

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 250 OF 1999

In The Matter of An Application By Robert Joseph for
Leave To Apply for An Order of Certiorari

And

In The Matter of The Sentence of Magistrate Haymant Balroop
Dated The 8th Day of February, 1999 Pursuant To Section 7(3) of
The Drugs (Prevention of Misuse Act) Chapter 219 of
The Laws of Saint Vincent and The Grenadines

Appearances

Mr. Richard Williams for the Applicant

Miss Dawn Lewis for the Crown

1999: December 1;

2000: January 7.

JUDGMENT

- [1] ADAMS, J: On the 8th day of February, 1999 Martin Henry of Castries, St. Lucia was convicted before His Worship the Magistrate Mr. Haymant Balroop for having in his possession a control drug to wit 6,490 grammes of Cannabis with intent to supply to another.
- [2] The magistrate thereupon sentenced Henry to 18 months imprisonment.
- [3] The offence was committed contrary to section 7(3) of Chapter 219 of the Revised Laws of St. Vincent 1990, and because it was mandatory to do so under the section, the magistrate forfeited the boat and engine to the Crown.
- [4] The application now before me seeks an order of certiorari (leave having been granted on September 16, 1999 to do so) "to remove into the High Court for the purpose of its being quashed on order of the

Magistrate Mr. Haymant Balroop dated the 8th day of February, 1999 whereby it was ordered that the applicant's boat and engine be confiscated and forfeited to the Crown."

- [5] Mr. Richard Williams for the applicant rests his case upon the fundamental right which the citizen of this State enjoys to exercise dominion over his property without being deprived of it by the State (or Crown) except where such property is taken for public purpose, followed by payment within a reasonable time of adequate compensation (emphasis mine).
- [6] The argument of Mr. Williams not only leans on the constitutional provision for support, but seeks to establish that his client was after all deprived of his property without having been a party to the Criminal proceedings and the consequence of which was that his boat and engine were forfeited! Indeed the person tried and convicted was one Martin Henry, and not the applicant Robert Joseph.
- [7] Is it right then that the applicant Robert Joseph should be deprived of his boat without having been given an opportunity to be heard?
- [8] It has been said ad nauseam in cases bearing on Constitutional Law that the fundamental rights which the citizen enjoys in a democracy such as St. Vincent and the Grenadines are not absolute rights; the right to freedom of expression is qualified by the law relating to libel, and the right to liberty of the person is qualified by the power to imprison on conviction of certain criminal offences, and so on.
- [9] The right to which Mr. Williams says his client is entitled is itself qualified in several ways, and a cursory study of Section 6 which proclaims that right reveals the qualification. I set out below in part its provisions, and those of the relevant Drugs Act. Section 6 (1)
 - (1) "No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the payment, within a reasonable time, of adequate compensation."
 - (2)
 - (3)
 - (4)
 - (5)
 - (6) "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section.
 - (a) to the extent that the law in question makes provision for the taking of possession, or acquisition of any property, interest, or right

- (i)
- (ii)
- (iii) by way of penalty for breach of any law or forfeiture in consequence of any breach of any law.
- (iv)
- (v)
- (vi)

Section 7(3) of the Drugs (Prevention of Misuse) Act lays down that:

"Subject to section 30, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 6(1)."

Section 28(1) says:

"Where a person is convicted of an offence under this Act other than a drug trafficking offence, the court shall order the forfeiture to the Crown of any opium pipe or other article or the controlled drug in respect of which the offence was committed and all receptacles of any kind whatsoever found containing the controlled drug and any ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description, proved to have contained the opium pipe or other article or controlled drug or anything shown to the satisfaction of the court to relate to the offence."

[10] Against this background it seems to me that the Magistrate is deprived of a discretion as to whether he should exercise the power to forfeit. That point made by Miss Lewis for the Crown is in my view beyond dispute. What is more, Miss Lewis accurately contends that no evidence was led before this court to suggest that the Magistrate was ever made aware of the existence of the applicant on planet Earth. How in the name of reason could a Magistrate be asked to hear a person whom he did not know to be in existence? In addition the court is concerned as to whether if any locus standi were ever to be attributed to the applicant at the conclusion of the proceedings in which his boat was seized, he should be allowed the remedy of certiorari, when the proceedings under which seizure took place specifically provide for an appeal from any judgment, sentence or order (see section 212(1) of the Criminal Procedure Code Cap. 125). But this is of academic consequence only.

[11] The magistrate in this case did in my view what he was mandated by Section 28(1) to do and the application is accordingly dismissed.

[12] In parting with this decision however I acknowledge the worth and gravity of Mr. Williams' argument that his client would have lost his boat in circumstances to be considered unfair; but I consider that the door to justice in this case may have been found by other proceedings.

[13] There will be no order as to costs.

Odel Adams
HIGH COURT JUDGE