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THE SUPREME COURT

[APPEAL NO. 262/2009]

MacMenamin J.
Dunne J.
Charleton J.

BETWEEN:

KEVIN TRACEY

APPELLANT

AND

DISTRICT JUDGE MIRIAM MALONE AND DISTRICT JUDGE BRIDGET REILLY, KEVIN GROGAN, RONAN COFFEY AND THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

Judgment of Mr. Justice John MacMenamin dated the 30th day of April, 2020

1. The appellant appeals against a judgment and order of the High Court delivered on the 20th January, 2009, wherein Cooke J. refused to grant judicial review against the respondents ([2009] IEHC 14). The appellant had been served with twelve summonses alleging various road traffic offences (para. 1 of the High Court judgment). These included allegations that he had driven his car without insurance and had left the scene of an accident. The summonses were brought by the third and fourth-named respondents. The appellant sought orders quashing prior orders made by the first-named respondent and restraining further prosecution of the summonses before the second-named respondent.

2. The matter came before Judge Malone in the District Court. The appellant sought to raise a series of preliminary issues (para. 2). As these would take some considerable time, District Judge Malone fixed a hearing date of the 12th October, 2006, for a hearing of those issues. The second-named respondent, District Judge Reilly, was sitting on that date. The only formal order made by Judge Malone was to fix the 12th October, 2006, as a hearing date for the preliminary issues and the 20th October, 2006, as the date when the summonses were to be adjourned for trial. Judge Malone's role was to invite Mr. Tracey to lodge in Court, and furnish to the prosecution, written submissions on these preliminary issues by the 2nd October, 2006, and asked the respondents to provide a submission by the 8th October, 2006. There is no basis for any order against her.

3. The matter then came before Judge Reilly on the morning of 12th October, 2006. The appellant applied for an adjournment on the grounds that he had been occupied in other courts dealing with other cases every day since he had received the DPP's submission (para. 4). He submitted he had not had time to prepare for the hearing. Judge Reilly refused to accede to that order.

4. Before Cooke J., the appellant made a number of complaints as to the conduct of the four-hour preliminary hearing before Judge Reilly. He complained that the respondent had refused his application to use the services of a contracted stenographer at that and previous hearings (para. 15); that the respondent had unduly frustrated his efforts to raise each of preliminary issues in court (para. 15); that he had been coerced into the witness box under threat of removal from the Court (para. 31); that Judge Reilly had demanded that return to Court at 2.30 p.m. on the afternoon of the hearing with case law justifying his use of a McKenzie friend, proof of the identity of that McKenzie friend, and a copy of the registration certificate of the stenographer (para. 15); and, finally, that Judge Reilly had summoned the owner of the stenographer's company into the witness box and requested the qualifications and identification of the stenographer (para. 15). The appellant further claimed he was denied a fair hearing before Judge Reilly, that there was undue haste in proceeding to a trial of the summonses, and an inadequate separate hearing of the preliminary issues (para. 28).

5. The appellant also made a complaint that, on the earlier occasion when the matter had listed on a preliminary basis, a representative from the DPP's Office had refused to give him his name (para. 31).

6. Finally, he raised an issue in relation to whether the summonses were in time. The appellant complained that the summonses had not been issued in accordance with ss.10 and 12 of the Petty Sessions (Ireland) Act, 1851 ("the 1851 Act") (para. 24).

7. All these complaints were dealt with by Cooke J. in a reserved judgment which he delivered on the 20th January, 2009. During the course of the High Court hearing before Cooke J., the appellant made an application to extend the reliefs which he was seeking in order to quash the summonses (para. 7). Cooke J. correctly refused that application.

8. As to undue haste, the High Court judge pointed out that the hearing before Judge Reilly had gone on for a period of four hours (para. 29), which was by any standard remarkable in the District Court. Furthermore, Cooke J. observed that it was a well-established principle of the Court's discretion in the grant of relief by way of judicial review that the Court should be slow to intervene in a criminal proceeding which is underway in an inferior court, especially where the alleged irregularities sought to be controlled are capable of being decided by the trial judge in the course of the trial and if necessary upon an appeal (para. 11; see, *DPP v.*

Special Criminal Court [1999] 1 I.R. 60 and *The People (Attorney General) v. McGlynn* [1967] 1 I.R. 232).

9. Cooke J. made clear that in the *McGlynn* case, Ó Dálaigh C.J. pointed out that the nature of a criminal trial was such that, once it started, it continued right through until discharge or the verdict (p.239 of the Report). The Chief Justice had observed that it had the "*continuity of a play*". He pointed out that it was something unknown to the criminal law for a jury to be recessed in the middle of a trial for months on end, and it would require clear words to authorise an unusual alteration in the course of a criminal trial by jury (p.239). Cooke J. observed that, by analogy, similar considerations applied in relation to the appellant's attempts to have the District Court proceeding halted. In my view he was correct on the facts of this case.

10. Cooke J. also stated that the appellant did not, in fact, need any permission from a District judge to be accompanied at a case heard in open court by a person to take notes on his behalf, whether that person was a professional stenographer, retained at his own expense, or a "*gifted amateur*" able to provide a verbatim note (para. 16).

11. The judge noted that, on the evidence, there was by then no dispute on the issue of the appellant's entitlement to a stenographer and that both the first and second-named respondents expressly confirmed that if he wished, the appellant was

free to retain a stenographer for the District Court (para. 17). Consequently, no issue remained regarding the use of a stenographer.

12. Cooke J. also dealt with areas where there had been some conflict of evidence. Lest it might have appeared that Judge Reilly had refused the appellant the services of a stenographer, Cooke J. suggested that, for the purposes of avoiding any further argument or delay, he would make a declaration that the appellant was entitled to a stenographer (paras. 19 - 20). Neither respondent opposed this.

13. Cooke J. also addressed the appellant's contention that he had been quizzed by Judge Reilly on the identity and qualifications of the McKenzie friend, and that he had been directed to bring case law in relation to his having the services of such a person. He held that the truth of the matter was that, while there was controversy about the issue on the morning of the hearing before Judge Reilly, and it appeared that the appellant was refused the services of a McKenzie friend then, this issue had been remedied by the afternoon (para. 22). Consequently, the appellant did not suffer prejudice as a result of what occurred.

14. The appellant raised issues as to whether the summonses were in time, based on submissions arising from ss.10 and 12 of the 1851 Act. At para. 24, Cooke J. pointed out that the summonses were not issued on foot of any sworn information or complaint made under s.10 of the 1851 Act, but by means of an administrative procedure introduced by s.1 of the Courts (No. 3) Act, 1986 ("the 1986 Act"). He

stated that s.7(a) of the 1986 Act had the effect of applying a six-month time limit to the period between the date upon which the cause of complaint arose and the date of *application* for issue of the summonses under s.4 of that Act. Cooke J. carefully considered the dates of the alleged offences and also the dates of application for the summonses, holding that they had all been issued within the time limitation provided (paras. 25–26). There is no basis for finding that Cooke J. erred in that regard.

15. Cooke J. then turned to the appellant's allegations that he had been denied a fair hearing and there had been undue haste. At para. 29, he made three points in this regard. First, he stated that on the 12th October, 2006, Judge Reilly had heard the appellant for a period of four hours, which was largely devoted to the stenographer and McKenzie friend issues. This did not imply any degree of haste to him. Second, he pointed out that the outcome of the debate on the two questions he had earlier raised was in the appellant's favour. He succeeded in obtaining the judicial approval he sought. Third, he concluded that Judge Reilly did not, as the appellant sought to imply, refuse to deal with any further preliminary issue, but rather understandably after a full day in court, had adjourned the trial of the preliminary issues to the day already reserved for the hearing of the summonses: the 20th October, 2006. In doing so, she expressed the intention of dealing with the outstanding issues prior to the substantive trial of the offences. Cooke J. rejected these contentions made on behalf of the appellant as being premature (para. 30). He did not suffer any detriment.

16. Cooke J. addressed the question as to whether the DPP's legal representative had given his name. He said this question was addressed to a solicitor representing the prosecution, not to a judge (para. 32). There could be no *certiorari* in those circumstances. Insofar as it could have been assumed that the allegations regarding his being intimidated into the witness box were concerned, these would not give good grounds for *certiorari* (para. 33). Cooke J. also refused the appellant's application to be represented on foot of the Attorney General Scheme (para. 37).

17. Cooke J. held that the only order that it was appropriate to make on the application for judicial review was one effectively on consent. This was what was referred to in para. 20 of the judgment; namely, a declaration confirming the entitlement of the appellant to retain a professional stenographer at the resumed trial of the summonses at his own expense, and subject to the entitlement of the trial judge to ensure that no interruption or delay was thereby caused by the conduct of the proceedings (para. 38).

18. Cooke J. dismissed all other claims. In my view, he acted entirely correctly in each of the determinations he made. I would dismiss the appeal and uphold the High Court order. There is no basis in law for any of the other reliefs. The other claims were, as the High Court judge held, either premature, moot or unnecessary as the appellant had not suffered any legal detriment. I would uphold each of the findings of the learned High Court judge.

19. I would, however, add one further word. These incidents are alleged to have taken place as long ago as 2006. A full period of 13 years has now elapsed. The matter was before the High Court in 2009. Both parties allowed the issue to rest in this Court without any application to have the matter expedited, despite the fact there were District Court proceedings pending. It was only as a result of initiatives taken by the Court itself that the matter was resuscitated. Judicial review proceedings in this or any category must not be allowed to become stale. I would dismiss the appeal and uphold the decision of the learned High Court judge.

5/5/2020.