

ABRAHAM E. ROGERS, B. E. PETTIQUOI, et al, Petitioners, v. **His Honor
LOCKETT S. TOGBA**, Assigned Circuit Judge, Fifth Judicial Circuit, February Term, A.
D. 1983, the Minister of Justice et al., Respondents.

PETITION FOR WRIT OF PROHIBITION TO THE CIRCUIT COURT FOR THE
FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Decided : April 20, 1983.

1. The Supreme Court lacks jurisdiction to decide, originally, the question of double jeopardy which has not been raised in a trial court and brought for review.
2. The Supreme Court will not prohibit a judge of a circuit court from ordering the arrest of a person against whom an indictment has been found by a grand jury, or prevent said court from trying a murder case presented to it by indictment of a grand jury, it being the only court having jurisdiction to try and decide such cases.
3. Prohibition will not be granted where the lower court neither exceeded its jurisdiction nor proceeded by wrong rules.

Petitioners in prohibition, who had been indicted for murder by the grand jury for the Fifth judicial Circuit Court for Grand Cape Mount County, requested and was granted a change of venue to the First judicial Circuit Court, Criminal Assizes "B", Montserrat County, for trial. However, when the case was called for trial, the prosecution moved the court for a dismissal of the indictment with reservation. The trial judge denied the motion and ordered the petitioners arraigned and the trial proceeded with. The petitioners then entered a plea of not guilty, following which a trial jury was selected to try the case. The prosecution, believing that the trial judge had erred in denying the motion to dismiss the indictment and in ordering that the case be proceeded with, applied to the Supreme Court for a writ of certiorari.

The writ was granted and the trial judge was adjudged in error in denying the motion for dismissal of the indictment. The case was therefore remanded, with instructions that the trial judge grants the motion to dismiss the indictment.

Following the reading of the mandate of the Supreme Court, the trial judge dismissed the indictment and ordered the petitioners discharged without day. Shortly thereafter, the petitioners were indicted for the crime of murder. It is from this new indictment that petitioners sought prohibition.

The justice in Chambers denied the petition, holding that the Court could not grant the writ as the issue of double jeopardy was being raised for the first time. The Justice noted that the Court did not have jurisdiction to review a matter not raised in the trial court, noting that the petitioners should have raised the issue in the trial court and have the trial judge pass thereon so that the Court could then have the opportunity to review the decision.

The Justice opined also that as the trial court, being a circuit court was the proper court to try the petitioners on an indictment brought by a grand jury, and that as the court had not exceeded its jurisdiction or proceeded by any wrong rule, prohibition would not lie. The Justice therefore denied the petition.

Raymond A. Hoggard and Julia Gibson for petitioners; The Acting Solicitor General, A. W. Octavius Obey and the Senior Legal Officer, S. Momo Kiawu for respondents.

SMITH, J. presiding in Chambers.

The petitioners in these proceedings sought the Chambers of this Court for the issuance of the most powerful writ of prohibition, praying that this Court prohibits and restrains the respondents from arresting, prosecuting and trying them for the same murder charge for which they were previously indicted and subsequently discharged without day, after they had appeared for trial, had been arraigned, had pleaded "not guilty", and a trial jury had been selected, sworn and empanelled to try the issues joined between them and the State. The petitioners argued that they had in no way contributed to the wrongful act of the court which had resulted in the mistrial of the case and their discharge, to which the prosecution contributed. It is under these circumstances that the petitioners have invoked the doctrine of "double jeopardy" and prayed that their petition be granted and that a peremptory writ of prohibition be issued, commanding the respondents to refrain from subjecting them to any further prosecution.

In response to the petition, the respondents filed an eight-count returns contending, among other things, that prohibition will not lie against a tribunal which has not exceeded its jurisdiction or proceeded by wrong rule; that joining the Minister of Justice and the prosecuting attorneys as party respondents was intended to have the court impede the normal operation of their duties, and that the doctrine of double jeopardy cannot be raised for the first time at the appellate level. The respondents further contended in their returns that the trial judge's ruling denying their motion to dismiss, having been reversed by the Supreme Court, the proceeding in the trial court was rendered null and void, and therefore double jeopardy would not attach to bar further prosecution of the petitioners for the same crime. They therefore prayed that the petition be denied.

From the records we have before us and the arguments of the counsel, it is revealed that the petitioners, residents of Grand Cape Mount County, were indicted by the grand jury of that County for the crime of murder. A motion for change of venue was filed, heard and granted, and the case was transferred to the First Judicial Circuit Court, Criminal Assizes "B", Montserrado County, for trial. When the case was assigned and called for hearing during the February, A. D. 1983 Term of the First Judicial Circuit Court aforesaid, the prosecuting attorney for Montserrado County, by leave of the court, moved to dismiss the indictment with reservation. No reason was given for the motion. The trial judge denied the motion and

the prosecution noted exception thereto, but it did not give notice that it would move by remedial process to have the Supreme Court review the ruling. The trial judge then ordered the petitioners arraigned, without any objection being interposed by the prosecution. The petitioners pleaded not guilty to the charge, after which the prosecution applied for a trial jury. The jury was selected, sworn and empanelled, but the trial of the case was thereafter suspended. Before the case could be resumed for hearing of the evidence, the Solicitor General of Liberia fled to the Chambers of this Court by way of a petition for a writ of certiorari against the trial judge to review his ruling denying the application to dismiss. The petition was heard in Chambers and granted. This Court held then that the prosecution had the right, as provided by statute, to request the dismissal of the indictment by leave of the trial court and that it was therefore prejudicial for the trial court to deny the motion to dismiss, since it could be possible that some material defect was discovered in the indictment that needed to be corrected. This Court reasoned then that to allow such defect to remain uncorrected could have meant that the State might not have been able to prosecute her case successfully. The errors of the trial court having been pointed out by this Court in granting the petition for a writ of certiorari, the said court was commanded to set aside the erroneous ruling.

The Chambers Justice, in ruling on the petition for certiorari, gave the following directive: "In view of all that we have stated hereinabove, coupled with the legal citations in support of our position, it is our holding that the ruling of the respondent judge is erroneous and prejudicial to the interest of the State. The petition for a writ of certiorari is therefore hereby granted and a peremptory writ of certiorari ordered issued, commanding the respondent judge to resume jurisdiction and set aside the erroneous ruling, And it is hereby so ordered."

When Judge Bailey, co-respondent in the certiorari proceeding, received the mandate from our Chambers, he called the case for hearing and made the following record:

"Reverting to the finding entered by the Chamber Justice, His Honor Frank W. Smith, in the certiorari proceedings dated 10th day of March, A. D. 1983, he has mandated us to resume jurisdiction and set aside our previous ruling which denied prosecution's motion for the dismissal of the indictment."

The Court in executing the said mandate does hereby dismiss the indictment for the crime of murder laid against the defendants, Abraham B. Rogers, B. E. Pettiquoi, John Kpakamia, Siah Pettiquoi and Morris Kromah, filed in this Court on the 21st day of June, 1982. The said defendants as of today's date are discharged from further prosecution for the crime of murder. The clerk of court is hereby commanded to prepare a release discharging the above named defendants from further detention at the central prison or elsewhere, and place same in the hands of the sheriff for execution. And it is hereby so ordered adjudged".

No exception was interposed by the prosecution to the quoted ruling and no motion was filed during the term time of the respondent judge have his said order of discharge, which order the petitioners have argued was a judicial judgment putting finality to the murder charge.

During the same February Term of the Fifth Judicial Circuit Court, Grand Cape Mount County, the said defendants, petitioners herein, were again indicted by the grand jury for the crime of murder. The respondent judge, acting upon the indictment, ordered the arrest of the petitioners and their commitment to jail pending the trial of the case. It was upon the arrest of the petitioners for second time, upon the new indictment, that they have come to the Chambers of this Court, invoking the doctrine of "double jeopardy".

While there seems to be some merits to the argument of the petitioners, and looking at the careless manner in which the case was handled by Judge Bailey and the prosecution, the question that has arisen, under the circumstances, is whether prohibition will lie to decide the question of "double jeopardy", raised in the Supreme Court for the first time?

In my opinion, prohibition proceedings will not legally decide this issue. It is our further opinion that the doctrine of double jeopardy should have firstly been raised before the trial court by a motion to discharge on the ground of double jeopardy, and that in the event the ruling of the trial court was deemed erroneous, then petitioners could have come to this Court on certiorari. Under the circumstances narrated in this case, this Court will not prohibit a judge of a circuit court from ordering the arrest of one against whom an indictment is found by a grand jury, or prevent the court from trying a murder case presented to it by indictment of a grand jury, it being the only court having jurisdiction to try and decide such case. It is also our opinion that this Court lacks jurisdiction to decide originally the question of double jeopardy when the issue was not raised in and decided by the trial court and brought to the appellate court for review. Prohibition will also not be granted where the lower court neither exceeded its jurisdiction nor proceeded by a wrong rule. For reliance, see *Parker et al. v. Richards*, 11 LLR 396 (1954); and *Carter v. Massaquoi*, 24 LLR 511 (1976).

In view of the foregoing facts and the law cited herein, it is our opinion that the petition be, and the same is hereby, denied and the alternative writ of prohibition quashed.

The Clerk of this Court is hereby ordered to send a mandate to the court below, informing the judge therein presiding to resume jurisdiction over the case and proceed according to law. And it is hereby so ordered.

Petition denied.