

MONARCH (Z) LTD (1983) Z.R. 33 (H.C.)

HIGH COURT
MUMBA, COMM
13TH NOVEMBER, 1981
(1979/HK/399)

Flynote

Tort - False imprisonment - Need for detention to be unlawful.

Tort - False imprisonment - Liability for - Need for person to be direct and immediate cause of detention.

Criminal Law and Procedure - Arrest - Complainant's liability for false imprisonment where suspect not prosecuted.

Headnote

The plaintiff was arrested and detained on suspicion of theft, for two days, upon a complaint by his employers - the defendant company. Due to insufficient evidence the plaintiff was discharged and released. He subsequently brought an action for false imprisonment against the defendants since there was no reasonable cause for his arrest. The defendants contended that there was a reasonable and probable cause since a felony had been committed and the plaintiff was a suspect.

Held:

- (i) False imprisonment only arises where there is evidence that the arrest which led to the detention was unlawful, since there was no reasonable and probable cause.
- (ii) A person will not be liable in trespass for merely setting into motion the machinery of law, he must be the direct and immediate cause of the false imprisonment.
- (iii) Reporting crime and even signing charge sheet which may lead to an arrest is insufficient to make the giver of the information liable for the imprisonment even if there is insufficient evidence to prosecute, unless the report was made mala fide.

Cases cited:

- (1) Walter v W.H. Smith and Son Ltd [1911-13] All E.R. Rep.170.
- (2) Mcardle v Egan and Ors [1933] All E.R. 611.
- (3) Christie and Anor v Leachinsky [1947] All E.R. 567.
- (4) Bird v Jones [1845] 115 E.R 68.
- (5) Gosden v Eldick (1849) 4 Exch. 445.
- (6) Sewell v National Telephone Co. Ltd [1904-1907] All E.R. Rep. 457.

Legislation referred to:

Halsbury's laws (3rd Edn.) Vol. 38, para. 1268

For the plaintiff: P. J. Pendwe, A.E. Clark and Co.

For the defendant: B. B. Kaweche, Ellis and Co.

Judgment

MUMBA ,COMMISSIONER :

The plaintiff brought this action to recover from the defended damages for false imprisonment. The plaintiff, in his statement of claim, alleged that the defendant, its servants, or agents on or about January 27, 1979, handed the plaintiff over to Mindolo Police and wrongfully directed and procured police officers to arrest the plaintiff and take him into custody on charge, then made by the defendant, that the plaintiff with other persons had broken into the defendant's premises and stole some property and caused the plaintiff to be imprisoned at Mindolo Police Station and only to be released and discharged after about two days or so. The defendants in their defence denied that they caused the plaintiff to be taken into custody and arrested by the police as the defendant company or its officers has/have no control over the operations of the Zambia Police more so Mindolo Police Officers.

The plaintiff is or was at the material time employed by the defendant company as a security guard. At the time of the alleged incident giving rise to this action, the plaintiff had been the defendant's employ for a month. The plaintiff and other three security guards were in the afternoon shift which commenced duties at 14.00 hours at the defendant's premises. As a security guard, there is evidence which is not disputed to the effect that, the sole duty of the plaintiff was to guard the defendant's premises so that property is not damaged or stolen. The other undisputed fact is that on January 27, 1979, the defendant's premises were broken into and as result of this break in, much damage was done to offices and a sum of over K500 was stolen. There is further evidence to the effect that the plaintiff's group when it took over from the other shift made check round the premises, (see the evidence of Security Guard Webster Chikwokwe DW3) and everything was left in order; when the break in and the theft of money was reported to the Management it was there and then decided to make a report to Mindolo Police for the latter to come and carry out their investigations to find out who the culprits were. The plaintiff and other security guards were taken to Mindolo Police Station for interrogation. It is for that, that the plaintiff is now claiming for damages for false imprisonment.

Counsel for the plaintiff submitted that the defendant should be found liable because it is the defendant that caused the plaintiff to be arrested by the police. On this point I was referred to number of cases and to Halsbury Laws of England on an arrest by a private person. Paragraph 1268 of Halsbury Laws of England, 3rd Edition at page 766, Vol. 38 says:

"A private person is liable if he unlawfully detains another, or if he gives him in charge to a Police Officer who thereupon arrests, him or if he causes Police Officer to arrest or detain the other or if he participates in the arrest or detention. A person may participate in an arrest even though he acts with no wrong; motive and in complete ignorance of the unlawful nature of the arrest."

It is the Plaintiff's contention, that there was no reasonable good ground for arresting him or causing him to be arrested. Going by the

above paragraph, I was urged by the plaintiff to find that the defendant unlawfully detained or caused the plaintiff to be detained. I was further, on the question of arrest, referred to the case of *Walter v WH Smith & Son Limited* (1911-13) A.E.R. Rep. p.170. In that case Sir Rufus Isaac C.J., said:

"A private person cannot in an action of false imprisonment justify the arrest of another on suspicion of having committed felony in respect of which he arrested such person was in fact committed. It is not sufficient for him to prove that other felonies of a similar kind had been previously committed and that he had reasonable and probable cause for suspecting that the person whom he has arrested had committed those felonies."

Counsel for the defendant also referred to a number of cases such as *Mcardle v Egan and Others* [1933] All E.R. 611 to 615 and *Christie & Anor v Leachinsky* [1947] All E.R. 567 and contended that the arrest of the plaintiff was done on reasonable and probable cause because a felony had been committed and the plaintiff with his associates were reasonably suspected of having committed that felony. I am indeed grateful to the industrious manner in which this case was ably argued by both counsel. The operative word to this action as rightly put by the plaintiff is found in paragraph 1268 of *Halsbury Laws of England 3rd Edition* at page 766. That is that the arrest or detention should be done unlawfully. It is my duty therefore to determine and see if the defendant's actions could be said to be unlawful. In *Bird v Jones* [1845] 7 Q.B. 742, Patteson defined false imprisonment as follows:

"False imprisonment is a restraint on the liberty of the person without lawful cause, either by confinement in prison, stocks house etc., even by forcibly detaining the party in the streets against his will."

It should be noted that emphasis in such an action is placed on the unlawfulness of the arrest. In our case if it can be shown that the defendant brought the accusation without reasonable or probable cause and with malice an action for false imprisonment will lie against the defendant because I am satisfied that the plaintiff had his liberty restrained when he was taken into police custody. After the break in it was discovered that some money, about K500 was stolen. The management suspected that the plaintiff and his friends who were then on duty and who were supposed to guard the defendant's premises against damage and theft of defendant's property, could be in a position to explain as to how the break in and the theft were committed. The defendant had tried to get satisfactory information from the plaintiff but could not. As a mark of prudence, the defendant had to hand over the plaintiff and his friends to Mindolo Police. What the defendant did, was to give the plaintiff in charge to the police who started conducting their independent investigations. At page 766 of *Halsbury Laws of England 3rd Edition Volume 38*, there is very useful reference to the case of *Gosden v Elshick* (1849) 4 Exch. 445. There it was said:

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"The mere giving of information to Police Officer although it may lead to an arrest does not make the giver of the information liable for the imprisonment."

In our case under judgment, the defendant after failing to get a satisfactory explanation from the

plaintiff and his associates, as to how the break in happened during the day time and when on duty, decided to hand the plaintiff to the Police for them as agents for crime detection to interview the plaintiff and his associates for at least two days. Going by the decision of Gosden supra, the defendant could not be found to have acted unlawfully. Further, in Sewell v National Telephone Co. Ltd [1904- 1907] All E.R. 457 in an action for false imprisonment, it was held that:

"The fact that while the Plaintiff was in custody of the Police, the Defendant signed at the Police Station the charge sheet containing the charge against him is not evidence sufficient to support an action of false imprisonment by the Plaintiff against the Defendant, for the Defendant did not commit a trespass against the Plaintiff but merely set in motion the machinery of law."

That is exactly the position here. The defendant only set in motion the machinery of law when he reported the plaintiff to the police. When the police started their investigations and according to how they operate they had to detain the plaintiff. This was not done in collaboration with the defendant for the defendant does not know how the police carry out their duties. In fact as was said in Sewell's case, there was no evidence in our case that the defendant authorised the police to detain or arrest the plaintiff. Sir Richard Henn Collins M.R., in Sewell's case at page 458 said:

". . . if a person only desires to obtain a judicial decision, and for that purpose merely makes statement before the proper officer who then intervenes and acts upon, the statement that person does not commit trespass; he merely sets in motion the machinery of law, and by doing that does not commit any trespass."

I am in complete agreement with what was said by Sir Richard Henn Collins M.R. in Sewell's case. Right from the start, the actions of the defendant cannot be said to be those made with malice. The defendant was duty bound to protect its property and one must not be made to fear to approach the police when there is reason to suspect that one has committed an offence just because if it turns out that the suspected person if not arrested and tried he will sue for false imprisonment of malicious prosecution. In fact, I cannot end this case on a sound note if I did not borrow the words of Pollock C.B., as reported at page 459 of Sewell's case which were referred to by Cozens - Hardy L.J. Pollock C.B. said:

"We ought to take care that people are not put in peril for making complaint when a crime has been committed. If a charge be made mala fide, there are ample means of redress. But in the absence of mala fides we ought not to be too critical in our examination of the facts to see if something is not done without which the

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charge against the suspected person could not have been proceeded with. A person ought not to be responsible in trespass unless he be directly and immediately causes the imprisonment."

How could the defendant be put in peril for reporting crime that had been committed at its premises? If I were to condemn the defendant for action taken in this case in absence of Mala fides, I would be giving an opportunity to those dishonest employees who would commit a crime and the employer will fear to report such a commission because of the sanction of damages for false

imprisonment if it turned out that the police had not sufficient evidence to prosecute the suspects. That will be a sad day and companies and individuals, would not be protected by the law of their land. In this case, I find that there was no cause for false imprisonment by the plaintiff. The detention was done for the purposes of police investigations and this is the normal police practice. We are not going to depart from this in genuine cases like this one. If there is any discomfort caused to the plaintiff it is *damnum absque injuria*. The actions by the defendant were proper and done in good faith. The action by the plaintiff is dismissed. There will be judgment for the defendant with costs.

Action dismissed