Charles Rishiram Ramson v Lloyd Barker, Commissioner Of Police, And Attorney-General

HIGH COURT OF GUYANA
CRANE CJ
5TH, 12TH, 15TH, 31ST DECEMBER 1979

Constitutional law – Fundamental rights – Political meeting – Meeting without permission of police – Breach of the peace – Reasonable apprehension by police of breach thereof – Dispersal of gathering by police – Whether dispersal justified – Public Order Act, Cap 16:03 [G] s 3(1)

Constitutional law – Fundamental rights – Barrister-at-law and colleague speaking on highway awaiting start of political meeting – Right to remain on highway – Reasonable apprehensions of breach of peace – Barrister and colleague ordered to move on – Whether police have right to impose such order - Assault by police in execution of duty

Constitutional law – Fundamental rights – Originating notice of motion for contravention of constitutional freedom of speech, rights of assembly and movement – Meaning of expression 'hindered' in guaranteed right to freedom of speech – Constitution of Guyana art 12(1)

Constitutional law – Complaint to Commissioner of Police of acts of assault and indiscipline committed by policemen in execution of duty – Commissioner's right to enquire therein – Invitation by Commissioner to complainant to submit detailed report so that full scale police enquiry could be set in train – Complainant elects to seek constitutional right of redress in High Court under art 19(1) rather than have police investigation mounted – Meaning of 'redress' under art 19(1) – Police (Discipline) Act, Cap 17:01 [G]

Evidence – Originating notice of motion – Trial by affidavit evidence – Viva voce evidence in support of affidavits – Whether court compelled to decide on viva voce evidence alone – Rules of the High Court, Cap 3:02 [G], Ord 34(2), r 2

On the evening of 22nd August 1979, the applicant Ramson and a fellow barrister were standing beside their motor car in Sheriff Street. They were discussing crowd dispersal and crowd control methods used by the police who had, a short while before, broken up an intended political meeting in the vicinity. The barristers were asked by the police to move on and to remove their motor car from the highway. Some policemen were attired in uniform without regulation numbers. Mr Ramson, however, stood his ground and, on being asked what he was doing on Sheriff Street, replied it was his business. Thereupon, one of the unnumbered policemen

pulled him by the right arm and spun him around causing abrasion marks to appear on the inner aspect of that arm. Another policeman jabbed him in the ribs with a staff until both he and his colleague were reluctantly compelled to depart from the scene with their car. On 10th September 1979, the applicant's legal adviser complained in writing to the Commissioner of Police of the incident of 22nd August, requesting certain detailed information including the names and numbers of all policemen who were then employed on duty; how long they were employed in the force, and the name and rank of the officer in command of them. In a written reply the commissioner declined to furnish the required information, but requested a detailed report of the alleged 'acts including assaults' by the policemen so that he might set in train full police investigations. The applicant, however, did not heed the invitation that a full police investigation should be set in train by the Commissioner of Police. He elected to approach the High Court under art 19(1) of the Constitution seeking 'redress' for constitutional contraventions of which he complained and to obtain declarations on the constitutionality of (a) the conduct of the persons dressed in police uniform; (b) failure of the Commissioner of Police to comply with the applicant's request to disclose the names of persons who were new recruits in uniform without numbers; (c) violation of the applicant's fundamental *right to assemble* with others in Sheriff Street; (d) the acts of the unnumbered policemen on the evening in question infringed the applicant's *freedom of expression*; and (e) infringement of the applicant's *right of movement*.

Held - (i) (obiter) The injuries suffered by the applicant being only of a minor nature, 'adequate means of redress' may well have been provided by the commissioner's disciplinary court of inquiry and the proviso to s 19(2) became applicable since redress does not necessarily mean only monetary compensation.

(ii) On the interpretation of the word 'hindered' in art 12(1) of the Constitution, it must be understood that an applicant can only properly ground a claim for redress for a contravention under art 19(1) if it were the deliberate intention of the police to hinder or prevent him from speaking by assaulting him.

(iii) If the policemen on the facts of the case, reasonably apprehended a breach of the peace would have been committed on the evening of 23rd August then it would have been their duty to order Mr Ramson to move on and their ostensible object or purpose to preserve the peace and not to hinder or deprive him in the exercise of his freedom of expression, his right of assembly or movement which he claimed, albeit the assault had the consequential effect of his not being free to speak to his companion or to exercise any of these other rights.

(iv) If a constitutional right to 'redress' were permitted for any other than a direct or intentional hindering of freedom of speech, any trivial, or even aggravated assault by the police on persons in the act of speaking to each other, assaults that really had only a mere consequential effect on the enjoyment of freedom of speech, would ground a claim in the

High Court. This would open the floodgates to constitutional motions and other actions seeking, as did the instant case, declarations and redress for the contravention of constitutional rights. It was important that the newly-created right be not misused in that way.

(v) 'Redress' under art 19(1) must be entirely restricted to the contravention of the constitutional right to the freedom of expression and not be extended to a claim for damages for personal injuries for assault.

(iv) The originating notice of motion was misconceived and must be dismissed with cost.

Frank Hope v New Guyana Co Ltd (1979) 26 WIR 233 and Maharaj v Attorney-General of Trinidad and Tobago (No 2) [1978] 2 All ER 670 applied.

Cases referred to
Lovell v Wallis (1883) 53 LJ Ch 494, 49 LT 593
Christian Catholic Church v Jeffrey [1957] LRBG 179
Kemrajh Harrikissoon v Attorney-General of Trinidad and Tobago [1979] 3 WLR 62, PC
Jaundoo v Attorney-General of Guyana [1971] AC 972, PC
Maharaj v Attorney-General of Trinidad and Tobago (No 2) [1978] 2 All ER 670, PC
Frank Hope v New Guyana Co Ltd (1979) 26 WIR 233
Duncan v Jones [1936] I KB 218

Originating notice of motion in the Guyana High Court under art 19 (1) of the Constitution of Guyana to determine the validity of the applicant's claim of violations of arts 12, 13 and 14 and right to constitutional redress.

Editor's note.
Editor's note. An appeal against this decision was allowed by the Court of Appeal on 17th May 1982. A report of the appeal will be included in a future volume of the series.

Ashton Chase with *v Persaud* for the applicant
J C Nurse, Principal Legal Adviser (*ag*) *N Kissoon, Senior State Counsel* and *M Ramgopaul SC* for the respondents

CRANE CJ. The applicant, Charles Rishiram Ramson, is a barrister-at-law practising his profession in the inferior and superior courts of Guyana. He prefers these proceedings by originating notice of motion under art 19(1) and (2) of the Constitution of Guyana, which, in so far as is material, provides as follows:

> '(1) Subject to the provisions of para (6) of this article, if any person alleges that any of the provisions of arts 4 to 17 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person

alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction - (*a*) to hear and determine any application made by any person in pursuance of the preceding paragraph; (*b*) to determine any question arising in the case of any person which is referred to it in pursuance of the next following paragraph, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of arts 4 to 17 (inclusive) of this Constitution:

Provided that the High Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.'

Redress thereunder is sought in respect of five declarations, damages in excess of $1,500 and 'such orders, consequential or other declarations and directions as may be necessary or appropriate' to give him redress 'for the contravention of fundamental rights and freedoms that are guaranteed him by the Constitution of Guyana'.

The notice of motion also seeks leave of this court to call evidence other than the customary affidavits if need be, *in support of his affidavit in support*, a concession which was granted and, in respect of which, counsel for the respondents offered no objection. Here I will only observe that every well-drawn motion paper generally includes a request of such a nature, but counsel for the applicant at the address stage surprisingly submitted that, in view of the fact that viva voce evidence had been led on both sides in addition to the affidavit in support of the motion and reply thereto, I should exclude all affidavit evidence and rely solely on the viva voce. I must point out that no such agreement was made by both sides to this effect. In limine, counsel for the applicant merely intimated to the court that he considered there was a conflict on the affidavits and it would be necessary to lead oral evidence to resolve it by calling Mr Ian Chang. To this course counsel for the respondents offered no objection. I certainly did not consider there was a parallel situation to that which arose in *Lovell v Wallis* ((1883) 53 LJ Ch 494, 49 LT 593) where, in the interests of justice, on an action coming on for trial by affidavit evidence, the court considered them so unsatisfactory that it directed the trial to stand over in order that the witnesses might be produced in court and examined orally and that the affidavits should not be used as evidence. Here, however, there is no question of 'either or'. I consider in the absence of an agreement by the parties to exclude the affidavit evidence and the fact that there is no likeness to the situation in *Lovell v Wallis* ((1883) 53 LJ Ch 494, 49 LT 593), nor in *Christian Catholic Church v Jeffrey* ([1957] LRBG 179), I am entitled to look at both affidavit and oral evidence, particularly as counsel for the applicant, in the course of the hearing, as the record shows, has made copious allusions to both affidavits in support of his argument. It therefore seems to me the objection taken

to the use of the affidavit evidence was a veritable afterthought, especially as it was made only at the address stage of the hearing.

I will now being by recounting the facts which have led up to the filing of this motion.

On the evening of 22nd August 1979, at about 4.00 to 4.30 pm a large crowd of people had assembled at the corner of Campbell Avenue and Delph Street, Campbellville. Their purpose was to listen to the speakers of the newly-formed political party, 'The Working Peoples' Alliance' who were preparing to address them. This meeting, so say the police authorities, was not sanctioned by them. It was necessary for the conveners to give them notice in writing as required by the Public Order Act, Cap 16:03 [G], s 3(1), and as there was no such notice, the meeting became an unlawful assembly and it was necessary to disperse the gathering. The crowd, however, did not leave the scene altogether; several pockets or small groups of persons persisted in remaining together in nearby yards some two hours after the police had broken up the assembly.

At this time the applicant Ramson and fellow barrister Ian Chang were standing beside Mr Ramson's motor car then facing north and parked on the eastern side of Sheriff Street, partly on the grass parapet and partly on the bitumen surface. The two barristers had gone to listen to the speakers at the meeting but were unable to do so because the police had broken it up. According to Mr Ramson, he and his colleague were standing on the left side of his car some 500 yards from Campbell Avenue which runs at right angles to Sheriff Street and in an east and west direction. It was about 7.30 pm to 8.00 pm when a man dressed in black trousers and a khaki-coloured shirt and wearing a police cap with badge pulled him by the right arm and spun him around. The man demanded to know whose was the parked car and, when told, insisted on knowing what he was doing on Sheriff Street. Whereupon Mr Ramson replied that was his business. This caused the policeman to apply greater force to Mr Ramson's arm, so much so that his finger-nails penetrated the muscles of the arm. Mr Ramson then warned the policeman that he was assaulting him and in turn demanded to know his name and number since he wore no regulation number where slits on his shirt showed the number ought to have been. Yet more force was applied to the arm and this policeman shaped up to hit him with a staff, while another with a helmet marked 'police' jabbed him with a night-stick in the ribs. At that stage about one dozen policemen had come up, three of whom were officers whom he recognised. One was Deputy Superintendent of Police Carlton Bentinck, in charge of the Alberttown police station. The others were Inspector Neville Cort and Assistant Superintendent Rambarran. All policemen, he observed, wore no regulation numbers. Mr Ramson then called out to Deputy Superintendent Bentinck who was merely standing by without taking action or reproving the others for what they were doing to him. Just then, a policeman revealed to Supt Bentinck the

professional status of himself and Mr Chang, and this caused Supt Bentinck to reply in a derisive manner, 'So what? We just locked up another one'. In the meanwhile,

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the policeman continued to jab as he ordered and pursued him to the eastern side of his car which he boarded and unwillingly drove away.

Such police action, Mr Ramson insisted, was thoroughly unjustified, for there was no procession nor crowd round and about his motor car at the time when traffic was normal. It was pressed upon the court that Mr Ramson had never afterwards been charged with any offence in connection with the incident, and particularly the fact that at the time they were interrupted, he and his colleague were discussing the conduct of the police and their attitude in relation to the members of the public, discussions which were considered very fruitful because they were applying their training as lawyers to the events as they were happening before them.

On the following morning, ie 23rd August 1979, Mr Ramson was seen by a registered medical practitioner who examined him. This was evidently on the advice of his lawyer whom he had contacted shortly after the incident. The doctor found there were 'abrasion marks inner aspect of (R) arm with tenderness upon palpation', and his lawyer, Mr Chase, was instructed to address the following letter of complaint about the previous night's incident to Mr Lloyd Barker, the Commissioner of Police. This letter, dated 10th September 1979, is set out in para 11 of the affidavit in support of the motion and is in the following terms:

> 10th September 1979
> 'L Barker Esq
> Commissioner of Police
> Police Headquarters
> Eve Leary
> Georgetown
> Dear Sir,
>
> I am instructed by my client Mr C R Ramson of King Street, Georgetown, that on 22nd August 1979 at approximately 7.15 pm certain unlawful acts including assaults were committed against him in Sheriff Street, Campbellville, Greater Georgetown, in the county of Demerara by men dressed in police uniforms on which there were no numbers or other form of identification. Further, when requested by my client to identify themselves either by name or number these men refused. The men concerned appeared to comprise part of a regular police party in attendance at a meeting at Campbell Avenue and Delph Street, Campbellville, of the Working Peoples' Alliance (WPA).
>
> Consequently, I am instructed to request you, as I hereby do, to furnish me on behalf of my client with: (a) the names and numbers of the persons detailed to carry out police duties in or about Sheriff Street, Campbellville, Greater Georgetown, on 22nd August 1979 at the aforesaid meeting; (b) whether any person so detailed was a member of the Guyana Police Force for less then three months; and to indicate whom; (c) whether any person so detailed had been in the Guyana Police Force for more than three months; and to indicate whom; and (d) the name and rank of the officer in command of the persons so detailed.

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> Your co-operation will be appreciated.
> Yours faithfully,
> (Sgd) Ashton Chase.'

To the above letter the Commissioner of Police replied on 18th October 1979 as follows:

> 18th October, 1979.
> Dear Comrade Chase,
>
> In reply to your letter dated 10th September 1979 written on behalf of Mr C R Ramson may I first of all emphasise that I do understand your concern to pursue your client's interest in a way you think fit.
>
> However, after a careful perusal of the questions posed in your letter, I reluctantly formed the opinion that a Commissioner of Police should not be liable to be privately interrogated in the manner attempted in respect of the deployment of police personnel. You did not state in your letter whether your client made a report to the police about the "acts including assaults" allegedly committed against him. If he has not already done so, may I suggest that he should now make a detailed report so that full police investigations may be set in train.
>
> Yours co-operatively,
> (Sgd) L A BARKER DSS
> Commissioner of Police.
> Cde Ashton Chase,
> "Alton Covey",
> 217 South Street,
> Georgetown.'

In para 12 of his affidavit in support, the applicant complained that the police commissioner had refused to furnish any of the information solicited in the above letter, and in para 13 he requested the relief and redress set out in his originating notice of motion which are as follows:

> '(a) Declaration that the conduct towards the applicant of persons dressed in police uniform and under the supervision and control and in the presence of Assistant Superintendent of Police Bentinck on 22nd August 1979, in Sheriff Street, Campbellville, in the county of Demerara, was improper, illegal and unconstitutional.
>
> (b) A declaration that the Commissioner of Police on reasonable and due request is required to disclose the names of persons under his command where they are on public duty in police uniforms without numbers and are new recruits into the police force; and his failure so to comply constitutes an interference with the applicant's right to secure redress against such person under the Constitution (where his constitutional rights are violated) and otherwise (where there is a breach of the law). And an order requiring the Commissioner of Police the first-named respondent to disclose to the applicant the aforesaid information.
>
> (c) A declaration that the applicant was exercising his fundamental

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> right to assemble with others in Sheriff Street, Campbellville, Greater Georgetown, on 22nd August 1979.
>
> (d) A declaration that the acts of the uniformed but unnumbered police constables on 22nd August 1979 at Campbellville, in the county of Demerara, against the applicant infringed the applicant's fundamental right and freedom to receive and to communicate ideas and information without interference as set out in the Constitution.
>
> (e) A declaration that the applicant was exercising his fundamental right to move freely within Guyana and more particularly in Sheriff Street, Campbellville, Greater Georgetown, on 22nd August 1979, and a further declaration that such right has been infringed.
>
> (f) Damages in excess of $1,500.00 for breach of the applicant's constitutional rights.
>
> (g) Any such orders, consequential or other declarations and directions as may be necessary or appropriate to give redress to the applicant for the contravention of the fundamental rights and freedom guaranteed to him by the Constitution of Guyana.
>
> (h) Costs.
>
> And further take notice that in support of this application the applicant will rely upon the grounds set out in the affidavit filed herewith and *may seek leave of the court to call other evidence in support hereto.'*

Accordingly, as it appears to me, the contraventions complained of as illegal and unconstitutional and for which the above five declarations are sought are as follows: (a) the *conduct* of the persons dressed in police uniform; (b) failure of the Commissioner of Police to comply with the applicant's request to disclose the names of persons who were new recruits under his command in public duty in police uniforms without regulation numbers; (c) violation of the applicant's fundamental right *to assemble* with others in Sheriff Street; (d) the acts of the unnumbered policemen on the evening in question infringed the applicant's *freedom of expression*; and (e) infringement of the applicant's *right of movement* on the night in question.

Mr Ian Chang, the applicant's colleague, also gave supporting viva voce evidence. His account of the origin of the assault on Mr Ramson differed in an important respect from that of Mr Ramson. Mr Chang is clear that the applicant's right arm was seized *after* the unnumbered man demanded to know whose was the parked car and what Mr Ramson was doing on Sheriff Street, and it was thereafter the latter had replied that it was his business. Mr Ramson's account, on the other hand, is to the effect that the man first seized his arm. I am advertising to this difference because the policeman might well have reacted in the way he is alleged to have done because of what he considered to be the objectionable manner and tone of voice of Mr Ramson's reply. If this is so, and we cannot say for certain, then the manner in which the policeman was spoken to could well have justified the action of seizing Mr Ramson by the arm, provided of course, such seizure did not go beyond mere *molliter manus imposuit.*

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While Mr Chang substantially supported Mr Ramson's version of the incident, the peculiar part of his evidence is that although he knew as a State Counsel in the chambers of the Director of Public Prosecutions that what he told the court concerned a criminal offence, yet he took no steps to report the matter, nor did he seek to offer any explanation for this lapse other than by insisting it was unnecessary for him to do so since police officers were present and they should have taken action. However, in view of both versions of the incident and the allegations of partiality of the police officers in the affair, I can hardly accept Mr Chang's reason for not reporting the matter to the Commissioner of Police. His attitude does not differ from Mr Ramson's in this respect, for the latter also did not report Supt Bentinck to the Commissioner of Police on the night of 22nd August and not even after the commissioner requested a 'detailed report' in his reply to Mr Chase's letter 'so that full police investigations may be set in train' (see the commissioner's letter above, dated 18th October 1979). No report was made to the police even though both Mr Ramson and Mr Chang were fully aware of the names of some of the police officers who were present on the night in question. Mr Ramson's excuse was that he did not complain about Supt Bentinck because previously, ie on 18th August 1979, he had occasion to speak with the commissioner at an interview about the 'spiriting' away of one Gordon Todd by the police, and at that interview he complained about assaults by unnumbered policemen on members of the public and

the commissioner had admitted he was responsible for his men going about without numbers, insisting it was for their good that they were so attired. However, if unnumbered policemen were to assault anyone, the commissioner said, their names and numbers could be demanded from them. It was for that reason, namely that the commissioner was fully aware of the situation, that he did not report Supt Bentinck. But, surprisingly, Mr Ramson told the court he was satisfied with what the commissioner told him; but I can hardly believe that. There was no deposition in his affidavit concerning this fact and nothing was revealed in the letter from counsel about such an important matter. Mr Ramson said that he would have liked to sue, personally, the man who assaulted him, but being handicapped by the absence of registration numbers he was constrained to bring these proceedings.

So what is in essence being complained of by Mr Ramson is that he was assaulted by two numberless policemen and others who aided and abetted them on the night of 22nd August 1979; and it is alleged that all the constitutional contraventions mentioned above have sprung from the assault by the unnumbered men.

The respondents have denied in their affidavit in answer that the applicant was assaulted by any member of the police force; they say they were informed by Supt Bentinck, and verily believe, that the police acted with civility on the evening in question and that no acts of violence were committed against the applicant when he was requested to remove his vehicle from Sheriff Street; they aver, contrary to what is denied by the applicant, that there were several persons present within approximately

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5 feet of the applicant as well as parked cars in which there were occupants; they insist that no illegal acts were perpetrated, as alleged, by any member of the force and that the applicant has not availed himself of the advice given in the last sentence of the second paragraph of their letter of 18th October 1979.

On the applicant's behalf, counsel is at pains to stress in his address that his client was under no obligation to accede to the request of the Commissioner of Police to furnish a detailed report because art 19(1) gives him the right to approach the High Court for 'redress', which right is 'without prejudice to any other action with respect to the same matter which is lawfully available.' He distinguishes the case of *Kemrajh Harrikissoon v Attorney-General of Trinidad and Tobago* ([1979] 3 WLR 62, PC) on the ground that in that case there was a specific regulation with a detailed review procedure which it was incumbent on the applicant in that case to follow. It was a condition precedent to his pursuing the review procedure that constitutional redress was to be made available should a contravention exist under the Constitution of Trinidad and Tobago. But, in the instant case, counsel stresses, there are no such regulations.

Counsel for the respondents, in his reply contended that following on the letter from counsel for the applicant, it became obligatory on the applicant to follow up the commissioner's offer to mount a full-scale police investigation of the matter of complaint on receipt by him of a detailed report from the applicant. He alluded to s 4 (1)(ii) and (v) of the Police (Discipline) Act, Cap 17:01, and pointed out that both the applicant's complaints are, in effect, specific offences against the discipline of the force and are in reality acts well within the commissioner's jurisdiction to punish. Section 4(1)(ii) and (v) of Cap 17:01 read as follows:

> 'Any member of the force (other than the commissioner) who - (1) ... (ii) uses any unnecessary violence to any prisoner, or other person with whom he may be brought into contact in the execution of his duty ... (v) removes his duty badge when on duty or endeavours at any time to conceal or disguise his number; commits an offence against discipline, and is liable to such punishment as may be imposed upon him, by the ... commissioner...'

Counsel for the respondents pointed out that by s 5(1) of the same Act, it is obligatory that there should be an investigation of every complaint against discipline. Section 5(1) reads:

> 'Every alleged commission of an offence against discipline under this Act shall be investigated as soon as practicable by a member of the force not below the rank of sergeant and of higher rank than the member of the force who is alleged to have committed the offence.'

The procedure at the inquiry, namely, the manner of hearing, is set out in s 6 of the Act wherein it is provided who should hear it and for the summoning of witnesses and securing their attendance. But the point counsel stresses is that as s 5(1) above is mandatory in the sense that the applicant, having previously made complaint to the commissioner, was

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obliged to have it investigated at the statutory disciplinary court of inquiry under s 6 (just like in *Harrikissoon's* case (*Kemrajh Harrikissoon v Attorney-General of Trinidad and Tobago* [1979] 3 WLR 62, PC)) rather than preferring a constitutional motion under art 19(1) for declarations as mentioned above.

I think the words 'without prejudice to any other action with respect to the same matter which is lawfully available... may apply to the High Court for redress' are of especial relevance here when considering the respondents' contention and the question whether the applicant ought to have approached the High Court for constitutional 'redress' instead of first having the matter investigated at the commissioner's disciplinary court of inquiry. The words 'apply to the High Court for redress' have already received judicial interpretation. In *Jaundoo v*

Attorney-General of Guyana (*Jaundoo v Attorney-General of Guyana* [1971] AC 972, PC) ([1971] AC at p 982), the Privy Council said of the expression that it–

> 'was not a term of art at the time the Constitution was made. It was an expression which was first used in the Constitution of 1961 and was not descriptive of any procedure which then existed under rules of court for enforcing any legal right. *It was a newly-created right of access to the High Court to invoke a jurisdiction which was itself newly created*...'

The idea of this newly-created right and jurisdiction to apply to the High Court for redress was also considered in depth in the recent case of *Maharaj v Attorney-General of Trinidad and Tobago (No 2)* (*Maharaj v Attorney-General of Trinidad and Tobago* (No 2) [1978] 2 All ER 670, PC). It was there held that the intention of the Constitution makers 'is to create a new remedy whether there was already some other existing remedy or not' subject, of course, to the proviso in art 19(2) relating to the court's discretion to refuse to exercise its original jurisdiction 'if it is satisfied that adequate means of redress are or have been available ... under any other law' ie, any other than the supreme law. However, by electing to proceed in the High Court rather than at the commissioner's disciplinary inquiry, it is obvious that the applicant has thwarted an investigation into the acts of the unnumbered policemen of which complaint was made in his lawyer's letter above, and also the opportunity to have them disciplined; if need be.

In the *Shorter Oxford Dictionary*, the meaning of 'redress' is stated to be: 'Reparation of, satisfaction, or compensation for, a wrong sustained or the loss resulting from this'. On this definition, payment of monetary compensation is not the only form of redress that can be given, although in *Maharaj's* case (*Maharaj v Attorney-General of Trinidad and Tobago* (No 2) [1978] 2 All ER 670, PC) it was the only practical form in view of the fact that the applicant had long served part of the sentence when his appeal came on for hearing. But I am thinking, having considered the injuries suffered by the applicant, Mr Ramson, were only of a minor nature, that 'adequate means of redress' may well have been provided by the commissioner's disciplinary court of inquiry and that the proviso to s 19(2) became applicable since it is clear from the definition above that redress does not necessarily mean only monetary compensation. However, I do not have to decide that moot point as I have been asked by the respondents to do in their favour. I am deciding this matter on the

interpretation given recently to the meaning of the expression 'hindered' in our art 12(1) by the Guyana Court of Appeal in the celebrated constitutional case of *Frank Hope, Competent Authority, Attorney-General of Guyana v New Guyana Co Ltd* (*Frank Hope v New Guyana Co Ltd* (1979) 26 WIR 233).

In the Constitution of Guyana, art 12(1) provides that:

> 'Except with his own consent, no person shall be *hindered* in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence.'

So when Mr Ramson claims he has been 'hindered' in the enjoyment of his freedom of expression, ie his freedom to receive ideas and information free from interference by anyone, when he was speaking to his colleague on Sheriff Street on the evening of 22nd August 1979, it must be understood on the authority of *Frank Hope's* case (*Frank Hope v New Guyana Co Ltd* (1979) 26 WIR 233) he can only properly ground a claim for redress for a contravention under art 19(1) if it were the deliberate intention of the police to hinder or prevent him from so speaking by assaulting him.

No doubt, if a man has been assaulted when in the act of speaking to another in such a way that he can no longer exercise his right to speak freely to that other, he is in one sense of the word prevented or hindered from exercising his right of free speech. But it is not every interruption by assault or otherwise of the right of free speech that will ground a claim to constitutional relief or redress. It all depends *quo animo* the assault was committed. We must look at the facts in order to ascertain whether the assault on Mr Ramson was committed with the direct object or purpose that he should desist from exercising his right to freedom of speech with Mr Chang or whether it was committed in the course of the events dealing with the order that was given to him by the policemen that he should remove himself and his vehicle from the highway. If the facts, as I think they do, show the policemen reasonably apprehended a breach of the peace would have been committed that evening, then it would have been their duty to order Mr Ramson to move on and their ostensible object or purpose to preserve the peace and not to hinder or deprive him in the exercise of his freedom of expression, his right of assembly or movement which he claims, albeit the assault had the consequential effect of his not being free to speak to his companion or to exercise any of those other rights. If the policemen reasonably so apprehended, then it became their duty to prevent anything which, in their view, would lead to a breach of the peace: see *Duncan v Jones* (*Duncan v Jones* [1936] I KB 218), where the question was considered whether an apprehended breach of the peace was sufficient justification for the police to prevent the holding of a meeting in the street.

As it seems to me, there exists for examination in order to determine whether there was a reasonable apprehended breach of the peace, these

important facts which have already been stated: there were crowds of people, albeit small pockets of them, still about the neighbourhood of the intended meeting place; they were congregating in nearby yards and other places in the vicinity thereof. The police were evidently taking no chances; they apprehended a breach of the peace was likely to occur and they wanted the area cleared of people and parked vehicles. This is clear enough, because, before they accosted Mr Ramson they did not know who he was; they did not know he was a lawyer or the fact that the was speaking to his colleague about police action and methods used by them to disperse a crowd of some 3,000 to 4,000 people. In my view, had the police known the subject of their discourse, that alone would have been sufficient justification for ordering them to move on; that would have certainly been ample justification for fearing that a crowd might gather around them in an atmosphere that was already charged with and prone to violence and ample ground for holding that a breach of the peace was likely to occur. It seems to me ironical that, on Mr Ramson's own admission, he and his colleague were together speaking of, if not criticising, the methods of crowd dispersal and control by the police, and he has now chosen to make that fact the basis for the launching of this constitutional motion.

In *Frank Hope's* case (*Frank Hope v New Guyana Co Ltd* (1979) 26 WIR 233), the President of Guyana signed two trade orders under s 5 of the Trade Act, Cap 91:01, prohibiting importation of newsprint except under licence from the Competent Authority. It was contended, inter alia, on behalf of the respondent newspaper company, that both of the trade orders were unconstitutional for the reason that they 'hindered' the company in the enjoyment of freedom of expression by reason of the restraint those orders imposed on the importation of that commodity. The Court of Appeal had occasion to consider the word 'hinder' in relation to the expression 'enjoyment of freedom of expression' in art 12(1) of the Constitution and decided that 'whereas an intentional and deliberately created hindrance is within, one that is merely consequential and incidental is not within that article', and cannot therefore ground a claim for redress and a contravention under art 19(1) of the Constitution.

So I must conclude from the facts that the alleged assault on Mr Ramson, which I will accept was committed in the manner described by him, was not aimed directly at hindering him in the enjoyment of his freedom of expression within the meaning of art 12; the assault did not 'hinder' him in a constitutional sense from speaking freely to his friend, nor did it hinder either of them from receiving ideas and information from the speakers of the intended meeting which the police had a short while before dispersed, even though indirectly or consequentially it was instrumental in having that effect. Even though the effect of the assault complained of was to prevent the two barristers from pursuing their conversation about the manner of police dispersal and their exercise of crowd control, and from receiving information from the speakers whose meeting had been dispersed, the assault did not, in a constitutional sense,

'hinder' the applicant's enjoyment of his freedom of expression so as to give rise to a claim for redress under art 19(1) of the Constitution.

Admittedly, the assault may have affected the barristers' freedom to speak to each other, but on the facts it could have done so only indirectly and unintentionally. It seems to me if a constitutional right to 'redress' were permitted for any other than a direct or intentional hindering of freedom of speech, any trivial, or even aggravated assault by the police on persons in the act of speaking to each other, assaults that really have only a mere consequential effect on the enjoyment of freedom of speech, would ground a claim for constitutional relief in the High Court. This would open the floodgates to constitutional motions and other actions seeking, as does the instant case, declarations and redress for the contravention of constitutional rights. We must be careful lest the newly-created jurisdiction under art 19(1) of the Constitution be misused in that way. In my judgment, such a claim ought not to be permitted when, in reality, the gravamen of the complaints and the redress sought are in respect of matters which are cognisable in the magistrate's court or the High Court in their original civil jurisdiction. However, I think an effective brake must be put on the approach to the High Court in this 'newly created' jurisdiction in a claim for redress under art 19(1). I would formulate the matter in this way: a claim for redress for the breach of the fundamental right to the enjoyment of freedom of expression ought not to be sought indirectly, consequentially or as the result of a wrong under a law like the common tort of assault, unless it is clear from the facts of the case that the assault was committed with a view to hindering the enjoyment of the freedom of speech. For example, a man may be assaulted on a political platform with a view to preventing him from speaking there; that would be a direct impact on the constitutional right to freedom of expression.

So, if redress is being sought in respect of the fundamental right to the freedom of expression in a manner that is only *incidental*, consequential or indirect, it will not be permissible for the citizen to approach the High Court for declarations and for redress in that way. *Per contra*, if the assault is *directly* aimed at contravening the fundamental right under art 12(1) (and one can readily envisage such a situation) the redress obtainable will not be in respect of damages for the assault as such, but solely for the contravention or breach of the fundamental right of free speech. In that case, the assault will only be a part of the history of the contravention for which no monetary redress can properly be claimed.

I would respectfully adopt and apply to the instant case the analysis of the right to redress under the Constitution of Trinidad and Tobago by Lord Diplock in *Maharaj v Attorney-General of Trinidad and Tobago (No* 2), [1978] 2 All ER at p 679):

'There claim for redress under s 6(1) [our art 19(1) for what has been done by a judge is a claim against the State for what has been done in the exercise of the judicial power of the State. This is not vicarious liability: it is a liability of the State itself. *It is not a liability in tort at all:* it is a liability in the public law of the State, not of the judge himself,

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which has been newly created by s 6(1) and (2) of the Constitution.'

And, more appropriately ([1978] 2 All ER at p 680):

'The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large, and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone.'

The above analysis of the nature of the redress claimable under s 6(1) of the Constitution of Trinidad and Tobago (our art 19(1) is revealing, particularly the fact that liability in respect of a tort is impermissible. Emphasis must be placed upon the fact that the liability for 'redress' is against the State and an entirely new one. 'Therefore, liability not being in respect of a civil wrong, one cannot indirectly invest the State with responsibility for the payment of monetary compensation for what is, in effect, a claim for damages for personal injuries for the tort of assault. In the instant case, it means that 'redress' must be entirely restricted to the contravention of the constitutional right to the freedom of expression, and not to a claim for damages for the tort of personal injuries for assault. This ought immediately to show how misconceived is the applicant's claim under art 19(1) of the Constitution and ought to be conclusive of the type of 'redress' for which he could have preferred a claim, because even if he were aware of the names of his assailants on the night of 22nd August last, it is obvious he cannot recover. The basis of his complaint is that he was precluded from knowing the policemen because they were numberless, and it was that fact, he said, which compelled him to launch these proceedings under the Constitution. But, as it seems to me, even if the policemen had duly worn their regulation numbers and their names had become known, any proceedings to enforce the protective provisions of art 12(1) would have been doomed to failure without proof, as in the instant case, that the applicant was 'hindered' in the enjoyment of his freedom of expression in the sense already explained.

I think it would be appropriate if I were to end this judgment with a salutary piece of advice that fell from their Lordships' Board so that any applicant who may be minded to prefer a motion or other action for redress under art 19(1) of our Constitution may well wish to heed it (see *Kemrajh Harrikissoon v Attorney-General of Trinidad and Tobago* (*Kemrajh Harrikissoon v Attorney-General of Trinidad and Tobago* [1979] 3 WLR 62, PC), [1979] 3 WLR at p 64):

'The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under s 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but *its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action.* In an originating application to the High

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Court under s 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.'

I must conclude for these reasons that this motion is misconceived and must be dismissed with costs.

Notice of motion dismissed with costs.