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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

A. No. 212/84

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IN THE MATTER of Part I of the Judicature Amendment Act 1972

BETWEEN M of Whakatane, Farmer

APPLICANT

A N D COMMISSIONER OF POLICE

FIRST RESPONDENT

A N D DISTRICT COURT JUDGE, SYLVIA CARTWRIGHT

SECOND RESPONDENT

Hearing : 4th December 1984

Counsel : B. Hart & J. Waymouth for applicant
J. McDonald for respondents

Judgment : 4th December 1984

ORAL JUDGMENT OF BISSON J.

The applicant was first arrested in Auckland on the 6th August 1984 and charged with being in possession of cannabis for supply at Auckland on that date, the 6th August 1984. Those proceedings have continued to the stage that a preliminary hearing was to take place on the 12th October 1984 but, because of subsequent developments, the preliminary hearing has been enlarged to the 1st February 1985, at Auckland.

On the 7th August 1984 the applicant was re-arrested and charged with being in possession of cannabis for supply on the 5th August 1984 at his farm property near Whakatane. As both informations were laid indictably this second information also called for a preliminary hearing and the applicant was remanded for the preliminary hearing in the Whakatane District Court on the 27th September 1984. Both the Police, who laid the charges, and Mr. Hart, who represented the applicant, agreed to the proceedings taking the course to which I have mentioned up to that stage.

Then, on the 15th August 1984 the applicant was further arrested and charged jointly with his de facto wife, in the two informations, with being in possession of cannabis for supply at his farm on the 15th August 1984. These two informations were laid indictably and for reasons I do not need to go into, the Police and Mr. Hart agreed to them, along with the information for a preliminary hearing at Whakatane, being transferred for a preliminary hearing at Tauranga before a District Court Judge on the 10th October 1984.

The next development was that three new informations were sworn on the 10th September 1984 and soon after filed in the District Court at Tauranga, the first being an exact duplicate of the first information to which I have referred, namely, the one relating to a charge against the applicant for being in possession of cannabis for supply at Auckland on the 6th August 1984. The other

two informations were joint charges relating to the applicant and his de facto wife, the allegation relating to them being in possession of cannabis for supply at the applicant's farm on the 5th August 1984. On the 10th October 1984 the Auckland information relating to the 5th August 1984 charge against the applicant alone was withdrawn and the two new joint charges relating to that date replaced it.

No exception was taken to the latter two informations proceeding, that is against the applicant and his de facto wife jointly, the second Auckland information having been withdrawn. What Mr. Hart, on behalf of the applicant, objected to was that an information was filed in the District Court at Tauranga alleging the very offence in respect of which an information had already been filed in the Auckland Court and in respect of which a date for a preliminary hearing had been fixed and that no steps had been taken to withdraw it.

In the circumstances, the District Court Judge, who was about to take the preliminary hearing of all charges at Tauranga, adjourned them all while an application was made to this Court for review. Mr. McDonald has submitted that there is nothing in the Summary Proceedings Act against the Police laying any number of identical informations at the same time in any number of different Courts, pointing to section 13 of the Summary Proceedings Act 1957 which says :-

> "Except where it is expressly otherwise provided by any Act, any person may lay an information for an offence."

He relies on the words "an offence" as opposed to "the offence". He also refers to section 149 of the Summary Proceedings Act 1957 and submits that the Crown, or the Police in this case, was entitled to proceed on the preliminary hearing notwithstanding that one of the informations was a duplicate of the Auckland information.

In my view the Police, having chosen quite properly under section 18 of the Summary Proceedings Act, to file the first information in the Auckland Court, that being the nearest Court to the place where the alleged offence had been committed, could not, while that information was current and, indeed, reached the stage where a preliminary hearing was pending, then bring an identical charge against the applicant in another Court. The provisions of section 18(2) provide :-

> "(2) Notwithstanding anything in subsection (1) of this section, where 2 or more informations to which this Part of this Act applies are laid against the same defendant, it shall be a sufficient compliance with the provisions of this section if the informations are filed in an office of the Court in which any one of the informations could be filed or has already been filed."

In my view that subsection seems clearly to relate to informations in respect of different alleged offences and does not support the filing of yet another information in

exactly the same terms as a previous one in another Court while the previous one is still current in the first Court. It may be that, as Mr. McDonald says, there is nothing in the Summary Proceedings Act which expressly provides that such course cannot be adopted but it would amount, in my opinion, to an abuse of the due process of the law if a defendant were exposed to another information for the same alleged offence when there was already one current and awaiting a preliminary hearing on a certain date in another Court as agreed to by both the parties without that first information having been disposed of in one way or another.

Mr. Hart, in a memorandum, has submitted that the situation could be dealt with in one of the following ways. First, that the hearing of the Auckland information should proceed on the date fixed for the preliminary hearing. Secondly, there might be an application by the Police for a transfer of that information pursuant to section 155 of the Summary Proceedings Act. Thirdly, the withdrawal of that information by leave of the Court pursuant to section 157 and fourthly, by the Police offering no evidence in respect of that Auckland charge.

This review may be somewhat academic in the ultimate outcome because the Police, no doubt, have various options open to them but whatever application they may make would require argument and consideration of aspects of the matter which are not before this Court on this review. In

my view, the learned District Court Judge was wrong in adjourning the hearing of an information which had been filed in the Tauranga District Court when an identical information had already been filed in the Auckland District Court and a date fixed for the preliminary hearing. As things stood the second information should have been dismissed. Accordingly, the order of this Court is that the information in the Tauranga District Court, which is identical to the first information filed in the Auckland Court, should be dismissed without prejudice to the Auckland information which is pending so far as special pleas are concerned and I direct that the District Court Judge act accordingly. Mr. Hart accepts that qualification. As the informations in the Tauranga Court have all been transferred to the Hamilton District Court for hearing on the 20th December 1984 my direction applies to the District Court in Hamilton.

Gault J.

Solicitors :

Applicant : John Waymouth, Taupo.

Respondents : Davys Burton Henderson ¢ Moore, Rotorua.