Neutral Citation Number: [2008] IEHC 60

THE HIGH COURT
JUDICIAL REVIEW

[2007 No. 190 J.R.]

BETWEEN

KEVIN TRACEY

APPLICANT

AND
DISTRICT JUDGE TOM O'DONNELL

RESPONDENT

AND
THE DIRECTOR OF PUBLIC PROSECUTIONS

NOTICE PARTY

Judgment OF Mr Justice Brian McGovern delivered the 6th day of March, 2008

1. By order made on the 26th day of February, 2007, the High Court had granted the applicant leave to apply for Judicial Review for the reliefs set out at paragraph D. in the Statement of Grounds and on the grounds set forth in paragraph E. therein. In summary, the grounds were as follows:

> (i) That the respondent failed to accede to the applicant's application to adjourn the case and refused a stay on the proceedings while the matter was being dealt with in the High Court.
>
> (ii) The respondent refused an application to dismiss the case, although the time limit of six months had been exceeded.
>
> (iii) The respondent refused an application to dismiss the case in the absence of evidence and on the basis that the charge was founded on hearsay.
>
> (iv) The respondent refused a "Gary Doyle Order" when the application was made at the first opportunity.
>
> (v) The respondent refused a copy of all witness statements on the 28th of November, 2006 prior to the District Court trial.
>
> (vi) The respondent denied the applicant a fair hearing and due process.

The applicant also sought various ancillary orders including an order quashing the judgment of the respondent given in the District Court in the matter of *Garda Deirdre Ryan v. Kevin Tracey* wherein he found the applicant guilty of careless driving. The applicant also sought various mandatory orders as set out in the Statement of Grounds and a recommendation that the Attorney General's scheme be applied.

The facts

2. The hearing in the District Court took place on the 28th of November, 2006 and was recorded by an official stenographer retained by the applicant.

3. At the commencement of the proceedings, the applicant applied for a stay in the light of High Court proceedings bearing record no. 2006 no. 652 J.R. These were the proceedings for Judicial Review arising out of a finding by District Judge Aeneas McCarthy that the applicant was guilty of contempt in the face of the Court, on the 31st of May 2006. Those Judicial Review proceedings have been heard by this Court in conjunction with this application.

4. The applicant did obtain a stay on his contempt conviction, pending the determination of the Judicial Review on that point. He did not obtain a stay relation to the hearing of the Road Traffic Act prosecution. The transcript of the hearing in the District Court on the 28th of November, 2006 establishes that the prosecutor informed the Court that there was only a stay on the District Court committal proceedings and not the Road Traffic prosecution. In the course of this hearing, I have been presented with a number of orders of the High Court and in none of them does it appear that a stay has been granted in relation to the Road Traffic Act prosecution. Indeed it appears that on the morning of the 28th of November, 2006, the applicant applied to the High Court for a stay and was refused.

5. The applicant also sought an adjournment of the hearing in the District Court to await the orders of the High Court in another application which he had and which was due for hearing on the 12th of December, 2006.

6. The respondent refused an adjournment for two reasons. In the first place, no stay had been ordered, and secondly, a witness had travelled from the United Kingdom to give evidence. When the District Judge told the applicant that the matter was proceeding to hearing, the applicant said he wanted it adjourned on another ground, namely that he had not got a "Gary Doyle Order". This was the first time the applicant had sought such an order. The respondent took the view that the applicant was too late in applying for a "Gary Doyle Order" at that time, and that he was not granting an adjournment on that basis.

7. In my view, the respondent was perfectly entitled to proceed with the hearing on the basis that there was no stay and he also correctly used his discretion to proceed on the basis that there was a witness in Court who has travelled from the United Kingdom for the hearing of what was a routine Road Traffic offence.

8. The applicant had been in Court on the 31st of May, 2006 when a date for hearing was fixed and the first time he applied for a "Gary Doyle Order" or for witness statements was at the hearing on the 28th of November, 2006.

9. Counsel for the respondent argues that this was a summary prosecution and the facts were not complex. The case could be readily distinguished from *DPP v. Doyle* [1994] 2 I.R. 287, and the principles set out by O'Higgins C.J. in *The State (Healy) v. Donoghue* [1976] I.R. 325 at 350 applied. I accept that submission. In the hearing before me, the applicant did not show any prejudice to him on account of the unwillingness of the respondent to make a "Gary Doyle Order" or to stay the proceedings.

10. In my view, the respondent dealt with both issues fairly and within the limits of his discretion and he also acted within jurisdiction.

11. I therefore refuse the applicant's claim for relief on the basis of refusing a stay and refusing to adjourn the case.

12. The Road Traffic offence alleged against the applicant occurred on the 30th of August, 2004. An application for a summons was made on the 17th of February, 2005, and was therefore within the six month time limit required by s.10 of the Petty Sessions (Ireland) Act, 1851 which requires that a complaint be made within six months from the offence. Section 1 (7) (a) of the Courts (3) Act, 1986 provides that the provision in any enactment passed before that Act relating to the time for the making of a complaint, shall apply, with any necessary modifications in relation to an application for a summons. In the circumstances of this case, I hold that the respondent was correct in deciding that the complaint was made within the prescribed period. In those circumstances, I reject the applicant's claim under this heading.

13. The applicant claims that the evidence in the District Court was based on hearsay. Just as the applicant made unwarranted accusations against Counsel in the High Court, he also stated to the District that it was proved that Garda Deirdre Ryan was a liar. There was no basis for this allegation. Mr Tracey argued that in an affidavit sworn in the judicial proceedings bearing record no. 2006 no. 652 J.R., Garda Ryan swore that the applicant had driven on the footpath at speed on the occasion complained of. He pointed out that she did not witness the incident. I think it is useful to quote what Garda Ryan said in her affidavit. In paragraph 3 of her affidavit sworn on the 2nd of October, 2006, she stated, "I say and believe that applicant faces a charge of careless driving which is alleged to have taken place on the 30th of August, 2004. A complaint was made to the Gardaí by a member of the public that the applicant drove his motor car, 02D 14492, at Park Lane, Chapelizod, on the footpath at speed. The complainant was staying at her aunt's house in Park Lane at the time. She was physically disabled and alleges that the motor vehicle was driven in such a manner that she was forced to press up against a wall and was in fear of being knocked down by the car".

14. It is quite clear from that affidavit that the Garda was recording the complaint received from a member of the public and is not purporting to say that she saw the applicant driving on the occasion in question. There was some issue as to whether the pedestrian on the footpath was physically or mentally disabled. In fact, her aunt said in evidence in the District Court, that she had a physical and a mental disability. The applicant sought to make something of this and suggested that the Garda was wrong in stating that she had a physical disability. This was but one of many examples of the applicant "nitpicking" and seeking to characterise minor uncertainties or, perhaps inaccuracies, as lies and untruths. This was not very helpful. While arguing on this point, the applicant also objected to the evidence given by Ms Olive Boyle as to the capacity of her niece to understand the meaning of an oath. He claimed that she purported to give evidence as an expert witness. She did nothing of the kind. She was merely asked for her opinion as to whether or not her niece would be capable of understanding the meaning of an oath. It is clear from the transcript of evidence in the District Court that in fact she was satisfied and the Judge was satisfied that she could give evidence on oath, and she did so. She was therefore not treated differently to any other witness and was examined and cross-examined in the usual way. I find the applicant's argument on this point to be without merit. A reading of the transcript from the District Court does not establish any evidence that the case against the applicant was decided on the basis of hearsay evidence.

15. The applicant also claims that there was no evidence before the Court and that the respondent should have dismissed the case. A perusal of the transcript shows that Ms Olive Boyle was sitting in her front room when the applicant's car came up the path by her sitting room window. She said that a short time later, her niece came into the house, "in a state of nerves". When she asked what happened, her niece told her that when walking up the lane, she heard a car coming behind her and that she had to mount the footpath and press herself against the wall because the driver, whom she named as the applicant, mounted the footpath with his car. That evidence was hearsay inasmuch as it could not be admitted to prove the fact of Mr Tracey's driving. But it seems to me that it was evidence the District Judge was entitled to receive of a complaint made to Ms Boyle by her niece and the reason for her upset. No objection was taken to that evidence at the hearing, and when Ms Boyle's niece (Ms Brigid O'Dowda) gave evidence, she described in detail what happened. Furthermore, Ms Boyle was pressed on the matter and described how the car passed very close to the window ledge of her house and she said it was a few seconds later when her niece came in.

16. As I have already stated, there was no evidence to show that the case was decided on the basis of hearsay evidence. Even if the account of the complaint received by Ms Boyle could be interpreted as hearsay, that evidence was given first hand by Ms O'Dowda and was, together with the eyewitness evidence of Ms O'Boyle, the basis of the conviction.

17. Accordingly, I hold that there was ample evidence before the Court on which to find the applicant guilty of careless driving.

18. When the State completed its evidence, the transcript shows that the following exchange took place: -

> MR TRACEY: Judge, what is quite apparent here today is that there is no evidence for a defence, so, as far as that, because there is no evidence here today, I am taking no further participation with regard to evidence.
>
> JUDGE: Very well.
>
> MR TRACEY: And I am not here to give evidence, Judge.
>
> JUDGE: Very well. Insofar as this is concerned. So I would like you to be absolutely clear, I am inviting you, as such, in your own defence if you want to either make a statement, or alternatively if you want to give evidence in the witness box, that I am affording you that particular opportunity. And you are telling me that you, you do not intend to take any other part in the proceedings, is that correct? Do I understand that to be . . .
>
> MR TRACEY: Yes, Judge. No, because there are other remedies to be . . .".

19. The Judge then went on to give his decision in the matter and found the applicant guilty of careless driving. After the Judge had convicted the applicant, he asked him if he wished him to fix recognisance for an appeal, should he wish to do so. The applicant said that he did wish him to do so and the Judge duly fixed recognisance for an appeal. No appeal was ever lodged by the applicant. When I asked him why he did not appeal, the applicant said he would not appeal anything to the Circuit Court and would have good reason for not doing so.

20. I hold that there was sufficient evidence for the respondent to make the finding, which he did, and there was no reason why he should have dismissed the prosecution in the District Court on the basis of the applicant's submission.

I reject the claim of the applicant based on that ground.

21. The applicant has a number of grounds for his claim based on being denied a fair hearing and equality with the prosecution. I am quite satisfied from reading the transcript of evidence in the District Court that this claim is unfounded. The respondent showed great patience and forbearance in listening to the various applications made by the applicant in the hearing, and insofar as he refused submissions and applications of the applicant, he was entitled to do so and was acting within his discretion and within jurisdiction.

The applicant was given the opportunity to cross-examine witnesses and exercised this opportunity. He was given the opportunity to go into evidence or call evidence if he wished to do so and he declined to do so, as was his right. I find no evidence to support the applicant's claim that he was treated unequally or unfairly. Furthermore, it is clear that the respondent ruled on each of the applications made at the hearing, and if the applicant felt that the respondent was wrong in his rulings, he had a right of appeal which he declined to exercise.

22. The applicant claims that the respondent prevented him making his argument and submissions and did not give reasons for his decisions. Having considered the submissions of the parties and the affidavits and the transcript of the hearing in the District Court, I am satisfied that this case has not been made out and that the respondent acted reasonably and fairly having regard to the summary nature of the proceedings.

23. Although the applicant claims in his Statement of Grounds that the respondent did not comply with the principle of natural and Constitutional justice, human rights and basic fairness of procedures, I am satisfied that that case has not been established and that the claim under that heading must fail.

24. I have had an opportunity to hear and observe the applicant over two days while this matter and the related Judicial Review were argued. The applicant presented as an obsessive and argumentative individual with a tendency to introduce technical and legal points at every opportunity. I formed a clear view that this was for the purpose of frustrating the order of the Court on the contempt issue and the prosecution of the Road Traffic offence. Sadly, most of his legal arguments were not to the point and many of his claims I found to be vexatious. The applicant has the misguided view that any decision with which he is not satisfied can be dealt with by way of Judicial Review, rather than through the normal appeal process. I feel bound to say that the manner in which this case, and the related case, was prosecuted, resulted in a scandalous and shocking waste of valuable Court time and amounts to an abuse of process. In reaching this conclusion, I have made all due allowance for the fact that the applicant is a lay litigant, but one who, nevertheless, holds himself out as a person who has familiarised himself with the law and its procedures.