Neutral Citation: [2016] IEHC 559

THE HIGH COURT

Record No. 2015/578 J.R.

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

AND

DEAN PAGET

RESPONDENT

JUDGMENT of Mr. Justice Hunt delivered on the 14th day of July, 2016

Facts

1. The respondent is accused by the applicant of committing the offence of burglary on 5th February, 2015. This allegation is the subject matter of Blanchardstown Charge Sheet 15471895, dated 12th February, 2015. The respondent initially appeared before the Dublin District Court for the first time on 3rd March, 2015, when he was remanded to 28th April, 2015 for the directions of the applicant. There was a further remand for this purpose to 9th June, 2015. On that date, directions were available indicating consent to summary disposal before the District Court.

2. After hearing a brief outline of the proposed evidence, the District Court judge accepted jurisdiction, made an order for pre-trial disclosure and further remanded the matter to 7th July, 2015, by which time the prosecution were obliged to comply with the disclosure order. No disclosure was made by the return date, when the District Court adjourned the matter again to 21st July, 2015, for the purpose of an indication of plea by the accused. However, this adjournment was peremptory against the prosecution in respect of compliance with the disclosure order.

3. On 21st July, 2015, the prosecution remained in default of compliance with the earlier disclosure order. On the basis of the previous peremptory adjournment, it appears that the learned District Judge dealing with the matter on that date dismissed the matter "*for want of prosecution*". It seems that he did so of his own volition on the basis of the previous peremptory adjournment, and without further application, objections or submissions from either side.

4. A formal Order embodying the particulars of the disposal of the case on 21st July, 2015 has been produced in evidence, and was signed and dated by the District Court Clerk on 15th October, 2015. The face of this order does not accurately reflect the record of the proceedings in one material respect. It correctly sets out particulars of the allegation against the respondent, the opinion of the District Court that the facts alleged constituted a minor offence to be tried summarily and that the applicant had consented to summary trial. However, it wrongly records that the respondent had been informed by the District Court of his right to be tried with a jury and had not objected to being tried summarily. It was agreed by both parties in the hearing before me that the respondent had never elected for summary trial in the course of the District Court proceedings. Having recited the foregoing matter, the written order of the District Court also set out that the learned District Judge had ordered that the complaint set out therein be dismissed for want of prosecution.

5. Having obtained this order of the District Court, which was apparently drawn up on 15th October, 2015, the applicant then immediately brought an application for leave to seek judicial review before Humphreys J. on the following Monday, 19th October, 2015. On that date, the applicant was granted leave to apply to quash the order of the District Court made on 21st July, 2015.

6. The order of the District Court is challenged by the applicant on two grounds. Firstly it was argued that an order to "*dismiss for want of prosecution*" is not an order that can be made by the District Court. Secondly it was said that the learned District Court Judge had no power to try the respondent or dispose of the complaint made by the applicant in default with compliance with the three conditions specified by the provisions of s. 53 of the Criminal Justice (Theft and Fraud Offences) Act 2001. The respondent delivered a statement of opposition contesting the entitlement of the applicant to the relief sought on 16th February, 2016. The matter came on for hearing on 17th June, 2016.

The District Court

7. The first point to be considered is the nature and extent of the jurisdiction of the District Court when processing a prosecution for an alleged offence of burglary commenced by way of charge sheet. The general position of the District Court was considered and set out in the majority decision of the Supreme Court in *Cleary v. Director of Public Prosecutions* [2013] 2 I.R. 48. In referring to the fact that in the argument on the hearing of that appeal, a good deal of attention had been devoted to the question of what order had been made by the District Judge in that case, and what its legal significance was. Hardiman J. stated as follows:-

> *"It is important, in view of that, to have regard to s. 14 of the Courts Act 1971, as amended by the Criminal Justice (Miscellaneous Provisions) Act 1997, which provides that:-*
>
> > *'In any legal proceedings regard shall not be had to any record, relating to a decision of a judge of the District Court in any case of summary jurisdiction, other than an order which, when an order is required, shall be drawn up by the District Court Clerk.'*
>
> *That provision, in turn, followed from the establishment of the District Court as a court of record, which speaks through its order and not otherwise."*

8. The record of the District Court proceedings in this case, as embodied in the order drawn up and signed by the District Judge dealing with the case, established the following matters:-

> (i) The complaint alleging the commission of a burglary by the respondent on 5th February, 2015, was heard and determined on 21st July, 2015.
>
> (ii) The court was of the opinion that the facts alleged constituted a minor offence fit to be tried summarily.

(iii) The respondent, on being informed by the District Court of his right to be tried with a jury, did not object to being tried summarily.

(iv) The applicant had consented to summary trial.

(v) That the basis upon which the complaint had been dismissed was "*for want of prosecution*".

The jurisdiction of the District Court in this case

9. The offence of burglary, as created by the provisions of s. 12 of the Criminal Justice (Theft and Fraud Offences) Act 2001, is indictable in nature. Jurisdiction is conferred on the District Court to try this indictable offence by the provisions of s. 53(1) of the 2001 Act where the three conditions set out in that subsection are met. These conditions are listed to on the face of the District Court order issued in this case. The first difficulty arising is that this record of the proceedings has been established to be inaccurate, in that it is agreed that the respondent had not been informed by the District Court of his right to be tried with a jury, and therefore had not indicated whether or not he objected to summary trial. In those circumstances, the reader of the District Court order would form an erroneous impression that the statutory preconditions for summary trial had been met. Such a reader might also suspect that the learned District Court Judge was operating on an understanding that he had jurisdiction to try the allegation in question, otherwise the recitals in the order are meaningless. Secondly, the error raises the question as to whether the District Court judge was in fact dealing with "*a case of summary jurisdiction*" within the meaning of s.14 of the Courts Act, 1971 when he made the impugned order.

10. As the three statutory preconditions for the exercise of jurisdiction in this case had not been met, it follows that the District Court did not have an established summary jurisdiction to try the matter when it dismissed the complaint for "*want of prosecution*". This result seems to follow inevitably for the decision of this Court (Hogan J.) in *Cirpaci v. Governor of Mountjoy Prison* [2014] 2 I.R. 471. In that case, the applicant was convicted of an offence of theft by the District Court and sentenced to six months imprisonment. As in this case, the District Court had not informed the applicant of his statutory right to elect for jury trial. The High Court declared that the applicant's detention was not in accordance with law and ordered his release from prison. Hogan J. held that in such a case, the court was not confined to considering invalidity in the context of where this could be established from a patent error on the face of the record. There was a right to go beyond a warrant that was good on its face and to examine the underlying legality of the detention. The court went on to hold that the obligation that was imposed on a District Judge to inform an accused of his right to elect for jury trial before any summary disposal could take place was mandatory. The District Court only had jurisdiction to try a case once the accused had been informed of his right to jury trial and he had elected nonetheless for summary disposal.

11. If the concept of "*hearing and determining a complaint*" referred to on the face of the District Court order in this case is to be regarded as synonymous with the concept of "*summary trial*" contained in s. 53 of the 2001 Act, then it appears to me that there is no answer to the application to have this order quashed. The respondent was not in jeopardy of being validly convicted of the offence of burglary by the District Court when it dismissed the complaint for want of prosecution on 21st July, 2015, because it had no jurisdiction to try the applicant in default of fulfilment of the necessary jurisdictional prerequisites. On that analysis, if the District Court had no jurisdiction to reach a conclusion adverse to the respondent, it is difficult to see why the applicant should then be in jeopardy of an adverse conclusion, in circumstances where the sole official record of the proceedings indicates that the complaint made by the applicant was "*heard and determined*". That record appears to suggest that the learned District Judge had presided over a trial of the issues in the case and reached a conclusion on those issues. This impression is reinforced by the explicit reference on the face of the order to the fulfilment of the three statutory conditions necessary to establish summary jurisdiction to try an indictable matter such as burglary. The sole purpose behind recording these matters on the District Court order is to display the foundation of jurisdiction on the face of the order. Consequently, the official record of the District Court proceedings strongly suggests that at the time of the making of the order that Court purported to exercise a summary trial jurisdiction which it did not possess. In my view, the applicant has demonstrated that there is a significant error on the face of the District Court record in this case.

12. As to the suggestion by the applicant that the District Court had no jurisdiction to make an order in this case, I agree that there was no power to "try" the case, and in so far as the learned District Judge purported to do so, he acted in excess of jurisdiction. This construction of events in the District Court would be sufficient to resolve the matter in favour of the applicant. However, in addition to a summary trial jurisdiction, the District Court also possesses a limited jurisdiction to hear and process indictable matters in accordance with applicable substantive and procedural provisions until the question of trial jurisdiction is finally determined. It is at least possible that the learned District Judge was in fact exercising this jurisdiction in dealing with the issue of non-compliance with the disclosure order. It was not argued by the applicant that the disclosure order itself was not validly made by the District Court in the particular context of this case. The focus of complaint was rather on the manner in which the prosecution was subsequently dealt with by the District Court Judge.

13. Although not apparent from any statutory provision or rule of court, the jurisdiction of the District Court to grant pre-trial disclosure orders appears to be well established. A strict view might suggest that the District Court should not make a pre-trial disclosure order until it has been safely established that it will be the court of trial in respect of the allegation in question, as opposed to exercising the jurisdiction arising preliminary to a trial on indictment. In practical terms, such an order will often be sought and granted at a stage where the question of trial jurisdiction has not been finally settled, either because the parties will, in most cases, have a well-founded expectation that the trial will ultimately take place on a summary basis, or perhaps because in a limited number of cases disclosure might be relevant to the exercise by an accused of his or her election as to mode of trial. The applicant made no apparent objection in the District Court to the making of a disclosure order at an early stage of the proceedings in this case, nor did she suggest in this Court that the order was made in excess of jurisdiction. In the absence of argument on the point, I express no view on whether pre-trial disclosure should be ordered by the District Court at a stage when the summary trial jurisdiction has not been established.

14. It follows logically that if the District Court can issue an order, it should also enjoy the ability to secure compliance with such orders when made. In this case, a disclosure order was made in favour of the respondent without demur by the applicant. The applicant did not comply with the terms of this order by the expiry of the initial period specified by the District Court in that regard, and was unable to demonstrate compliance to the learned District Court Judge on the expiry of the second limit prescribed by the District Court, resulting in the dismiss "*for want of prosecution*".

15. The jurisdiction of the District Court to ensure fair trials and fair procedures was considered by this Court (MacMenamin J.) in *Director of Public Prosecutions v. Ní Chondúin* [2008] 3 I.R. 498. At p. 517 of the report, MacMenamin J. stated as follows:-

"In Whelan v. Kirby [2005] 2 I.R. 30 Geoghegan J. pointed out that the common law principle that a court of summary jurisdiction is a creature of statute and may only make orders permitted by statute must be subject to the overriding requirement of fair procedures under the Constitution. He observed at p. 43:-

> *'There is jurisdiction in the District Court to make any order that will be necessary for the fulfilment of the constitutional obligations of a fair trial and fair procedures …'*

These observations are a reiteration of the views expressed by Denham J. in Coughlan v. Judge Patwell [1993] 1 I.R. 31 at p. 37 that:-

> *'… while the District Court is a court of limited statutory power it remains at all times a court which must protect the individual constitutional rights of the person.'*

Denham J. went on at p. 37 to quote Walsh J. in Ellis v. O'Dea [1989] 1.R. 530 to the following effect:-

> *'The District Court has a duty to act constitutionally and to act in such a manner as to preserve an individual's constitutional rights. If an individual as here alleges that his constitutional rights have been infringed in procedures adopted … the District Justice has jurisdiction to, and indeed should, hear the submission and take such steps as it considers proper.'*

The fact that the District Court may exercise jurisdiction so as to protect the rights of an accused is demonstrated by the fact that that court has, with the approval of the Supreme Court in Whelan v. Kirby [2004] IESC 17, [2005] 2 I.R. 30, allowed for the disclosure of witness statements or other material necessary to safeguard fair procedures and also in making orders for inspection. The fact that the District Court Rules do not confer any power to make such orders does not diminish or detract from a constitutional duty to observe fair procedures. Such jurisdiction must include a power to dismiss, as established in Dixon v. Hogan and Director of Public Prosecutions (Geoghegan J., 1st December, 1997) and Shannon v. McGuinness [1999] 3 I.R. 274.

I do not consider the adoption of the Rules of 1997 affects the situation. Certainly, were there to be a new order or rule purporting to circumscribe or reduce the jurisdiction of a District Judge it would require to be expressed explicitly, even were it in accordance with the Constitution. No such order or rule is contained in the Rules of the District Court 1997.

I am satisfied therefore, that a District Judge may lawfully exercise such power to dismiss a claim in the circumstances of the instant cases. The fact that an order of 'strike out' might also in certain circumstances be an appropriate order is not relevant. The matter was one of judicial discretion applied within jurisdiction, in a particular situation where there had been previously a peremptory adjournment and prosecution witnesses were not present to testify in cases listed for hearing."

16. Therefore, the judgment of MacMenamin J. clearly affirms the ability of the District Court to make orders for disclosure and to secure compliance with such orders, and the applicant has not argued otherwise. The status and meaning of a District Court order dismissing a complaint "*for want of prosecution*" has been considered in previous judgments of this Court. These are also referred to in the helpful judgment of MacMenamin J. in *Ní Chondúin*. The following is an extract from p. 515 of the report of that judgment:-

"Shannon v. McGuinness [1999] 3 I.R. 274 is of assistance in that it establishes that a court order which recited that a complaint had been heard does not of necessity imply that a full hearing has taken place with evidence tendered. It is further authority for the proposition that in any case involving a summary offence, where a District Judge did not convict the defendant, such judge had jurisdiction to dismiss the complaint either on the merits or without prejudice to its being made again (Carpenter v. District Judge Kirby [1990] I.L.R.M. 764 approved). In the course of his judgment in Shannon v. McGuinness, Kelly J. stated at p. 281:-

> *'It appears to me that on the 4th September, 1995, all of the relevant parties were assembled before the District Judge and he was addressed by the representative of the Director of Public Prosecutions concerning the two summonses in question. What took place was undoubtedly a hearing and it was a hearing relating to the complaints of the Director of Public Prosecutions against John Shannon. Whilst evidence was not called, it was, in my view, nonetheless a hearing and one concerning the complaints which had been made by the Director of Public Prosecutions. It does not appear to me that when the orders complained of use the expression 'a complaint was heard' that that necessarily carries with it the implication suggested by counsel to the effect that there was a full hearing with evidence being tendered. I am of the view that the orders do not misstate the position insofar as they recite that a complaint was heard. Even if they did, it does not appear to me that that of itself would entitle the applicant to an order quashing the orders of the District Court still less the declaratory relief which is now sought.'*

Thus, the jurisdiction of a District Court Judge may include a dismiss in circumstances where there has not been a formal adjudication on the merits."

17. Therefore, the use of a similar phrase in the District Court order in this case does not mean that the learned District Court Judge was obliged to conduct a full hearing with evidence being tendered before dismissing the complaint. Indeed, the specific use of the phrase "*for want of prosecution*" in conjunction with the decision to dismiss expressly indicates that there had not been a full hearing of the substance of the complaint. However, I am of the view that there is a significant relevant factual distinction between *Shannon v. McGuinness* and the instant case. It is clear from p. 282 of the report of the judgment of Kelly J. that *Shannon* was a case involving offences punishable on summary conviction where the District Judge did not convict the defendant. Kelly J. observed that he was therefore entitled to dismiss the complaints either on the merits or without prejudice pursuant to the applicable rule, being rule 66 of the Rules of the District Court of 1948. It was not a case dismissed for want of prosecution based on non-compliance with a previous disclosure order, nor was it a situation where the District Court was hearing an indictable allegation where trial jurisdiction had not yet been allocated. Furthermore, there was nothing in that case to suggest that there might have been any misapprehension on the part of the District Judge as to the precise jurisdiction being exercised when the relevant order was made.

18. The concept of an order dismissing "*for want of prosecution*" was specifically considered by Geoghegan J. in *Dixon v. Hogan* (Unreported, 1st December, 1997). In that case, a District Judge made an order of dismiss, was asked for clarification and used the

expression that the case was dismissed "*for want of prosecution*". Geoghegan J. pointed out that this expression did not appear in the District Court Rules then in force, and observed as follows:-

> "*In the District Court Rules it is confined to a dismissal on the merits or a dismissal without prejudice. I have to look at the circumstances surrounding the making of the order to see [what] the effect of the order was. It was quite simple. The prosecuting guard was without his witnesses. He applied for an adjournment and Judge Hogan refused to grant the adjournment. The case could not go on. The case was then dismissed. It does not matter that the expression 'dismissed for want of prosecution' was used as it comes to the same thing. In those circumstances the State does not have the right to come again. It had nothing to do with delay. The order made was effectively a dismiss on the merits*." (Emphasis added).

19. In *Ní Chondúin*, MacMenamin J. observed that these observations mean that a judge may, within jurisdiction reasonably exercised, dismiss the case finally if the prosecution cannot proceed. There is a significant difference between the present case and the other cases mentioned above, namely that the only jurisdiction that could have been validly exercised was that directed towards securing compliance with a pre-trial order rather than the disposal of a trial that had been previously fixed, where all parties were on notice that they ought to be in a position to call witnesses and otherwise deal with the full hearing of the complaint before the District Court. However, in relation to a dismissal "*for want of prosecution*" in the District Court, the case law mentioned above is highly persuasive authority for the proposition that the use of this term is clearly indicative of a final order. Although the circumstances in the instant case are distinguishable, I see no rational basis for holding that such the use of the same phrase should be taken to bear the opposite meaning in the pre-trial context, as was suggested by Mr. Hartnett S.C. Consequently, I do not share the view expressed by him that this application for judicial review was unnecessary, in the sense that the applicant was free to reinstitute the District Court proceedings after they had been "dismissed". I construe the term used in the order as displaying an intention by the learned District Court judge to effect a final disposal of the proceedings, particularly when it was used by him against the background of a previous peremptory adjournment. Had a less final outcome been intended, it was open to him to strike the case out of the list, or to use other terms such as "without prejudice" to convey that intention. Just as in *Dixon v. Hogan*, I am satisfied that in all of the circumstances, the terms of the order means that the applicant does not have the right to come again in the District Court.

20. This view is also based upon the rationale expressed by Hardiman J. in the judgment of *Cleary v. Director of Public Prosecutions*. It will be recalled that in that case a complaint embodied in summary proceedings was dismissed, and the Director of Public Prosecutions thereafter sought to proceed in respect of the same allegation by way of a trial on indictment. Hardiman J. noted that the order of the District Court dismissing the complaint had subsisted unchallenged since it was made. If the applicant had proceeded again in the present case, and obtained a conviction, this would result in a situation which would breach the clear admonition of Hardiman J. that "*there cannot, as a matter of first principles, be inconsistent court orders in the same matter, from two courts of competent jurisdiction*", unless the District Court had decided to set aside the order on a re-entry by the prosecution, or decided that a "dismiss" did not express an intention to finally dispose of the case. It would also involve the applicant not heeding the criticism of her predecessor by Hardiman J. in *Cleary* that if the Director had been of the opinion that the District Court order in that case was made without jurisdiction, it was open to him to seek to have the order quashed on *certiorari*. Noting that no such steps had been taken, Hardiman J. was unable to see how the Director could be heard to challenge for want of jurisdiction an order of the District Court made some significant time previously, which had never been impugned in the appropriate way. Bearing these observations in mind, where the Director of Public Prosecutions perceives a fundamental difficulty with a District Court order, it seems to me that it is both reasonable and proper to proceed by way of judicial review to clarify the matter. The suggestion that the applicant should have returned to the District Court on a re-entry before launching judicial review proceedings has a pragmatic appeal, but would not address the strictures set out in *Cleary*. The applicant was entitled to interpret the express terms of the order as meaning that the District Court had no further function in the matter.

21. In summary, therefore, I do not accept the general principle put forward by the Ms. Buckley on behalf of the applicant to the effect that a District Judge can never dismiss a case in such circumstances on the basis of a "*want of prosecution*". The precedents clearly establish a jurisdiction to do so in cases where a summary trial has been fixed. In the other category of cases where the District Court has a clearly established jurisdiction to make pre-trial orders, that jurisdiction would not be complete if the District Court did not also possess the means to secure compliance with such orders. The District Court has been held to have the power to dismiss in exercise of its constitutional duty to observe fair procedures. Similarly, it appears to me that it must necessarily enjoy the power to dismiss in an appropriate case in pursuit of compliance with pre-trial orders, such as disclosure, which themselves are made in the exercise of a jurisdiction designed to protect the rights of the accused at the pre-trial stage. In an appropriate case, this may include the option to finally dismiss for want of prosecution. However, it seems to me that this type of order will only be made in a very limited category of cases at the pre-trial stage, as distinct from in cases where the prosecution cannot proceed in a previously fixed summary trial, such as those referred to above.

Exercise of this jurisdiction in this case

22. Therefore, although I am satisfied that the District Court generally has a jurisdiction to dismiss a complaint where there is non-compliance with pre-trial orders, there remain serious issues in this case as to whether this was within the jurisdiction that was actually exercised by the learned District Judge in making the impugned order, and if so, as to whether that jurisdiction was reasonably exercised.

23. I have already referred to the suspicion arising from the face of the District Court record that the learned District Court Judge was operating on the assumption that summary jurisdiction was in place when he made the order in question. This would not, in itself, be decisive, because whether the District Court is dealing with a purely summary matter, or with a matter which might be triable summarily but where the question of trial jurisdiction has not been settled, it is entitled in either case to consider the application of a sanction for failure to comply in a timely fashion with an order for disclosure made in pursuance of the duty to safeguard the rights of the individual accused. However, a possible misapprehension on the part of the learned District Court Judge as to the nature and extent of his or her jurisdiction on the occasion in issue is a factor to be considered in the overall assessment as to whether jurisdiction was reasonably and properly exercised in the individual case. Of much more significance is the fact that it appears that the learned District Court Judge simply proceeded to dismiss the complaint solely on the basis that the matter had previously been adjourned on a peremptory basis against the prosecution. There is no evidence to suggest that there was any weighing or balancing of the position of the accused following the further failure to make disclosure against that of the prosecution. Indeed, it appears that the respondent did not apply for the order in question, the applicant expressed no objection to the making of the order, and neither side made any submissions directed to the manner in which the default by the prosecution in making disclosure ought to be addressed by the District Court.

24. In this regard, further assistance may be derived from the judgment of MacMenamin J. in *Ní Chondúin*, who considered that a District Court Judge has the jurisdiction to dismiss without a formal adjudication on the substance or merits of the case, with the

important qualification that such jurisdiction must be "*reasonably exercised*". As to whether the exercise of jurisdiction in this case was reasonable, the following further observations of MacMenamin J. at p. 518 of the report in *Ní Chondúin* are of relevance:-

> *"While it cannot be said that a 'peremptory' adjournment is an irrevocable indication that a case will proceed on a particular date, it is nonetheless one of the factors which must also be borne in mind here, as must be the circumstances of the prior adjournments which took place in June, 2006 to the 5th September, 2006. In a situation where a number of adjournments had already taken place at the instance of the prosecution and where a District Judge may reasonably infer that the basis for any further adjournment application is inadequate, there must surely lie within the jurisdiction of that court, within the constitutional duty of fairness, the power to ensure that justice is administered expeditiously and finally. The public interest in ensuring that crime is prosecuted, must be balanced by the public interest in ensuring that justice is concluded."*

25. There is no evidence that the learned District Court Judge evaluated whether the respondent's right to fair procedures and a fair trial required the making of the order in question, as opposed to any other order that might have been available to the learned District Judge. The previous peremptory adjournment seems to have been the sole justification for the significant step of dismissing a public prosecution without further ado. There is no evidence that the learned District Judge considered, as he ought to have done, whether and to what degree weight ought to be accorded to the public interest in ensuring that crime is prosecuted. Although the rights of the individual accused will, of necessity, enjoy primacy in such situations, in order that the jurisdiction to dismiss a complaint for want of prosecution in these circumstances is reasonably exercised there must be some consideration of the correct balance to be struck between competing rights on the facts of each case. I am mindful of the difficulties faced by District Court Judges in efficiently processing large and varied caseloads, and it is fair to observe that the learned District Court Judge in this case did not derive much assistance from the parties appearing before him in the discharge of his task. The balancing process in question need not be prolonged or elaborate, but it must take place.

Delay

26. At the hearing, it was also suggested that this application ought to be dismissed on the basis of delay notwithstanding that the *ex parte* application seeking leave to apply for judicial review was apparently brought within three months of the making of the District Court order now under consideration. In the light of that submission, I directed the respondent to provide a further affidavit setting forth particulars of the history of the matter between the date of the making of the District Court order and the date of the application for leave in October 2015. This was duly furnished, and further argument took placed on 1st July, 2015. This discloses that, as one would expect, there was a number of reports made within internal Garda channels, resulting in the inspector in charge of the relevant station seeking legal advice by a letter to the Chief Prosecution Solicitor on 23rd August, 2015. A file was then sent to the judicial review section of the applicant's office on 31st August, 2015. Further information was requested by the gardaí by this section 17th September, 2015, and counsel subsequently briefed on 30th September, 2015. On the advice of counsel, the written order of the District Court, together with other matters. The applicant directed that leave be sought on 6th October, 2015. The District Court order was drawn up and signed by the District Court Clerk on 15th October, 2015. This order was received on 16th October, 2015, and was incorporated into the draft pleadings that had been received from counsel, for the purposes of the leave application which was made before Humphreys J. on 19th October, 2015. Leave was granted on that date and after various other procedural steps, the matter was subsequently listed for hearing.

27. As leave was granted by Humphreys J. just within the relevant three month period after the making of the impugned order, it would require proof of highly specific or damaging prejudice, or some other extraordinary factor, in order to deny the applicant the right to proceed or obtain relief in circumstances where the applicant has otherwise complied with the prescriptions of the Rules of Court. *Certiorari* is a discretionary remedy, but this discretion is exercised by reference to the features and facts of the individual case. In this case, in the absence of either asserted or proved prejudice on the part of the respondent caused by alleged delay on the part of the applicant, there is no reason to deny the applicant relief on a discretionary basis in this case.

Conclusion

28. If the learned District Judge purported to make this order in exercise of the jurisdiction to try an indictable offence summarily, the order must be quashed on the basis that no such jurisdiction existed at the relevant time. If the order was made pursuant to a jurisdiction that he did possess at the pre-trial hearing stage of an indictable statutory offence, then that jurisdiction was not "*reasonably exercised*", by reason of the absence of a balancing process. A District Judge may have recourse to a variety of orders in order to ensure that the parties receive a fair trial. The primary fair trial rights of the accused must be balanced against the rights of the applicant and the public generally concerning the prosecution of alleged crimes before it can be concluded that it is appropriate to terminate the prosecution process in order to vindicate the those fair trial rights.

29. As for future cases, it would be helpful if District Judges selected either a form of order or a form of words which clearly conveys the intention of an order. It should be possible to discern unambiguously whether it is intended that the prosecution be punished by the removal of the case from the list for the time being, with the possibility of re-entry, or whether it is to be terminated in the interests of justice. In general, the case law suggests that a form of "dismiss" is more likely to be interpreted as terminating the proceedings, whereas the use of some form of "strike out" is indicative of the possibility of re-entry. A pre-trial final dismiss is possible if required to vindicate the fair trial rights of an accused, but should only occur after a consideration of the rights engaged on either side of the individual case.