

22/1962

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IN THE PRIVY COUNCIL

No. 46 of 1961

ON APPEAL
FROM THE SUPREME COURT OF FIJI
(APPELLATE JURISDICTION)

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N:

JANME JAI PRASAD and JAIMUNI PRASAD
Appellants

- and -

68239

COMPTROLLER OF CUSTOMS Respondent

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C A S E FOR THE APPELLANTS

Record

1. This is an appeal by special leave from the Judgment and Order of the Supreme Court of Fiji, Appellate Jurisdiction, dated the 28th day of July 1961, whereby the said Court dismissed the appeal of the Appellants from their conviction by the Senior Magistrate, Lautoka, Fiji, on the 17th day of April. pp. 33-34.
pp. 29-32

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2. The Appellants were charged jointly with three offences, each of making a false entry in a document contrary to section 116 of the Customs Ordinance Cap. 166; each offence related to documents required by the Comptroller of Customs covering the import into Fiji of shipments of laundry blue and in each it was alleged that a false value of the shipment had been shown. pp. 3-4.

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3. The prosecution produced three customs entry forms lodged by J. Prasad Bros. the firm in which the Appellants were partners; they were all signed by Janme Jai Prasad; they were dated 15.7.60, 18.7.60 and 12.8.60 and showed imports of laundry blue to the value of £124.6s.5d., £31.1s.7d. and £124.6s.5d. respectively. pp.61,53,59.

4. The evidence on the first count was that the entry form referred to 20 cwt of laundry blue of a value of s.111/- per cwt imported from Richardson & Co. (London) Ltd., that 10 cases of this assignment were invoiced by the Appellants' firm to Samji Jadavji & Co. and that this invoice (C3) showed the p. 51

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cost of the laundry blue as s.122/6 per cwt plus freight, insurance, exchange, Duty, P.C.S.T. wharfage, Bank Charge and Customs Entry.

5. The learned magistrate in dealing with this count said:-

p.15,11.1-22.

"Exhibit C3 is clearly an invoice meant to show the cost of goods together with charges payable. It is not a Sales docket setting out the price of an article which is being sold. It is clear, at least to this Court, that J. Prasad Bros. were defrauding Samji Jadavji & Co. but that does not concern this case. In this case the Court must be satisfied beyond reasonable doubt that the figure of cost at S111/- C.I.F. per cwt is false.

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There is one point which seems to have been overlooked in this Court. Written on Exhibit 'C4' the invoice attached to the entry form, are the following words: "We hereby certify that we have received from J. Prasad Bros. the sum of Stg. £111 being payment in full of the amount drawn upon them by Richardson & Co. of London - For the Bank of New Zealand signed Manager."

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With that endorsement, which speaks for itself, I cannot see how this Court can say that it is satisfied, beyond reasonable doubt that the figure of S111/- C.I.F. per cwt. is false. On the 1st count I find each Defendant not guilty and he is acquitted."

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pp.42, 53.

p. 52.

p. 45.

6. On the second count the evidence showed that the invoice (D3) attached to the customs entry form (D2) showed the value of the blue as s111/- per cwt C.I.F. but that on the order form (D1) the price had been based on a figure of s122/6 per cwt. and that another invoice similar to D3, but showing the figure of s122/6 had been shown to the purchasers C.M. Patel & Sons.

7. The learned Magistrate said in his judgment:-

p. 16, 1.18
- p.17, 1.19.

"Now how did Exhibit "D4" come into the picture. It was not produced to the Customs, for obvious reasons if a certain view is taken. It was however, handed to Chotabhai Patel of C.M. Patel & Sons by J. Prasad Bros. before he ordered his "blue". In other words, J. Prasad

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Brothers showed C.M. Patel Bros. Exhibit "D4" to prove what the cost to C.M. Patel Bros. would be, and in fact, the figures on Exhibit "D4" are exactly the same as those on J. Prasad & Sons invoice Exhibit "D1" to C.M. Patel for the goods shown in Invoice Exhibit "D4".

10 The Court realises that two explanations for these discrepancies are available. The firm of J. Prasad Bros. could be purchasing this blue for S111/- cwt. C.I.F. Lautoka, and deliberately showing C.M. Patel & Co. invoices etc. purporting to show that they have paid 122/6 F.O.B. in order to obtain from C.M. Patel & Co. money which J. Prasad Bros. have not spent. They could be doing this alone. They could on the other hand be paying S122/6 cwt. F.O.B. London for their blue, defrauding the Customs by paying duty on a value of S111/- cwt. C.I.F. Lautoka shown on the invoice, and 20 defrauding C.M. Patel & Co. by claiming to have paid duty on a value of 122/6 F.O.B. whereas in fact they have only paid duty on 111/-S. C.I.F. and obtaining the difference from C.M. Patel & Co.

30 This Court is only concerned with the possibility of defrauding the Customs. Are the facts set out sufficient to satisfy the Court beyond reasonable doubt that the Defendants are defrauding the Customs? If one considers all the facts relating to this count, and the fact that neither defendant has seen fit to give any explanation of this dubious transaction, this Court is satisfied beyond reasonable doubt that the entry of value of blue in the Import Entry Form signed by the 1st defendant is false. That is the figure £31.1.7. in Exhibit D2.

40 I am satisfied 1st defendant knew it was false when he made it. I find him guilty of offence charged on 2nd count and convict accordingly.

The Court can find no evidence to connect 2nd defendant with the false entry. He apparently told C.M. Patel and Co. that the price was 122/6 F.O.B. London and there is no evidence to show that he knew otherwise. I find him not guilty and acquit him."

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8. Dealing with the third count the learned Magistrate said:-

p.17, l.20
- p.18, l.11.

"We now come to the third count, concerning a shipment to Dayaram & Sons, of "blue". The exhibits are marked "E". Here again in Exhibit E3, there is an order from Dayaram & Sons to J. Prasad Bros. for laundry blue, 5 cases, at 122/6 cwt. F.O.B. U.K. Port. It arrives in M.V. "Nottingham" and 1st defendant files with the Customs an invoice (Exhibit E1) and an import entry form (Exhibit E2) which he himself signs. The import entry form and the invoices show the selling price to be 111/- C.I.F. Lautoka. The marks are N.D. & Sons 6964. 6964 is the number of Dayaram's order on J. Prasad Bros. J. Prasad Bros. pay duty on 111/- C.I.F. Lautoka and inform Dayaram & Sons that the blue cost 122/6 F.O.B. London. Dayaram & Sons pay this amount and the moneys assessed on this amount and J. Prasad Bros. put the difference in their pocket. Here again, neither defendant has seen fit to give evidence explaining this dubious transaction. Further more, on this count, 2nd defendant clearly had full knowledge of what was going on. Dayaram made this order through him, and 2nd Defendant explained to Dayaram how the transaction would be carried out. 2nd Defendant showed Dayaram Exhibit E6, where the price of blue is shown as 122/6 F.O.B. London and told Dayaram & Son the price would be the same. Not only that, 2nd Defendant showed it to Dayaram when the goods arrived, it was revealed in XXN. I have no doubt whatsoever that on this count 2nd Defendant acted in concert with 1st Defendant from the start, and knew all along what was happening. Again, on this count, I am satisfied beyond reasonable doubt that the value shown on the Import entry Exhibit E2 as £124.6.5. is false, the value of 5 cases of "Blue" marked "6964 Nadi" being false, and that both the Defendants knew it. I find each Defendant guilty on third count as charged and convict accordingly."

9. The Appellant Janme Jai Prasad was fined £200 or 6 months on the second count and each of the Appellants was fined £200 or 6 months on the third count.

pp. 19-21.

10. The Appellants appealed to the Supreme Court

of Fiji Appellate Jurisdiction on the following grounds:-

Record

(a) That the trial was irregular and conducted in a manner prejudicial to the Appellants case and the learned trial Magistrate made premature finding of facts. Consequently there has been a substantial miscarriage of justice. In support of this ground the Appellants will allege at the hearing of this appeal:-

p.20, l.31
- p.21, l.29.

10 (i) that at the end of cross-examination of the Prosecution witness Chotubhai Patel the learned trial Magistrate pointing to the Appellants said to the witness "You have been diddled by those two people"; and whilst addressing the said witness and referring to the Appellants the trial Magistrate said "I have no time for these two people" and whilst addressing the Appellants (who were in the dock at that time) the learned Magistrate said
20 "You two are crooks". "It is a pity that this case doesn't carry penalty of imprisonment."

(ii) that at the end of cross-examination of the Prosecution witness Dayaram the learned Magistrate said to the said witness words to the effect "Don't you think these two people have cheated you."

(b) That the learned trial Magistrate erred in law and in fact in holding that the Import Entry on the document referred to in the 2nd
30 Count was false.

(c) That the learned trial Magistrate erred in law and in fact in holding that the Import Entry on the document referred to in the 3rd Count was false.

(d) That the learned trial Magistrate erred in law and in fact in holding that the Appellant Jaimuni Prasad was a party to the offence charged under the 3rd Count."

40 11. The judgment of the Appellate Court dismissing the appeal dealt with these grounds of appeal as follows:-

"With reference to grounds (b) and (c), the prosecution evidence clearly established

p.31, l.15
- p.32, l.28.

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that in respect of the two consignments of laundry blue there were two invoices prepared in respect of each consignment. The selling price entered upon the one invoice differed from the selling price entered upon the other invoice, in each case. The facts set up thus showed not only a prima facie fraud, but also that, prima facie, the declaration on the respective Import Entry form was in each instance false. Neither appellant chose to give any sort of explanation whatsoever. The learned Senior Magistrate was therefore entirely justified in drawing an inescapable inference that a false entry had been made, in both instances, as charged in Counts 2 and 3. I find no substance in these two grounds of appeal. 10

As regards ground (d), the only possible inference to be drawn from the evidence is that the second appellant not only knew of the existence of the two invoices, giving different values, when the goods had actually arrived at the Customs, but must have been a party to the whole fraudulent transaction. The court below was fully entitled to conclude that in respect of count 3, both appellants had formed a common intention to make and submit a false entry and both share in the prosecution of this common intent. The fact that it was the first appellant who actually wrote and presented the false entry does not render the second appellant any the less guilty of the offence committed in prosecution of their common purpose. This ground of appeal also fails. 20 30

I turn now to the first ground of appeal. It is conceded by the Crown that such premature condemnation of both appellants, expressed before the conclusion of the case, and indeed, before the prosecution evidence was completed, constituted an irregularity. The only issue is whether in this particular instance the irregularity is curable under the proviso to section 325 (1) of the Criminal Procedure Code which reads:- 40

"Provided that the Supreme Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred." 50

It is common ground that in most cases such an irregularity would be fatal but in this case no evaluation of conflicting testimony was necessary. The documents themselves disclosed, in the present context, a prima facie case against the appellants. The appellants chose to remain silent in the face thereof. I do not see how it can be said therefore that this irregularity affected the issue in any way. However regrettable, no substantial miscarriage of justice has actually occurred. I therefore apply the proviso to section 325 (1) (supra).

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In the outcome the appeal is dismissed."

12. Special Leave to Appeal to Her Majesty in Council was granted by Order in Council dated the 24th day of October 1961.

pp. 33-34.

13. The Appellants humbly submit that this appeal should be allowed and the said judgment and order of the Supreme Court of Fiji (Appellate Jurisdiction) set aside and their convictions and sentences quashed for the following among other

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R E A S O N S

- (1) BECAUSE, in view of the premature condemnation of the Appellants by the learned Magistrate, the Appellants were deprived of a fair trial.
- (2) BECAUSE, in these circumstances, the Supreme Court were wrong in applying the proviso to section 325 (1) of the Criminal Procedure Code.
- (3) BECAUSE there was no evidence to show that the Appellant Jaimuni Prasad saw or knew of the value inserted on the custom forms.
- (4) BECAUSE the only evidence of the actual value of the imports was the indorsement on Exhibit C4 which showed that the customs entries were correct.
- (5) BECAUSE there was no evidence to support the convictions.

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THOS. O. KELLOCK.
