

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 918 J.R.]

BETWEEN

STEPHEN MANNING

APPLICANT

AND

JUDGE AENEAS MCCARTHY

RESPONDENT

(No. 2)

EX TEMPORE JUDGMENT of Mr. Justice Richard Humphreys delivered on the 11th day of January, 2017

1. The situation in this telescoped application for leave to seek judicial review is that on the 2nd September, 2015, an incident occurred in Castlebar District Court in which it is suggested that disorderly conduct occurred as a result of which the presiding judge was occasioned to rise and that a group of the public present then appointed one of themselves as a “judge” and purported to conduct some sort of proceedings. The applicant Dr. Manning was charged in relation to disorderly conduct arising from that incident. His trial has been taking place over a period of 12 days and the current position in relation to that trial is that the prosecution case has concluded. The defence case has yet to begin. On the 21st November, 2016, I refused two applications by the applicant for leave to seek judicial review by way of prohibition of the trial that was ongoing primarily on the grounds that the appropriate remedy was to pursue the criminal process rather than to seek to interfere with it midstream which could only be done in exceptional circumstances.

2. The Director states at paragraph 3 of the statement of opposition that the matter is therefore *res judicata* and essentially that it is an incorrect procedure to reapply for judicial review in the circumstances; and that seems to be correct. The Director also pleads at paragraph 7 and 8 of the statement of opposition that if and insofar as there’s any validity to the complaints by the applicant they can be made in the criminal process. There is very extensive law on alternative remedies probably most notably in the Supreme Court decision in *EMI Records v The Data Protection Commissioner* [2014] 1 I.L.R.M. 225, which admittedly does allow for exceptional circumstances in not pursuing an alternative remedy (such as an appeal which was the issue in that case).

3. While Dr. Manning submits that his case does come into the category of exceptional circumstance it seems to me that the main thrust of his complaints relate to issues such as the alleged failure by the prosecution to comply with an order for release of the DAR, alleged inaccuracies in evidence offered on behalf of the Director and a process whereby it is alleged that statements of prosecution evidence were put together based on a listening to DAR material that was not disclosed. It seems to me that those allegations are essentially merits-based allegations of the type that are discussed in the Supreme Court decision of *Sweeney v Fahy* [2014] IESC 50 (Unreported, Supreme Court (Clarke J.), 31st July, 2014), where the distinction is drawn between matters of merits and matters of legality, only the latter being suitable for judicial review. It seems to me that the complaint can’t be regarded as being sufficiently exceptional to oust the doctrine on alternative remedies. I’m not saying, for the purpose of clarity, that Dr. Manning doesn’t have a point. I’m not making a decision on the merits or otherwise of these complaints; that should be left to the criminal process nor am I saying that he can’t have access to judicial review if a point of legality emerges at the end of the process.

4. The only question is whether he should have that access at this point and for the reasons outlined, essentially those at paragraphs 3, 7, and 8 of the statement of opposition, the answer to that has to be in the negative.

5. However, I would conclude just with two comments. First of all, I would like to commend Dr. Manning for the courteous way in which he has made his submissions and secondly I will arrange to assist him to have a written record prepared of my ruling in this matter and in the ruling of the 21st November, 2016, and in a further judicial review which I dealt with on the 12th December, 2016.

6. There will be an order for the Director’s costs but I’ll stay the order for costs until the conclusion of the criminal process or any further judicial review proceedings against the Director, whichever first occurs.