

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2021] IEHC 859**

**[2018 No. 432 J.R.]**

**BETWEEN**

**STEPHEN MANNING**

**APPLICANT**

**AND**

**DEIRDRE GEARTY**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENTS**

**JUDGMENT of Mr. Justice MacGrath delivered on the 18th day of May, 2021**

1. This application for leave to apply for judicial review is brought by way of notice of motion dated 1<sup>st</sup> June, 2018. The applicant, Mr. Manning seeks an order prohibiting his trial in the District Court (District Court Case 2017 /180452) where he has been charged with the offences of assault contrary to s. 2 of the Non-Fatal Offences Against the Person Act, 2001 and with threatening, abusive, and insulting behaviour in a public place contrary to s. 6 of the Criminal Justice (Public Order) Act, 1994.

2. These charges arise from an incident which is alleged to have taken place on 4<sup>th</sup> April, 2017 at Castlebar Court Office, when Mr. Manning attended there for the purpose of requesting access to a file in relation to another matter which was then pending before the Circuit Court. This latter matter proceeded and his conviction was upheld by the

Circuit Court on 4<sup>th</sup> May, 2017. Mr. Manning has instituted separate proceedings seeking an order of *certiorari* quashing that decision.

3. The reliefs which he seeks in these proceedings are outlined at para. (d) of the Statement grounding the application as follows:

*“(d) Reliefs sought:*

*(1) An Order of prohibition preventing District Court Case 2017 180452 DPP v Manning from proceeding on the general grounds that it is a malicious prosecution and an abuse of process as outlined at (e)I – xxiv following and in the accompanying affidavit(s) and exhibits.*

*(2) An Order staying those proceedings until this Judicial Review is determined.*

*(3) An Order of Mandamus directing the contracting party to the Courts Service to release to the Applicant directly [without transfer or interference by Courts Service personnel]\* the full unedited DAR recordings (in ‘FTR’ format) of the following District Court hearings in Castlebar regarding case 2016/40190 ‘DPP vs Granahan & Manning’: (i) September 2<sup>nd</sup> 2015 (before Judge Kevin Kilraine); (ii) September 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> & 9<sup>th</sup> 2016; (iii) November 21<sup>st</sup>, 22<sup>nd</sup> & 23<sup>rd</sup> 2016; (iv) January 23<sup>rd</sup> 2017; and (v) January 24<sup>th</sup> 2017 each before Judge Aeneas McCarthy all of which have been either refused or denied to us without proper or lawful explanation and which recordings are crucial to establishing the truth of (a) the ongoing High Court Judicial Review application in that matter JR 2017/798 and (b) the underlying circumstances of the pending Belmullet District Court case 2017 180452 DPP v Manning which is the specific subject of this JR application.*

*\* The Applicant has the ‘FTR’ software and can receive the said ‘FTR’ files directly from the source either by cd or email, thus avoiding the possibility*

*that the original files may again be unlawfully interfered with or deleted by the DPP Prosecution team, and/or by the Courts Service, as before.*

*(4) An Order of Mandamus directing the contracting party to the Courts Service to release to the Applicant directly, [without transfer or interference by Courts Service personnel]\* the full unedited DAR recordings (in 'FTR' format) of the following Circuit Court hearings in Castlebar concerning the Applicant's Circuit Court Appeal: (i) February 10<sup>th</sup> 2017 before Judge Rory McCabe; (ii) February 17<sup>th</sup> before Judge Raymond Groarke; and (iii) May 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> 2017 before Judge Sean O'Donnabhain.*

*(5) An Order for Costs and/or Expenses.*

*(6) Any other Order as deemed fit and appropriate by the Court.*

*(7) Leave to apply.*

**4.** The Grounds upon which such relief are sought are set out at para. (e) of the application:

- i. That a miscarriage of justice is already well 'in train' in case 2017 180452 which constitutes (a) a malicious prosecution; (b) a fraud upon the Court; (c) an abuse of process; and (d) an affront to natural justice, and to the Courts.*
- ii. That the named Prosecuting Garda Sergeant Gerard McEntee has misled the Court as to his 'due process' dealings with the Applicant and an eyewitness, regarding giving a statement to Gardaí prior to the dispatch of the summons.*
- iii. That the Prosecution has knowingly and repeatedly failed and refused to comply with the Gary Doyle Order of the District Court of January 17<sup>th</sup> 2018.*

- iv. *That the Prosecution has unlawfully conspired, before-the-fact, to mislead the Court in this respect as per written statements delivered to the Court.*
- v. *That State Prosecution Garda Inspectors Dermot Butler and Gary Walsh have also conspired to mislead the Court after-the-fact in this respect, having knowingly lied and made false utterances on two occasions in open Court.*
- vi. *That Judge Deirdre Gearty denied the Applicant 'fair procedure' or 'equality of arms' by accepting these false utterances 'on their face' and ignoring the Applicant's sworn testimony to the contrary.*
- vii. *That Judge Deirdre Gearty has demonstrated extreme bias by repeatedly refusing to view, or accept into the record, the Applicant's documented evidence of 'prosecutorial misconduct' i.e. premediated perjury, criminal damage and contempt of Court by the Prosecution.*
- viii. *That none of the individuals concerned has responded to the proofs of these allegations made in writing by the Applicant in February and March 2018.*
- ix. *That the Applicant has received no responses from the Office of the DPP to these serious allegations.*
- x. *That on February 21<sup>st</sup> and March 14<sup>th</sup> respectively Judge Gearty refused two formal applications to strike out, backed by the Applicant's sworn affidavits and documented proofs of prosecutorial misconduct on the misleading and absurd grounds that, 'We don't accept documents in the District Court' (Quoted as per the Applicant's best recollection).*

- xi. *That on February 21<sup>st</sup> Judge Gearty directed that the case be moved from Castlebar to be dealt with in Belmullet without explanation, despite the Applicant's objections and requests for explanations.*
- xii. *That on March 14<sup>th</sup> Judge Gearty unlawfully refused a legitimate, fully-supported application for a criminal summons (with documented proofs) as against the lead accuser in this case, Castlebar Courts Service Manager Peter Mooney under the Petty Sessions Ireland Act 1851 in contravention of the law and of at least four Superior Court Rulings as listed below.*

*No. 1: SUPREME COURT in The State (Ennis) v. Farrell [1966] I.R. 107, 'The court should require clear language to abolish the valuable right of private prosecution.')*

*No 2: HIGH COURT [2012 No. 436 J.R.] between Kelly & Buckley (Applicants) and District Court Judge Ann Ryan (Respondent). Mr. Justice Hogan delivered judgment on 9<sup>th</sup> July 2013.*

*No 3: SUPREME COURT (same case as No. 2 above) judgment delivered by Justice Frank Clarke, plus consulting Justices Denham, Hardiman, O'Donnell & Dunne on July 30<sup>th</sup> 2015.*

*No 4: COURT OF APPEAL between Colm Granahan (Applicant) and District Court Judge Kevin Kilraine / County Registrar Fintan J Murphy (Respondent). Justices Ryan, McKechnie and Hogan, judgment delivered on July 25<sup>th</sup> 2016 with the right to 'common informer' prosecutions endorsed again.*

- xiii. *That the Applicant is engaged in an ongoing Judicial Review application in the High Court (2017 JR 798) which is directly related to this District Court case in many respects, and is awaiting disclosure of DAR evidence which will have a direct bearing on the outcome of the JR application and on the validity, probity and legality of this District Court case 2017 180452 DPP v Manning.*
- xiv. *That the Applicant is alleging a criminal conspiracy by persons involved in both cases for the purposes of interfering with, obstructing or perverting the course of justice particularly in regards to the Applicant's declared intention to take his case to the European Courts if the ongoing JR 798 process fails.*
- xv. *That the Applicant has (again) been granted a legal aid certificate but remains without effective legal representation despite repeated sincere attempts to secure the same, and in face of the failure of the State to assign the same.*
- xvi. *That having granted the Applicant permission to privately record proceedings (due to multiple proven interferences with the DAR by the DPP Prosecution Team in the said previous contrived prosecution last year in Castlebar which is the subject of ongoing Judicial Review proceedings JR 2017 798) that Judge Gearty subsequently withdrew that permission without proper explanation.*
- xvii. *That there is a grave and obvious risk of another serious miscarriage of justice if this case is allowed to progress under these current circumstances.*

- xviii. *That there is a grave and serious risk of another miscarriage of justice if any of these matters progress without disclosure of the DAR at (3) and (4) above.*
- xix. *That there is a grave and obvious risk of a miscarriage of justice if this District case progresses before the related JR 798 process is properly completed.*
- xx. *That the District Court has failed to observe constitutional and natural justice.*
- xxi. *That the District Court has failed to act according to its legal duty.*
- xxii. *That the District Court has acted in excess and breach of its jurisdiction.*
- xxiii. *That Judge Deirdre Gearty has acted with extreme bias and prejudice and is in clear violation of her solemn Oath of Office.*
- xxiv. *That there have (again) been multiple breaches of the Applicant's fundamental right to good administration as per Article 41 of the Charter of Fundamental Rights of the European Union, and of the right to access justice as per the European Convention on Human Rights Act 2003, specifically Articles 1,5,6 & 7 as detailed in the respective supporting affidavits and in documentation lodged in these collective proceedings.*
- xxv. *That new evidence surfaced on July 20<sup>th</sup> 2017 which in turn gave rise to the ongoing Judicial Review application in the High Court (2017/798) which demonstrates beyond doubt that the previous prosecution in Castlebar Court – which resulted in the unlawful imprisonment of the Applicant and which involved at least eight of the same persons who are now involved with these ongoing cases – was a wholly illegitimate and*

*unlawful miscarriage of justice; a malicious prosecution that involved an astonishing range of 'abuses of process'; which was conducted on the back of multiple criminal acts undertaken by agents of the State, most notably by agents of the DPP's Office, by witnesses for the prosecution in the employ of the State and by certain Judges who were parties or affiliates to those proceedings and/or to affiliated actions on the part of the Applicant or of the named parties herein which have, in part or in whole, arisen out of these proceedings and or out of the causes for the same."*

5. The court has considered the affidavits and submissions of the parties.
6. The basis for the application may be considered under the following categories:
  1. Misconduct on the part of the prosecution and investigating garda, and refusal on the part of these bodies and persons representing them to reply to all of the applicant's correspondence in respect of complaints made by him.
  2. Alleged bias on the part of the District Judge who has dealt with preliminary applications in connection with the case. It is alleged against the District Judge that:
    - a. She accepted the evidence of the gardaí and prosecuting authorities over the evidence of the applicant, thus, resulting in lack of fair procedure and equality of arms.
    - b. She refused to consider evidence of prosecutorial misconduct including perjury, criminal damage and contempt of court by the prosecution.



- c. She refused to accept a formal application to strike out the proceedings on the basis of prosecutorial misconduct.
  - d. She moved the hearing of the case to a different District Court venue.
  - e. She refused to accept a summons against the person alleged to have been assaulted, in respect of which criminal proceedings have now been brought against Mr. Manning which he seeks to prohibit.
  - f. She withdrew permission from the applicant to record proceedings which she had previously given.
3. There are ongoing judicial review proceedings in case, 2017 No. 798 J.R. and there is a risk of miscarriage of justice if the District Court case progresses before that judicial review application.
  4. Criminal conspiracy on the part of many persons including gardaí, prosecuting authorities, members of the judiciary and others.
  5. The lack and absence of adequate legal representation.
  6. The failure to release the digital audio recordings (DAR) in respect of previous proceedings involving the applicant.
  7. What the applicant describes as new evidence which he claims substantiates his claim of conspiracy by State officials, office holders and judges. He also avers that the *whole extended saga through the Irish courts* began for his family in 2009 with the launching of a civil case for defamation against a second cousin of the then Taoiseach.
7. On an application for leave to apply for judicial review, the applicant must satisfy the test outlined by Finlay C.J. in the Supreme Court in *G. v. Director of Public Prosecutions* [1994] 1 I.R. 374, where he observed:-

*“It is, I am satisfied, desirable before considering the specific issues in this case to set out in short form what appears to be the necessary ingredients which an applicant must satisfy in order to obtain liberty of the court to issue judicial review proceedings. An applicant must satisfy the court in a prima facie manner by the facts set out in his affidavit and submissions made in support of his application of the following matters:—*

*(a) That he has a sufficient interest in the matter to which the application relates to comply with rule 20 (4).*

*(b) That the facts averred in the affidavit would be sufficient, if proved, to support a stateable ground for the form of relief sought by way of judicial review.*

*(c) That on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks.*

*(d) That the application has been made promptly and in any event within the three months or six months’ time limits provided for in O. 84, r. 21 (1), or that the Court is satisfied that there is a good reason for extending the time limit. The Court, in my view, in considering this particular aspect of an application for liberty to institute proceedings by way of judicial review should, if possible, on the ex parte application, satisfy itself as to whether the requirement of promptness and of the time limit have been complied with, and if they have not been complied with, unless it is satisfied that it should extend the time, should refuse the application. If, however, an order refusing the application would not be appropriate unless the facts relied on to prove compliance with r. 21 (1) were subsequently not established, the Court should grant liberty to institute the proceedings if all other conditions are complied with, but should leave as a*

*specific issue to the hearing, upon notice to the respondent, the question of compliance with the requirements of promptness and of the time limits.*

*(e) That the only effective remedy, on the facts established by the applicant, which the applicant could obtain would be an order by way of judicial review or, if there be an alternative remedy, that the application by way of judicial review is, on all the facts of the case, a more appropriate method of procedure. These conditions or proofs are not intended to be exclusive and the court has a general discretion, since judicial review in many instances is an entirely discretionary remedy which may well include, amongst other things, consideration of whether the matter concerned is one of importance or of triviality and also as to whether the applicant has shown good faith in the making of an ex parte application.” (at pp. 377-378).*

In *G. v. DPP*, Denham J. observed that the burden on the applicant is light, the applicant being required to establish that he has made out a stateable case:-

*“The burden of proof on an applicant to obtain liberty to apply for judicial review under the Rules of the Superior Courts O. 84, r. 20 is light. The applicant is required to establish that he has made out a stateable case, an arguable case in law. The application is made ex parte to a judge of the High Court as a judicial screening process, a preliminary hearing to determine if the applicant has such a stateable case.*

*This preliminary process of leave to apply for judicial review is similar to the prior procedure of seeking conditional orders of the prerogative writs. The aim is similar – to effect a screening process of litigation against public authorities and officers. It is to prevent an abuse of the process, trivial or unstateable cases*

*proceeding, and thus impeding public authorities unnecessarily.”* (at pp. 381-382) (emphasis added).

8. It is difficult to see how many of the allegations made by Mr Manning could give rise to grounds for prohibiting the hearing of the proceedings. I am satisfied that the vast majority of matters raised and which relate to the conduct of the District Court proceedings can be dealt with on a substantive basis during the course of any further hearing of the complaint. It is clear also from the applicant’s affidavits and counsel for the respondents’ submissions that Mr Manning was granted legal aid

9. The only aspects of the application which are potentially connected to an application for prohibition of the proceedings at issue are those which relate to the conduct of the District Judge and in particular those which allege prejudgment and bias. Fundamentally and importantly at para. 39 of his affidavit, sworn on 8<sup>th</sup> October 2018, Mr Manning avers that the District Judge who he seeks to prohibit from hearing the case said that she would recuse herself. The court after hearing submissions from the parties sought clarification from the respondent as to whether this was the stated position of the Judge of the District Court. Following a period of delay, the court, of its own motion, relisted the matter. Having heard the solicitor representing the respondents, the court is satisfied that the first respondent has decided not to continue to hear the case. Whereas I am satisfied that there is no basis for the allegations of prejudgment or bias and that a judge who deals with preliminary matters is not thereby precluded from further involvement, the judge has, presumably for pragmatic reasons, determined not to hear the proceedings. Thus, this complaint falls away on the facts and therefore, insofar as the allegation of bias or any alleged misconduct on the part of the first respondent is concerned, this issue and these proceedings are moot.

**10.** Mr. Manning's very extensive and lengthy affidavits for the most part contain allegations against individuals, many of whom have little or nothing to do with the pending District Court prosecution. At paras. 3a and 37 of his affidavit, sworn on 1<sup>st</sup> June 2018, he admits that he is in effect alleging a broad ranging conspiracy by various named individuals, bodies, and agents of the State. At para. 7 he sets out what he contends are violations of the law and what he describes are relevant events and incidents allegedly visited on him. He alleges collusion between organs of State including gardai, court staff and the judiciary. This pattern is evident throughout his affidavits. He alleges misconduct or improper activity on the part of at least 5 members of the Courts Service, 7 gardai, 7 members of the Office of the DPP and the Office of the Chief State Solicitor, 3 registrars from different courts, and at least 27 judges of the District Court, the Circuit Court, the High Court and the Court of Appeal, some who have since retired. He outlines alleged activities on the part of, what he describes as, 14 key players in purported support of the alleged collusion. These include court staff, gardai, solicitors, judges and the Law Society.

**11.** I am satisfied that the continuation of this application beyond this point is designed not to secure an order for prohibition in respect of the particular proceedings in the District Court but as a vehicle to air perceived grievances against court staff, prosecutors, solicitors, barristers, gardaí, and judges who have dealt with the applicant or his cases, now or in the past, and with whom he might disagree. In my view this is an impermissible objective of an application for judicial review and amounts to an abuse of process.

**12.** It is further noteworthy that when this matter was relisted by the court of its own motion, Mr Manning chose not to engage with the court and sought to have this court also recuse itself. I am satisfied that this provides further confirmation that Mr

Manning's application has little to do with the pending District Court proceedings and is an abuse of process.

**13.** I conclude therefore that this is not an appropriate case in which to grant leave to seek judicial review and I refuse the application.