THE COURT OF APPEAL

Neutral Citation Number: [2018] IECA 158

Appeal number [2017 / 77 J.R.]

High Court record number [2016 /65 J.R.]

Birmingham P.
Mahon J.
Hedigan J.

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

AND THE COMMISIONER OF AN GARDA SÍOCHÁNA

RESPONDENTS

AND

JOHN PAUL LEDWIDGE

APPLICANT

JUDGMENT of the Court delivered on the 11th day of June 2018 by Mr. Justice Hedigan

1. In this application the applicant seeks to appeal from:

> (a) The decision of the High Court refusing to grant the reliefs including certiorari of the decision of the district judge by way of judicial review.
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> (b) The decision of the High Court refusing to grant relief by way of mandamus ordering the return of the sums of money seized by An Garda Síochána on the 14th August 2015.
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> (c) The decision of the High Court refusing relief on the basis that the applicant had not exhibited the order of adjournment sought to be quashed in the context of the proceedings.
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> (d) The decision of the High Court refusing relief on the basis that the District Court appeal was the more appropriate course of action rather than judicial review proceedings. The applicant contends that the learned District Court judge erred as to his jurisdiction to hear the matter of their leased property application and this ruling is one that may be more appropriately quashed in judicial review proceedings.

2. The applicant's house was searched by members of An Garda Síochána on the 14th August 2015 pursuant to a search warrant. In the course of this search sums of cash totalling €23,040 and $1,188 US were found concealed in unusual places throughout the premises in various bundles and denominations. Later that day the applicant attended at a Garda station where he claimed that the seized monies were the proceeds of betting winnings. He produced a number of betting slips to the value of in or about a quarter of the money seized. The Gardaí were not satisfied with his explanation as to how he came into possession of the money seized.

3. Following the seizure of the monies, on the following day an application was made pursuant to s. 38 of the Criminal Justice Act 1994 as amended by s. 20 of the Proceeds of Crime (Amendment) Act 2005 for an order authorising the retention of the money for a period of three months. Communication between the applicant's solicitor and An Garda Síochána commenced but did not result in the return of the money. On the 6th December 2015 the applicant served proceedings under the Police Property Act 1897 seeking the return of the cash. On the 18th December 2015 this application came before the District Court for hearing. On the understanding that it would be resolved without the need for court intervention, the matter was adjourned to the 25th January 2016. On that date Garda Tom Murray informed the court that he was currently carrying out a money laundering investigation in relation to the cash the subject matter of the police property application. Upon being informed thus, the learned District Court judge stated that he could not make an order in relation to the money whilst it was the subject of a money laundering investigation and he adjourned the applicant's application for mention to the 13th June 2016 when the Court was to be updated as to the status of the money laundering investigation and as to whether a file had been sent to the Director of Public Prosecutions in relation to it. The s. 38 order was not renewed on the basis that the investigation into the subject money began to reflect a money laundering investigation as opposed to a proceeds of crime investigation. As such, the money is retained by the Gardaí pursuant to the provisions of s. 7 of the Criminal Justice Act 2006 which relates to the holding of evidence pending a criminal investigation.

4. On the 1st February 2016 the applicant was granted to seek judicial review for the following reliefs:

> (i) An order of *mandamus* compelling the respondents to return the money that was the subject matter of the application pursuant to s. 38 of the Criminal Justice Act 1994 to the applicant,
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> (ii) An order of *certiorari* of the order made by district judge Dunne on the 25th January 2016 refusing to return the money that was the subject of the police property application to the applicant. Leave was granted by Humphreys J. The matter came on for hearing on the 25th October 2016 before Barrett J. who delivered judgment on the 15th December 2015 refusing the reliefs sought. The learned High Court judge noted that the application for the application for *mandamus* had been abandoned at the hearing. In his judgment the judge noted that no copy of the District Court order sought to be quashed was actually before the court. The judge accepted the evidence of Garda Murray that on the 25th January 2016 the learned district judge on being informed that the Garda was carrying out a money laundering investigation stated that he could not make an order in relation to the money whilst it was the subject of such an

investigation and that he proceeded to adjourn the applicant's application. It is the respondent's position that the District Court did not make an order refusing to return the money to the applicant but made an order adjourning the matter for mention to the 13th June 2016 when the court was to be updated in relation to the status of the money laundering investigation and as to whether a file had been sent to the Director of Public Prosecutions in relation to it.

5. This being so, the judge noted that it was not possible for the High Court to quash an order that was never made.

6. The learned High Court judge further decided that the more appropriate course of action for the applicant was to bring an appeal against the decision to adjourn the hearing of the police property application. Lastly, in the learned High Court judge's judgment, if there had been any mishap in the District Court's handling of the application then that could be cured and best cured on appeal.

The submissions of the applicant

7. Connor Devally, senior counsel on behalf of the applicant, agreed that he was not challenging the search warrant nor was he resiling from the abandonment of the *mandamus* claim in the High Court. The appeal was focused entirely on the application for certiorari. In his submission, the district judge's statement to the effect that he could not deal with the police property application whilst an investigation was existing into money laundering was in effect an abandonment of his jurisdiction to do so. It was submitted that to date no charges had been brought against the applicant nor was any information given by the Gardaí as to the status of an investigation into money laundering which was the sole reason for retaining the seized cash. They further submitted that the period during which the s. 38 right to withhold the seized cash had long expired. The learned High Court judge had erred in holding that an appeal to the Circuit Court was the appropriate remedy. Such an appeal would only be against a decision to adjourn. Such appeals were very rare indeed. In his submission the appeal remedy was one more likely to lead to confusion. As the case was that the learned district judge had improperly fettered his jurisdiction, the correct form of relief was by way of judicial review. It is submitted that the respondents did not have a lawful basis for the retention of the applicant's money. The learned district judge erred in how he dealt with the applicant's police property application and by holding that he did not have jurisdiction to hear the matter when in fact and as a matter of law he was not so constrained.

Submissions of the respondent

8. Mr. O'Higgins, senior counsel on behalf of the respondents, argued that the proceedings are misconceived, futile and premature. He submits that the District Court order was not one refusing the application but was an adjournment made for good reason. That reason was outlined to the district judge by the investigating Garda. He indicated that a money laundering investigation was in train in relation to the seized cash the subject matter of the police property application. The district judge formed the view that he could not make an order in relation to this money whilst it was subject to such an investigation. No order was made refusing to return the money to the applicant. The only order made was one adjourning to the 13th June 2016 when the Court was to be updated in relation to the status of the money laundering investigation and as to whether a file had been sent to the Director of Public Prosecutions in relation thereto. Mr. O'Higgins further submitted that the order that was actually made is long since spent because the adjournment date has come and gone. The application therefore is moot. Even were this not so, it is submitted that this application is premature. The correct form of procedure for the applicant to follow is to apply to the District Court within the police property application already before it or alternatively with a new similar application and if at this stage the Court refuses to deal with the matter then they may choose to bring their appeal to the Circuit Court against the refusal to deal with the application or take whatever other course of action they may be advised. The respondent submits that the High Court refused the application on two bases. No order existed to be quashed. This was a plainly correct finding. Secondly the remedy sought was an inappropriate one. The respondent concluded the submissions by reiterating that the order sought to be quashed had not been produced in court. That order was an order for an adjournment.

The decision of the Court

9. It is never helpful to find in a judicial review application for *certiorari* of an order that the said order is not available in court. It almost always means that the applicant has not actually seen the order in question. It is not uncommon to find when the order is to hand that it is in fact somewhat different to that which is expected. In this case had the order been obtained at the outset and examined it would have shown quite clearly that it was one to adjourn the police property application and not to refuse it. That might well have lit a bright red light for the applicant herein. As it is, the order sought to be quashed was quite clearly never made. The Court in judicial review has a jurisdiction strictly limited to the reliefs and grounds described in the application. The relief sought is to quash a particular alleged decision and that is the only jurisdiction that the High Court had. The Court was satisfied quite correctly that the decision actually made was quite different from the one sought to be quashed.

10. It is also the case that the remedy sought is not the appropriate one. The best way for the applicant to have proceeded was to appear on the 13th June 2016 and ascertain what the state of the Garda investigation was. That was the purpose for which the adjournment was made by the learned District Court judge. The District Court is quite ready to impose deadlines in respect of many different matters including criminal. There is every reason to believe that if no further information was forthcoming to justify the continued retention of the seized cash, the district judge would have proceeded to hear the police property application.

11. In my judgment, the learned High Court judge was quite correct in the two grounds upon which he refused the reliefs. I would dismiss the appeal.