

Sanderson v Lambe [2005] NTSC 44

PARTIES: SANDERSON, Karen

v

LAMBE, Michael Paul

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SPECIAL CASE STATED BY THE
COURT OF SUMMARY
JURISDICTION EXERCISING
TERRITORY JURISDICTION

FILE NO: JA 33 of 2005 (20505505)

DELIVERED: 12 August 2005

HEARING DATE: 10 August 2005

JUDGMENT OF: RILEY J

CATCHWORDS:

PRACTICE AND PROCEDURE – CONTEMPT

Complaint of contempt contrary to s 46(1) Justices Act (NT) – whether any person has jurisdiction or standing to lay the complaint – whether any magistrate has jurisdiction or standing to hear the complaint – the statutory offence may be initiated, heard and determined in the same way as other offences.

Justices Act (NT), s 46, 50, 162

Tippett v Murphy (1982) 62 FLR 183 at 190, considered

Davis v Baillee [1946] VLR 486 at 492, considered

Lewis v Judge Ogden (1984) 153 CLR 682 at 693, considered

The King v Dunbabin ex parte Williams (1935) 53 CLR 434 at 445, considered

European Asia Bank AG v Wentworth (1986) 5 NSWLR 445 at 460, considered

REPRESENTATION:

Counsel:

Complainant: N. Crafti
Defendant: In person

Solicitors:

Complainant: Office of the Director of Public
Prosecutions
Defendant: --

Judgment category classification: B
Judgment ID Number: ril0521
Number of pages: 6

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Sanderson v Lambe [2005] NTSC 44
No JA 33 of 2005 (20505505)

IN THE MATTER OF the *Justices Act*

AND IN THE MATTER OF a special case
stated by the Court of Summary
Jurisdiction at Darwin

BETWEEN:

SANDERSON, Karen
Complainant

AND:

LAMBE, Michael Paul
Defendant

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 12 August 2005)

- [1] This matter comes before the Court by way of case stated by the Court of Summary Jurisdiction pursuant to the provisions of s 162 of the Justices Act. The case stated is in the following terms:

“1. The above-named complainant made a complaint against the above-named defendant for that the said defendant did on the 20th day of June 2003 at Darwin in the Northern Territory of Australia

- (i) wilfully interrupted the proceedings of the Darwin Court of Summary Jurisdiction by verbally intervening in an exchange between the presiding magistrate and a defendant before the court. Contrary to section 46(1) of the Justices Act.
 - (ii) conducted yourself disrespectfully to the Justice during the sittings of the court of Summary Jurisdiction at Darwin by saying the following words to the presiding magistrate – “You’ve got not right to lie”, “Oh, you remember me do you?”, “I thought you didn’t remember us, you suddenly remember me now”, “Your memory is coming back, is it?” and “You lied in court mate, we heard you”. Contrary to section 46(1) of the Justices Act.
2. The said complaint came on for hearing before me on the fifteenth day of February 2005. The defendant pleaded not guilty to both charges. I queried whether the charge had been properly laid and whether I had jurisdiction to deal with the matter, or whether the magistrate before whom the alleged contempt was committed was the only person who could lay the charge or had jurisdiction to hear and determine the matter.
3. The question of law upon which this case is stated for the opinion of the Supreme Court is whether any person, other than the magistrate presiding over proceedings in which a contempt of court pursuant to section 46(1) of the Justices Act is alleged to have been committed, has jurisdiction or standing to
- (a) lay a complaint for an offence against subsections (1) and (2) of section 46 of the Justices Act, and
 - (b) hear and determine that matter?”

[2] Although not recorded in the case stated, the complainant is a sergeant of police.

[3] Section 46(1) of the Justices Act creates a statutory offence under the heading “Contempt of Court” and the powers of the Court of Summary Jurisdiction to punish for that offence are to be found in the section.

Section 46 is in the following terms:

“Contempt of Court

(1) Any person who –

- (a) wilfully interrupts the proceedings of the Court;
- (b) conducts himself disrespectfully to the Justice or Justices during the sittings thereof;
- (c) obstructs or assaults any person in attendance, or any officer thereof, in the execution of his duty, in view of the Court; or
- (d) wilfully disobeys any order made by the Court under section 61(2) –

shall be guilty of an offence.

Penalty: \$20 or imprisonment for one month.

(2) Any person who in the opinion of the Justice or Justices wilfully prevaricates in giving evidence to the Court of Summary Jurisdiction shall be guilty of an offence.

Penalty: \$20 or imprisonment for one month.

(3) The Justice or Justices constituting the Court in whose presence any offence under this section is committed may forthwith convict the person guilty of the offence, either on their own view or on the oath of some credible witness and may issue their warrant of commitment accordingly.

(4) Every warrant of commitment under this section shall be good and valid in law without any other order, summons, or adjudication whatsoever.

(5) If any person found guilty of an offence under subsection (1) makes to the convicting Justices, before the rising of the Court, such an apology for the interruption or misbehaviour as they in their uncontrolled discretion deem satisfactory the Justices may, if they think fit, remit the penalty either wholly or in part.”

[4] The offence dealt with in s 46(1) of the Act is of a kind classified elsewhere as contempt in the face of the court. As was pointed out by Muirhead J in *Tippett v Murphy* (1982) 62 FLR 183 (at 190):

“ ... here we are dealing with a breach of a statutory provision and caution must be exercised before drawing too much upon the “contempt” authorities. But the magistrate initially charged the appellant with contempt and he refers to contempt in the subsequent proceedings. Section 46 is designed to give courts of summary jurisdiction summary powers to prevent interference with their functions. But they are in fact provisions designed to cope with contemptuous behaviour and the Territory legislation follows the format of the South Australian legislation in prefixing the section by the words “contempt of court”.”

[5] The usual response to conduct that may fall within the scope of the provision or, in common law terms, constitute contempt in the face of the court, is for the matter to be dealt with then and there by the presiding justice. However in light of the statutory provision that is not exclusively the case.

[6] The purpose of punishing a person for such contempt is rarely, if ever, to uphold the personal dignity of the judicial officer concerned but, rather, to serve the interests of the general public in maintaining the due

administration of justice, the authority of the courts and the interests of the litigants: *Davis v Baillie* [1946] VLR 486 at 492. As has been observed on a number of occasions, the power to summarily punish a contempt of court should be used sparingly and only in serious cases: *Lewis v Judge Ogden* (1984) 153 CLR 682 at 693.

- [7] By operation of s 50 of the Justices Act a complaint may be made by the complainant in person or by his counsel or solicitor or by any other person authorised in that behalf. There is no suggestion that Sergeant Sanderson is not qualified to issue a complaint if the response to the question of law in par 3(a) is that persons other than the presiding magistrate have the appropriate standing.
- [8] At common law it is open to private litigants to make application for an order that someone be punished for contempt. In *The King v Dunbabin ex parte Williams* (1935) 53 CLR 434 at 445 Rich J (with whom the other judges in the majority agreed) observed that “the Court may be put in motion by a person who has no particular interest in the contempt complained of”. In *European Asia Bank AG v Wentworth* (1986) 5 NSWLR 445 Kirby P (with whom Glass JA agreed, Priestley JA to similar effect) upheld the right of private initiation of contempt proceedings. He went on to observe (460):

“There are adequate protections against abuse of the private initiation of contempt proceedings. They include the sanction of costs, the power of the Attorney-General or the Registrar to commence

proceedings and the facility to strike out proceedings which are manifestly vexatious or an abuse of the process of the court.”

[9] In the present case s 46 of the Justices Act creates the statutory offence broadly described as contempt of court and permits the presiding justice to take action pursuant to the provisions of that section. So much is clear from s 46(3) of the Act. However there is nothing within s 46 which requires that the complaint be laid by the presiding magistrate or that the matter be heard and determined by that magistrate. There is nothing to suggest that the statutory offence thereby created cannot be initiated and heard and determined in the same way as other offences.

[10] In my view the questions posed for the consideration of the Court in the special case should be answered, as submitted by the counsel for the complainant:

“(a) Yes, provided that the laying of the complaint is authorised by s 49 and s 50 of the Justices Act;

(b) any magistrate may hear and determine that complaint.”
