



JUDICIARY OF
ENGLAND AND WALES

In the Westminster Magistrates' Court

Judge Howard Riddle, Senior District Judge (Chief Magistrate)

**Ruling on the application of Mr Karl Watkin MBE for the issue of
process**

-v-

Mr Babar Ahmad

&

Mr Syed Talha Ahsan

3 October 2012

I have considered two informations dated 23rd August 2012 submitted by Ward Hadaway solicitors on behalf of Karl Watkin MBE. Mr Watkin seeks to summons Mr Babar Ahmad and Mr Syed Talha Ahsan to face allegations of solicitation to murder, contrary to Section 4 Offences Against the Person Act 1861. It is said that the two proposed defendants played a leading role in the administration of websites that, among other things, encouraged engagement in violent Jihad, pursuing the death of 'non-believers' if necessary.

Test

Section 1 MCA 1980 says:-

1 Issue of summons to accused or warrant for his arrest

- (1) On an information being laid before a justice of the peace that a person has, or is suspected of having, committed an offence, the justice may issue--

- (a) a summons directed to that person requiring him to appear before a magistrates' court to answer the information, or
- (b) a warrant to arrest that person and bring him before a magistrates' court.

It will be seen from the section that the justice "may" issue a summons. There is a discretion. That discretion is neither unfettered nor unlimited.

In *R v West London Magistrates' Court, ex p. Klahn* [1979] 1 WLR 933 it was said:

"The duty of a magistrate in considering an application for the issue of a summons is to exercise a judicial discretion in deciding whether or not to issue a summons. As Lord Goddard CJ stated in *Rex v Wilson* at PP46 -- 47:

"A summons is the result of a judicial act. It is the outcome of a complaint which has been made to a magistrate and upon which he must bring his judicial mind to bear and decide whether or not on the material before him he is justified in issuing a summons".

It would appear that he should at the very least ascertain:

- (1) Whether the allegation is of an offence known to the law and if so whether the essential ingredients of the offence are prima facie present;
- (2) That the offence alleged is not 'out of time';
- (3) That the court has jurisdiction;
- (4) Whether the informant has the necessary authority to prosecute.

In addition to these specific matters it is clear that he may and indeed should consider whether the allegation is vexatious: see *Rex v Bros ...* Since the matter is properly within the magistrate's discretion it would be inappropriate to attempt to lay down an exhaustive catalogue of matters to which consideration should be given. Plainly he should consider the whole of the relevant circumstances.....

The magistrate must be able to satisfy himself that it is a proper case in which to issue a summons".

Relevant circumstances

The solicitors have helpfully provided a bundle of papers, including the signed witness statements of Mr Ahmad and Mr Ahsan, taken at Long Lartin prison on 5th August 2012. I return later to the content of those witness statements.

I am satisfied: that the informant has the necessary authority to prosecute [this is not an offence that requires the consent of the Attorney General]; that the court has jurisdiction to grant process; that the allegations are of an offence known to law; and that the offence is not 'out of time', the alleged offence being an indictable offences.

I doubt that the informations alone disclose the essential ingredients of the offence of soliciting to murder. The information as far as Mr Ahmad says:

“As part of Mr Ahmad’s activities in administering and maintaining these websites he participated in the uploading of a large number of articles which encouraged readers to engage in violent Jihad, pursuing the death of “non-believers” if necessary, in areas of the world including Afghanistan, Chechnya and the Balkans”.

The information states as far as Mr Ahsan is concerned:

“As part of Mr Ahsan’s activities in administering and maintaining these websites he participated in the uploading of a large number of articles which encouraged readers to engage in violent Jihad, pursuing the death of “non-believers” if necessary, in areas of the world including Afghanistan, Chechnya and the Balkans”.

Without more these informations do not provide the essential ingredients of soliciting to murder.

Moreover, as referred to in *Klahn*, before issuing process against a defendant I am also required to consider whether an allegation is vexatious, and the whole of the relevant circumstances.

In the circumstances of these applications, which are highly unusual, it would have been expected that the defence would supply materials sufficient to show a genuine intention to prosecute. In fact the material supplied does not provide a sufficient connection between the proposed defendants and the material complained of. There is no direct evidence that either Mr Ahmad or Mr Ahsan solicited murder. As far as nexus is concerned Mr Ahmad says:

“I was never asked in the police station or thereafter whether I was involved in the administration of azzam.com and qoqaz.net websites.

I have now been asked this question. Both websites were taken offline in June 2002. I have no hesitation in confirming that I continued to be involved in the administration of both websites until a date I am no longer certain of in Spring 2002”.

Mr Ahsan says:

“I admit when requested I provided assistance with some of the running of the Azzam publication activities whilst a student between the mid 90s and 2001”.

The failure to provide evidence is far from determinative, and in most applications for a summons is not required. However here it is relevant to the question as to whether Mr Watkin genuinely intends to prosecute this case.

In this case I am satisfied that the purpose of these proposed proceedings is to stop or delay extradition of the two named proposed defendants to the USA. The application is made many years after the events complained of. It appears to have the co-operation and support of the proposed defendants themselves. It comes as almost all other ways of resisting extradition have been exhausted.

Decision

The application is an abuse of the process of the court.

Bearing in mind all the factors that have been drawn to my attention, I am satisfied that it is not in the interests of justice to issue these proceedings. I have a discretion, and I exercise it by refusing the application.