).

35. I cannot accept his submissions. The order made by the first named respondent on 10th March, 2005, was an order which profoundly interfered with the applicants constitutionally protected right to liberty. It was not made in due course of law because it was unwarranted by any evidence and unjustified by any principle of law. It was therefore unlawful.

36. An application was made on behalf of the applicant to the first named respondent on the 16th March, 2005 seeking to vary the unlawful order. That application was made pursuant to the provisions of s. 6(3) of the Bail Act, 1997. Whether a variation would have rendered the order lawful is open to question. However the first respondent refused to vary the order and the applicant remained profoundly and fundamentally affected by the unlawful order.

37. Mr. O'Higgins is certainly correct to say that this court should apply circumspection in the exercise of its discretion to grant relief by way of *certiorari* and should be reluctant to do so where other remedies are available to applicants.

38. He says that the applicant ought to have appealed the decision to the High Court and relies upon the following extract from the decision of the Supreme Court (O'Higgins C.J.) in *The State (Abenglen Properties Ltd.) v. Dublin Corporation* [1984] I.R. 393 in support of that contention:

> *"The question…arises as to the affect of the existence of a right of appeal or an alternative remedy on the exercise of the court's discretion. It is well established that the existence of such a right or remedy ought not to prevent the court from acting. It seems to me to be a question of justice. The court ought to take into account all the circumstances of the case, including the purpose for which certiorari has been sought, the adequacy of the alternative remedy and, of course, the conduct of the applicant. If the decision impugned is made without jurisdiction or in breach of natural justice then, normally, the existence of a right of appeal or of a failure to avail of such, should be immaterial. Again, if an appeal can only deal with the merits and not with the question of the jurisdiction involved, the existence of such ought not to be a ground for refusing relief. Other than these, there may be cases where the decision exhibits an error of law and a perfectly simple appeal can rectify the complaint…in such cases, while retaining always the power to quash, a court should be slow to do so unless satisfied that, for some particular reason, the appeal or alternative remedy is not adequate".In this case I have found that the order made by the first named respondent on 10th March, 2005, was made in excess of jurisdiction.*

39. I am satisfied also that the order was made in breach of the principles of natural justice because, in the circumstances which arose, the applicant's advisers were not afforded an opportunity to make adequate representations on behalf of the applicant.

40. Where an accused person is deprived of his or her constitutional right to liberty by reason of an order made in excess of jurisdiction, in breach of the principles of natural law and in apparently flagrant breach of established principles of law then it is appropriate that such an order should be quashed.

41. It follows that the applicant is entitled to the relief which he seeks.