

IN THE INNER LONDON CROWN COURT

BETWEEN:

AHMED BALOGUN (1)

CAUL SILFORD GRANT (2)

& OTHERS (3)

-V-

HIGHBURY CORNER MAGISTRATES

GROUND OF APPEAL AGAINST CONVICTION

SHORT FACTS/CHRONOLOGY

1. This is an appeal against conviction following conviction of contempt in the face of the Court by District Judge Pigott on 6 January 2003.

1.1 An appeal against conviction dated 13 January 2003 was initially lodged, but because the Court was bombarded by a number of skeleton argument on behalf of the Magistrates', on behalf the Crown and on behalf of the Attorney General's Chambers stating that the Crown Court had no jurisdiction to hear an appeal in relation to a finding of contempt of Court the matter was never heard.

1.2 However, as it has now turned out, such advice by those acting for and on behalf of the Crown or state is incorrect and has led to a grave injustice occurring, this appeal against conviction pursuant to **Article 6** of the European Convention of Human Rights, as enshrined under the **Human Rights Act 1998** must now be heard and ruled upon. The right herein sought is an appeal '**as of right**', namely, access to an Appellant Court following a conviction at the Court below, and right to a fair hearing.

1.3 This appeal therefore now arises *mutatis mutandis De Novo*, and under the principles of **Stare Decisis**.



DELAY

1.4 The issue of delay may well arise, and if it does arise, it is plain that 'but for' the ill advice given to the Court, as indicated above, for those acting for and behalf of the Crown and the State, this matter would have been heard fully on its merit, as to whether or not the conviction could be interfered with. Accordingly, the said ill advice acts as a strong mitigating factor in hearing this appeal and perhaps, in any event, given the nature and circumstances of this case, this case raises *an important point of law* so that the appeal ought to be heard on its merits. In support on the question of delay and the principle adumbrated, it must be noted that in R v. Home Secretary, ex p. Ruddock [1987] 1 W.L.R. 1482 at p. 1485, there was a delay of some 2 years in bringing an application for judicial review, the House of Lords held that *'the importance of the point of law at stake was held to be good reason to extend time*. Likewise, in the present case, if the view were to be taken as to delay, time should be extended because of the importance of the point of law at stake is such that the appeal ought to be heard on its merits.

JURISDICTION

1.5 It is respectfully submitted that the Crown Court is the appropriate Court to hear this appeal, since Blackstones Justices at Paragraph 1-2441 does make clear that contempt of Court is by way of appeal to the Crown Court pursuant to Section 108 Magistrates' Courts Act 1980. Certainly, Section 108 does not exclude contempt of Court being appealed to the Crown Court, and there is certainly no reference or restriction to sentences only, in that, without a sentence, a person is not deemed convicted. Accordingly, Section 108 strictly speaking, is dealing with all matters arising from decisions made at a Magistrates' Court, and such matters are in respect of appeals arising from such decisions so that no restriction can be imposed as to the category of case or cases that is subject to an appeal, as to do that, is to write into Section 108 what is not written by the draftsman.

1.6 Further, it appears that Section 13 of the Administration of Justice Act 1960 is confined to Courts exercising inherent jurisdiction only. Please see for this purpose Section 13 (2) (a), (b), (bb), and (c). There is no doubt that the Magistrates' Court does have power to punish for contempt, nevertheless, such

punishment cannot be imposed, absent natural justice principles, which is of universal application. It is plain that the Magistrates' Court does not exercise inherent jurisdiction, so that the reliance placed by the Crown or Attorney General on **Section 13** with respect, is misplaced.

- 1.7 It is submitted that where there is a conflict of laws between one statute and the other, it is not for the Court to resolve it, and in any event, it is trite law, that where there is an appeal route, as there is in the present case, pursuant to **Section 108**, it is inappropriate to pursue such matters by way of judicial review, wherein an alternative remedy lies by way of an appeal. It is also trite that judicial review can only be used where all other remedies have been exhausted. It is clear, that the remedy available by way of an appeal has not been exhausted, was in fact blocked by those acting for the Respondent when the matter came up in 2003.
- 1.8 The Attorney General's Chambers submits that pursuant to **Section 13 (2) (a) of Administration of Justice Act 1960**, inferior Court must prima facie include the Magistrates' Court and then goes on to rely on the definition of Court under **Section 13 (5) A.J.A 1960**. It is respectfully, submitted that **Section 13 (5)** of the Act, is simply dealing with Courts powers to punish for contempt, and is not dealing with appeal powers, and certainly the provision of **Contempt of Court Act 1981**, pursuant to **Section 12 (1)** of the Act, gives the Magistrates' jurisdiction to deal with any contempt occurring before it, but unrelated to **Section 108 Magistrates' Court Act 1980**, which is also unrelated to **punishing for contempt** to which **Section 13 (5) A.J.A. 1960** is limitedly concerned.
- 1.9 The argument about the Divisional Court having exclusive jurisdiction over contempt committed in connection with inferior Court proceedings has now been settled in the leading case of **Attorney-General v. BBC [1981] A.C. 303**, where the House of Lords curtailed the ambit of the Divisional Court's contempt jurisdiction over inferior court proceedings by adopting a more limited test for what constitutes an "inferior court". The majority consensus was clearly that where "administrative" rather than "judicial" functions were, essentially, being exercised a body would-even where it was required to act judicially in order to discharge such functions-not be categorized as an inferior court.

~~4~~

2. Lords Scarman identified a court of law as “ ... a body established by law to exercise ... the judicial power of the state.” [1981] A.C. 303 at p. 3589 per Lord Scarman. This approach is echoed in the Contempt of Court Act 1981 section 19 which defines “court” for the purpose of the Act as including: “any tribunal or body exercising the judicial power of the State”.
- 2.1 Further, and in the alternative, it is submitted that the extent to which the availability of alternative remedies ought to restrict the availability of judicial review has been revisited by the Divisional Court in R v. Hereford Magistrates’ Court, ex p. Rowlands [1998] Q.B. 110. In that case, as a matter of general practice the Court has encouraged aggrieved defendants to:
- i. **appeal to the Crown Court where he contended that the Magistrates had made an error of fact or mixed fact or law. Such appeal was by way of a rehearing de novo.**
- 2.2 As indicated much earlier under short facts/chronology above, this appeal arises de novo and it is an appeal arising as of right as in every contempt of court matters. Even as recently as 2004, in Rayne In The Matter of S LTL 22/4/2004 Extempore (Unreported), a contempt of court case, the Court of Appeal held that a writ of habeas corpus was not an appropriate remedy, and that the remedy lied in an appeal process. These enunciates the point about pursuing the appeal route rather than judicial review, which for the reasons above is inappropriate as there is the risk of that court dismissing it for want of other alternative remedies available, such as an appeal.

GROUND OF APPEAL

2.3 Conviction: (Breach of Natural Justice)

The Appellants submits that the learned District Judge erred in law, as there was a failure to (a) allow the Appellants to be heard on the question of contempt; (b) allow reasonable time for the Appellants to prepare their defence; (c) allow the Appellants or afford them the opportunity to seek legal advice at the very least as their liberty at the time was at stake; (d) allow the Appellants legal representation as their liberty at the time was obviously at stake; (e) allow the Appellants to put in any mitigation; allow the

~~SS~~

Appellants or give them a chance to apologise; (f) grant any adjournment; and (g) failure to consider and grant any legal aid for the purposes of representation by counsel. This proposition is supported by the decision of the Court of Appeal in R v. Hill [1986] Crim LR 457. All of these principles, which were not adhered to and failings rendered the decision seriously flawed.

2.4 Conviction: (Breach of Article 6)

The Appellants further submits that their rights under Article 6 of the European Convention on Human Rights enshrined pursuant to the Human Rights Act 1998, namely, reliance is placed under Article 6(3) which includes at paragraph (C): *“to defend himself in person or through legal assistance of ... own choosing or, if he has sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”* In support of this proposition, reliance is placed on the case of Bennham v. UK [1996] 22 EHRR 293 at page 324 where it was said that *‘when deprivation of liberty is at stake the interests of justice in principle call for legal representation’*. The Court’s attention is also drawn to the principle of ‘equality of arms’, namely, that the parties must be on equal footing before the Court, wherein the Respondent had the benefit of legal knowledge and by implication, representation. In this regard, the Court has jurisdiction and power to grant legal aid in contempt of court matters, enabling the Appellant and affording him the chance of legal representation. This was clearly not done at the Court below.

2.5 Conviction: (Unlawful)

The learned Magistrate acted as a Judge in her own cause and certainly by sitting to deal with the contempt itself, acted as a Judge in her own course. In support of this proposition, it was stated in Balogh v. St Albans Crown Court [1975] 1 QB 73 where Stephenson LJ said at p.90: *“[The summary procedure] must never be invoked unless the ends of justice really require such drastic means; it appears to be rough justice; it is contrary to natural justice; and it can only be justified if nothing else will do...”* In the present case, it was plainly rough justice when the learned Magistrate dealt with the matter immediately without reflecting on it and without giving any opportunity to the contemnors for legal advice. In this regard, the decision of the Court of Appeal in R v. Moran (1985) 81 Cr App R 51, in the important passage at p.53 comes to mind wherein it was stated: *“First, a decision to imprison the man for contempt of*

~~_____~~

court should never be taken too quickly. The Judge should give himself time for reflection as to what is the best course to take. Secondly, he should consider whether that time for reflection should not extend to a different day because overnight thoughts are sometimes better than thoughts on the spur of the moment. Thirdly, the judge should consider whether the seeming contemnor should have some advice"... All of these principles were not followed in the present case, not least of all that they were not borne in mind by the learned Magistrates' in the course of the proceedings.

Even far worse, as in the DPP v. Channel Four Television Co Ltd [1993] 2 All ER 517 case; and the case of Schot and Barclay [1997] 2 Cr App R 383 the learned Magistrate acted as prosecutor in her own cause and therefore, for the purposes of Article 6(1) of the European Convention on Human Rights as enshrined under the Human Rights Act 1998, the said learned Magistrate could not be an impartial tribunal. Accordingly, a grave injustice has occurred in this case that now needs to be put right. Accordingly, against this backdrop, the learned Magistrate was debarred from sitting and acting in her own cause, one which Article 6(1) supported by authorities above, clearly forbids.

2.6 Conviction: (Against The Weight of the Evidence)

On the merits, the finding of contempt do not support the evidence, as the first Appellant, was before the Court on a road traffic charge and certainly did not willfully insult the District Judge or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court. Accordingly, the first Appellant does not understand how a charge under Section 12 (1) (a) could have been brought and sustained simultaneously without due process as indicated above.

Accordingly, this appeal should be heard on its full merits de novo and without further ado.

In any event, for the purposes of any hearing, the following dates should be avoided:

- a. 8 May – 30 June 2005 (Holiday);
- b. 4th, 5th and 6th July 2005 (engaged with other matters in Court).

