

50/82

## SUPREME COURT OF VICTORIA

**CAMPAGNOLO v ATTRILL**

O'Bryan J

16 April 1982 — [1982] VicRp 90; [1982] VR 893

**CRIMINAL LAW – PRACTICE AND PROCEDURE - PRELIMINARY EXAMINATION INTO CHARGE OF RAPE – PERIOD PRESCRIBED ELAPSED – INTERPRETATION OF "CHARGED" – CARRIES THE TECHNICAL LEGAL MEANING: MAGISTRATES (SUMMARY PROCEEDINGS) ACT 1975, S47A RULE 9.**

1. The expression "charged with any offence" in s47A of the *Magistrates (Summary Proceedings) Act 1975* is used in the technical legal sense of appearing before a competent Court to answer an accusation made on summons or information. Section 47A is not concerned with police procedures in a police station when a person may be "charged" or "informed against" or "summonsed", or "bailed" to appear in a Court on some future occasion. It operates when a person is formally charged before a Court. The limitation period fixed by s47A is essentially concerned with events within the jurisdiction of a Magistrates' Court.

2. The Magistrate was correct in law when he determined to conduct the preliminary examination on 15th June 1981. The events at the Geelong Police Station were of no concern to him because, within the meaning of s47A, the applicant had not been charged with any offence of rape before the 26th March 1981.

**O'BRYAN J:** Order nisi to review a decision of the Stipendiary Magistrate at Geelong (Mr RJ McAllister) on 15th June 1981. ... I believe that the learned Magistrate did not purport to extend the period prescribed by s47A of Rule 9 because he considered that the time limit prescribed by Rules 8 and 9 had not expired. He believed that he had jurisdiction to proceed with the preliminary examination. This would mean that the applicant's case was misconceived, but inasmuch as it is desirable in the interests of justice that the real issue should be determined I propose to amend the ground so as to raise the substantial point that was argued in a wider form. The amended ground will be: That the decision of the Magistrates' Court at Geelong on 15th June 1981 to conduct a preliminary examination into a charge of rape against Mark Campagnolo was wrong in law as the period prescribed by s47A Rule 9 of the *Magistrates (Summary Proceedings) Act 1975* for the commencement of a preliminary examination had elapsed.

What the applicant is really aggrieved about is the ruling of the Magistrate that he had jurisdiction to proceed with the preliminary examination. The applicant's main argument is that he was 'charged' with rape at the Geelong Police Station on the 22nd December 1980 and the prescribed period for commencing the preliminary examination had expired before the 15th June 1981.

Accordingly, there are two matters to be considered. Firstly, whether on the proper construction of s47A the prescribed period for commencing the preliminary examination only commences when an accused person is brought before the Court and formally charged with an offence relating to rape or, whether the period commences in the police station when the police lay a charge. Secondly, whether on the facts in this case the applicant was 'charged' with rape at the Geelong Police Station on 22nd December 1980. If the first matter is determined in favour of the respondent's argument the second matter will not require my decision.

The first matter is one of general public importance and involves a point of statutory construction. Therefore, rather than embark upon a consideration of the facts which are peculiar to this case, I shall go to the first matter and determine the point of construction. One must now determine whether the legislature intended that the expression 'charged with any offence' should carry the strict technical meaning of 'charged in court' or, the more popular and usual meaning 'charged at the police station'.

I think I am permitted to look at a report of the Law Reform Commissioner into Rape Prosecutions, which recommended time limits on proceedings against persons charged with raped. The report is concerned with Court Procedures and Rules of Evidence. I believe it is important to appreciate that the Commissioner was only concerned with court procedures. He had no occasion to recommend procedures to be followed by the police regarding the charging of suspects with rape or other kindred offences.

Underlying the Commissioner's recommendations was an obvious concern for the rape victim and her ordeal in having to give evidence in a court. Therefore, the answer to the construction question I have to determine seems to lie in the subject matter of the legislation within which the reform provisions recommended by the Commissioner are now located.

In my view, the expression "charged with any offence" in s47A carries the technical legal meaning Mr McArdle contends for. It is used in the technical legal sense of appearing before a competent Court to answer an accusation made on summons or information. Section 47A is not concerned with police procedures in a police station when a person may be "charged" or "informed against" or "summonsed", or "bailed" to appear in a Court on some future occasion. It operates when a person is formally charged before a Court. The limitation period fixed by s47A is essentially concerned with events within the jurisdiction of a Magistrates' Court. Therefore, the learned Magistrate was correct in law when he determined to conduct the preliminary examination on 15th June 1981. The events at the Geelong Police Station were of no concern to him because, within the meaning of s47A, the applicant had not been charged with any offence of rape before the 26th March 1981.

In view of the conclusion I have reached it is not necessary for me to determine whether the applicant was charged with rape in the Geelong Police Station, in the sense of being accused in a formal way with a crime. I need only say this, that the applicant faced the difficulty of persuading me I should not accept the answering affidavits of the respondent in which the respondent and Loveday each deposed that the applicant was not charged with any offence at the Police Station on the 22nd of December 1980.

For these reasons I shall discharge the order nisi with costs. When the matter is returned to the Magistrates' Court it will be necessary, of course, for the respondent to apply under Rule (9) of s47A for an extension of the limitation period. No doubt he will satisfy the Court that "special circumstances", to wit these proceedings, warrant a later fixation in accordance with Rule (9).

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