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Ref WEAB4733

Transcript as amended

*Judgment: approved by the Court for
(subject to editorial corrections)**

Delivered: 11/12/2006

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

APPLICATION BY H A S FOR JUDICIAL REVIEW

WEATHERUP J

[1] This is an application for judicial review of a decision of Mr Conner, Resident Magistrate, on 1st March 2006, as confirmed on 19th June 2006, by which he issued a warrant for the arrest of the applicant. The issue arising on this application concerns the interpretation of Article 20(5) of the Magistrates' Courts (Northern Ireland) Order 1981. Ms Doherty appeared for the applicant, Mr Woolf for the Resident Magistrate and Mr McAllister for the Public Prosecution Service.

[2] On 16th September 2004 a Justice of the Peace issued a complaint that on 19th March 2004 at East Antrim Institute, Shore Road, Newtownabbey, Belfast the applicant unlawfully assaulted NF contrary to section 42 of the Offences Against the Person Act 1861. The complaint was signed by Mr Shaw, Justice of the Peace. The next step was that a summons was issued against the applicant on 1st November 2004 on foot of the complaint with a return date for the court in Belfast on 29th December 2004. The summons was signed by a different Justice of the Peace, a Mr Richardson. The summons was served by a constable on the applicant in person on 17th November 2004. On 29th December 2004 the Resident Magistrate, Mrs Kelly, ruled that she had no jurisdiction to hear the summons. The reason was that the Magistrates' Courts Order required the Justice of the Peace who issued the complaint to be the Justice of the Peace who signed the summons. As a different Justice of the Peace had signed the summons it was found that the summons was not valid and the Court marked the summons "No jurisdiction".

[3] A further summons was issued on 21st February 2004, with a return date for the Court in Belfast on 18th April 2005, and again this summons was signed by a Justice of the Peace other than Mr Shaw who had signed the complaint. The reason for the issue of this second summons signed by a different Justice of the Peace, after

the first summons had been rejected for lack of jurisdiction, is not clear. The second summons was not served.

[4] On 1st April 2005 the Justice (Northern Ireland) Act 2005 came into effect and created the new position of Lay Magistrate and transferred the powers of Justices of the Peace to the new Lay Magistrates. Mr Shaw, the Justice of the Peace, was not appointed a Lay Magistrate.

[5] Undaunted by these developments a new summons was issued on 25th July 2005 with a return date for Belfast Magistrates Court on 10th August 2005. Of course the new summons was not signed by Mr Shaw so again there would have been no jurisdiction to deal with the summons. The summons was not served. At this stage it was no longer possible for a valid summons to be issued because Mr Shaw, who had signed the complaint, no longer had any jurisdiction to issue a summons as a Justice of the Peace and he was not a Lay Magistrate.

[6] On 19th August 2005 yet another summons was issued and obviously it was signed by a Lay Magistrate who had not signed the complaint. The return date was the 12th October 2005. The summons was not served.

[7] A summons had also been issued against each of two co-defendants and had been served. Mr Connor RM heard an application on jurisdiction to hear the summonses and in a reserved judgment on 23rd November 2005 ruled that there was no jurisdiction because the summonses had not been signed by the Justice of the Peace or Lay Magistrate who had issued the complaint.

[8] The Public Prosecution Service applied for warrants for the arrest of the applicant and the two co-defendants and Mr Connor dealt with the application on 1st March 2006. He found that he had jurisdiction to issue a warrant and did so. A warrant for the arrest of the applicant was issued on that day and states that the complaint against the applicant was substantiated on oath. The warrant was executed on 12th May 2005 and the applicant came before the RM to object to the issue of the warrant. On 19th June 2006 Mr Connor upheld the validity of the warrant.

[9] This application for judicial review challenges the decision of 1st March 2006 by which Mr Connor granted the application for a warrant for the arrest of the applicant and challenges the decision of Mr Connor of 19th June 2006 by which he rejected the submissions that were made on behalf of the applicant that the warrant had not been validly issued. The applicant's Order 53 Statement sets out the grounds of challenge -

- “(a) The Resident Magistrate issued the said warrant on 1st day of March 2006 pursuant to Article 20 paragraph 5 of the Magistrates' Courts (Northern Ireland) Order 1981 and in the

circumstances of this case the Magistrate acted ultra vires the statutory provision in that –

- (i) the difficulty in this case did not relate to the service of the summons but rather to its issue in the first place;
 - (ii) the only reason a summons could not be served in the present case was that it could never be issued;
 - (iii) the said statutory provision was not designed nor intended to cover such situations but instead intends to cover situations where difficulties arose regarding the service of a summons; and
- (b) for the reasons set out in paragraph (a) above the issue of the warrant was unlawful;
 - (c) the subsequent decision of the Resident Magistrate upholding the decision to issue the warrant was also unlawful and wrong in law”.

[10] Article 20 of the Magistrates’ Courts (Northern Ireland) Order 1981 provides –

“(1) Upon a complaint being made to a justice of the peace for any county court division that a person has, or is suspected of having, committed a summary offence in respect of which a magistrates' court for that county court division has jurisdiction to hear a charge the justice may issue a summons directed to that person requiring him to appear before such court to answer to the complaint.

(2) Where a justice of the peace for any county court division issues a summons under paragraph (1) directed to a person requiring him to appear before a magistrates' court for that county court division, the justice may, upon a complaint being made to him that the person in respect of whom the summons has been issued has, or is suspected of having, committed in another county court division a summary offence, issue a summons directed to that person requiring him to appear before that court to answer to the complaint.

(3) Upon a complaint being made to a justice of the peace for any county court division that a person has, or is suspected

of having, committed an indictable offence into which a magistrates' court for that county court division has jurisdiction to conduct a preliminary investigation or a preliminary inquiry the justice may either issue a summons requiring him to appear before such magistrates' court or issue a warrant to arrest that person and bring him before such court.

(4) Where the offence charged in the complaint is an indictable offence, a warrant under this Article may be issued by a justice of the peace at any time notwithstanding that a summons has previously been issued and whether before or after the time mentioned in such summons for the appearance of the person summoned.

(4A) Where a justice of the peace for any county court division is satisfied that a summons issued under paragraph (1) by him or another justice of the peace for the same county court division has not been served, he may, without a complaint being made to him, re-issue the summons extending the time for the appearance of the person summoned.

(5) Where a resident magistrate is satisfied that a person suspected of having committed a summary offence cannot for any reason be served with a summons, he may issue a warrant for the arrest of that person notwithstanding that a summons has not been first issued.

(6) A warrant may be issued in respect of an offence to which Article 16(1)(b) applies, notwithstanding that the offence was committed outside Northern Ireland if an indictment for the offence may legally be preferred in Northern Ireland.

(7) A warrant shall not be issued under this Article unless the complaint is in writing and substantiated on oath."

[11] First of all article 20 deals with complaints to a JP of a summary offence and provides that the JP may issue a summons for the Magistrates' Court (paragraphs 1 and 2).

Secondly, article 20 deals with complaints to a JP of an indictable offence and provides that the JP may issue a summons for the Magistrates' Court or a warrant to bring the defendant to the Magistrates' Court (paragraphs 3 and 4).

Thirdly, article 20 deals with service of a summons for a summary offence. Paragraph 4A provides that where a summons has not been served a JP may re-issue and extend the time of the summons, whether it was issued by that JP or by another.

The provision obviously contemplates that the summons will be served. Further paragraph 5 provides that a Resident Magistrate, satisfied that a person suspected of having committed a summary offence cannot for any reason be served with a summons, may issue a warrant for the arrest of that person, notwithstanding that a summons has not been first issued. Thus, where there can not be service of a summons the Resident Magistrate may issue a warrant. Under paragraph 7 a warrant shall not be issued under article 20 unless the complaint is in writing and substantiated on oath.

[12] The issue in the present case concerns the words ‘cannot for any reason be served with a summons’.

[13] Leaving aside for the present the words “for any reason”, the applicant contends that this is not a case where the applicant can not be served with a summons. The applicant can be and was served with a summons, albeit a summons which was invalid as the RM found that there was no jurisdiction to hear the complaint. The respondent contends, on the other hand, that service of a summons would be to no effect because the RM could never have jurisdiction to hear the complaint. The respondent’s approach is that article 20(5) is dealing with a summons that is valid and effective to bring the person concerned before the Magistrates Court to answer the complaint.

[14] In relation to the words “for any reason” the applicant contends that the reason that is contemplated by article 20(5) must be a reason connected with difficulties in effecting service of the summons and that article 20(5) does not extend to reasons other than those connected with service. Thus, says the applicant, as a summons could be served on the applicant and as the difficulty concerned the signatures of the JP and the jurisdiction to hear the summons, there was no problem with service of a summons and no valid “reason” for the purposes of article 20(5). The respondent says on the other hand that “any reason” is wider than simply issues about physical service and includes whether or not a valid and effective summons can be served.

[15] The applicant’s grounds concern first of all the context of the statutory provisions, which it is said leads to the conclusion for which the applicant contends. Secondly, it is said that the wider meaning attributed by the respondent to the words “for any reason” in effect renders the provision otiose. Thirdly, it is said that the paragraph must be interpreted strictly because it is dealing with the liberty of the subject. Fourthly it is said that the six month time limit that applies in relation to complaints would be side stepped were the wide interpretation to be given.

[16] In relation to the six month time limit, article 19 of the 1981 Order provides that a Magistrate’s Court does not have jurisdiction in relation a complaint unless the complaint was made within six months from the time that the offence was committed. In the present case the complaint was made within the statutory time limit. However there is not a statutory time limit imposed in relation to the period

between the issue of the complaint and the issue of a summons or the issue of a warrant. The applicant says that the issuing of the warrant could side step the six month time limit. Article 20(7) requires that a warrant shall not be issued unless the complaint is in writing and substantiated on oath. It is the complaint that is heard when the matter comes before the Magistrates' Court so whether the matter proceeds by summons or by warrant there must be a valid complaint. Unless there has been compliance with the requirements for a complaint, including issue within the requisite time limit, the warrant cannot issue. As compliance with the requirements for a complaint is a pre-condition to the issue of the warrant I do not accept the argument that the warrant may have the effect of side stepping the six month time limit.

[17] In relation to the liberty of the subject, the interpretation of article 20(5) will take account of the context of powers of arrest and the issue of warrants affecting the liberty of those concerned.

[18] The further ground is that the provision would be otiose if the approach of the respondent were to be adopted, that is, if there were unlimited reasons that might justify the issue of a warrant. I do not accept that the wide interpretation of the paragraph suggested by the respondent, if it is otherwise the correct interpretation, would render the provision otiose.

[19] The applicant refers to the context of article 20 and to the provisions of the Police and Criminal Evidence (NI) Order 1989 dealing with the arrest of suspects. Article 26 of PACE deals with arrest without warrant for arrestable offences. Article 27 deals with general arrest conditions and in the case of non arrestable offences provides for the arrest of a person if it appears that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied. The general arrest conditions are that the name of the relevant person is unknown and cannot be readily ascertained or that the constable has reasonable grounds for doubting whether a name furnished by the relevant person is his real name, or that the relevant person has failed to furnish a satisfactory address for service, or the constable has reasonable grounds for doubting whether the address furnished is a satisfactory address. In these instances there will be a doubt about the person being served with the summons. Further, the general arrest conditions include cases where a constable has reasonable grounds for believing that it is necessary to prevent the relevant person causing injury to himself or another or suffering injury or causing damage or committing an offence against public decency or obstructing the road and finally that the constable has reasonable grounds for believing that an arrest is necessary to protect a child or other vulnerable person. In these instances there may be no doubt about the identification of the person or the identification of the address at which the summons might be served and the power of arrest is granted for other reasons connected with protecting people and property against injury or insult. The general arrest conditions are not limited to those cases where a summons can not be served. In any event I do not find that the PACE provisions speak to the issue that arises under article 20 (5) although clearly there are

parallels and some of the same concerns that must arise in relation to false identities and false addresses are obviously common to both.

[20] It is said that had it been intended to limit the grounds for the issue of a warrant to cases where physical service could not be effected then article 20(5) might have so stated. The English equivalent in section 1 of the Magistrates Courts Act 1980 contains a provision that limits the entitlement of the Magistrate to issue the warrant to cases where no address has been furnished. Article 20(5) obviously does not limit the matter in that way by the use of the words “for any reason”.

[21] I am satisfied that the words “cannot for any reason be served with the summons” extend to “any reason” and is to be given a wide meaning. I do not accept any of the applicant’s grounds for a narrow interpretation of article 20(5). Accordingly article 20(5) applies where there is no purpose in serving a summons and extends to a case where there is no power for the Magistrate to hear the summons.

[22] Article 20(5) contains four ingredients:

- (1) The Resident Magistrate must be satisfied that the person is suspected of having committed the summary offence;
- (2) The summons cannot be served for any reason;
- (3) The Resident Magistrate has a discretion to issue a warrant for the arrest of the person; and
- (4) The warrant may be issued even if a summons has not been first issued.

[23] The first matter is that the RM must be satisfied that there is a person suspected of having committed the summary offence. The police officer will give evidence that he can connect the applicant to the charge and that is what happened in this case and the RM was so satisfied. He might have asked more if he thought it was necessary to do so, but having heard the evidence from the officer the RM was satisfied on the first condition. The second condition is that the defendant cannot for any reason be served with a summons and that matter is discussed above. The third ingredient is the exercise of discretion whether to issue a warrant and clearly the RM exercised his discretion to issue the warrant in this case. The fourth ingredient is that a warrant may be issued notwithstanding that a summons has not first been issued.

[24] Article 20(7) provides that a warrant shall not be issued under the article unless the complaint is in writing and substantiated on oath. It is stated on the face of the warrant that the complaint has been substantiated on oath. Before the RM the police substantiated on oath the requirement that the RM should be satisfied as to

the suspicion of the commission of a summary offence. It is a different matter as to whether or not the complaint was substantiated on oath and it is not clear from the papers how this was achieved in the present case. The complainant should substantiate on oath, whether by swearing an affidavit which would be produced to the court, by the complainant attending to substantiate on oath or by evidence that the complainant substantiated the complaint on oath before the JP when the complaint was made.

[25] On the challenge to the RM's rulings on the issue of the warrant in the circumstances, I uphold the RM's rulings. The application for judicial review is dismissed.