Neutral Citation Number [2009] IEHC 475

THE HIGH COURT

2008 346 JR

BETWEEN

IWONA GRODZICKA

APPLICANT

AND

JUDGE AINGEAL NÍ CHONDÚIN

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

JUDGMENT of Ms. Justice Dunne delivered on the 30th day of October, 2009

1. Relief sought

1.1 On the 31st March, 2008 this Court (Peart J.) granted leave to the applicant to pursue, inter alia, the following reliefs by way of judicial review proceedings:-

1. An order of certiorari quashing the order of the first named respondent made in Court 52 on the 5th February, 2008 on the application of the second named respondent amending charge sheet 648003.

2. An order of prohibition or in the alternative an injunction restraining the second named respondent from pursuing the said prosecution.

3. An order of mandamus compelling the first named respondent to state a consultative case for the opinion of the High Court pursuant to s. 52 of the Courts (Supplemental Provisions) Act 1961 seeking the opinion of the High Court on whether in the circumstances as outlined to her on the 5th February, 2008 and the 18th March 2008 it was an error in law to amend charge sheet 648003 as requested on the 5th February, 2008 on the grounds that the amendment sought amounted to the substitution of a different offence and this application was made in excess of six months from the date of the alleged commission of the offence.

2. The facts

2.1 In the early hours of the 22nd July, 2007, the applicant was charged with the summary offence of obstructing a Garda contrary to ss. 19F (2) and 19(G) of the Criminal Justice (Public Order) Act 1994, as inserted by the Housing (Miscellaneous Provisions) Act 2002. The charge sheet read as follows:-

"Offence Charged: That you the said Accused/Defendant, on the 21/07/2007 at South Richmond Street, Dublin 2 in the said District Court Area of Dublin Metropolitan District did obstruct one Garda Enda Browne a member of an Garda Síochána in the execution of his duty under Section 19F of the Criminal Justice (Public Order) Act 1994.

Contrary to Section 19F(2) and 19G of the Criminal Justice (Public Order) Act 1994 (as inserted by Section 24 of the Housing (Miscellaneous Provisions) Act 2002.)"

2.2 The matter was first listed in the District Court on the 14th August, 2007 and evidence of arrest, charge and caution was given by Garda Enda Browne. At para. 5 of his affidavit sworn on the 29th July, 2008, he stated in this regard as follows:-

"5. On the 14th of August 2007 I gave evidence of arrest, charge and caution. I gave evidence that the accused was arrested on South Richmond Street, a public place, at 11.22 p.m. on the 21st of July 2007 for the offence of causing obstruction to me on South Richmond Street, as per Harcourt Terrace Charge Sheet 648003, which charge sheet was before the District Court on that date and upon a copy of which marked with the letters 'ED2' I have signed my name prior to the swearing hereof."

2.3 The matter was mentioned before the District Court on five occasions until the 21st December, 2007 when a hearing date of the 5th February, 2008 was fixed. The office of the second named respondent sent a letter to the applicant's solicitor by facsimile on the 4th February, 2008, indicating that it was their intention to make an application the following day to amend the charge sheet. The letter stated:-

"The prosecution are placing your office on notice that an application to amend charge sheet number 648003 will be made prior to the hearing tomorrow. This is the charge sheet in respect of the defendant Iwona Grodzika. The charge sheet currently reads 'his duty … under section 19F of the Criminal Justice (Public Order) Act 1994.' The application will be to delete the underlined wording.

Similarly the end of the charge reads Contrary to Section 19F(2) and 19G of the Criminal Justice (Public Order) Act 1994 (as inserted by Section 24 of the Housing (Miscellaneous Provisions Act 2002). The application will be to delete this wording as underlined."

2.4 The said application was made by Mr. Briscoe, solicitor of the office of the second named respondent. He handed in the above letter to the Court to illustrate the changes he wished to make to the charge sheet. It was his evidence also (as per para. 4 of his affidavit filed on the 11th August, 2008) that he informed the first named respondent that the charge should refer to subsection 3 of section 19 of the Criminal Justice (Public Order) Act 1994. The reason for the making the application is apparent from a reading of paragraph 6 of Mr. Briscoe's affidavit which states:-

> *"6. I further submitted that the Defence had been furnished with the prosecution statements of evidence in advance of the hearing date and therefore they had been supplied with very clear details of the alleged offence and where there was no suggestion of 'housing' or to the instant case being one concerned with operation or working of the Housing (Miscellaneous Provisions) Act 2002. I submitted that the wording of the charge or more specifically the reference to the Housing Act was a technical matter which did not go to the real issues in the case and that there was no incurable prejudice to the accused if the amendment was granted as the case was very clearly set out in the statements received by the Defence in advance of the hearing."*

2.5 Counsel for the applicant in the District Court, Mr. Mulrooney B.L., opposed the application to amend. He argued that the effect of the purported amendment would be the substitution of one distinct charge (an offence contrary to ss.19 F (2) and 19(G) of the Criminal Justice (Public Order) Act 1994, as inserted by s.24 of the Housing (Miscellaneous Provisions) Act 2002) for another (an offence contrary to s.19 of the Criminal Justice (Public Order) Act 1994, as amended by the Criminal Justice Act 2006). Mr. Mulrooney outlined the differences between the two offences to the Court and the fact that the penalty under s.19 (3) of the Criminal Justice (Public Order) Act 1994 was greater than that which the applicant may face under the original charge. He submitted that should the original complaint be dismissed by the Court that the second named respondent would be out of time to re-enter another charge because a period in excess of six months had elapsed since the cause of action. This time limit is contained in s.10 of the Petty Sessions Act 1851. He further submitted that a high degree of prejudice would be visited upon the applicant if the amendment was granted as she had a full defence prepared to the charge as per the charge sheet.

2.6 Having listened to legal argument the first named respondent granted the application to amend the charge sheet and adjourned the matter to the 3rd March, 2008.

2.7 On the 6th February, 2008, the applicant's solicitor wrote to the office of the second named respondent seeking clarification of the amended charge. It replied by letter dated the 14th February, 2008, and stated that the applicant would be prosecuted pursuant to s.19(3) of the Criminal Justice (Public Order) Act 1994, as amended by the Criminal Justice Act 2006.

2.8 The applicant's solicitor then sought to have the matter re-listed before the first named respondent to seek a reconsideration of her decision based on a submission that the effect of the amendment was to hear a new complaint outside of the timeframe permitted by s.10 of the Petty Sessions Act 1851 and was thus ultra vires or in the alternative for a consultative case stated for the opinion of the High Court pursuant to s. 52(1) of the Courts (Supplemental Provisions) Act 1961 ("the Act of 1961"). The applicant's solicitor wrote to the office of the second named respondent by letter dated the 26th February, 2008, enclosing a draft case stated and asking if consent to the case being stated would be forthcoming. It replied by letter dated the 28th February, 2008 that it would not consent to same.

2.9 The matter came on for hearing in the District Court on the 3rd March, 2008, before District Court Judge Cormac Dunne. The applicant made the application to have the case adjourned so that the first named respondent could be requested to state a case for the opinion of the High Court pursuant to s. 52(1) of the Act of 1961. The applicant was remanded on continuing bail to Dun Laoghaire District Court on the 18th March, 2008. On this date the matter again came before the first named respondent. Mr. Mulrooney submitted that the effect of the amendment was to hear a new complaint as s. 19(3) of the Act of 1994 was distinct to ss. 19F(2) and 19(G). He again contended that such an amendment was not permissible. He cited McAvin v. Director of Public Prosecutions (Unreported, High Court, Ó Caoimh J., 14th February, 2003), and Director of Public Prosecutions (King) v. Tallon [2007] 2 I.R. 230. In the alternative he requested the Court to state a case to the High Court pursuant to s. 52 (1) of the Act of 1961.

2.10 The first named respondent refused his application. It appears from the evidence given that she did not wish to revisit her original decision in the matter.

3. The issues

3.1 The first issue to examine is the effect of the amendment to the charge sheet of the 5th February, 2008, and whether it amounts to substitution of an entirely different charge. Consideration must also be given as to whether the first named respondent was functus officio on the 18th March, 2008. The second issue that arises is whether first named respondent, in refusing to state a consultative case stated to the High Court pursuant to s. 52 of the Act of 1961, erred in law.

4. Counsels' Submissions

4.1 Counsel for the applicant, Mr. Ó Lideadha S.C., made the case that the first named respondent had erred in law in granting the amendment to the charge sheet. He submitted that there was an entirely different charge, with different proofs and a different penalty being brought against the applicant and that this was not permissible for the reasons outlined by Ó Caoimh J. in McAvin v. Director of Public Prosecutions (Unreported, High Court, Ó Caoimh J., 14th February, 2003). Mr. Ó Lideadha acknowledged that the District Court had wide powers to amend charges but he contended that it did not have the power to substitute a charge. A District Judge, in his submission, could revisit an interim ruling and was not functus officio. He relied on a passage from the judgment of O'Daly J. in AG v. Simpson [1959] I.R. 335 in this regard. In the alternative he argued that the decision of the first named respondent of the 5th February, 2008, was unreasonable and irrational.

4.2 As regards the first named respondent's refusal to grant the application to state a case under s. 52 of the Act of 1961, he submitted that this was an error of law. He argued that a Judge could only refuse to state a case for the opinion of the High Court pursuant to that section if he or she concluded that the request was frivolous or that the particular question of law arising had been definitively decided by a binding authority of the Superior Courts.

4.3 Mr. Nolan B.L., for the second named respondent, submitted that the first named respondent acted within jurisdiction when making her rulings and that if an error was made it was made within jurisdiction. He relied on the judgment of Morris P. in Folan v. Judge John Garavan (Unreported, High Court, Morris P., 9th November, 2001) in this regard. He further submitted that there was no amendment made to the factual basis upon which the charge was founded and that applicant had clear knowledge of the substance of the complaint made against her and that no prejudice arose as a result.

4.4 He sought to distinguish the case of McAvin v. Director of Public Prosecutions (Unreported, High Court, Ó Caoimh J., 14th February, 2003) on the basis that there was a much greater element of change in the charge sheet than in the present case. In the present case, he argued that the complaint of obstruction of a Garda had not changed and that the amended charge could not be said to be an entirely different charge.

5. The amendment of the charge

5.1 In McAvin v. Director of Public Prosecutions (Unreported, High Court, Ó Caoimh J ., 14th February, 2003) the opinion of the High Court was sought, by way of appeal by case stated, as to whether a District Judge was correct in law in acceding to a prosecution application to amend a summons. The appellant was charged with failing to provide a breath specimen contrary to the Road Traffic Acts. The summons, in its original form, stated that there was a failure on the part of the appellant to comply with the requirement of a designated doctor to provide a specimen of blood. An application was made by the prosecution to amend the summons so as to charge the appellant with failing to comply with the requirement of a Garda to provide the sample. Ó Caoimh J. held that the District Judge had erred in law in granting the application to amend on the following basis:-

> *"I am satisfied that the section provides for distinct offences in regard to the failure to comply with the requirement of a member of An Garda Síochána on the one hand, which relates to the requirement to provide a specimen or blood (or urine) as the case may be, and the failure to comply with the requirement of a designated doctor 'in relation to the taking of a specimen' on the other hand. While these offences are created by the same section, I am satisfied that they are distinct offences. In this regard, I am satisfied that the power of amendment was exercised in the instant case to convert an accusation [sic] the commission of one offence to an accusation of the commission of a separate offence. Had this taken place within the period of six months from the date of the alleged offence, I am satisfied that it could have been done in the preferring of a separate charge against the accused ore tenus.*
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> *I am satisfied that the learned judge erred in law in these circumstances in permitting the amendment of the summons or complaint to prefer a wholly different charge against the appellant in circumstances where the time provided for in s.10 of the Petty Sessions Act, 1851 and applied by the Courts (No. 3) Act, 1986 had expired. While this is not a matter of jurisdiction but one of defence, I am satisfied that it was correct of the appellant's solicitor to submit to the District Court that by the proposed amendment the respondent sought to substitute one offence for another. It is clear that Mr. Lynam sought to rely on the time requirement specified in the Act of 1851."*

5.2 From the above it is clear that Ó Caoimh J. considered the failure to provide a specimen to a doctor and the failure to provide a specimen to a Garda to be separate offences and as such one could not be inserted for another by way of an amendment. It was noted that time limit of six months of preferring a new charge arising from the incident in question had passed.

5.3 In the subsequent case of Director of Public Prosecutions (King) v. Tallon [2007] 2 I.R. 230 MacMenamin J. referred to the case of McAvin and highlighted the prejudice the appellant faced in that case by the impugned amendment, at paragraph 22 on p. 242:-

> *"In considering the decision in MacAvin v. Director of Public Prosecutions (Unreported, High Court, Ó Caoimh J., 14th February, 2003) it is important to focus on the degree of prejudice which arose in that case by reason of the District Judge in so deciding. Firstly, as pointed out by Ó Caoimh J., the power of amendment was exercised to convert an accusation of the commission of one offence to that of the commission of a separate offence - it was effectively a substitution of one charge for another. Secondly, such amendment took place outside the period of six months from the date of the alleged offence. Thirdly, the procedure adopted was the purported amendment of the original offence rather than the preferring of a separate charge against the accused ore tenus . Fourthly, the application to amend the summons was made on the third occasion on which the accused was before the court. On each of the previous occasions the case had been adjourned owing to the fact that the respondent was unable to proceed. Finally the proposed amendment of the location of the offence (it was submitted) took place in a completely different place to that set out in the summons.*
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> *An amendment cannot be permitted therefore where there is such a degree of prejudice, and where it amounts to the substitution of a quite different charge and, where it is out of time. But this is not the situation on the facts of this consultative case stated."*

5.4 The question arises in the instant case of whether a technical amendment took place or a substitution of one charge for another one, each charge requiring different proofs. The charge sheet in its original form stated that the the applicant "did obstruct one Garda Enda Browne a member of an Garda Síochána in the execution of his duty under Section 19F of the Criminal Justice (Public Order) Act 1994" and indicated that this was "Contrary to Section 19F(2) and 19G of the Criminal Justice (Public Order) Act 1994 (as inserted by Section 24 of the Housing (Miscellaneous Provisions) Act 2002."

5.5 Sections 19 F (2) and 19 (G) of the Criminal Justice (Public Order) Act 1994, as inserted by s. 24 of the Housing (Miscellaneous Provisions) Act 2002 read as follows:-

> *"(2) Any person who obstructs or impedes or assists a person to obstruct or impede a member of the Garda*

Síochána in the execution of his or her duty under this section shall be guilty of offence.

…

19G (1) A person guilty of an offence under this Part shall be liable on summary conviction to a fine not exceeding €3,000 or to a term of imprisonment not exceeding one month or to both.

(2) In any proceedings for an offence under this Part it shall be presumed until the contrary is shown that consent under this Part is not given."

Therefore, under the above sections it must be proved that a person obstructed or impeded or assisted a person to obstruct or to impede a member of An Garda Síochána who was exercising his duty under s. 19 F, as inserted by s. 24 of the Housing (Miscellaneous Provisions) Act 2002. That duty is set out in s. 19F as removing or causing to be removed any object which has been brought onto a person's land without their consent when the person who brought the object onto land has refused to comply with a direction by a Garda to remove it.

5.6 The evidence of Garda Browne, as quoted at paragraph 2.2 above, makes it clear that the complaint made before the District Court on the 14th August, 2007 was in the exact terms of the original charge sheet.

5.7 The application to amend the charge sheet resulted in the applicant facing a charge under s. 19 (3) of the Criminal Justice (Public Order) Act 1994, as amended by s. 185 of the Criminal Justice Act 2006 which provides:-

"19. (3) Any person who resists or willfully obstructs or impedes –

(a) a person providing medical services at or in a hospital, knowing that he or she is, or being reckless as to whether he or she is, a person providing medical services, or

(b) a person assisting such a person, or

(c) a peace officer acting in the execution of a peace officer's duty, knowing that he or she is or being reckless as to whether he or she is, a peace officer so acting, or

(d) a person assisting a peace officer in the execution of his or her duty,

shall be guilty of an offence.

Section 19 (4) of the Criminal Justice (Public Order) Act 1994, as amended by s. 185 of the Criminal Justice Act 2006 defines "peace officer" as "a member of the Garda Síochána, a prison officer or a member of the Defence Forces".

5.8 Therefore, what was now to be proved was that the applicant resisted or willfully obstructed a peace officer in the execution of his duty and that she was knowing or being reckless as to whether the person is a peace officer acting in the execution of his duty.

5.9 It is clear that the proofs in respect of the offence in the original charge sheet and the amended charge sheet were considerably different. The penalties also differed. As stated above s.19G of the of the Criminal Justice (Public Order) Act 1994, as inserted by s. 24 of the Housing (Miscellaneous Provisions) provided for a "fine not exceeding €3,000 or to a term of imprisonment not exceeding one month or to both". In respect of person found guilty of an offence under s. 19(3), s. 19(4) of the Criminal Justice (Public Order) Act 1994, as amended by s. 185 of the Criminal Justice Act 2006 provides for a penalty of "a fine not exceeding €2,500 or to imprisonment for a term not exceeding 6 months or to both". The differentiation in respect of penalties is of importance when considering the prejudice to the applicant. The fact that the applicant appeared in the list five times in the District Court between her first appearance on the 14th August, 2007 and the 21st December, 2007, when a hearing date was fixed is also of relevant in this regard. The application to amend the charge sheet was not brought until the 4th February 2008.

5.10 The case was made by the second named respondent that the applicant was not prejudiced as she knew the essence of the case being made against her and was appraised of all the facts.

5.11 As to whether the matter was functus officio by the time the second application was made on the 18th March, 2008, the following obiter comments from O'Daly J.'s dissenting judgment in Attorney General v. Simpson [1959] I.R. 335 at p. 346 are relied on by the applicant:-

"A judge is always free to revise an interim ruling. He is, so to say, still in itinere and he may retrace his steps. If it were not so a judge presiding at a trial could be compared to a man moving along a passageway who as he advanced every few steps found a door swinging out behind him, locking itself, and barring his return. A trial or legal proceedings has many terrors for the unwary but not this.

The Justice here even if he had, in conformity with Rule 55 of the District Court Rules, immediately entered up his ruling that the evidence sought in cross-examination was admissible would nonetheless, up to the moment of making his order sending forward for trial or refusing informations, have been free to state a case on a question of law. Every question of law may be said to be 'arising' in the case while the justice is still not functus officio .

For the reasons indicated the Case Stated before the Court is in my opinion entertainable."

5.12 That case concerned whether s.83 of the Courts of Justice Act 1924, as amended by s.56 of the Courts of Justice

Act 1936 conferred jurisdiction on a District Judge to state a case in respect of the preliminary investigation of indictable offences. The majority held that it did not and that it could only arise in cases in which the District Judge was empowered to try and determine.

6. The refusal of the consultative case stated

6.1 The application to amend the charge sheet was granted by the first named respondent on the 5th February, 2008. It was only subsequently, on the 18th March, 2008, that the Court was asked to state a consultative case pursuant to s. 52 of the Act of 1961 to the High Court. Section 52(1) of the Courts (Supplemental Provisions) Act 1961 states as follows:-

> *"52.- (1) A justice of the District Court shall, if requested by any person who has been heard in any proceedings whatsoever before him (other than proceedings relating to an indictable offence which is not being dealt with summarily by the court) unless he considers the request frivolous, and may (without request) refer any question of law arising in such proceedings to the High Court for determination."*

6.2 It is clear from the wording of s. 52 of the Act of 1961 that it is a mandatory provision. If a request is made to the District Court by any person who has been heard in any proceedings for a consultative case to be sent to the High Court, other than proceedings relating to an indictable offence which is not being dealt with summarily by the District Court, it must be sent. Section 52 of the Act of 1961 is silent, however, as to a timeframe within which this must be done. This is to be contrasted with s. 51 of the Act of 1961 which expressly provides for a case stated by way of appeal within fourteen days of the determination of the matter in the District Court.

6.3 If proceedings are "before" the District Judge, as s. 52(1) of the Act of 1961 requires this would seem to infer that the matter had not been disposed of. Therefore, up until the point of a final decision being given I am satisfied that a case must be stated by a District Judge pursuant to s. 52(1) of the Act of 1961 if asked to do so by a person who has been heard in the proceedings. This did not occur in this case. The learned District Judge could not have been described as and was not functus officio on the 18th March, 2008 when the second application was made for a consultative case stated.

6.4 It appears that the learned District judge refused to state the case on the basis that she had already decided the matter but as I have indicated above it seems to me that the learned District Judge could have considered a further application to have an appeal by way of a consultative case stated. However, it does seem to me that such an application would have been premature at the time when the application was made, whether it was the 5th February or the 18th March, 2008. In Folan and Ors. v. Judge John Garavan, (Unreported, High Court, 9th November, 2001) Morris J. considered the jurisdiction of the District Court in relation to applications to state a Consultative Case to the High Court. At p. 6 of his judgment, he made the following observation:

> *"If it were the case that there is some doubt whether the District Judge agreed or disagreed to state a consultative case I am of the view that in the exercise of my discretion I should decline to make the Order sought in this case. Murphy J. in Brady and Others v Cavan County Council 2000 ILRM 81 in relation to the exercise of this jurisdiction insofar as the affairs of local authorities are concerned had this to say:*
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> *'It is well settled law that the granting or withholding of judicial review by way of mandamus is discretionary. I would have no doubt that such a discretion should be exercised sparingly in relation to the affairs of a local authority and in particular should not be granted at all where any doubt exists as to the existence of a duty or the adequacy of its performance.'*
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> *I respectfully agree with this view an consider that the discretion should be exercised equally if not more sparingly when the Order is sought against a District Judge, as a variety of alternative procedures are open to the Applicants as an alternative to the stating of a Consultative Case Stated by the District Judge. The appeal procedure from the District Court to the Circuit Court remains intact and available to the Applicant if convicted of the offences referred to in the summonses…"*

Morris J. went on at p. 9 to state:

"The application was made at a time when no evidence had been heard, there were no findings of fact, no agreement as to facts had been entered into and in my view at the time when the application was made to the District Judge the framing of a case stated upon which the High Court could advise on the law was impossible…"

He also referred to a passage from the judgment of Kenny J. in Corley v. Gill [1975] I.R. 313, where he said:-

"There is no basis to support a question of law until evidence has been given and the facts found."

7. Conclusions

7.1 It seems to me that there are a number of difficulties in the application before me. First of all, assuming that the District Judge in this case made an error of law in amending the charge sheet, such an error could only have been an error made within the jurisdiction of the court and as such, the decision is not amenable to judicial review by way of certiorari. If the applicant were to be convicted on foot of the amended charge sheet, the Applicant could appeal to the Circuit Court or could invoke the procedure of Appeal by way of Case Stated provided for by the Summary Jurisdiction Act 1857 as extended by the Courts (Supplemental Provisions) Act 1961.

7.2 The other difficulty I find with this application flows from the nature of a consultative case stated and the comments of Morris J. referred to above. There is some element of conflict on the affidavits before me as to what precisely occurred in the hearings before the District Court. What is beyond dispute is that no evidence was heard and there are no facts found or agreed by the parties to enable the High Court to be consulted on a question of law. A draft Consultative Case

Stated was exhibited in the Affidavit of Michael Finucane grounding this application in which the question at issue was formulated as follows:

> "In the circumstances as set out above, was it an error in law to amend the charge sheet as requested on the 5th of February 2008, on the grounds that the amendment sought amounted to the substitution of a different offence and this application was made in excess of six months from date of the alleged commission of the offence."

7.3 The draft consultative case stated appears to be a recitation of the submissions made in the District Court on the application to amend the charge sheet on the 5th February, 2008 and on the subsequent hearing. There is no finding of fact as to the matters which would appear to be central to the question posed, for example, what evidence was given when the applicant was charged before the District Court on the 14th August, 2007. I know that the Affidavit of Garda Enda Browne contains an averment in this regard which is referred to above but that is not a finding of fact or an agreed fact for the purpose of a consultative case stated and it is not for this Court to reach a conclusion on this issue.

In Judicial Review, 2nd Ed., de Blacam, the author quotes a passage at para 46.18 from the judgment of Lynch J in Director of Public Prosecutions (Travers) v. Brennan [1998] 4 I.R. 67 at 70:

> *"The proper procedure leading to the stating of a consultative case stated for the opinion of the Superior Courts is for the District Court to hear all the evidence relevant to the point of law arising, to find the facts relevant to such point of law in the light of such evidence, then to state the case posing the questions appropriate to elucidate the point of law and finally, on receiving the answers to those questions to decide the matter before him on the basis of those answers."*

7.4 Nothing of the kind happened in this case. I accept that the obligation to state a consultative case is mandatory having regard to the provisions of s. 52 of the Act of 1961 but it is clearly not the appropriate procedure to adopt in circumstances such as those that pertained in this case.

7.5 For the reasons I have set out above, it seems to me that the applicant is not entitled to judicial review by way of certiorari of the decision of the learned District judge made on the 5th February, 2008 amending the charge sheet or judicial review by way of mandamus compelling the learned District Judge to state a consultative case for the opinion of the High Court. Therefore I am refusing the applicant the relief claimed herein.