POLICE v. LOUIS EDDY SADIEN

2011 PL3 58

Cause No. 13310/10

IN THE DISTRICT COURT OF PORT-LOUIS (3RD DIVISION)

In the matter of:-

Police

v

Louis Eddy SADIEN

Judgment

The accused initially stood charged under two counts of an information with the following offences:

(1) Carrying a classified trade without permit in breach of "Sec. 102(3)(4)(7) and Part II of the 8th Schedule of the Local Government Act 2003 amended by Act 21/06 of the Business Facilitation Act"; and

(2) Throwing litter in a public place in breach of "Sec. 88(1) of the 9th Schedule of the Environment Protection (Amendment) Act 2008 coupled with GN 60/2009".

Before the plea was taken on 13 December 2010, the prosecution moved that count I be dismissed as advised by the Director of Public Prosecutions. The motion was granted. The accused hence only pleaded to count II and he put in a plea of "not guilty". He was assisted by Mr R.Valayden, of Counsel, during the trial.

Inspector Kokil deposed to the effect that he interviewed the accused under warning only with respect to count I. The accused had exercised his right to silence in relation to same.

Ex-Inspector Saupin deposed to the effect that he was detailed to work with a party of men in relation to a pacific demonstration held by an association by the name of ACIM under the charge of one Mr Parsooramen Chellum, also known as Jayen. At 11.30 hrs, he saw the said Mr Chellum in

company of four other male persons. All of them took position in front of the Government House, along Royal Street. He added that the demonstration was being carried after the required authorisations from the relevant authorities. At 11.45 hrs, he saw Mr Chellum kneeling down on the tarmac. The accused, who was one of the demonstrators, started trimming down the hair of the said Mr Chellum. He approached the spot and saw that Mr Chellum did not take any precaution to avoid the hair falling down on the road. Neither the accused nor Mr Chellum picked up the trimmed hair. He intervened and asked the accused whether he had any barber's licence and whether he was authorised to carry out such a gesture in a public place. The accused replied in the negative. He caused the pair of scissors, razor and pressure foam to be secured. The accused and Mr Chellum voluntarily accompanied police to Line Barracks for enquiry. Photographs taken upon his instructions were also produced. During cross-examination, he admitted that as soon as the trimming started, the police intervened and the protagonists were taken to Line Barracks.

The defence did not adduce any evidence.

Learned Counsel for the defence submitted in essence that the evidence adduced before the Court does not substantiate the offence averred in the information.

After due consideration, this Court cannot but agree with the submissions of the defence.

Section 88 (as amended) averred in the information provides:

> ***88. Fixed penalties***
>
> *(1) Notwithstanding any other enactment, where a person commits an offence specified in the Ninth Schedule, the authorised officer who detects the offence may, as soon as is reasonably practicable, and not later than 14 days after the commission of the offence, serve on that person a notice in the form set out in the Tenth Schedule calling upon him to pay in respect of the offence the fixed penalty provided in the Ninth Schedule.*
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> *(2) A notice under subsection (1) shall-*
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> *(a) be in such form as may be prescribed;*
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> *(b) be drawn in quadruplicate; and*
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> *(c) specify-*
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> *(i) the name and address of the person committing the offence;*
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> *(ii) the time and place of the offence;*
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> *(iii) the nature of the offence;*
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> *(iv) the fixed penalty provided for the offence;*

(v) the time within which the fixed penalty is to be paid;

(vi) the Court or Tribunal where the fixed penalty is payable;

(vii) the name and identification number of the authorized officer who detected the offence.

(3) The authorised officer who detects the offence shall-

(a) cause the original of the notice to be served on the offender;

(b) forward one copy to the enforcing agency and another to the appropriate Court or Tribunal; and

(c) retain one copy.

(4) Every person who is served with a notice under subsection (1) shall, within 20 days of the service and upon production of the notice, pay the fixed penalty in the prescribed manner at the appropriate Court or Tribunal.

(5) Where a person who has been served with a notice under subsection (1) fails to pay the fixed penalty within the time limit mentioned in the notice and criminal proceedings are instituted against him for the offence in respect of which he was served with the notice, he shall be liable, on conviction, to a fine which shall not be less than - thrice the fixed penalty.

There is not an iota of evidence that this section has been complied with.

GN 60/2009 also mentioned in the heading is the Insolvency (Transitional Provisions) Regulations 2009 and cannot by any stretch of the imagination find its application in the present case. The Court can only surmise that "60" has been inserted mistakenly for "96" as GN 96/2009, the **Environment Protection (Amendment of Schedule) (No. 3) Regulations 2009,** repealed and replaced the Ninth Schedule of the Environment Protection Act.

Learned Counsel for the defence also submitted that count II was not put to the accused when recording his statement. In the case of **State v. E. Madelon & ors [2004] SCJ 129,** the Supreme Court addressed this issue in an interlocutory judgment and concluded:

> "*I have come across no provision in our law which imposes a duty on the police to actually put the charge to the accused at the enquiry stage*."

It is however clear that the accused cannot be left in the dark as to the facts and circumstances of the impugned act and be asked to record his defence.

Here there is no defence recorded with respect to the only charge which the accused presently faces, i.e. count II.

In **Police v Roheman [2010] SCJ 415,** the following question was referred to the Supreme Court under section 84 (1) of the Constitution:

> *"Whether failure by the prosecution to put the charges to the accused on both counts and record his defence accordingly is in breach of his Constitutional rights to silence and to a fair trial and against section 10(2) (b) and section 10(7) of the Constitution and whether the practice of the police not to record defences of Accused parties in contravention cases is in breach of such rights."*

The Supreme Court commented as follows:

> *The question referred to this court by the learned Magistrate is in effect the following: does the practice of the police, at enquiry stage in contravention cases, not to inform the suspect of the complaint made against him and invite him to give a statement, if he so wishes, in that connection –*
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> *(1) amount to a breach of his constitutional right, as a suspect, to silence?*
> *(2) infringe section 10 (2) (b) of the Constitution?*
> *(3) preclude him from freely exercising his right to silence as an accused party under section 10(7) of the Constitution?*
> *(4) jeopardise his right to a fair trial?*

The Supreme Court further pointed out:

> *It is also to be noted, in relation to subquestion (3) above, that an accused party who chooses to exercise his right not to give evidence but wishes his unsworn version to be before the court can always state that version in a statement from the dock.*

Section 10(7) of the Constitution provides:

> *No person who is tried for a criminal offence shall be compelled to give evidence at the trial.*

The Court finds it questionable whether the practice of not recording defence statements should be restricted to "simple" contraventions or whether the possibility of making a statement from the dock

can substitute the need for a defence statement recorded after informing an accused of the charge and his constitutional rights in other cases, including those of the present nature.

Since this case has been disposed on account of other aspects, this Court will not delve any further on the absence of a defence statement from the accused with respect to count II.

Having regard to the special features of this case, the Court however wishes to make the following remark. Ex-Inspector Saupin confirmed that the aforesaid association had the required authorisation for carrying out a demonstration. Whether the trimming of hair can be said to have breached the pacific nature of same is dubious. The demonstration was stopped on account of the fact that the accused had no barber's licence and the police went to the extent of forfeiting the pair of scissors, razor and pressure foam as exhibits. It was only later that count II was levelled. Whilst this Court will abstain from commenting on the legitimacy or otherwise of the respective acts of the accused and the police viewed in conjunction with the spirit of the Environment Protection Act and the "mischief" it aims to curb, it finds it apposite to reproduce the following quote from **Mahboob v Government of Mauritius [1982] MR 135,** though made it a significantly different context:

> *"In our country, which has no army, the stability of the Government does not depend upon force, but upon the consensus of the people. And that consensus itself derives from confidence in the rule of law. The rule of law is the citadel which guards the people against despotism. It is equally the citadel which guards Government against anarchy. If any part of the wall crumbles, the enemy is free to widen the breach, and the citadel is lost."*

Having regard to the foregoing and bearing in mind all the evidence borne on record and especially the fact that section 88 of the Act has not been complied with, this Court dismisses count II of the information.

Goolshan Sharma JORAI
District Magistrate
12th April 2011