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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. M.563/85

1197
BETWEEN PETER DANIEL HARRISON

Appellant

A N D THE CROWN

Respondent

**LOW
PRIORITY**

Hearing: 14 August 1986

Counsel: P.M. James for Appellant
D.J.L. Saunders for Respondent

Judgment: 14 August 1986

ORAL JUDGMENT OF HOLLAND, J.

The appellant, Peter Daniel Harrison, has filed in this Court a notice of motion seeking orders "directing the respondent to deliver to the appellant without further delay negatives held by the police since April 1985 and not involved in any proceeding and awarding costs to the appellant". The circumstances are unusual and I can readily understand how the matter has come before this Court, but I doubt if this Court has any jurisdiction to make a formal order.

Some time in April 1985 the police seized three rolls containing 108 negatives with a view to prosecuting the appellant under section 21(1)(b) of the Indecent Publications Act 1963 for printing indecent documents. The appellant was convicted in respect of 38 of those 108 negatives. On entering the conviction, the District Court made an order that the three rolls of negatives be

destroyed. The appellant appealed against his conviction. That appeal was dismissed on 17 December 1985 but in the course of arguing the appeal the appellant submitted that the order for destruction of the 70 negatives taken from him and in respect of which no convictions were entered should be cancelled. This Court on appeal accepted that submission and varied the order for destruction to restrict it to the negatives in respect of which convictions were entered. The appellant sought and obtained leave to appeal to the Court of Appeal against the dismissal of his appeal against conviction. That appeal was heard in May of this year and dismissed.

Meanwhile the appellant had been active in endeavouring to have returned to him the 70 negatives in question. The police refused to return them to him claiming that they were required for investigation of further offences. On 9 January this year he was charged with extortion where some of the negatives related to photographs of the complainant in the extortion charge. He was committed for trial in the District Court on the charge of extortion on 9 April 1986. He has not yet been tried. On 11 June 1986 the appellant applied to a District Court Judge under section 199(3) of the Summary Proceedings Act for orders that these negatives be returned to him. At that hearing the prosecution apparently asked for an adjournment to enable legal advice to be obtained. The application was adjourned to 25 June.

In the meantime on 20 June 1986 the police returned the negatives to the appellant but immediately executed a fresh search warrant seizing the negatives in relation to this extortion charge. When the matter came back before the Court on 25 June the

District Court Judge was troubled because this Court had already taken some part in the proceedings. The District Court Judge invited the appellant to agree to having his application adjourned until his trial on the extortion charge was completed or alternatively that he dismiss the application leaving it to the appellant to come back to this Court. The appellant, perhaps unwisely, opted for the second alternative and the District Court Judge accordingly dismissed the application.

Counsel has not been able to draw my attention to any right of appeal against the granting or refusing of an order under section 199 of the Summary Proceedings Act 1957. It does not appear to me that either a complaint or an information was before the Court and the fundamental ground for an appeal may well not exist. On the other hand I can understand the District Court Judge's concern that some sort of order had been made relating to those negatives in this Court.

It now transpires that the negatives in question were not produced as exhibits at the depositions for the extortion trial because they were the object of examination by the Court of Appeal in the appellant's appeal against his conviction in relation to them being indecent documents. Counsel for the Crown has told me that counsel for the appellant specifically agreed at the time of the taking of depositions on the extortion charge that he would waive the production of these negatives as an exhibit because they were needed in the Court of Appeal. Had they been produced as an exhibit they would then have been in the custody of the Registrar of the District Court. I accept the submission advanced on behalf of the appellant that the police have no right to retain documents that are

not directly related to either a current investigation or a prosecution. Here a prosecution has been brought. If the documents are directly related they should be produced as exhibits. The reason why they were not produced as exhibits has been explained. It is not clear to me whether all of the 70 negatives are relevant to this extortion charge.

I propose to dismiss the present application on the grounds that the Court has no jurisdiction but by way of guidance to the District Court Judge in case the matter should come back before the District Court Judge on application from the appellant, it seems to me that an order should be made that any negatives held by the police seized from the appellant should be produced to the Registrar of the District Court to await the determination of the Court pending the completion of the extortion trial. If some of those negatives have no relation to that trial they should be returned to the appellant. For the reasons given, however, the present notice of motion before the Court is dismissed. I should record that I have not heard counsel on the question of the inherent jurisdiction of this Court. This may be a case where ultimately the Court has got some inherent jurisdiction, but even accepting that I would still dismiss the application because of the specific procedure provided in section 199 of the Summary Proceedings Act which can still be observed.

A. D. Holland