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# R. v. Theosanamoorthy

Between
Her Majesty the Queen, and
A. Theosanamoorthy

[1997] O.J. No. 6175

**Ontario Court of Justice (Provincial Division)**
**Scarborough, Ontario**
**Jogendra J.P.**

September 17, 1997.
(46 paras.)

Charge: Red light and fail to stop - Section 144(18) of the Highway Traffic Act.

**Counsel:**

Maureen Pecknold, for the Crown.
A. Thompson, for the defendant.

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¶ 1 **JOGENDRA J.P.**:— When this matter relating to Provincial Offences Ticket (hereinafter referred to as the "P.O.T.") # 20462211 issued to A. Theosanamoorthy (hereinafter referred to as the "Defendant") on January 14, 1997 by P.C. Priestley Badge # 4925 of 42 Division for the offence of Red Light - Fail to Stop contrary to section 144(18) of the Highway Traffic Act (hereinafter referred to as the "H.T.A.") was taken up for trial on September 10, 1997 the Defendant was present.

¶ 2 Ms. Maureen Pecknold Student-at-Law appeared as Agent for the Crown. Mr. A. Thompson appeared as Agent for the Defendant.

¶ 3 Mr. A. Thompson on behalf of the Defendant made a motion for a "Stay" of proceedings before arraignment and plea by the Defendant on the basis there was delay in the issue of the Notice of Trial to the Defendant. Mr. Thompson submitted that on the very day the Notice of Offence was issued namely on January 14, 1997, the Defendant had promptly filed a Notice of Intention to Appear and requested a trial. But the Clerk of the Court had however issued the Notice of Trial only on March 11, 1997 after a delay of about two months. This he said was contrary to the express and mandatory provisions of Section 5(2) of the Provincial Offences Act (hereinafter referred to as the "P.O.A.")

¶ 4 Section 5 (2) of the P.O.A. reads thus:

> 5(2) - "Where an offence notice is received under sub-section (1), the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial."
>
> (Underlining by Court)

¶ 5 He placed emphasis on the words "the clerk of the court shall as soon as is practicable" and contended that.a period of about two months was not "as soon as is practicable", and further the word shall" there was a

mandatory direction to the clerk of the court. (Underlining by Court)

¶ 6 Ms. Pecknold for the Crown in reply submitted that having regard to the volume of cases there was bound to be institutional delay and it had not been shown such delay had caused any prejudice to the Defendant; and in any event the remedy of "stay" was available only in very exceptional circumstances and this was not such a case.

¶ 7 When Court invited both the Prosecution and Defence to provide any case law or authority on the interpretation of the words "as soon as is practicable", neither party was able to do so. (Underlining by Court)

¶ 8 Hence Court had to adopt the "golden rule" of interpretation of giving the words their plain,fair and literal meaning and also give effect to the whole scheme of the law and its various provisions in its proper context and not consider one section in isolation of the other, as laid down by the following authorities.

¶ 9 Maxwell on the Interpretation of Statutes (9th Edition) says:

> at page 6:
> Per Jervis C.J. in Mattison v. Hart (1854) 23 L.J.C.P 108, 14; 14 C.B. 35
> "We ought to give the words their plain, fair, literal and natural meaning where we do not see from its scope that such a meaning would be inconsistent, or would lead to manifold injustice.
> Nokes v. Doncaster Amalgamated Collieries [1940] A.C. 1014, 1022
> "The golden rule is that the words of a statute must prima facie be given their ordinary meaning .... Judges are not called up on to apply their opinions of sound policy so as to modify the plain meaning of statutory words."

¶ 10 Black's Law Dictionary (Sixth Edition) 1990 Centennial Edition (1891-1991) at page 122 defines and interprets:

> "As soon as practicable": Means reasonable time. These words are not synonymous with "as soon as possible"; they mean ordinarily as soon as reasonably can be expected in the particular circumstances; or "in due time ....
> "as soon as practicable" means within reasonable time in view of all the facts and circumstances of each particular case. (Underlining by Court)

¶ 11 Lord Reid in Inland Revenue Commissioners v. Hinchy [1960] A.C. 748 at 766 (1960) 1 All E.R. 505 (H.L.) said:

> "It is no doubt true that every act should be read as a whole, but that is, I think, because one assumes that in drafting one clause of a Bill, the draftsman had in mind the language and substances of other clauses, and attributes to Parliament a comprehension of the whole Act."

¶ 12 In view of the fact that the words "as soon as practicable" had been given the meaning "as soon as reasonably can be expected in the particular circumstances" in Black's and no other interpretation had been shown to exist and or apply, Court is of opinion that the contention of Mr. Thompson cannot succeed in the circumstances in the first instance.

¶ 13 Now looking at the expression of Lord Reid, one has to examine in what context the words "as soon as is practicable" occur in the P.O.A.

¶ 14 The words "as soon as is practicable" appears in section 5(2) of the P.O.A., a stage anterior to the filing of a "Notice of Intention to Appear" by the Defendant. Once a Notice of Intention to Appear has been filed by the Defendant, the succeeding provisions or sections of the P.O.A. applies.

¶ 15 It would be seen that sections 5.1 and sub-sections (1) to (5) thereof would come into operation with regard to the duty of the Clerk of the Court informing the Defendant and Prosecutor of the time and place of the trial, once a Notice of Intention to Appear has been filed.

¶ 16 Section 5.1(5) reads thus:

> 5.1(5) "If a Defendant files a notice of intention to appear under subsection (3) the clerk of the Court shall inform the Defendant and the Prosecutor of the time and place of the trial."

¶ 17 This section under which evidently the Clerk of the Court had acted does not speak of "as soon as is practicable." The Notice of Trial contemplated is a notice simpliciter" laying no pre-conditions for doing so, or giving any mandatory directions to the clerk of the Court other than what is expressly set out therein,which for all intents and purposes the clerk had carried out.

¶ 18 If anyone were to allege that there was non-compliance of the said section, it is up to that party to show in keeping with the well-known maxim "he who asserts must prove".

¶ 19 Black's at page 1087 states:

> "OMNIA PRESUMUNTUR RITE ESSE ACTA" -"A prima facie presumption of regularity of the acts of Public Officers exists until the contrary appears.

¶ 20 Cross on Evidence at page 40 states:

> Per Lord Simonds in Morris v. Kanssan [1946] A.C 459 at 475; (1946) 1 All E.R. 586 at 592: "The wheels of business will not go round unless it is assumed that that is in order which appears to be in order."

¶ 21 Having regard to all these provisions of the P.O.A. and the authorities alluded to herein in the absence of anything to the contrary been shown with regard to the presumption of regularity the Court was of the view that the motion of Mr. Thompson must necessarily fail.

¶ 22 Accordingly the motion for "stay" made by Mr. Thompson on behalf of the Defendant was denied on September 10, 1997.

¶ 23 After his first motion was denied by Court, Mr. Thompson made a second motion for "stay" on the same day namely September 10, 1997 on the grounds that there was inordinate delay to bring this matter to trial.

¶ 24 He submitted that the Notice of Offence was served on January 14, 1997 and the Defendant had on the same day filed a Notice of Intention to Appear and requested a trial of the matter. But the trial had been scheduled for the first time only for September 10, 1997 and thereby causing a delay of about eight (8) months, or else to be exact eight (8) months less four (4) days.

¶ 25 For that reason, he considers it unreasonable delay and moved for a "stay" of proceedings.

¶ 26 In support of his motion he cited the decision of His Honour Judge D. Hogg dated April 19, 1990, delivered at Newmarket Court. This is a Judgment of the Provincial Court Judge His Honour sitting in appeal from a decision of a Justice of the Peace in the case of Her Majesty the Queen v. Jayne Winstone, where the Learned Justice of the Peace had denied a motion by the Defendant for a "stay" for delay.

¶ 27 His Honour Judge Hogg had allowed the appeal and stayed the charges.

¶ 28 In reply thereto Ms. Pecknold for the Crown cited the decision of the Supreme Court of Canada in the case of Regina v. Morin decided on March 26, 1992 and reported in 71 C.C.C. (3d) 1 to 32.

¶ 29 She submitted, she was not, disputing the factual situation put forward by Mr. Thompson of 8 months less 4 days as the period of delay but that was not the guideline laid down by the Supreme Court of Canada in the Provincial Court, and a period of 8 months was "permissible" and does not call for a "stay".

¶ 30 As Court desired to review the case laws cited and also it was late in the hour when this matter was dealt with, Court reserved its Ruling on the matter for September 17, 1997.

¶ 31 As such this matter comes up today for Court to deliver its ruling having considered the matter in the light of the case laws cited by both parties.

¶ 32 It is common ground, if not admitted by both parties that the delay is really eight (8) months less four (4) days. It is therefore not necessary for the Court to determine the period of delay as such.

¶ 33 Mr. Thompson, on behalf of the Defendant complains to this Court that the said delay, having regard to the circumstances is unreasonable and relies on the case of Her Majesty the Queen v. Jayne Winstone (supra).

¶ 34 Court has carefully considered the facts and the decision in this case.

¶ 35 Briefly stated the facts of this case are that there was a total delay between the date the ticket was issued and the trial date of 12 months and 11 days. There were no adjournments, no first appearance etc. (vide page 9 paras 11 and 2 of the decision) Secondly, the Defendant had testified at the motion under 11(b) in order to establish that there was some prejudice in the sense that she might have forgotten details of the offence. (Vide page 11 para 2 of the decision).

¶ 36 Considering all these matters, inter alia, the Learned Judge His Honour D.Hogg had given the following Ruling at page 15 and 16:

RULING

> **D. HOGG, P.C.J.** (Orally):
> All right fine thank you. I'm of the opinion that the Learned Justice of the Peace did indeed error (err) in this situation. It is a 12 month delay in a Provincial Offences matter should never exist. The most this matter should be on is 60 to 90 days. It's an absolute disgrace and therefore I shall allow the appeal. The charges will be stayed. Thank you.

¶ 37 In the case at bar the facts are different, the delay is only 8 months less 4 days, and not 12 months 11 days. The Defendant did not give evidence to demonstrate any form of prejudice unlike in the case of Winstone. Hence the facts of Winstone's case do not apply to the case at bar, if not it could be easily and clearly distinguished.

¶ 38 Hence the case of Winstone does not support the contention of Mr. Thompson for his motion for a "stay".

¶ 39 As such, the Court is now left with the case of Regina v. Morin (supra) cited by Ms. Pecknold for the Crown for consideration.

¶ 40 Thus, the short and interesting question for determination is: Is a delay less than 8 months 'per se' with nothing more, sufficient in law to hold that there has been a breach of section 11(b) of the Charter?

"In Morin's case:

at page 3(d):

> Per Sopinka J., La Forest, Stevenson and Iacobucci JJ. concurring:
> "Because of the sudden substantial increase in case load in the Provincial Court in the particular jurisdiction, a period of systemic delay which is in the upper range of eight to 10-month Guideline should be adopted. A period of 10 months would not be unreasonable."
> .....
> "The Accused led no evidence of prejudice .... It appears that the accused was content with the pace with which things were proceeding and that therefore, there was little or no prejudice

occasioned by the delay in the result, the delay in this case was not unreasonable and the appeal must be dismissed."
at page 21(e)
Arbour J.A. in Bennett (1991), 64 C.C.C. (3d) 449 (supra)
"A delay of eight and a half to nine months in getting a case to trial in the Provincial Court, although not a model of brevity, is not outside the range of reasonableness" (p. 474)
at page 21 (f) to (g)
Cory J. in Askov (1990) 59 C.C.C. (3d) 449,
74 D.L.R. (4th) 3552 [1990] 2 S.C.R. 1199 etc. seq:
"It is appropriate for this Court to suggest a period of institutional delay of between eight and 10 months as a guide."

¶ 41 Having carefully reviewed and considered the decision in Morin's case (supra) and the other cases referred to therein, this Court is of the view that Morin's case (supra) would apply on all fours to the case at bar and not Winstone's case (supra).

¶ 42 But, however the case at bar does not satisfy either the test or the guideline of eight to 10-months laid down in all those cases.

¶ 43 In the result, this Court holds that the motion of Mr. Thompson on behalf of the Defendant for a "stay" must necessarily fail. Accordingly the motion is denied.

¶ 44 Before the Court concludes it wishes to express its appreciation for the assistance given by Ms. Maureen Pecknold, Agent for the Crown and Mr. A. Thompson, Agent for the Defendant in this matter.

¶ 45 It directs that this written Ruling be entered as part and parcel of the record of proceedings in this case and further directs that a copy of same be given to each the Prosecution and Defence.

¶ 46 Ruling delivered in open Court.

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