

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Roshanimeydan*, 2013 NSCA 146

Date: 20131212
Docket: CAC 420106
Registry: Halifax

Between:

Alireza Roshanimeydan

Appellant

v.

Her Majesty The Queen

Respondent

Judge: The Honourable Justice Joel E. Fichaud

Motion Heard: December 5, 2013, in Halifax, Nova Scotia, in Chambers

Held: Motion dismissed

Counsel: The Appellant (Applicant) in person
Joshua J. Judah, for the respondent

Reasons:

[1] Mr. Roshanimeydan moves for what his Notice describes as a “stay of the lower court decisions” pending the determination of his appeal.

[2] Mr. Roshanimeydan operates a taxi service in the Halifax Regional Municipality. He wants to pick up passengers at the Halifax Airport.

[3] The airport is about thirty four kilometers outside the City. The airport land is owned by the Government of Canada and leased by the privately run Halifax Airport Authority (“Authority”) which operates the facilities. The Authority controls taxi access to the airport by rules that license a limited number of commercial passenger vehicles. Unlicensed commercial passenger vehicles may drop off passengers, but may not pick up a passenger unless the passenger has a contract with the taxi operator and, in that event, there is a fee of \$4.50 for the pick-up.

[4] Mr. Roshanimeydan does not hold a license from the Authority, and said bluntly at this chambers hearing that he has no intention of getting one. He disagrees in principle with the Authority’s restrictions. He says he does not “scoop” passengers from other taxi operators, but wants only to vindicate his liberty, without restrictions from the Authority, to pick up passengers who specifically call his taxi service. His affidavit for this motion says:

3. The real dispute with the Authority concerns the fact that I have refused to pay what I consider to be an unjust and unfair charge of \$4.50 every time that I pick up a prearranged passenger.

[5] Mr. Roshanimeydan has picked up passengers at the airport contrary to the licensing rules. Despite many discussions with the Authority about the matter, he is undeterred.

[6] On January 31, 2012, the Authority served Mr. Roshanimeydan with a Notice under the *Protection of Property Act*, R.S.N.S. 1989, c. 363, as amended (“PPA”), s. 3. The Notice prohibited Mr. Roshanimeydan from entering the airport premises for six months.

[7] On three occasions in early February 2012, Mr. Roshanimeydan entered the airport property, ignoring the Notice, to carry on with his taxi business.

[8] Section 3(1)(e) of the *PPA* says that anyone who, without legal justification or permission of the occupier, enters on premises where entry is permitted by notice, commits an offence punishable on summary conviction by a fine of up to \$500.

[9] Mr. Roshanimeydan was charged with three counts of violating s. 3(1)(e). On September 6, 2012, he was convicted by a justice of the peace and sentenced to pay three fines of \$225.21 per count.

[10] Mr. Roshanimeydan, represented by counsel, appealed to the Supreme Court of Nova Scotia as the Summary Conviction Appeal Court (“SCAC”). Justice Warner heard his appeal on January 16 and March 18, 2013 and issued a decision on March 18, 2013 (2013 NSSC 106). The SCAC’s dismissed Mr. Roshanimeydan’s appeal.

[11] In the SCAC, Mr. Roshanimeydan contended that his taxi license under the *HRM Taxi Bylaw* authorized him to pick up passengers at the airport, and trumped the Authority’s rules to the contrary, giving him legal justification under s. 3(1)(e) of the *PPA*. He also submitted that the *PPA* should be interpreted not to apply to roadways, such as the airport roadway where he picks up passengers. Justice Warner rejected both submissions. He said that the roadway at the airport was private property, was subject to the Authority’s licensing rules despite the *HRM Taxi Bylaw*, and was subject to the *PPA*.

[12] On September 23, 2013, Mr. Roshanimeydan appealed to the Court of Appeal. His grounds resemble his submissions to the SCAC.

[13] On October 17, 2013, Mr. Roshanimeydan appeared in chambers to schedule the date of hearing before the Court of Appeal. I scheduled the hearing for June 16, 2014.

[14] Also on October 17, 2013, Mr. Roshanimeydan, acting in person, sought what his Notice of Motion described as a “stay of the lower court decisions”. The material filed for the motion did not include the SCAC’s reasons for judgment. It was unclear to me what type of order Mr. Roshanimeydan sought. From his oral explanation on October 17th, it appeared that he did not seek a typical stay of

execution pending appeal. I adjourned the motion to December 5, 2013, to enable Mr. Roshanimeydan to file a copy of Justice Warner's reasons, and to file a written explanation of the order that he seeks on this motion.

[15] Mr. Roshanimeydan then filed a copy of Justice Warner's reasons and a chambers brief that explains his position.

[16] On December 5, 2013, I heard Mr. Roshanimeydan in support of his motion, and Mr. Judah in reply. I reserved a ruling. This is my decision.

[17] By ss. 2 and 7(1) of the *Summary Proceedings Act*, R.S.N.S. 1989, c. 450, as amended, the provisions in the *Criminal Code* governing offences punishable on summary conviction apply to summary proceedings under provincial legislation, including the *PPA*. Section 839(2) of the *Criminal Code* incorporates, for appeals to the Court of Appeal from decisions of the Summary Conviction Appeal Court, ss. 673 through 689 of the *Criminal Code*.

[18] Section 683(5) of the *Criminal Code* states:

683(5) Power to order suspension – If an appeal or an application for leave to appeal has been filed in the court of appeal, that court, or a judge of that court, may, when the court, or the judge, considers it to be in the interests of justice, order that any of the following be suspended until the appeal has been determined:

- (a) an obligation to pay a fine;
- (b) an order of forfeiture or disposition of forfeited property;
- (c) an order to make restitution under section 738 or 739;
- (d) an obligation to pay a victim surcharge under section 737;
- (e) a probation order under section 731; and
- (f) a conditional sentence order under section 742.1.

Regina v. Sunoco Inc., [1986] O.J. No. 3071 (C.A.), para 5, per Cory, J.A. as he then was, and *R. v. Weinkauf*, 2008 SKCA 99, paras 10-12, per Jackson, J.A., discussed when it will be in the “interests of justice” to order a suspension under s. 638(5). See also *R. v. Chek TV Ltd.*, [1986] B.C.J. No. 169 (C.A.) under the predecessor provision.

[19] The only power listed by s. 683(5) that pertains to Mr. Roshanimeydan is the suspension of the fine under s. 683(5)(a). There has been no order of forfeiture, restitution, victim surcharge, probation or conditional sentence.

[20] Mr. Roshanimeydan was fined a total of \$675.63 for the three summary offences.

[21] At the chambers hearing, the Respondent's counsel said the Respondent agrees that Mr. Roshanimeydan may delay the payment of the three fines until the conclusion of this appeal. Mr. Judah says that there is no intent to collect the \$675.63 before the Court of Appeal's decision. Neither did Mr. Roshanimeydan's submissions address the due date for the \$675.63. As the payment date for the fines is not in issue, I will say no more about it.

[22] Mr. Roshanimeydan's motion is not about the three offences in February 2012, or the fines for those offences. His chambers brief says:

22. It is understood that the direct effect of a stay would be that the convictions are not enforced and the fines are not payable. But the Airport treats the convictions as if they were a total vindication of its position, almost like an injunction. If this Court were to make clear that all of the issues are up in the air and open to argument on the appeal, the Airport would hopefully understand that it cannot enforce its position until the legal proceeding is finally decided in its favour.

[23] Mr. Roshanimeydan's oral submissions fastened on this point. He seeks an order that the Airport Authority "cannot enforce its position until" Mr. Roshanimeydan's appeal is dismissed. In particular, to address what his affidavit describes as the "real dispute" (above para 4), he wishes me to order that the Authority cannot charge \$4.50 per passenger from today until the determination of his appeal. This would be a prospective declaration and injunction that would bind the Authority on future occasions when Mr. Roshanimeydan would attempt to pick up passengers at the airport. The Authority is not a party to this appeal or motion.

[24] Such an order is not on the menu of s. 683(5).

[25] Mr. Roshanimeydan submits that I may issue such an order by Rule 90.41(2):

90.41(2) A judge of the Court of Appeal on application of a party to an appeal may, pending disposition of the appeal, order stayed the execution and

enforcement of any judgment appealed from *or grant such other relief against such a judgment or order, on such terms as may be just.* [Emphasis added]

Mr. Roshanimeydan says that, as his requested “other relief” is “just”, I have the authority to grant it.

[26] I disagree that Rule 90.41(2) contemplates Mr. Roshanimeydan’s proposed remedy.

[27] Rule 90.41(2) is written for civil appeals. This is an appeal from three convictions for summary offences, and is governed by Rule 91. Rule 91.02 says:

91.02(1) This Rule is made under subsections 482(1) and (3) of the [*Criminal Code*].

(2) The *Civil Procedure Rules* as a whole and in particular Rule 90 apply to this Rule with any necessary modifications and when not inconsistent with this Rule.

3) The procedures in Rule 90 for motions made to a judge of the Court of Appeal and to the Court of Appeal apply to motions made under this Rule.

[28] Section 482(1) of the *Criminal Code* – the enabling authority for Rule 91.02 - authorizes rules “not inconsistent with this or any other Act of Parliament”.

[29] There have been criminal appeals where interim remedies, consistent with the *Code*, were authorized by the former Rules 62.10(2) and 65.03. These are the predecessors to the current Rules 90.41(2) and 91.02. *R. v. Keating* (1991), 106 N.S.R. (2d) 63 (C.A. – chambers), per Freeman, J.A.; *R. v. Dempsey* (1995), 138 N.S.R. (2d) 110 (C.A. – chambers), per Clarke, C.J.N.S.. See also *R. v. MacIntosh*, [2008] N.S.J. No. 341 (C.A. – chambers), per Bateman, J.A. and *R. v. T.C.F.*, 2012 NSCA 74 (chambers), per Oland, J.A..

[30] In Mr. Roshanimeydan’s case, Rules 91.02(2) and (3), and any incorporation of the civil stay power by those Rules, must be interpreted consistently with the *Criminal Code*. Nothing in the *Code* generally, nor s. 683(5) in particular, contemplates that a chambers judge on a criminal appeal may issue a forward declaration of rights and an injunction against future conduct by a non-party, such as the Halifax Airport Authority. Mr. Roshanimeydan seeks what is essentially a civil remedy against the Authority. A civil process would name the Authority, along with any other appropriate parties.

[31] I should not be taken as commenting on whether any such civil process would have merit. All I am saying is that this remedy does not emanate from a chambers motion in a criminal appeal to which the Halifax Airport Authority is not a party.

[32] I dismiss the motion.

Fichaud, J.A.