



**IN THE KWAZULU-NATAL HIGH COURT DURBAN
REPUBLIC OF SOUTH AFRICA**

CASE NO : DR 157/13

In the matter between:

THE STATE

and

PRAVESH SINGH

Accused

REVIEW JUDGMENT

KHALLIL AJ

- [1] This matter comes on review ostensibly in terms of Section 304(4) of the Criminal Procedure Act 51 of 1977 (hereinafter referred to as the CPA).
- [2] The accused was convicted of negligent driving in the Magistrate's Court, Pinetown on the 21st June 2012 and

sentenced to pay a fine of R4000.00 or in default of payment to undergo (4) months imprisonment.¹

- [3] It appears that the Presiding Magistrate's decision to submit the matter for review, purportedly on the basis of the provisions of Section 304(4) of the CPA, was prompted by counsel who represented the accused at trial.

IS THE MATTER REVIEWABLE IN TERMS OF SECTION 304(4) OF THE CPA?

- (4) In a letter dated 30 June 2012 addressed to the "*Chief Magistrate, Pinetown*",² counsel who represented the accused at trial, raised concerns regarding the conduct of the Presiding Magistrate during the trial. These concerns included allegations of gross irregularity, bias, admission of inadmissible evidence and unnecessary delays in the finalization of the case.
- [5] In paragraph 9 of the aforesaid correspondence, counsel concluded:

"In my opinion, a miscarriage of justice has taken place and looking at some of the irregularities that I have pointed out, it is in the interest of justice and the accused's right to a fair trial that a request for the transcript is called for and the matter be submitted on special review."

¹ See pages 183 and 187 of the Record

² Apparent reference to the Judicial Head of Court at Pinetown at the level of Senior Magistrate

- [6] Despite the fact that the accused was legally represented throughout the trial by counsel, no application for leave to appeal was made against the conviction and/or sentence.
- [7] The sentence was also not subject to review in the ordinary course as the accused was legally represented.³
- [8] Subsequent correspondence and e-mails were exchanged between counsel for the accused and the Presiding Magistrate, the net result of which was the procurement of the transcript of the proceedings at the expense of the Department of Justice & Constitutional Development⁴ and the submission of a copy of the Record to counsel for the accused.⁵
- [9] I digress to mention that counsel in acting as alluded to in paragraph [8] supra, appeared to have carried out the functions of an attorney.⁶
- [10] The allegations by counsel for the accused are categorically denied by the Magistrate in a written response dated 8 March 2013 addressed to both the Registrar of the High Court and counsel for the accused. I may add that the concerns raised by counsel, for the most part, if not entirely, are not apparent on the record.

³ Section 302(3)(a) of the Criminal Procedure Act 51 of 1977

⁴ See e-mail sent by Magistrate to Counsel on 8 March 2013

⁵ See Page 4 ADD (sic) paragraph X of Magistrate's Response

⁶ De Freitas & Another vs Society of Advocates KwaZulu-Natal 2001(3) SA 750 (SCA)

[11] Notwithstanding his aforesaid denial of the allegations and view, in essence, that the proceedings were indeed in accordance with justice, the Learned Magistrate still caused the matter to be sent on special review.

[12] The question which arises is whether the Magistrate had, in the circumstances, been entitled to submit the matter for review in this fashion. The provisions of Section 304(4) of the CPA⁷ read as follows:

“If in any criminal case in which a Magistrate’s Court has imposed a sentence which is not subject to review in the ordinary course in terms of Section 302 or in which a Regional Court has imposed any sentence, it is brought to the notice of the Provincial or Local Division having jurisdiction or any Judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such Judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or Judge in terms of Section 303 or this section.”

[13] A Magistrate who approaches a High Court with a view of having proceedings reviewed in terms of Section 304(4) of the CPA should, at the least, specifically submit that the proceedings were not in accordance with justice.⁸ This was not done in the present case. I can only assume that the Magistrate in so acting succumbed to pressure from counsel for the accused as is apparent from the exchange of correspondence.

[14] The Magistrate’s decision in such circumstances is not only unfortunate but also disturbing. In effect he allowed himself

⁷ Criminal Procedure Act 51 of 1977

⁸ S vs De Wee & Others 2006(1) SACR 210 (NC)

to be used as an agent for the accused in not only submitting the matter on special review but also in procuring the transcript of the proceedings at State expense and supplying the defence with a copy of same. In my view this is an abuse of the review process as contemplated in Section 304(4) of the CPA. Such conduct if countenanced could have a disastrous effect on the general administration of justice, financially and otherwise. Magistrates should be mindful that Courts are not misused for cheap appeals in the guise of reviews based on Section 304(4) of the CPA.⁹

[15] The practice of Magistrates submitting matters on special review in the absence of any grounds must also be discouraged. Section 304(4) of the CPA was not conceived as a method whereby practitioners, in cases where there is no automatic review, can get the benefit of an appeal or review. The Courts will only exercise its powers thereunder in proper circumstances.¹⁰ Serious allegations are made against a Magistrate, allegations which are not under oath and no specific reference is made to the record consisting of 190 pages insofar as the allegations are concerned nor have I had the benefit of hearing the State.

[16] What should have been done was for the accused to apply for leave to appeal or institute review proceedings if he was dissatisfied. In that event the Court would not have to adjudicate on informal allegations made in a letter from

⁹ State vs Matsane n' Ander 1978(3) SA 821 (T)

¹⁰ S vs Smith 1965(2) SALR Page 121

counsel for the accused and which are denied by the Presiding Magistrate. It would be improper for a review court to deal with such a case in this informal manner and it would indeed lead to an untenable situation if the door were to be opened for the review of matters in this haphazard fashion.¹¹

- [17] I also think it improper for Magistrates to explain their findings to legal representatives (save as prescribed in law) or become involved in correspondence with practitioners regarding their findings once they have disposed of a case. This has the potential of bringing the administration of justice into disrepute.

ARE THE PROCEEDINGS NONETHELESS REVIEWABLE IN TERMS OF SECTION 24 OF THE SUPREME COURT ACT 59 OF 1959?

- [18] At best for the accused, the allegations raised on his behalf might constitute grounds for a review in terms of Section 24 of the Supreme Court Act.
- [19] This section enables proceedings in inferior courts in respect of which there is a complainant against the method of the proceedings to be brought before a Higher Court.¹² Rule 53¹³ of the Uniform Rules of Court lays down the procedure to be adopted.

¹¹ S vs Ferreira 1978(A) SA 30(T)

¹² Bester vs Easigas (Pty) Ltd & Another 1993(1) SA 30 (C) @ 438

¹³ Uniform Rules Regulating Conduct of Proceedings of the High Court of South Africa

- [20] That procedure will require an application by the accused on oath. In the present case, the review has been requested by the Magistrate. This creates a procedural problem in that Section 24, read in conjunction with Rule 53 of the Uniform Rules of Court, contemplates a review brought before the High Court by one of the parties to the proceedings sought to be reviewed.¹⁴

SHOULD THE COURT INTERFERE BY VIRTUE OF ITS INHERENT POWER?

- [21] Section 173 of the Constitution¹⁵ provides as follows:

“The Constitutional Court, Supreme Court of Appeal and High Court have the inherent power to protect and regulate their own process and to develop the common law, taking into account the interest of justice.”

- [22] In Hansen vs The Regional Magistrate, Cape Town & Another,¹⁶ Davis J, in commenting on the effects of Section 173 on the inherent jurisdiction of the Courts, stated at 433:

“.....Section 173 of the Constitution confirms a concept of inherent jurisdiction which promotes the interest of justice within the context of the values of the Constitution. This is a wider concept than that provided for in Section 19(1)(a) and Section 19(3) of the Supreme Court Act 59 of 1959....

- [23] From a review of reported cases it seems that before the High Court can exercise its inherent jurisdiction, particularly in criminal matters, the Court should be satisfied that all legal remedies have been exhausted. In the present case this

¹⁴ Narodien vs Andrews 2002(3) SA 500 (C) @ 506 D-E

¹⁵ Act 108 of 1996

¹⁶ 1999(2) SACR 430 (C)

would include Appeal, Review and Petition remedies. See *S vs Williams*¹⁷, *Moch vs Nedtravel (Pty) Ltd t/a American Express Travel Service*¹⁸, *S vs Bushebi*¹⁹.

[24] The accused, in casu, has not applied for leave to appeal nor have any review proceedings been instituted by him. These are options still available to the accused and it therefore cannot be said that all legal remedies have been exhausted.

[25] This is, in my view, not a proper case for the Court to exercise its powers in terms of Section 173 of the Constitution.

[26] In the circumstances, I propose the following order:

The matter is remitted to the Magistrate, without any further order.

DATED AT DURBAN ON THIS 5th DAY OF APRIL 2013.

I agree

KHALLIL AJ

GYANDA J

¹⁷ 2005(2) SACR 290

¹⁸ 1996(3)SA 1(A)

¹⁹ 19

96(2) SACR 448 (NmS) at 451 (C)