

26/99; [1999] VSC 499

SUPREME COURT OF VICTORIA

***HORVATH v CHAMBERS & ORS***

Beach J

29, 30 November 1999

**BANKRUPTCY – PERSON DECLARED BANKRUPT – PERSON LAID CHARGES AGAINST INDIVIDUALS ASSOCIATED WITH THE BANKRUPTCY LITIGATION – CHARGES RETURNABLE IN THE MAGISTRATES' COURT – PRINCIPAL CHARGE BROUGHT PURSUANT TO *BANKRUPTCY ACT 1996* (CTH) – WHETHER MAGISTRATES' COURT HAS JURISDICTION TO HEAR AND DETERMINE SUCH CHARGES: *BANKRUPTCY ACT 1966* (CTH), S263A.**

Following proceedings in the Federal Court in which H. was declared bankrupt, H. laid a number of charges against those persons who were involved in the bankruptcy litigation. One of the charges laid pursuant to s263A of the *Bankruptcy Act 1966* (Cth) ("Act") alleged that false affidavits had been filed in the Federal Court in relation to the bankruptcy proceedings. Another charge laid pursuant to s321G(1) of the *Crimes Act 1958* (Vic) alleged that the individuals incited each other to commit an indictable offence. When the charges came on for hearing in the Magistrates' Court, the magistrate held that the Court had no jurisdiction to hear and determine the charges and dismissed them. Upon appeal—

**HELD: Appeal dismissed.**

**The magistrate correctly found that the Magistrates' Court had no jurisdiction to hear and determine the charges. Only the courts designated in the Act have jurisdiction to hear and determine charges brought pursuant to s263A of the Act. The appropriate court having such jurisdiction is the Federal Court. As the inciting charges were ancillary to the principal offence created by s263A of the Act, the Magistrates' Court had no jurisdiction to hear and determine the ancillary offence.**

**BEACH J:**

1. Mr Horvath, his wife and son are no strangers to the Court. In that regard see the decision of the Court of Appeal in *Horvath v The Commonwealth Bank of Australia* [1999] 1 VR 643.
2. After obtaining judgment against the Horvaths in this Court the bank commenced proceedings in the Federal Court to have Mr Horvath declared bankrupt. Their application in that regard was successful and Paul Anthony Pattison was appointed the trustee of Mr Horvath's estate.
3. Mr Horvath apparently instituted a number of proceedings in the Federal Court against the Commonwealth Bank of Australia and Pattison, so much so that by order of that Court made in April of this year Mr Horvath was declared a vexatious litigant and forbidden from commencing any proceeding in that Court against the bank, its servants and agents and against Mr Pattison without the leave of a judge of that Court.
4. On 12 October 1999 Mr Horvath filed in the Magistrates' Court at Melbourne eight forms of charges and summons against eight individuals who have been associated with the litigation in which he has been involved. Two of the defendants to those charges are solicitors with the bank, one is Mr Horvath's trustee in bankruptcy, one is the trustee's assistant, one is the trustee's solicitor and I believe the remaining three defendants are Commonwealth Bank officers.
5. Each defendant was charged with three offences: First, swearing false affidavits filed in the Federal Court in relation to Mr Horvath's bankruptcy proceedings. That charge is brought, so it is said, pursuant to s263A of the *Bankruptcy Act 1966* which reads:

"263A A person who wilfully makes a false statement in an affidavit to be used for the purposes of this Act is guilty of an offence and is punishable:

(a) upon summary conviction—

by a fine not exceeding \$200, or imprisonment for a period not exceeding 6 months, or both; or

(b) upon conviction on indictment—  
by imprisonment for a period not exceeding 4 years."

6. Second, inciting each of the other defendants to commit an indictable offence. That charge was laid pursuant to the provisions of s321G of the *Crimes Act 1958* (Vic) which reads:

"321G(1) Subject to this Act, where a person in Victoria or elsewhere incites any other person to pursue a course of conduct which will involve the commission of an offence by—

(a) the person incited;

(b) the inciter; or

(c) both the inciter and the person incited—

if the inciting is acted on in accordance with the inciter's intention, the inciter is guilty of the indictable offence of incitement."

7. Thirdly, a contravention of ss49, 50 and 51 of the *Supreme Court Act 1986* which sections relate to contracts entered into by minors.

8. The charges came before the Magistrates' Court on 26 October 1999. The magistrate held that the Court had no jurisdiction to hear and determine the charges and dismissed them. The bases upon which the magistrate made that determination are as follows:

1. Sections 45, 50 and 51 of the *Supreme Court Act* do not create any offence and the charges brought under those sections were meaningless;

2. Only the courts designated in the *Bankruptcy Act* have jurisdiction to hear and determine charges brought pursuant to s263A of the *Bankruptcy Act* and the Magistrates' Court is not such a Court. See ss27 and 273 of the Act and see also s53 of the *Magistrates' Court Act 1989* and the fourth schedule to that Act;

3. The inciting charges must be ancillary to a principal indictable offence which the Court has jurisdiction to hear and determine. In this case the inciting charges are ancillary to the principal offence recreated by s263A of the *Bankruptcy Act*. As the Court has no jurisdiction to hear and determine the principal offence, it has no jurisdiction to hear and determine the ancillary offence.

9. Mr Horvath then sought to appeal to this Court from the orders of the Magistrates' Court pursuant to the provisions of s92 of the *Magistrates' Court Act*. On 24 November 1999 he made applications in each matter to Master Evans seeking orders from Master Evans stating the questions of law which he contended were raised by the appeal. See Rule 58.07 and following. The master dismissed his applications. Mr Horvath now appeals to a judge of the Court.

10. Overnight I have considered the material on the Court files in relation to each proceeding. In my opinion the Master made no error in the matter. I consider that the magistrate correctly found that the Magistrates' Court had no jurisdiction to hear and determine the charges and that the appropriate Court having such jurisdiction is the Federal Court. On that basis alone I would dismiss each appeal. However, it would seem to me that in bringing the charges he has against the individuals in question, Mr Horvath is simply seeking to circumvent the order made by the Federal Court declaring him a vexatious litigant. I consider the proceedings to be vexatious and simply another example of the lengths to which he is prepared to go to harass the bank and its officers.

11. The order of the Court is that each appeal is dismissed.

**APPEARANCES:** The plaintiff appeared in person. No appearance for defendants.

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