

POLICE v. SIAKI TUALASUPREME COURT. Apia. 1969. 4,9, December. SPRING C.J.

Appeal by way of case stated - inquiry pursuant to Police Force Regulations resulting in dismissal of Constable from Police Force - whether this a bar to criminal prosecution - effect of provision of Constitution.

The respondent, a Police Constable, was charged under the Police Force Regulations 1966 for being drunk while off duty. In a Police inquiry made pursuant to the Regulations, the charge was found proved and the respondent was dismissed from the Police Force. In a subsequent criminal prosecution brought before the Magistrates' Court under the Police Offences Ordinance 1961 alleging drunkenness in a public place, it was argued for the respondent that this amounted to a re-trial for the offence for which he was charged, and found guilty, before the Police tribunal. Reliance was placed on Article 10(3) of the Constitution. The Fa'amasino Fesoasoani accepted this argument and dismissed the information.

On an appeal by way of case stated by the Police -

Held: That as the Police inquiry was not before a court of competent jurisdiction, the finding of such inquiry did not amount to a conviction in law; nor was it a "conviction" within the meaning of Article 10(3) of the Constitution.

Information referred back to the Magistrates' Court.

Slade, for Appellant.
Clarke, for Respondent.

Cur. adv. vult.

SPRING C.J.: This is an appeal by way of case stated from a decision of Meleisea Folitau, Fa'amasino Fesoasoani. An information was laid in the Magistrates' Court on the 19th September 1969 alleging that one Siaki Tuala of Sapapali'i, Police Constable, was found drunk at a public place, namely, Apia Market, on the 19th September 1969, contrary to the provisions of the Police Offences Ordinance 1961 section 16. The information after various adjournments finally came before Fa'amasino Fesoasoani Meleisea on the 24th October 1969. It is agreed by the appellant and respondent that the accused had as at the 24th day of October 1969 been charged under the Police Force Regulations 1966 section 82(8) - with drunkenness while off duty - and that on the Police inquiry under the regulations the charge was found to be proved and the accused was dismissed from the Police Force.

Counsel for the defendant submitted before the Magistrates' Court that the information laid under the Police Offences Ordinance 1961 - of being found drunk in a public place - was in effect a re-trial of the accused for the offence with which he was charged under the Police Force Regulations section 82(8) and in respect of which he had already been found guilty. Counsel for the accused relied upon Article 10(3) of the Constitution of the Independent State of Western Samoa which states:

"No person who has been tried for any offence shall, after conviction or acquittal, again be tried for that offence except -

- (a) where a re-trial is ordered or conducted by a court or judicial officer exercising a jurisdiction superior to that under which that person was acquitted or convicted; or
- (b) in the case of a conviction entered in a trial conducted by a Judge or Judges of the Supreme Court, where a re-trial is ordered by a Judge of that Court on an application made within fourteen days of that conviction".

Counsel for defendant further submitted that the provisions of the said Article 10(3) precluded the Magistrates' Court from hearing the information laid under the Police Offences Ordinance as the defendant had already been charged and dealt with under the Police Force Regulations.

The learned Fa'amasino Fesoasoani after hearing submissions from the prosecutor and counsel for the accused held that as the defendant had been charged under the Police Force Regulations with the offence of drunkenness while off duty and found guilty, he could not be tried in the Magistrates' Court of being found drunk in a public place under the Police Offences Ordinance 1961 section 16 and accordingly the learned Fa'amasino Fesoasoani dismissed the information. The Police now appeal against this decision and the case stated on appeal poses certain questions for determination by this Court as follows:

- (i) Whether an "offence" under the Police Force Regulations 1966 is an offence contemplated by Article 10(3) of the Constitution;
- (ii) Whether the offence under the Police Force Regulations 1966 is the same offence as that for which the defendant was charged before me;
- (iii) Whether the word "tried" in Article 10(3) refers only to a person being tried in a judicial proceeding or whether it can include an administrative inquiry as well".

The Police Force Regulations 1966 are made pursuant to section 15 of the Police Force Ordinance 1951 which provides:

"The Head of State may from time to time by notice published in the Western Samoa Gazette make such regulations as he thinks fit for the government, maintenance, pay, discipline and control of the Force and with respect to all matters necessary for rendering the members of the Force efficient for the discharge of their duties and may prescribe fines, and other penalties for the breach of any such regulations".

It is necessary to consider Article 10(3) of the Constitution of Western Samoa.

In my view the Legislature in enacting Article 10(3) of the Constitution was assuring to the people of Western Samoa in written form that there would be no violation of the Common law right of an individual not to be placed in jeopardy twice in respect of the same offence.

Counsel for the defendant averred before the learned Fa'amasino Fesoasoani that the defendant had been previously convicted on a charge for the same offence as that in respect of which he was on trial in the Magistrates' Court. In fact in his argument on this appeal Counsel for the defendant submitted that the finding of the inquiry under the Police Force Regulations 1966 that the charge was proved amounted to a conviction in law.

Article 10(3) states - "No person who has been tried for any offence

shall after conviction or acquittal again be tried for that offence....."

In considering the English authorities dealing with the special plea of autrefois convict - which is very similar to the provisions of section 10(3) of the Constitution - it is stated in Archbold's Criminal Pleading Evidence and Practice 36th Edn. paragraph 451 as follows:

"The defence of autrefois convict applies where the previous conviction was on indictment or summary, provided that it was before a court of competent jurisdiction after a hearing on the merits, and does not apply where the earlier proceedings were before a domestic tribunal. In Lewis v. Mogan [1943] K.B. 376 it was held that the master of a ship, who had held an inquiry and as a result had made an entry in the log-book that the defendant was to forfeit one day's pay for neglect of duty, was not acting on that occasion as a court of competent jurisdiction, but only as a domestic tribunal, and that consequently a plea of autrefois convict based upon the master's action could not be established. See also where the appellants had been dealt with by the visiting justices in respect of an escape from prison and had received punishment under the Prison Rules, 1949, in the form of loss of remission of sentence, privileges, earnings, etc., it was held that the order of the visiting justices was no bar to a subsequent prosecution of the appellants for prison breach arising out of the same facts: R. v. Hogan; R. v. Tompkins [1960] 2 Q.B. 513; 44 Cr. App. R."

In my view, the inquiry under the Police Force Regulations 1966 was conducted in a domestic way by virtue of Regulations which had been specifically made for the purpose of "discipline and control of the Police Force".

As Regulation 82 of the Police Force Regulations 1966 states -

"Any member of the Force found guilty of any of the following offences of misconduct or neglect of duty shall be liable to the disciplinary punishments authorised by the Ordinance, irrespective of or in addition to any other punishment that he may be liable to by law".

The word "conviction" in Article 10(3) of the Constitution I interpret as meaning a conviction recorded by a Court of competent jurisdiction.

The Police inquiry was not before a court of competent jurisdiction and in my view the finding of such inquiry does not in my view amount to a conviction in law.

If the argument of counsel for the defendant was to be accepted by this Court that the finding of an inquiry under the Police Force Regulations was a "conviction" as this word is used in Article 10(3) of the Constitution absurd results could follow. For instance if a member of the Force assaulted his superior officer and such member was charged with assault and dealt with under the Police Force Regulations and dismissed from the Force then if counsel's argument is to be accepted such member could not be charged before a court of competent jurisdiction on a charge of assault. I am satisfied that this was not the intention of the Legislature when it enacted Article 10(3) of the Constitution.

The conclusion that I have come to as to the meaning of the word "conviction" in Article 10(3) is in my view sufficient to dispose of the matter and it is therefore unnecessary for me to answer the other questions raised in the case stated in Appeal. I am satisfied that the learned Fa'amasino Fesoasoani should have rejected the argument of counsel

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for defendant and proceeded to have heard the information laid against the accused in accordance with law. I accordingly answer the principal question posed by the case stated viz. as to whether the decision reached by the learned Fa'amasino Fesoasoani was erroneous in point of law - in the affirmative and accordingly I direct that the information be referred back to the Magistrates' Court for hearing and determination in accordance with law.

Before leaving this appeal I am concerned that Fa'amasino Fesoasoani are being required to hear and determine complicated matters of law. I am sure that it was never the intention of the Legislature when Fa'amasino Fesoasoani were appointed that they should be required to determine involved points of law. Fa'amasino Fesoasoani were appointed to assist the Magistrate to dispose of all cases coming before his Court in the most expeditious manner.

I therefore direct that in future all cases coming before the Fa'amasino Fesoasoani where matters of law are raised or likely to be raised are to be adjourned for hearing before the Magistrate.

I make no order as to costs in this appeal.