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IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY A.P. No.66/93

ORDER FOR SUPPRESSION
OF NAME, ADDRESS, OCCUPATION,
IDENTIFYING PARTICULARS

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BETWEEN S

Appellant

A N D POLICE

Respondent

Hearing: 17 September 1993

Counsel: K.N. Hampton, Q.C. for the Appellant
C.A. O'Connor for the Respondent

Judgment: 17 September 1993

ORAL JUDGMENT OF TIPPING, J.

The essential point in any question of name suppression is whether the prima facie rule (that all matters going on in the Court are in the public domain) is displaced by the individual features of the case in hand and the interests of the person concerned and on occasions the wider interests of innocent third parties necessarily affected by any publication. That always is the essential balancing exercise and at times it can be a difficult and sensitive exercise. One always starts from the proposition that there should be no suppression except for good cause. Good cause need not necessarily be found in a single factor. It can be and usually is found in a combination of factors which on balance, after careful judicial assessment, are found to outweigh the prima facie public right to know.

I start this appeal, which is in an interim suppression context, with the disadvantage that apparently not only are there no recorded remarks in the Court below as to why suppression was refused, but no reasons were given at all. I am bound to say, and it has been said before and I hope it won't have to be said again, that absence of reasons on a matter of considerable importance such as this is really a denial of the judicial function and a denial of any right of appeal and that is why, in circumstances such as this where there are no reasons, this Court departs from the ordinary approach on appeals from a discretionary decision below and has to deal with the matter de novo. That is not the normal approach but it is the only approach which this Court can take in common justice if there are no reasons.

The Appellant is a 51 year old . He has been a . He has been at his since 1989. It is quite a large The Appellant is facing six charges of common assault laid under the Crimes Act. He has elected trial by jury and of course he denies the allegations. The incidents alleged go back as far as November 1991. I bear in mind in that respect that the complainants are primary school children, some of them as young as five. I am told that there was originally some thought of charging the Appellant under the Summary Offences Act but time had run out in that respect and that is perhaps why some of the charges may have been laid under the Crimes Act.

The allegations against the Appellant have no sexual connotation whatever. They include claims of taking hold of a pupil by the hair, kicking a pupil on the ground, forcibly moving a child in school assembly and that sort of thing. They also include an allegation that the Appellant forced a pupil to push a lead pencil into that child's forearm. The complainants were interviewed in March of this year. Two charges were laid

at the end of March for hearing in early April. At that hearing, the first hearing, the learned Judge then presiding granted interim suppression of name and identifying particulars. There was a remand until 29 April and then a further remand until 27 July for depositions. The interim order for suppression was continued. Shortly before 27 July three additional charges were laid. There was a further remand to 10 August but the interim order was continued.

On 10 August there was a remand to 29 September for the taking of depositions on that date and it was at this point that the learned Judge, the same Judge as had made the interim order in the first place, refused to continue the interim order any further. This was the occasion earlier referred to when absolutely no reasons were given for that decision. The only possible change in circumstance that counsel have been able to identify is the fact that some further charges had been laid, but I note from the sequence of events referred to by Mr Hampton that the interim order was in fact continued, albeit for a short period, after the further charges were laid and then peremptorily, and I use that word deliberately, it was not continued. The fact that further charges have been laid can sometimes be a sufficient ground for changing course on a suppression front but I have no idea in this case whether the Judge thought that this was so here and if so why.

Mr Hampton submits that under s.140 of the Act, which is the section which gives the Court the discretion, an order suppressing the name, address, occupation and other identifying particulars of the Appellant was appropriate and remained appropriate at least until the commencement of the trial. It is true, as Mr O'Connor for the Crown submitted, that just because one is presumed to be innocent until found guilty does not mean that one automatically should get interim suppression. That was the law in New Zealand about 20 years ago for a period of years under the regime of Dr

Martyn Findlay, but it is not the law at the moment. However, the Court must bear in mind, in relation to the nature of the person charged, the nature of the charges and the prejudice that could ensue if publication is allowed, that up until a finding of guilt the person concerned may very well be innocent. It does not automatically lead to suppression but it is certainly, in my respectful view, one of the factors that must be put in the balance, not as decisive but as something to be weighed along with all the other points. I say that because the first ground of appeal is that there could be a major and prejudicial impact on the Appellant if publication is allowed prior to determination of the charges if it transpires that he is in fact innocent.

The next matter which Mr Hampton raised is the proposition that the charges, although of seriousness, are not by any means at the top level of seriousness. There is also the point, which in today's climate should I think be carefully weighed, that there is absolutely no sexual connotation in these charges. No doubt responsible members of the media would, if appropriate, make that point clear but I am bound to say that I think there is a risk with the best will in the world that some people may get hold of the wrong end of the stick. The next point is the possible prejudice to jurors, this being a relatively small community having a relatively small pool of jurors to draw on. Mr O'Connor makes the fair point that in accordance with the affidavit of the Chairman of the Board most of the people in the little community concerned know what is going on anyway. Mr O'Connor also mentions that the Judge at the trial would have to give the appropriate firm warning to exclude from their minds all pre trial publicity and the like. That may be so, but in a case of this kind I cannot help but think that there is some risk of prejudice under this head. If the matter stood on the basis of the interests of the Appellant alone, as against the interests of the community to know, then it could be said perhaps that the case was on a fairly fine balance but it does not stand in this case on that basis alone.

There is added in this case a somewhat unusual dimension. The Court below had before it letters from the

I am told that the Judge declined to hear him. That was his prerogative but he may thereby have deprived himself of the opportunity of seeing a wider dimension in the case which he may perhaps have not fully considered. It is not uncommon for suppression issues, as I said at the start of this judgment, to look not only to the immediate accused or Appellant but also to the effect of publication on other people. More conventionally it is the family of the person concerned, but in this case it is suggested that the interests of so on may be detrimentally affected if publication is allowed.

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will be aware of the nature of the charges faced by the Appellant. The says that in his opinion the immediately affected community already knows or has heard about these matters and it is not necessary therefore for them to be informed through the media. It is suggested that those further afield in New Zealand have no compelling public interest in knowing what is alleged to have happened in this , at least up to the point where guilt or innocence is determined. It is therefore suggested, and this is the way I am

putting it rather than the precise words of the deponent, that when one balances the interests of the to be free of intrusive media attention against the needs of the wider community to know what is alleged to have occurred before trial the balance comes down in favour of suppression.

Mr O'Connor properly recognising the sincerity of the concerns of the has not called on the deponent for cross-examination to challenge the sincerity of those views. Just because the views are sincere does not necessarily mean that the Court will regard them as sufficiently compelling. However, when I weigh that factor in the balance along with the matters more directly focussed on the Appellant himself, the effect on his career that this may have if the charges against him are dismissed, and the various other matters which Mr Hampton mentioned in that context, I have come to the clear view that the interests of the and the Appellant himself outweigh, at least up until trial, the general proposition that the community, and indeed society as a whole, should know what is going on. The immediate community obviously does know what is going on from the evidence before me and I cannot see the interest of the wider community as being sufficient in this particular case, and I emphasise those words, to outweigh the compelling factors that have been put to me in favour of suppression.

I am influenced also by the fact that the learned Judge in the Court below obviously thought for most of the currency of the proceedings before him that it was a proper case for suppression. He seems to have changed his mind on what I would, with great respect, regard as the flimsy basis, if this was the basis, that several further charges had been added. I cannot see that factor, and it seems to be the only possible factor that could have been exercising His Honour's mind, as outweighing the cumulative effect of all the grounds hitherto favouring suppression, as His Honour must have recognised.

Accordingly the appeal is allowed. There will be an order pursuant to s.140 of the Criminal Justice Act 1985 that the name of the Appellant, his address, his occupation and any other matters likely to identify him be not published. That order will last until the commencement of the Appellant's trial at which point the issue will be in the hands of the trial Judge. If there is any earlier final disposition of the case this order will last until then at which point similarly the issue will be in the hands of the Judge then presiding.

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