

FANCHETTE v ATTORNEY-GENERAL

(2011) SLR 65

B Hoareau for the petitioner
D Esparon for the respondents

Judgment delivered on 29 March 2011

Before Renaud, Kaunakaran JJ

On 28 April 2006 the petitioner petitioned this Court, supported by an affidavit sworn to by the petitioner, seeking the following relief with costs:

- (i) Declaring the right of the petitioner to liberty has been contravened and his whole detention unconstitutional;
- (ii) Further and alternatively to prayer (i) above declaring the right of the petitioner to liberty has been contravened and his detention outside the first 24 hours unconstitutional;
- (iii) Declaring that the petitioner's rights to retain the services of counsel or to be defended by a legal practitioner of his own choice and the petitioner's right to be informed of his arrest and detention have been contravened;
- (iv) Declaring that the petitioner's right to dignity has been contravened; and
- (v) Granting such other orders or writs as may be appropriate to enforce the provisions of the Constitution in relation to the parties.

On the basis of matters pleaded in the petition, the petitioner claimed that the whole of his detention or detention in excess of 24 hours by the police contravenes his right to liberty under article 18 of the Constitution, and these contraventions have been particularized as follows:

- (i) Failing or ignoring to produce the petitioner to Court within 24 hours of his arrest or detention and to apply to the Court for his further holding when the police intended to detain the petitioner for a period in excess of 24 hours from the time of his arrest or immediately thereafter; and
- (ii) Detaining the petitioner for a period in excess of 24 hours and for a continuous period of 47 ½ hours from the time of his arrest without the permission of any court.

The petitioner also claimed that his right to be informed of "his right to retain the services of counsel or to be defended by a legal practitioner of his own choice and his right to be informed of the reason of his arrest and detention under the Constitution have been contravened", and these are particularized as follows:

- (i) Failing to inform the petitioner of his rights to retain the services of counsel or to be defended by a legal practitioner of his own choice or

at all at the time of his arrest and/or immediately after the commencement of his detention and during the whole of his detention;

- (ii) Failing to inform or to give the petitioner any further or sufficient or satisfactory reasons and particulars for his arrest and detention or at all, despite the petitioner's earlier repeated requests to his arresting officer for them.

The petitioner further claimed that his right to be treated with dignity under the Constitution has been contravened, and this he particularised as follows:

- (i) Detaining the petitioner in a cell in the state and condition rehearsed below for a continuous period of 47 ½ hours;
- (ii) The cell in which the petitioner was detained in was at the material time dirty and in a deplorable state and condition to the extent that the cell being stenching in urine and faecal odours. The foul and offensive smelling odours and deplorable and offensive state and condition of the cell rendered it inappropriate and inhumane for the petitioner or any human being to be detained therein;
- (iii) The petitioner was strongly disturbed and distressed by the state and condition of the cell rehearsed herein and his treatment during the detention, which substantially affected him morally and became ill;
- (iv) During part of the time that the petitioner was in detention it rained and rainwater leaked into his cell and on the wood on which the petitioner had to sleep or rest on making it virtually impossible for him to sleep;
- (v) The cell was unlit and in complete darkness during the whole of the petitioner's detention therein;
- (vi) The petitioner had no rest or sleep on a piece of wood without any mattress or bed sheet during the whole of his detention;
- (vii) The petitioner was not given access to the toilet for the first 22 hours of his arrest and was not provided with toilet paper whilst in detention;
- (viii) The petitioner was denied any exercise or to spend time outside his cell at all during his detention.

The respondent entered its objections supported by affidavit sworn to by Police Officer Cheryl Vengadasamy who deponed that on Thursday 2 February 2006 at 3.30 pm, she assisted the police officer in arresting the petitioner. She claimed that upon his arrest she informed the petitioner of the reasons for his arrest, that being, upon reasonable suspicion of having committed the offence of neglecting a child. She also claimed that she put to him his constitutional right. She deponed that she managed to interrogate the petitioner before which she read his constitutional rights to him, namely his right to remain silent and his right to counsel and she then took a statement from the petitioner. She further deponed that on Friday 3 February 2006 at around 10.30 am she phoned the Mont Fleuri Police Station where the petitioner was being detained informing them to release the petitioner and to re-arrest the petitioner upon reasonable suspicion of having committed another offence namely that of assault against a child. The petitioner was accordingly released and then re-arrested. She claimed that in the afternoon she interrogated the petitioner after she had informed him of his rights to remain silent and to retain counsel of his choice. She deponed that the petitioner chose to remain silent and elected to retain counsel and his rights were respected. On Saturday 4 February 2006 in the afternoon the petitioner was released from custody at around 1.00 pm.

This tactical approach adopted by the police officer whereby the petitioner was released and re-arrested is a practice that ought not to be adopted by the police or tolerated by this Court. When the petitioner was initially arrested that information must have been within the knowledge of the police and if indeed the petitioner was informed as to why he was being arrested the whole information should have been communicated to him in the first place. It is my judgment that the police indeed arrested the petitioner on Thursday 2 February 2006 for no real reason and his release and re-arrest on Saturday 4 February 2006 was just a formality by the police to subject the petitioner to oppressive treatment in order to "legalise" the wrongful arrest.

The petitioner is a casual labourer resident and domiciled in Seychelles and is a Seychellois. On Thursday 2 February 2006 in his house at Beau Vallon, Mahe, in front of his 16 year old and 12 year old daughters, he was arrested by three police officers whose name and identity were unknown to him, whilst acting in the course of their employment and duties with the respondent. The petitioner was informed that he was needed at the police station but without the police officers proffering any further or better particulars to him. Upon his repeated requests and insistence for further and better particulars of the charge and reason of his arrest, made to the arresting officer, he was simply told by one of the arresting officers that - "*anba ou a konnen*" (meaning at the police station you will know).

Following his arrest the petitioner was detained in police custody in a cell at the Beau Vallon Police Station from about 3.00 pm on Thursday 2 February 2006 until about 3.00 pm on Saturday 4 February 2006 without being produced before a court at any time within the first 24 hours of his detention. Furthermore, during the whole of his detention the petitioner was not given any further or sufficient or satisfactory reasons and particulars for his arrest and detention or at all, despite his earlier repeated requests to the arresting officer for them.

I believe the petitioner when he deponed that during and immediately after his arrest and immediately after the commencement of his detention and during the whole of his detention the petitioner was not informed by any police officer of his constitutional rights to retain the services of counsel or to be defended by a legal practitioner of his choice or at all. Had he been informed of his right to counsel and had he been given the opportunity to do so, the petitioner would have contacted a lawyer.

I also believe the petitioner when he deponed that during the whole of his detention he was kept in a cell which to him was in an appalling and deplorable state, and the condition being unfit and inappropriate for him to be detained therein. During the whole period of his detention, the petitioner was not interrogated by any police officer in relation to his arrest and detention. As a result I conclude and find that the petitioner was indeed subjected to inhumane and degrading conditions and treatment whilst in police detention as particularized.

On the basis of those matters that the petitioner deponed to in his affidavit in support of his petition, that lead me to the conclusion and finding that the whole of the petitioner's detention or his detention in excess of 24 hours by the police contravenes his right to liberty under the Constitution.

In view of my conclusions and finding, I make the following declarations and orders:

- (i) I declare that the right of the petitioner to liberty has been contravened and his whole detention unconstitutional;
- (ii) I declare that the petitioner's rights to retain the services of counsel and his right to be informed of his arrest and detention have been contravened;
- (iii) I declare that the petitioner's right to dignity has been contravened; and I order the respondent to compensate the petitioner for the contravention of his rights in the global sum of R30,000.