

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

Dr. Navinchandra Ramgoolam GSCK FRCP

Of 37, Riverwalk, Vacoas

Plaintiff

-V-

1. The State of Mauritius duly represented by the Attorney General
2. The Commissioner of Police of Line Barracks, Port Louis
3. DPC 7266 Veder of Central CID , Line Barracks, Port Louis
4. DPS 2242 Ramdoo of Central CID, Line Barracks, Port Louis
5. DPS 1290 Seebaruth of Central CID, Line Barracks, Port Louis
6. Honourable Mrs. Jugnauth-Chuttur, a District Magistrate of the District Court of Port Louis
7. Honourable Mrs. K Sockalingum-Juwaheer, a District Magistrate of the District Court of Curepipe
8. Honourable Mrs. S . N Ganoo, a Senior District Magistrate of the District Court of Port Louis.

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Defendants

In the presence of

The Director of Public Prosecutions, garden Tower, Poudriere Street, Port Louis.

CONSTITUTIONAL RELIEF PURSUANT TO SECTION 17 OF THE CONSTITUTION

Plaint With Summons

1. The Plaintiff is the Leader of the Labour Party in Mauritius since 1991 and has been the Prime Minister of Mauritius for three mandates, the latest one ending on 13th of December 2014.

2. Defendant No 1 is the sovereign entity in Mauritius responsible and liable for all the acts and doings of the different national agencies, institutions and the public service in general including the police force headed by defendant no.2.
3. Defendant No 2 is the Commander of the Police Force in Mauritius and holds a constitutional post under Section 71 of the Constitution. Thereinafter, all the acts and doings of the Defendants Nos. 2, 3, 4 and 5 who are 'preposes' and agents of Defendant No 1 are to be construed as the acts and doings of the Defendant No 1, their 'commetant'.
4. Defendants No 3, 4 and 5 are police officers attached to the Central CID and are those who swore information in respect of the six search warrants as set out below.('the impugned search warrants')
5. Defendant No 3 is a Detective Police Constable and was one of the police officers acting under the instructions of the defendant no.2 who swore to information in respect of two search warrants issued by Defendant No 6 on the 6th February 2015 at 15:05 hrs.
6. Defendant No 4 is a Detective Police Sergeant and who was one of the police officers acting under the instructions of the defendant no.2 who solemnly affirmed to information in respect of two search warrants issued by Defendant No 7 on the 6th February 2015.
7. Defendant no.5 is a Detective Police Sergeant and who was one of the police officers acting under the instructions of the defendant no.2 who solemnly affirmed to information in respect of two search warrants issued by Defendant No 8 on the 7th February 2015.
8. Defendants Nos. 6, 7 and 8 are the District Court Magistrates who issued the impugned search warrants.. Defendants Nos. 6, 7 and 8 have on the 6th of February 2015 and 7th February 2015, issued six search warrants following information sworn under oath/solemnly affirmed by defendants Nos 3, 4 and 5.

Chronology of Events

9. Plaintiff avers that following the general elections; which were held on the 10th December 2014, his party, inter alia, was defeated and an alliance of three other political parties was elected and as a consequence a new Government was formed thereafter. The plaintiff duly resigned as Prime Minister on 13th December 2014.
10. Plaintiff avers that before and during the election campaign held between the months of October and December 2014, the current Prime Minister, then Leader of the three party coalition which won the election, stated openly and publicly that he would order police inquiries against the Plaintiff and would throw him in jail should his coalition be elected. He maintained that should he fail to do so, he would change his name. The exact words used were : “si mo pas mette Navin endans, mo change mo nom”.
11. Plaintiff avers that in implementation of the threats levelled against him, following the appointment of the new Government, a series of actions, some of which will be set out below, were initiated against the Plaintiff. These bear the hall marks of a political vendetta orchestrated and carried out by a specific unit of the police, namely the Central Criminal Investigation Department (commonly called ‘the Central CID’). The plaintiff avers that close family ties exist between the head of the Central CID (The ACP (Crime)) and the present Prime Minister and is a testament to the lack of objectivity and the continuous harassment of the police as is set out below.
12. Plaintiff avers that on or about the 6th of February 2015, Defendant No 3 swore an information [**CN 22/15 Port Louis District Court**] under oath before Defendant No 6, in support of an application for a search warrant in the following terms :

“Complainant avers that he has been credibly informed and has reasonable ground to believe that an offence under Section 3(b) of the Financial Intelligence and Anti-Money Laundering Act **to wit ‘possession of money in whole and in part , directly or indirectly representing the proceeds of any crime’ and money is being kept and concealed in a place** in the dwelling house and premises of Dr. Navinchandra Ramgoolam, also called Navin, 66 yrs, residing at Sir Seewoosagur Street Port Louis, where the police is not empowered to enter and carry out a diligent search without a search warrant...”

WHEREFORE the said complaint prayeth the Court that a search warrant be granted to enter and search the dwelling house and premises of the aforesaid

suspect to look for the aforesaid articles for if same or part thereof be found be secure, the said accused be brought before it and dealt with according to law.

13. Defendant No 6 granted the first impugned warrant [hereinafter referred as **warrant no.1**] at 15:05 hrs in the following terms.

“Whereas complaint upon oath has been made unto me Hon. Mrs. Jugnauth-Chuttur District Magistrate in and for the District of Port Louis by DPC 7266 Veder to the effect that he has been credibly informed and has reasonable ground to believe that **an offence under Section 3(b) of the Financial Intelligence and Anti-Money Laundering Act to wit ‘possession of money in whole and in part, directly or indirectly representing the proceeds of any crime’ and money is being kept and concealed in a place where the police is not** empowered to enter and carry out a diligent search without a search warrant in the dwelling house and premises of Dr. Navinchandra Ramgoolam, also called Navin, 66 yrs, residing at Sir Seewoosagur Street Port Louis, and there are sufficient grounds for suspecting that

THESE ARE THEREFORE to require you forthwith to make diligent search warrant by day or night in the said dwelling house and premises for to be found thereat

You are hereby required, immediately, to secure same and to bring the person or persons in whose custody you find the same before me to be examined and dealt with according to law.

Given under my hand at the District Court of the District of Port Louis the 06th day of February in the year two thousand and fifteen.” (ANNEX A).

14. Plaintiff avers that on the same day, 6th of February 2015, Defendant No 3 swore a second information [**CN 23/15 Port Louis District Court**] to the following effect:

“That on or about the 3rd day of July 2011 at Roches Noires, Riviere du Rempart in the said District one Dr Navinchandra Ramgoolam, also called Navin, 66 yrs, residing at Sir Seewosagur Street Port Louis has on 03.07.2011 at Roches Noires wilfully and unlawfully conspired with one Rampersad Sooroojebally and others to report an imaginary offence to the police thus committing the offence of Conspiracy to do an unlawful Act to wit “Effecting public mischief’ in breach of Section 109 of the Criminal Code (Supplementary Act). Complainant avers that he has been credibly informed and has reasonable ground to believe that the **articles used in the**

commission of the said offence to wit;- "SIM Cards, Cellphones, documents and other incriminating articles" are being willfully and unlawfully kept and concealed in the dwelling house and premises of the aforesaid suspect where the police is not empowered to enter and carry out a diligent search without a search warrant... "

15. Defendant No 6 granted the second search warrant at the same time and on the same day as the first one i.e at 15:05 hrs [hereinafter the **Warrant no.2**] in the following terms :

"Whereas complaint upon oath has been made unto me Hon. Mrs. Jugnauth-Chuttur District Magistrate in and for the District of Port Louis by DPC 7266 Veder to the effect that he has been credibly informed and has reasonable ground to believe that an offence under Section 109 of the Criminal Code (Supplementary Act) has been committed and articles used in the commission of the said offence are being willfully and unlawfully kept and concealed to wit;- "SIM Cards, Cellphones, documents and other incriminating articles" in the dwelling house and premises of Dr. Navinchandra Ramgoolam, also called Navin, 66 yrs, residing at Sir Seewosagur Street Port Louis, in a place where the police is not empowered to enter and carry out a diligent search without a search warrant and there are sufficient grounds for suspecting that

THESE ARE THEREFORE to require you forthwith to make diligent search warrant by day or night in the said dwelling house and premises for to be found Sim cards, Cellphones, documents and other incriminating articles thereat

You are hereby required, immediately, to secure same and to bring the person or persons in whose custody you find the same before me to be examined and dealt with according to law.

Given under my hand at the District Court of the District of Port Louis the 06th day of February in the year two thousand and fifteen." (ANNEX B).

16. Plaintiff avers that on the same day i.e. on the 6th of February 2015, Defendant no 4 swore two more information under oath [**CN 46/15 and 47/15 Curepipe District Court**] before Defendant No 7 in the respect of the same offences mentioned at paragraphs 12 and 14 above and for the same reasons set out in those paragraphs, but this time, the offences were alleged to have been committed at the residence of the Plaintiff situated at "Riverwalk, Floreal" whereas in fact and in truth the plaintiff

resides at 37, Riverwalk, Vacoas. These warrants will be referred to as **Warrant no.3 and no.4** respectively.

17. Defendant No 7 issued two search warrants [**warrants nos.3 and 4 respectively**] simultaneously at 13:50 hrs which read as follows respectively:

“Whereas complaint upon oath has been made unto me Hon. Mrs. s. K Sockalingum Juwaheer District Magistrate in and for the District of Curepipe by DPS 2242 G Ramdoo to the effect that he has been credibly informed and has reasonable ground to believe that **an offence under Section 3(b) of the Financial Intelligence and Anti-Money Laundering Act to wit ‘possession of money in whole and in part, directly or indirectly representing the proceeds of any crime’ and money is being kept and concealed in a place where the police is not empowered to enter and carry out a diligent search without a search warrant in the dwelling house and premises of Dr. Navinchandra Ramgoolam, also called Navin, 66 yrs, residing at Riverwalk, Floreal, where the police is not empowered to enter and carry out a diligent search without a search warrant”**

and that there are sufficient grounds for suspecting that

THESE ARE THEREFORE to require you forthwith to make diligent search warrant by day or night in the said dwelling house and premises for to be found thereat

You are hereby required, immediately to secure same and to bring the person or persons in whose custody you find the same before me to be examined and dealt with according to law.” **(ANNEX C)**

And

“Whereas complaint upon oath has been made unto me Hon. Mrs. Sockalingum-Juwaheer-Chuttur District Magistrate in and for the District of Port Louis by DPS 2242 G.Ramdoo to the effect that he has been credibly informed and has reasonable ground to believe that an offence under **Section 109 of the Criminal Code (Supplementary Act) has been committed and articles used in the commission of the said offence are being willfully and unlawfully kept and concealed to wit:- “SIM Cards, Cellphones, documents and other incriminating articles” in the dwelling house and premises of Dr. Navinchandra Ramgoolam, also called Navin, 66 yrs, residing at Riverwalk Floreal, in a place where the police is not empowered to enter and carry out a diligent search without a search warrant and there are sufficient grounds for suspecting that**

THESE ARE THEREFORE to require you forthwith to make diligent search warrant by day or night in the said dwelling house and premises for to be found Sim cards, Cellphones, documents and other incriminating articles thereat

You are hereby required, immediately, to secure same and to bring the person or persons in whose custody you find the same before me to be examined and dealt with according to law. (ANNEX D)

18. Plaintiff avers on the 7th February 2015, Defendant no 5 solemnly affirmed two further information [**CN 5/15 and 6/15 Port Louis District Court**] under oath before the District Magistrate of the District Court of Port-Louis (Defendant No 8) for offences committed under the Financial Intelligence and Anti-Money Laundering Act (para 12 refers) at the premises of the Plaintiff in Riverwalk, Floreal [again erroneously] and at Sir Seewoosagur St again mistakenly since the name of the street is Sir Seewoosagur ramgoolam Street], Port Louis respectively. The search warrants were simultaneously issued by Defendant No 8 at 1255 hrs on the same day (**ANNEX E AND F**). These warrants will be referred to as **Warrant no.5 and no.6** respectively and read as follows -

"Whereas complaint upon oath has been made unto me Hon. Mrs. Mrs. S N Ganoo District Magistrate in and for the District of Port Louis by DPS Seebaruth to the effect that he has been credibly informed and has reasonable ground to believe that an **offence under Section 3(b) of the Financial Intelligence and Anti-Money Laundering Act to wit 'possession of money in whole and in part, directly or indirectly representing the proceeds of any crime'** and money is being kept and concealed in a place where the police is **not** empowered to enter and carry out a diligent search without a search warrant in the dwelling house and premises of Dr. Navinchandra Ramgoolam, also called Navin, 66 yrs, residing at Riverwalk Floreal, and there are sufficient grounds for suspecting that

THESE ARE THEREFORE to require you forthwith to make diligent search warrant by day or night in the said dwelling house and premises for to be found thereat

You are hereby required, immediately, to secure same and to bring the person or persons in whose custody you find the same before me to be examined and dealt with according to law.

Given under my hand at the District Court of the District of Port Louis the 06th day of February in the year two thousand and fifteen." (ANNEX E).

And

"Whereas complaint upon oath has been made unto me Hon. Mrs. S N Ganoo District Magistrate in and for the District of Port Louis by DPS Seebarith to the effect that he has been credibly informed and has reasonable ground to believe that **an offence under Section 3(b) of the Financial Intelligence and Anti-Money Laundering Act to wit 'possession of money in whole and in part, directly or indirectly representing the proceeds of any crime' and money is being kept and concealed in a place where the police is not empowered to enter and carry out a diligent search without a search warrant in the dwelling house and premises of Dr. Navinchandra Ramgoolam, also called Navin, 66 yrs, residing at Sir Seewosagur Street Port Louis, and there are sufficient grounds for suspecting that**

THESE ARE THEREFORE to require you forthwith to make diligent search warrant by day or night in the said dwelling house and premises for to be found thereat

You are hereby required, immediately, to secure same and to bring the person or persons in whose custody you find the same before me to be examined and dealt with according to law.

Given under my hand at the District Court of the District of Port Louis the 06th day of February in the year two thousand and fifteen." (ANNEX F).

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19. Following the obtention of the impugned search warrants and armed with such warrants, the respective Police Officers of the Central CID, entered and searched Plaintiff's premises in purported execution of the same: (a) at Riverwalk, Vacoas (not Floreal as averred) the police officers seized a quantity of cash, two suitcases and two safes; (b) at Sir Seewosagur Ramgoolam Street (ex Desforges Street), Port Louis the police seized a quantity of cash and six mobile phones on the 6th February 2015. However no incriminating articles were secured by the police at Vacoas or in Port-Louis on the 7th February 2015 notwithstanding the fact that the defendant No 5 alleged that he had credible information that an offence had been committed under the FIAMLA and that money had been concealed.

20. Plaintiff avers that the when the officers of the Central CID arrived at his premises in Vacoas and Port-Louis to carry out the requirements of the six warrants, which virtually gave them "carte blanche", he had no other alternative than to allow the said officers to execute the said warrants. There was a multitude of police officers present searching simultaneously and a crowd of people had assembled outside the property at Port Louis and some became violent even damaging the car of counsel for the plaintiff who was in attendance.

21. Plaintiff avers that he allowed the execution of the warrants in the belief that the process on each occasion was lawful in the first place. Thereafter it came to light that the said warrants [the impugned warrants now tagged as warrants nos.1 to 6] were in fact wrong, unlawful and unconstitutional.

22. On the evening of 6th February 2015, following the search and seizure at the plaintiff's property at Sir Seewoosagur Ramgoolam Street, Port Louis, referred to above, the Plaintiff was arrested and taken in a police vehicle to the Central CID offices at Line Barracks in Port Louis.

22.1. Thereafter on the same night, the police took the plaintiff to his residence at Vacoas (not Floreal as erroneously averred in all the search warrants) and there another search took place which ended in the early hours of the morning.

22.2. All the property seized was taken into the care and custody of the police and kept by them ever since.

22.3. After the searches were over, the plaintiff was detained at the Detention Centre of the Police at Moka before any questions were put to him in relation thereto.

23. On 7th February 2015, the plaintiff was taken again to the offices of the Central CID after which he was transferred under heavy escort to the compound of the New Court House in Port Louis in order that he be provisionally charged and brought before a Magistrate of the bail and Remand Court which sits on Saturdays.

24. On the same day, the plaintiff moved to be bailed out after the defendant no.2 had objected to his release on a number of grounds. The Bail and Remand Court then acceded to the request of the plaintiff to hear the bail application immediately. The matter was heard and late in the afternoon, the plaintiff was released on bail after the Magistrate hearing the bail application, defendant no.8, ruled that the grounds put forward by defendant no. 2 had not been substantiated.

24.1. The rulings of the Bail and Remand court were not made the subject of any appeal by the co-defendant.

25. Shortly after being released, the plaintiff was informed that two further search warrants had been obtained by the police as further searches had to be carried out at the premises of the plaintiff at (1) Sir Seewoosagur Ramgoolam Street, Port Louis and (2) Riverwalk, Vacoas (again wrongly referred to as Floreal in the warrant). The police insisted on carrying out the searches immediately notwithstanding the fact that they had carried out searches on the

night of the 6th to 7th February at both locations. The searches yielded no incriminating article.

26. The next day was a Sunday. The Courts were closed on that day. The police insisted that the plaintiff attend the Central CID HQ in order to start the verification of the exhibits seized. It started on that day at about 11:30 hrs and carried on throughout the afternoon until about 16:30 hrs.

27. On Monday 9th February 2015, the plaintiff had to attend the district Court of Curepipe in relation to the provisional charge of Money Laundering (vide PCN 210/15 Curepipe DC refers) and later on the district court of Riviere du Rempart in relation to the charge of conspiracy (vide PCN 157/15 Mapou District Court refers). Nonetheless, the police insisted that the plaintiff attends the Central CID in the late afternoon for the continuance of the exercise in relation to the property seized.

28. On Tuesday 10th February 2015, the plaintiff was unwell and the police were informed accordingly. In fact a Medical Certificate setting out the ailment of the plaintiff was sent by fax to the Central CID and the Assistant Commissioner of Police (Crime) – the head of the Central CID - acknowledged having received same later in the afternoon. There was an agreement that the exercise would resume the next day. However, at about 19:15 hrs, out of the blue, the ACP (Crime) insisted that the plaintiff attends the Central CID forthwith. The plaintiff complied, wary of his undertaking to cooperate with the police. The exercise finished at about 01:30 hrs the next day.

29. On Wednesday 11th February 2015, the plaintiff moved the Curepipe District Court for an order enjoining the police to be less cavalier and to set parameters to police action in furtherance of the inquiries they were conducting. The matter was put for hearing on Friday 13th February when the Court issued an order setting down the parameters within which the police could act.

30. On 18th February 2015, the plaintiff asked for orders before the Judge in Chambers regarding six mobile phones seized at his premises at Sir Seewoosugur Ramgoolam Street at Port Louis during the evening of 6th to 7th February 2015. The orders are set out in the Procipe (Annexure G). The Court after an exchange of affidavits and hearing the parties gave a judgment in which it agreed that there was a need to intervene to circumscribe the acts and doings of the police and issued a specific order dated 13 March 2015 as reported in Supreme Court Judgment No. 84 of 2015.

31. Thereafter, the police never complied with the order of the Judge and on Tuesday 24 March 2015 issued a letter to the plaintiff at 08:15 hrs enjoining him to attend an exercise at 09:30 hrs the same day at the IT Unit of the police regarding the six phones secured and subject matter of the aforementioned judgment. The letter specified that the exercise would be carried out whether the plaintiff was present or not implying that his consent would not be sought. The plaintiff declined the last minute invitation in writing and specifically drew attention to the fact that there had been no compliance with the order of the Court and that he was not giving his consent to the exercise. In any case, by that time the delay to appeal against the judgment had not lapsed for either party.

32. By letter dated 30 March 2015 the plaintiff inquired from the ACP (Crime) whether the police had proceeded with the exercise regarding the phones notwithstanding his absence and objections but he has not been favoured with an answer to date.

33. Plaintiff avers that as far as the provisions of the law dealing with search warrants are concerned he is advised that there is a power to issue search warrants under Section 36 of the District and Intermediate Courts (Criminal Jurisdiction) Act entitled 'Warrant on oath of credible witness' which provides that :

"Where a credible witness **proves**, on oath before a Magistrate, reasonable cause to suspect that any person has in his possession any property which has been obtained by means of a crime or misdemeanour or any arm or instrument used in the commission of a crime or misdemeanour, the Magistrate may grant a warrant to search for such property, arm or instrument as in the case of stolen goods."

34. Plaintiff avers that in an application for a search warrant which is done ex parte the police officers are bound to make a full and frank disclosure to enable the Court to discharge its duties in a judicial manner. The police is under a duty to 'prove reasonable cause to suspect' the commission of an offence to justify the grant of the warrant and must bring enough evidence to enable the Court to take an informed decision bearing in mind the Constitutional rights of the Plaintiff.

35. Plaintiff avers that he is further advised that it is wrong and unlawful for the officer seeking the warrant to state merely that he possesses reasonable cause to suspect or believe that the grounds for a warrant exist and for the magistrate to accept the officer's statement as sufficient for the warrant to be granted.

36. Plaintiff avers that if the constitutional safeguards are to have any meaning, it is essential for the magistrate to conscientiously ask himself/herself whether on the information given before him/her upon oath he/she is satisfied that the officer's suspicion is based upon reasonable cause.

37. Plaintiff avers that it is also a condition of the validity of a search warrant that the Magistrate should exercise a personal and independent judgment to decide to whether the officer has "proved" to his satisfaction that there is "reasonable cause to suspect" that

- a. a relevant offence has been committed, and
- b. property obtained by means of the offence, and/or
- c. any arm or instrument used in the commission of the offence
- d. is in the possession of the person identified.

The first warrant

38. Plaintiff avers that as far as the first warrant referred to at paragraphs 12 and 14 are concerned :

(i) The police officers merely made mention of an offence which had been allegedly committed under the FIAMLA without more;

(ii) The information under oath neither made any mention of the date of the alleged offence nor did it contain any material which tended to prove the reasonableness of such a suspicion in breach of their duties of full and frank disclosure;

(iii) There was clearly insufficient information before the Magistrate on which she could have been satisfied of the matters necessary to grant the warrant;

(iv) There is no record to indicate that the officer gave any additional information other than the one sworn under oath;

(v) the information afforded no proper basis for the grant of a warrant.

39.1. Plaintiff further avers that the search warrant which was granted by Defendant No 6

a) failed to set out the power under which it was granted;

b) failed to set out clearly the premises to be searched;

c) permitted a disproportionate search and seizure of the Plaintiff's property in that it failed to identify the items to be seized with reasonable particularity by reference to the purpose of the investigation.

39.2. Plaintiff avers that the warrant should have contained the above information so as

- i. to enable the citizen to know, as was his right, the scope and extent of the power granted to enter and search his premises and seize property therein, and
- ii. to confine the search and seizure of property to that which it was lawful to seize under the statutory power and was the minimum necessary to achieve the purpose for which the warrant was granted.

40. Plaintiff further avers that the warrant omitted to give permission and require the officer to seize any property and was thus ex facie invalid. It is not sufficient that the Magistrate is satisfied by the officer's oath that he suspects; it must appear to the Magistrate that his cause for suspicion is reasonable. The test is an objective one. The issue of the warrant is a judicial act, and must be preceded by a judicial inquiry which satisfies the Magistrate that the requirements for its issue have been met. Plaintiff avers that the fact that the officer asserted that he had been credibly informed and reasonably believed an offence to have been committed did not relieve the Magistrate of the responsibility of examining the grounds for that belief.

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41. Plaintiff avers that there is also no record that Defendant No 6 made mention of the fact that she had fully addressed her mind to the relevant matters before issuing the warrant. On the contrary Annexes A and B reveal that both warrants were simultaneously issued at 1505 hrs thus showing that the Magistrate did not carry out any judicial exercise in issuing the warrants. They were issued for the mere asking.

42. The plaintiff avers that there has been a breach of the provisions of s.7 (2) of the District and Intermediate Courts Act (hereinafter DICA) in as much as contrary to the letter of the law and as ordered by the Magistrates in the search warrants, the plaintiff was never brought before the respective magistrates after the execution of the said warrants "to be examined and dealt with according to law" thereby vitiating the whole process. This is true for all the warrants referred to in the present plaint.

43. For the reasons set out above, Plaintiff avers that the combined omissions and/or failures of the police to obtain the warrant and execute same and those of Defendant No 6 in issuing the warrants have resulted in an invasion of the Plaintiff's constitutional right to privacy thus rendering the first search warrant null and void. In addition, the blanket

warrant which was issued by the said Magistrate by day or by night permitted a wholly disproportionate search and seizure of the plaintiff's property, which has resulted in a violation of his constitutional rights to the Privacy and integrity of his home and correspondence. Plaintiff avers that a warrant is issued at night in very exceptional cases, which was surely not the case here.

The Second Warrant

44. As regards, the Second Warrant:

- (a) the police officer merely stated that an offence had been committed in 2011 and that the Plaintiff had conspired with one Rampersad Sooroojebally (a former Deputy Commissioner of Police) and Others (without mentioning who they were) to report an imaginary offence;
- (b) the information under oath failed to give the particulars of the offence committed save for the fact that it was a 'public mischief';
- (c) No mention was made as to which 'documents' and 'other instruments' were used to commit that offence;
- (d) Plaintiff further avers that the information sworn by Defendant no.3 sets out that the alleged offence had been committed on 3 July 2011. It sought the power to search "the dwelling house and premises" of the Plaintiff for "SIM Cards, Cellphones, documents and other incriminating articles".

44.1. The plaintiff avers that the police ought to have disclosed, precisely, to the Magistrate that the offence was a one off-offence in order that the Magistrate to be in a position to take an informed and objective decision regarding same. As it is, the defendant no.6 gave the police, acting through defendant no.3, a blanket warrant to search thereby infringing the rights of the plaintiff to privacy and to freedom of expression and further impinging on the principle of proportionality.

44.2. Since the alleged offence under investigation had taken place three years and seven months prior to the application for the warrant, it was important, if it was to be proportionate, that the power to seize items of the type described, which of their nature were bound to contain private and confidential detail, was carefully circumscribed by reference to the date and nature of the alleged offence. Plaintiff thus avers that the property belonging to the Plaintiff has been seized, containing private and confidential detail accumulated over several years, which can have no relevance to the investigation of the offence alleged and cannot have been used in its commission.

45.1. plaintiff avers that Defendant No 6 :

- a) failed to set out the power under which the warrant was granted;
- b) failed to set out clearly the premises to be searched;
- c) failed to identify at all the property to be seized.

45.2. The warrant should have contained the above information so as

- i. to enable the citizen to know, as was his right, the extent of the power granted to enter and search his premises and to seize property therein, and
- ii. to confine the search and seizure of property to that which it was lawful to seize under the statutory power and was the minimum necessary to achieve the purpose for which the warrant was granted.

46. Plaintiff avers that :

- a) there was insufficient information before the Magistrate on which she could have been satisfied of the matters necessary to grant the warrant;
- b) the said warrant permitted the search and seizure of items such as “documents, and “other incriminating articles”, which could include stored electronic data that were not “instruments used in the commission” of the alleged offence;
- c) the warrant omitted the date of the offence and merely granted power to search for any SIM Cards or Cellphones regardless of the date of their manufacture or use.

48. Plaintiff further avers that the warrant permitted the search and seizure of “documents and other incriminating articles”. Firstly, if the Magistrate was conscious of the source and limits of the statutory discretion that she was exercising, she would have been aware that it permitted a search and seizure only of any instrument used in the commission of the offence. She possessed no power to grant a warrant of a general nature to search for and seize “documents” unless they had been used in the commission of the offence. Given the circumstances of the alleged offence, which allegedly took place on a single day in 2011, it is difficult to see how it could reasonably have been suspected to involve the use of “documents”.

49. Plaintiff further avers that the Magistrate failed to address her mind and give real judicial consideration to the statutory requirements for the grant of a warrant some three and a half years after the alleged offence. The Magistrate should have weighed the likelihood that mobile phones used in July 2011, would still be in the Plaintiff’s possession after all that time. She should have established the basis on which the officer, if he had addressed his mind to it, believed that to be the case.

50. Plaintiff avers that that information, which consists of a bare and unsupported assertion of the commission of an offence and of the officer's belief that articles used in the commission of the offence were on premises connected with the Plaintiff, was plainly incapable of providing a proper evidential basis for the grant of the warrant by the Magistrate who was obliged to satisfy herself of the existence of reasonable cause to suspect the commission of an offence and of instruments used in its commission at the premises to be searched. Yet, the warrant merely repeats the fact that the officer has made such assertions, without the date of the alleged offence, as the basis for its grant. It appears that the Magistrate made no statement that she had been satisfied that there were reasonable grounds to suspect the averments contained in the information sworn by the police officer. There is no record to prove the contrary.

51. Plaintiff avers that if the Magistrate were minded nevertheless to grant the warrant, then given the private and confidential nature of the material that might be found on such electronic storage devices, she should have been astute to define clearly the category of stored matters to which the police were permitted to have access. However, the information and the warrant show that these vital issues, which went to the heart of the exercise of her power and/or discretion, and the plaintiff's constitutional rights, were simply not considered. On the contrary, the sworn information and its prayer were simply adopted in full and without critical examination or qualification. Plaintiff therefore avers that the terms of the warrants showed that the power and/or discretion had not been properly exercised and that the Magistrate merely acted as a rubber stamp.

The remaining four warrants

52. Plaintiff avers that defendants Nos 7 and 8 also failed to carry out the same exercise as set out above in the four other warrants issued by them, nor did the police advance further materials other than what were contained in the various information to enable the magistrates to conduct the balancing exercise before issuing the impugned warrants.

53. Plaintiff avers that Annex C and D show that the warrants were signed and issued simultaneously at 13:50 hrs on the 6th February 2015, so were the ones signed on the 7th February 2015 at 12:55 hrs (Annex E and F).

54. Plaintiff also avers that in relation to warrants no.5 and 6, the police came before another magistrate without informing her that two warrants (warrants no.1 and 3) had been applied for and issued by defendants no.6 and 7 on the 6th February 2015 in respect of the same offence (under FIAMLA) and at the same two locations. The police failed to provide the defendant no.8 with cogent information as to why further warrants were necessary and allowed defendant no.8 to be blissfully unaware of the previous warrants. The police therefore failed to provide the defendant no.8 with such information as would have allowed her to make an informed and objective decision in the matter. These two totally unwarranted searches were carried out in flagrant breach and violation of the

plaintiff's rights to privacy and yielded no probative result as nothing was secured during these two searches which had all the hallmarks of a disguised search for other political reasons.

55. The plaintiff avers that amongst the things seized at Vacoas on 6th-7th February 2015. were two suitcases; one contained money in local and foreign currency and the other one contained personal items which have nothing to do with either of the alleged offences set out in the search warrants. Notwithstanding that fact, the police have not returned these personal items. Furthermore, in the two safes, the police found a number of personal documents which have nothing to do with the matters as set out in the search warrants. Again the police have not returned these personal items which include, inter alia, passports, certificates, driving licenses and decorations.

56. Plaintiff avers that the acts and doings of defendants Nos 1, 2, 3, 4 and 5 coupled with the acts and doings of defendants Nos 6, 7 and 8 as described in the above paragraphs created a cumulative effect which led to the blatant disregard of his Constitutional rights namely the right to privacy, the right to property and the principle of proportionality thus rendering the warrants null and void as being unlawful and unreasonable..

Consequences of the aforementioned warrants

57. Plaintiff avers that since a search in itself constitutes a serious inroad on the rights and liberties of the individual, the police have a duty of disclosure and are bound to state the basis of their assertions which have to be set out with precision in the information. Equally the magistrate should be scrupulous in discharging his/her responsibility and has duty to ensure that the procedure is not abused.

58. Plaintiff avers that Section 9 (2) of the Constitution, permits the police to search the home and other property of a citizen, and Section 12 (2), permits interference with his correspondence, only

a) under the authority of a law, and

b) in circumstances in which a search would be reasonably justifiable

59. Section 8 of the Constitution which protects property rights further provides that the taking of property must be reasonable in a democratic society.

60. Plaintiff avers that the principle of proportionality permeates the constitution and is further enshrined in Sections 1 and 7.

61. Plaintiff avers that for a draconian power to enter, by force if necessary, and at the time of the day or night the home of a citizen and to seize his property and correspondence to be

reasonably justifiable in a democratic society, the law must contain adequate legal protections and guarantees against abuse.

62. Plaintiff further avers what is true of the law, which provides for the power to grant a warrant, is also true of any specific exercise of the power – “the thing done”- under its authority, which must also be proportionate and reasonably justifiable. Thus, the need for a warrant in a specific case must be convincingly proven to the magistrate by evidence and the warrant must permit no more intrusion on the citizen’s home and property than is necessary to achieve the objective.

63. Plaintiff avers the law relies upon the independent scrutiny of the judiciary to protect the citizen against the excesses which would inevitably flow from allowing an executive officer to decide for himself whether the conditions under which he is permitted to enter upon private property have been met. It is the duty of the courts to see that it is not abused: for it is a dramatic inroad upon the individual’s right of privacy and right of property and it would be quite wrong to suppose that the Magistrate acts simply as a rubber stamp on an application for a search warrant.

64. Further, any law that establishes an exception to a Constitutional right must contain sufficient detail to allow the citizen to assess the circumstances in which, and the conditions under which, the exceptional power can be invoked by the State. Plaintiff avers that Section 36 of the District and Intermediate Courts Act under which the police applied for the warrants does not provide for any safeguard that should be contained within a law and is as such also unconstitutional.

65. Plaintiff avers that in this case his constitutional rights have been breached right from the moment the defendants nos.3,4.and 5 swore the information under oath which were far from being reasonable and the breach continued with the Magistrates issuing the warrants without exercising any judicial control and without ensuring that the rights of the Plaintiff were safeguarded. Therefore, it is the plaintiff’s contention that the entries, searches and seizures effected by the ‘preposes’ of the defendant no.1 were unlawful, illegal and unreasonable.

Prayers

In the light of the above, Plaintiff prays from this Honourable Court for a judgment declaring that :

(a) the impugned warrants issued by Defendants Nos. 6, 7 and 8 were obtained in breach of Section 1, 7, 8, 9 and 12 of the Constitution and are consequently null and void;

(b) the properties seized as a result of those unlawful unreasonable and illegal search warrants be returned back to him;

(c) all actions taken in furtherance of these search warrants including the entry search and seizures be declared unreasonable and unlawful for having been obtained in breach of Sections 1, 7,8, 9 and 12 of the Constitution;

(d) no use should be made of any knowledge or any copies made and taken by the defendants no.1 and no.2 and same should be destroyed.

With costs against all the defendants.

Under all legal reservations.....

