PRESS SUMMARY

16 April 2014

Dhooharika (Appellant) v Director of Public Prosecutions (Respondent) [2014] UKPC 11
On appeal from the Supreme Court of Mauritius

JUSTICES: Lady Hale, Lord Kerr, Lord Clarke, Lord Wilson and Lord Hodge

BACKGROUND TO THE APPEAL

This appeal centres on the existence and scope of a criminal offence known as scandalising the court.

Mr Dhooharika was a journalist and the editor-in-chief of a French language weekly newspaper published in Mauritius called *Samedi Plus*. He published a number of articles relating to hearings in chambers before the Chief Justice in the case of *Paradise Rentals Co Ltd v Barclays Leasing Co Ltd*.

The director of Paradise Rentals was Mr Hurnam, a disbarred barrister. At the first hearing, the Chief Justice refused leave for Mr Hurnam to represent the company. Mr Hurnam wrote a letter to the President of Mauritius complaining about the Chief Justice's actions and requesting him to set up a tribunal to investigate the Chief Justice's conduct. He sent copies of the letter to the Mauritian media and held a press conference criticising the Chief Justice. He alleged that the Chief Justice had acted wrongfully and beyond his powers by hearing the case in chambers and that he was biased.

Mr Dhooharika interviewed Mr Hurnam and published an extensive account of that interview under the title "Barclays Leasing Scandal". In one article, he detailed Mr Hurnam's allegation that the Chief Justice had made remarks that were intended to prejudice the issues in the action. Two further articles set out the grounds on which Mr Hurnam said that he considered the Chief Justice to be in contempt of court.

Mr Dhooharika was prosecuted for contempt by way of scandalising the court and convicted by the Supreme Court of Mauritius. He was sentenced to three months' imprisonment and a fine of R300,000.

Mr Dhooharika was granted permission to appeal against his conviction and sentence to the Privy Council. The issues for determination are:

- whether the offence of scandalising the court still exists in Mauritius;
- if so, what are the ingredients of the offence;
- whether Mr Dhooharika was given a fair trial;
- whether Mr Dhooharika was properly convicted of the offence; and
- whether Mr Dhooharika should have been sentenced to an immediate term of imprisonment having regard to all the circumstances of the case.

JUDGMENT

The Privy Council unanimously allows Mr Dhooharika's appeal. Lord Clarke gives the judgment of the Board.

REASONS FOR THE JUDGMENT

The offence of scandalising the court still exists in Mauritius. In *Ahnee v DPP* [1999] 2 AC 294 the Board concluded that the offence of scandalising the court exists to protect the administration of justice and was reasonably justifiable in a democratic society within the meaning of section 12 of the Constitution of Mauritius. The offence has existed at common law for very many years and, although it has been much criticised and abolished by statute in England and Wales, it continues to exist in many parts of the common law world. It would be inappropriate to depart from the decision in *Ahnee* and, if the offence is to be abolished in Mauritius, it should be abolished by statute [**32, 38, 41**].

The offence exists solely to protect the administration of justice rather than the feelings of judges. There must be a real risk of undermining public confidence in the administration of justice. The relevant *mens rea i*s related to the creation of that risk. If the prosecution establish that the defendant either intended to undermine public confidence in the administration of justice or was subjectively reckless as to whether he did or not, the offence is committed. It is not easy to see that any other, more general, state of mind would be sufficient to support a conviction [**42, 48, 49**].

Mr Dhooharika did not receive a fair trial. The alleged contemnor is always entitled to a fair trial and, depending upon the circumstances, he will almost certainly be entitled to call oral evidence on his behalf, including his own evidence. In the instant case, Mr Dhooharika was, as a matter of practical fact, deprived of his right to give evidence on his own behalf. He should have been permitted to give evidence [**50, 53**].

Mr Dhooharika was not properly convicted of the offence. The Board does not agree that he was acting in bad faith. The various articles and their presentation, taken as a whole, were not intended to convey the message that the allegations of Mr Hurnam were justified and that the Chief Justice should resign and appear before a tribunal. Rather, the thrust of them was that the allegations should be investigated and that the Chief Justice should put his position before the tribunal. The editorial expressly conceded that the paper was not equipped to judge a Chief Justice. Although the comments were plainly ill-judged, the Board does not think that they prove bad faith on the part of Mr Dhooharika. It follows that the appeal against conviction must be allowed [**54, 57, 59**].

In light of the conclusions above, the appeal on sentence does not arise. However, the Board would have allowed the appeal against sentence on the simple ground that Mr Dhooharika should have been afforded an opportunity to make submissions in mitigation before a conclusion as to the correct sentence was reached [**60**].

References in square brackets are to paragraphs in the judgment