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14, 1951

In the Privy Council.

31415

No. 10 of 1951.

ON APPEAL
FROM THE COURT OF CRIMINAL APPEAL IN THE
SUPREME COURT OF THE COLONY OF SINGAPORE.

UNIVERSITY OF LONDON
W.C.1.
21 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN
E. H. BATTAT - - - - - Appellant
AND
REX - - - - - Respondent.

Case for the Appellant

10 1. This is an appeal by special leave from an Order of the Court of Criminal Appeal in the Supreme Court of the Colony of Singapore dated the 12th December, 1949, dismissing an appeal by the Appellant from a certain conviction made against him by the High Court of Singapore on the 10th October, 1949, for offences against the Singapore Finance Regulations.

20 2. The main questions which arise for consideration in this appeal are whether a Proclamation made by the Supreme Allied Commander, South East Asia, Lord Louis Mountbatten, assuming (inter alia) full legislative powers and jurisdiction in Malaya and Proclamations Nos. 15 and 36 made or purported to be made under the said Proclamation of the Supreme Allied Commander whereby Finance Regulations were issued or purported to be issued under the authority of the said Proclamation are valid, and whether the said Finance Regulations are now or ever have been part of the law of Singapore.

3. On the 17th, 18th, 19th and 20th days of October, 1949, the Appellant was tried and convicted before the High Court of Singapore on the following charges:—

30 (1) That he and Kang Woon Geok between 24th day of August, 1948, and 17th day of June, 1949, at Singapore were parties to a criminal conspiracy with certain persons purporting to act on behalf of Albert Shayo & Company of Bangkok and one Albert Shayo of New York in that they agreed together to carry on the business of foreign exchange, an act which is not illegal, by illegal means, namely, by contraventions of Regulation 13 (2) of the Finance Regulations, and that in furtherance of such criminal conspiracy, the Appellant did an act, namely, on 16th May, 1949,

made a payment of \$169,952.77 to the Netherlands Trading Society, Singapore, and he Kang Woon Geok did an act, namely, on 16th May, 1949, made a payment of \$170,000 to the Appellant and that they thereby committed an offence punishable under Section 120B (2) of the Penal Code.

(3) That whereas one Kang Woon Geok on or about the 16th day of May, 1949, at Singapore, did, without the permission of the Controller of Foreign Exchange or his Deputy, make a payment of \$170,000 to the Appellant, a person who was not resident outside the sterling area, on behalf of Albert Shayo & Company of Bangkok, 10 a person who was resident outside the sterling area, and thereby committed an offence under Regulation 13 (2) of the Finance Regulations, the Appellant abetted the commission of the said offence which was committed in consequence of the abetment of the Appellant and that the Appellant thereby committed an offence punishable under Section 109 of the Penal Code and Section 7 (2) of the Finance Regulations Proclamation No. 36/46.

(5) That the Appellant on or about the 16th May, 1949, at Singapore, did without the permission of the Controller of Foreign Exchange or his Deputy make a payment of \$169,925.77 to the 20 Netherlands Trading Society, Singapore, a person who was not resident outside the sterling area, on behalf of Albert Shayo & Company of Bangkok, a person who was resident outside the sterling area, and that the Appellant thereby committed an offence under Regulation 13 (2) of the Finance Regulations and punishable under Section 7 (2) of the Finance Regulations Proclamation No. 36/46.

(7) That whereas one Kang Woon Geok on or about the 19th and 20th days of May, 1949, at Singapore, did, without the permission of the Controller of Foreign Exchange or his Deputy, make a payment of \$215,000/- to the Appellant a person who was 30 not resident outside the sterling area, on behalf of Albert Shayo & Company of Bangkok, a person who was resident outside the sterling area, and thereby committed an offence under Regulation 13 (2) of the Finance Regulations, the Appellant abetted the commission of the said offence which was committed in consequence of the abetment of the Appellant and that the Appellant thereby committed an offence punishable under Section 109 of the Penal Code and Section 7 (2) of the Finance Regulations Proclamation No. 36/46.

(9) That the Appellant on or about the 19th May, 1949, at 40 Singapore did without the permission of the Controller of Foreign Exchange or his Deputy make a payment of \$214,669.70 to the Netherlands Trading Society, Singapore, a person who was not resident outside the sterling area, on behalf of Albert Shayo & Company of Bangkok, a person who was resident outside the sterling area, and that the Appellant thereby committed an offence under Regulation 11 (2) of the Finance Regulations and punishable under Section 7 (2) of the Finance Regulations Proclamation No. 36/46.

10 (11) That whereas one Kang Woon Geok on or about the 25th day of May, 1949, at Singapore, did without the permission of the Controller of Foreign Exchange or his Deputy make a payment of \$99,000.000 to the Appellant, a person who was not resident outside the sterling area, on behalf of Albert Shayo & Company of Bangkok, a person who was resident outside the sterling area, and thereby committed an offence under Regulation 13 (2) of Finance Regulations, the Appellant abetted the commission of the said offence which was committed in consequence of the abetment of the Appellant, and that the Appellant thereby committed an offence punishable under Section 109 of the Penal Code and Section 7 (2) of the Finance Regulations Proclamation No. 36/46.

20 (13) That the Appellant, on or about the 27th May, 1949, at Singapore, did without the permission of the Controller of Foreign Exchange or his Deputy make a payment of \$98,357.90 to the Netherlands Trading Society, Singapore, a person who was not resident outside the sterling area, and that he thereby committed an offence under Regulation 13 (2) of the Finance Regulations and punishable under Section 7 (2) of the Finance Regulations Proclamation No. 36/46.

4. Upon such conviction the following sentences were imposed upon the Appellant :—

On Charge 1.—6 months rigorous imprisonment and fine of \$4,500/- or 6 months in default.

On Charge 3.—6 months rigorous imprisonment and fine of \$2,000/- or 6 months in default.

On Charge 5.—6 months rigorous imprisonment and fine of \$2,000/- or 6 months in default.

30 On Charge 7.—6 months rigorous imprisonment and fine of \$3,500/- or 6 months in default.

On Charge 9.—6 months rigorous imprisonment and fine of \$3,500/- or 6 months in default.

On Charge 11.—6 months rigorous imprisonment and fine of \$1,600/- or 6 months in default.

On Charge 13.—6 months rigorous imprisonment and fine of \$1,600/- or 6 months in default.

Sentences of imprisonment were ordered to be concurrent.

5. The Finance Regulations in respect of which the Appellant was charged were originally promulgated under powers delegated by Lord Louis 40 Mountbatten as Supreme Allied Commander, South East Asia Command. The history of the said Regulations is as follows :—

(A) The Finance Regulations were made on the 4th January, 1946, by Brigadier W. D. Godsall, Controller, Finance and Accounts, and were approved on the same day by Major-General H. R. Howe,

Chief Civil Affairs Officer. They are stated expressly to have been made in exercise of powers conferred upon the Controller, Finance and Accounts, by Section 3 of the Finance Regulation Proclamation.

(B) The Finance Regulations Proclamation was made on the 31st December, 1945, by Brigadier P. A. B. McKerron, Deputy Chief Civil Affairs Officer, Singapore. It is stated expressly to have been made under the Military Administration (Delegation of Powers) Proclamation.

(C) The Military Administration (Delegation of Powers) Proclamation was made on the 1st October, 1945, by Lt.-General M. C. Dempsey, General Officer Commanding Military Forces Malaya. It is expressly stated to have been made in exercise of the powers conferred upon Lt.-General Dempsey by the Supreme Allied Commander, South East Asia Command. Section 2 delegates to the Chief Civil Affairs Officer, Malaya, full authority, power and jurisdiction with power further to delegate. 10

(D) The Military Administration Proclamation made at Kandy on 15th August, 1945, by Lord Louis Mountbatten, Supreme Allied Commander, South East Asia, established a British Military Administration in Malaya by Section 1 and reserved to the Supreme Commander powers of delegation by Section 3. It is stated expressly to have been made by reason of military necessity and for the prevention and suppression of disorder and maintenance of public safety. 20

6. The Straits Settlements (Repeal) Act 1946 which received the Royal Assent on the 26th March, 1946, provided by Section 6 thereof that on such day as His Majesty might by Order in Council appoint the Straits Settlements Act 1866 should be repealed and by Section 1 (2) thereof further provided that an Order in Council made under Section 1 (2) might contain such provisions— 30

“(a) determining the laws which, on and after the appointed day, are (subject to amendment or repeal by any competent legislature or authority) to remain valid as laws of any of the said territories, notwithstanding the change in the government thereof effected by the Order :

(b) adapting or modifying any such laws as aforesaid, and any other laws in force at the passing of this Act relating or referring to any of the said territories . . .

as appear to His Majesty in Council necessary or expedient in view of such change as aforesaid.” 40

7. On the 27th March, 1946, the Singapore Colony Order in Council 1946 was made purporting to come into operation on the 1st April, 1946, the appointed day. The Singapore Colony Order in Council provided *inter alia* for the continuation of existing laws in the following manner :—

Article 42 (1).—“ Subject to the provisions of this Order, the existing laws shall . . . continue to have effect in the Colony or in any part thereof to which such law applied prior to the appointed

day, but shall be construed subject to such modifications as may be necessary to bring them into conformity with the provisions of this Order."

Article 2 (1).—" In this Order, unless the context otherwise requires :—

10 ' the existing laws ' means the common law, the doctrines of equity and all Acts of Parliament, Orders in Council Ordinances of the Legislature of the Colony of the Straits Settlements, Proclamations issued by the Governor of the Straits Settlements, or by or under the authority of the Supreme Allied Commander, South East Asia (other than the Proclamations establishing the British Military Administration and delegating powers thereunder), and all Rules, Regulations and by-laws made thereunder and all other enactments or instruments having the force of law in the territory comprising the Colony or in any part thereof immediately prior to the appointed day, whether the same were administered by the British Military Administration or not :"

20 8. The said Order in Council further provided in Parts IV and V thereof for the making of new laws by the Governor acting in conjunction with the Executive and Legislative Councils. By way of transitional provision Part VI further provided (inter alia) as follows :—

Article 40 (I).—" Until such time as Section 13 and Parts IV and V of this Order shall come into operation it shall be lawful for the Governor to make laws for the peace, order and good government of the Colony."

30 9. On the 1st April, 1946, the Governor of the Colony of Singapore enacted the Indemnity and Validating Ordinance 1946 purporting to do so in accordance with the provisions of Section 40 of the Singapore Colony Order in Council.

This Ordinance provided as follows :—

Article 5.—" All laws, proclamations, orders, rules, regulations and legislative acts whatsoever made or issued during the war period by or with the assent of any British or Allied Military authority shall be deemed to have been validly made from the date of promulgation in the area concerned notwithstanding that any such law, proclamation, order, rule, regulation or legislative act may have repealed or amended or been inconsistent with any law previously in force."

40 10. On the 15th March, 1949, the Governor with the advice and consent of the Legislative Council enacted the Transfer of Powers and Interpretation Ordinance 1949, which provided as follows :—

Article 3 (1).—" Every regulation, rule or order made before the coming into force of this Ordinance by any Authority in exercise of the powers conferred upon him by any Proclamation or by the

Ordinance or by any regulation made under any Proclamation shall not continue in force after the expiration of four months from the time of coming into force of this Ordinance unless a resolution is passed by the Legislative Council providing for the continuance thereof."

11. Upon the hearing of the said charges it was contended on behalf of the Appellant that the said Finance Regulations were invalid and did not have the force of law on the following grounds :—

(1) That the Supreme Allied Commander, South-East Asia Command, a British Officer, had no power in law to make such Regulations in respect of British territory, no state of martial law being then in existence, and such Regulations in any event not being necessary for any of the purposes permissible under martial law. 10

(2) That accordingly such Regulations were not "laws" within the meaning of Section 1 (2) (a) of the Straits Settlements (Repeal) Act 1946 and that there was therefore no power under that subsection to provide that such Regulations should "remain valid," similarly that such Regulations were not "laws in force" within the meaning of Section 1 (2) (b) and that there was not therefore any power to provide for "adapting or modifying" them under that subsection. 20

(3) That the Singapore Colony Order in Council did not, upon its true construction, purport to continue in force or validate the said Finance Regulations, but if and in so far as it purported so to do it was ultra vires the Straits Settlements (Repeal) Act 1946.

(4) That the Indemnity and Validating Ordinance 1946 did not upon its true construction purport to validate or continue in force the said Finance Regulations, but if and in so far as it purported so to do it was ultra vires Section 40 of the Singapore Colony Order in Council 1946. 30

12. The trial Judge (Brown, J.) rejected the contentions of the Appellant on the grounds :—

(1) That the British Military Administration constituted the de facto Government of Singapore, recognised by His Majesty, at the time the Regulations were made, and that it was not therefore competent for the Courts of Singapore to question the validity as laws of legislation which it had enacted.

(2) That in any event the Finance Regulations, if not already valid, were validated by Section 5 of the Indemnity and Validating Ordinance 1946 made under Section 40 of the Singapore Colony Order in Council 1946. 40

13. The Appellant appealed to the Court of Criminal Appeal before whom he further contended :—

(1) That the Proclamations issued by the British Military Administration were not "laws" within the proper meaning of that word, laws as such being Common Law, Custom and Statute,

and the British Military Administration having subjected the Island of Singapore to an "etat de siege" a state of affairs unknown to British Law and thoroughly unlawful. That accordingly there was no power under Section 2 of the Straits Settlement (Repeal) Act 1946 to declare that Proclamations issued by the British Military Administration should remain valid laws in the new Colony of Singapore.

10 (2) That the Indemnity and Validating Ordinance was a nullity as on the day it was made there was no unofficial members of the Advisory Council whereas on the true construction of the Singapore Order in Council the Governor was placed under an obligation to appoint such members to the said Council.

14. It was contended on behalf of the Crown before the Court of Criminal Appeal :—

(1) That the Supreme Allied Commander, South East Asia, derived his authority from the Allied Chiefs of Staff in Washington and that he was in the position of a belligerent occupying force.

20 (2) That Section 42 of the Singapore Order in Council was *intra vires* the British Settlements Acts of 1887 and was intended to cover the making of new laws as well as the continuing of existing laws.

(3) That by virtue of subsequent legislation the Financial Regulations had been made law by implication, and in support of this contention the Crown relied upon the Transfer of Powers and Interpretations Ordinance 1949, a copy of which is lodged with this case.

30 15. On the 12th day of December, 1949, the Court of Criminal Appeal (Murray Ansley, C.J., Evans, J., and Gordon Smith, J.) after a four days' hearing dismissed the Appellant's appeal and upheld the decision of the trial Judge, and the grounds of the decision of the Court of Criminal Appeal and set forth in a written Judgment given on the 16th day of January, 1950.

16. As appears from the said Judgment, the Court of Criminal Appeal accepted the contention of the Appellant's :—

(1) That the said Regulations were not in any sense law when made and that they ceased to have even the limited authority that they did have when once the emergency which had caused them to be issued had passed.

40 (2) That the said Regulations never having had the force of law prior to the establishment of the Colony of Singapore they could not "continue to have effect" as "existing laws" under Section 42 of the Singapore Colony Order in Council or under Section 1 of the Straits Settlements (Repeal) Act 1946.

17. As further appears from the said Judgment, the Court of Criminal Appeal held, however, that in view of the express inclusion of "Proclamations issued . . . by or under the authority of the Supreme

Allied Commander, South East Asia ” in the definition of “ existing laws ” contained in Section 2 of the Singapore Colony Order in Council and to the terms of Section 45 thereof, there was an intention to treat such Proclamations as part of the law in force prior to the appointed day, and the said Judgment proceeds :—

“ It is clearly within the scope of the Repeal Act to make the Proclamations law for the Colony, although it is not done on express terms we think this contention can be found by reading Section 42 together with the definition. Section 45 confirms this construction. In view of this it is we think unnecessary to consider whether, if 10 the Order in Council had failed to make the Proclamations into law, subsequent legislation in the Colony had had that effect.”

18. The Appellant humbly submits that the Judgment of the High Court of Singapore and the Judgment of the Court of Criminal Appeal dated the 12th day of December, 1949, were wrong and should be set aside and the said convictions quashed for the following among other

REASONS

- (1) BECAUSE the Court of Criminal Appeal were wrong in coming to the conclusion that the effect of the Singapore Order in Council was to “ make the Proclamations into law ” even though they had not previously had the force of law. 20
- (2) BECAUSE the intention to make new laws as distinct from continuing existing laws is not to be implied from the terms of a definition of “ existing laws.”
- (3) BECAUSE the said Order in Council was not purporting to make the Proclamations law, but to treat them as part of the “ existing law ” and that accordingly the relevant provision of the Straits Settlement (Repeal) Act 1946 was Section 1 (2) and not Section 2. 30
- (4) BECAUSE the said Finance Regulations are not now nor ever have been part of the law of Singapore.
- (5) BECAUSE the Appellant has been wrongly convicted.

JOHN FOSTER.

In the Privy Council.

ON APPEAL

*from the Court of Criminal Appeal in
the Supreme Court of the Colony of
Singapore.*

BETWEEN

E. H. BATTAT - - - *Appellant*

AND

REX - - - - *Respondent.*

Case for the Appellant

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