

22 / 1962

IN THE PRIVY COUNCIL

No. 46 of 1961

O N A P P E A L
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 68238

- and -

COMPTROLLER OF CUSTOMS

Respondent

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CASE FOR THE RESPONDENT

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1. THIS is an appeal, by special leave of the Judicial Committee granted on 16th October, 1961, from a judgment of the Supreme Court of Fiji (Knox-Mawer Atg.J) dated 28th July 1961, which dismissed an appeal by the Appellants from a decision by M.J.C. Saunders, Esq., Senior Magistrate, dated 17th April, 1961, whereby both Appellants were found guilty on charges of making false entries in Customs documents and the first Appellant was fined £400 and the second Appellant was fined £200.

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2. THE questions raised on this appeal are:-

- (a) Whether there was any evidence on which the Appellants could have been convicted, and
- (b) Whether the Appellants were deprived of a fair trial.

3. The relevant statutory provisions of Fiji include:-

CUSTOMS ORDINANCE, Cap. 166:

116. Should any person make any false entry in any form, declaration, entry, bond, return receipt or in any document whatever required by or produced to any officer of Customs under this Ordinance, or should any person counterfeit or falsify or wilfully use when

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counterfeited or falsified, any document required by or produced to any officer of Customs, or should any person falsely produce to any such officer of Customs under any of the provisions of this Ordinance in respect of any goods or in respect of any vessel any document of any kind or description whatever that does not truly refer to such goods or to such vessel.....such person shall on conviction for every such offence, except where a specific penalty is herein provided, be liable to a fine not exceeding two hundred pounds nor less than fifty pounds and in default of payment to imprisonment not exceeding six nor less than two months.

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137. The production of proof of the existence of any other invoice, account, document or paper made or sent by any person or by his authority wherein goods or any of them are charged or entered at or mentioned as bearing a greater price than that set upon them in any such invoice as in the preceding section mentioned or in which the goods are falsely described shall be prima facie evidence that such invoice was intended to be fraudulently used for customs purposes, but such intention or the actual fraudulent use of such invoice may be proved by any other legal evidence.

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CRIMINAL PROCEDURE CODE, Cap. 9:

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325 (1) At the hearing of an appeal the Supreme Court shall hear the appellant or his advocate, if he appears, and the respondent or his advocate, if he appears, and the Supreme Court may thereupon confirm, reverse or vary the decision of the magistrates' Court, or may remit the matter with the opinion of the Supreme Court thereon to the magistrates' Court, or may make such other order in the matter as to it may seem just, and may by such order exercise any power which the magistrates' Court might have exercised:

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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.

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4. The charge against both Appellants charged them with three offences against section 116 of the Customs Ordinance, the particulars alleging the making of a false entry at Lautoka in respect of a document covering shipments of laundry blue, of alleged values of £124. 6. 5. on or about 15th July, 1960, of £31. 1. 7. on or about 18th July, 1960, and of £124. 6. 5. on or about 12th August, 1960 respectively.

10 5. The trial took place before Mr. Saunders, Senior Magistrate on 28th March 1961. The evidence for the prosecution included the following:

(a) Jack Desmond Eley, Collector of Customs produced the Second Appellant's authority to sign customs documents on behalf of the firm of J. Prasad, Bros. Three import entries dated 15.7.60, 18.7.60 and 12.8.60 were signed by the First Appellant: there was also produced the application for registration as a firm of J. Prasad Bros. The valuation of goods imported under the customs entries produced were based upon documents submitted by the firm.

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(b) John Henry Roland Gardiner, Senior Collector of Customs carried out an investigation at the premises of the firm regarding imports of laundry blue: he produced documents marked C1-5 relating to an import of 10 cwt on 15.7.60 showing import duty paid on the laundry blue at a price of 111/- per cwt. c.i.f. Lautoka, per s.s. Port Wyndham but a sale by the firm to Samji Jadavji at a price of 122/6 f.o.b. London. Document C.4 was an invoice to the firm from Richardson & Co. (London) Limited the consignors, on which was endorsed a statement made on behalf of the Bank of New Zealand acknowledging payment by the firm of £111 being payment in full of the amount drawn upon them by Richardsons.

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The witness produced documents marked D1-4 in respect of a consignment of 5 cwt. of laundry blue on 18.7.60. These showed that this consignment was sold to C.M.Patel Bros. in Fiji for 122/6 per cwt. plus freight insurance and customs duty which was charged as having been paid on that price. The consignor's invoice showed a price to

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Patel of 122/6 per cwt. c.i.f. Lautoka per s.s. Port Wyndham. A customs entry and invoice had been produced purporting to show a price of 111/- per cwt. c.i.f. Lautoka, on which the appropriate duty was charged and paid.

The witness also produced documents marked E1-6 in respect of a consignment per m.v. Nottingham of 5 cwt. of laundry blue. This was invoiced to the purchasers Darayam Bros. at 122/6 per cwt. f.o.b. London, and Dayaram Bros. had ordered the goods from London at that price. The invoice and customs entry produced to the Customs showed a price of 111/- per cwt. c.i.f. Lautoka, on which the appropriate duty was charged and paid.

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p.8 1.5 (c) Samji Jadavji said his firm had ordered laundry blue through J. Prasad Bros. as their agent: that firm had said the price was 122/6 per cwt. f.o.b. London. His lorry had collected the goods from the Customs and the price on the invoice C3 had been paid. He had done business in this manner before but this was the first occasion on which he had not received an invoice.

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p.9 1.27 (d) Chotubhai M. Patel said that he had ordered 5 cases of laundry blue through J. Prasad Bros. as his agent in July 1960. He identified documents D1 and D4 but had never seen D3. The price to him was 122/6 per cwt. f.o.b. London.

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p.11 1.4 (e) Darayam s/o Nanji said that in May 1960 he ordered 5 cases of laundry blue through J. Prasad Bros. Document E3 was a copy of the order sheet: he received the cases but no invoice from Richardsons: the second Appellant had told him that all the goods had arrived in the name of Prasad Bros., who would distribute the goods and give the necessary invoices showing the charges to be made including customs duties. The second Appellant also showed him Exhibit E6 in the name of C.M. Patel and said that all the charges would be the same as that one.

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p.12 1.20 6. Neither Appellant gave evidence or called any witnesses.

p.13 7. Mr. Saunders, the Senior Magistrate, gave a reserved judgment on 17th April, 1961. He

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said that the prosecution had to show that the figure of £124. 6. 5. in exhibit E2, £31. 1. 7. in Exhibit D2, and of £124. 6. 5. in exhibit C5, or any one of them were false. Each of these exhibits was signed by the First Appellant, who was clearly acting on behalf of the firm.

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10 Dealing with the first count it was clear that J. Prasad Bros. were defrauding Samji Jadavji, but the Court was only concerned with the import charges: on exhibit C4 the endorsement by the Bank of New Zealand showed that the price charged by Richardsons was apparently 111/- per cwt. In view of that endorsement which spoke for itself the charges on the first count would be dismissed.

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p.15 1.22

20 On the second count the documents produced to the customs showed a price of 111/- per cwt. c.i.f. Lautoka: in this instance also J. Prasad Bros. had defrauded the purchaser by charging him on the basis of the price of 122/6 per cwt. f.o.b. London. Another customs invoice D4 had also been produced in relation to this consignment. The judgment continued:

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p.16 1.17

30 "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 Chotubhai Patel of C.M. Patel & Sons by J. Prasad Bros. before he ordered his "blue". In other words, J. Prasad 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".

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40 The Court realises that two explanations for these discrepancies are available. The firm of J. Prasad Bros. could be purchasing this blue for \$111/- 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 \$122/6 cwt. F.O.B. London for their blue, defrauding the Customs by paying duty on a value of \$111/- cwt. C.I.F. Lautoka shown on the invoice, and defrauding C.M.

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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.

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 of £31. 1. 7. in Exhibit D2.

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

"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.

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10 Here again, neither defendant has seen fit
to give evidence explaining this dubious
transaction. Furthermore, 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
20 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."

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The First Appellant was fined £200 or six
months imprisonment on each of the second and
third counts and the Second Appellant was fined
£200 or six months imprisonment on the third count.

p.18 11.21-24

30 8. Both Appellants appealed to the Supreme Court
of Fiji. The first ground of appeal was that the
trial was irregular and conducted in a manner
prejudicial to the Appellants, causing a mis-
carriage of justice. In support of this ground,
an affidavit was filed by S.M. Koya, an advocate
who had appeared for the Appellants, alleging that
during the course of the trial, the following
statements had been made by the Senior Magistrate:

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40 (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 "You two are crooks". "It is a pity
50 that this case doesn't carry penalty of
imprisonment".

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(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."

No objection was made by the Crown and it was stated in Court that the Senior Magistrate agreed that he had made the remarks.

The other grounds of appeal were:-

p.21 11.18-29 (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 Count was false. 10

(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.

p.25 1.18 - (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." 20

p.28 1.28 - 9. The appeal was heard in the Supreme Court of Fiji on 6th July 1961 by Knox-Mawer J. who gave judgment on 28th July 1961 dismissing the appeal. p.29 After stating the charges and the grounds of appeal the learned Judge continued:-

p.31 1.15 "With reference to grounds (b) and (c), the prosecution evidence clearly established that in respect of the two consignments of laundry blue there were two invoices prepared in respect of each consignment. 30 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 40 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.

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.

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:-

"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."

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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10. The Respondent respectfully submits that there was sufficient evidence upon which the Appellants could have been convicted. It is submitted that in respect of the charges found proved, the evidence clearly showed that the prices at which the goods were supplied from London were not the prices declared on the invoices or customs entries produced on behalf of the Appellants to the customs authorities. The amounts upon which duty was charged were in both cases lower than the price paid by the purchasers which raises the strong inference that too low a price had been declared to the customs authorities. The Respondent relies upon Section 137 of the Customs Ordinance No. 166 of Fiji to establish that the existence and proof of invoices showing higher prices than those declared proved a prima facie case of commission of the charges made against the Appellants.

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11. The Respondent respectfully submits that the Appellants have suffered no miscarriage of justice by reason of the remarks made by the learned Senior Magistrate which are the subject of complaint. Although the remarks ought not to have been made, they did not make and could not have made any difference to the result of the proceedings. The character and credit of either Appellant was never relevant to the issues before the learned Senior Magistrate, as appears from his detailed judgment, nor was the question whether or not either had been fraudulent in any respect and it is submitted that the case turned solely upon the proper interpretation of the documents adduced in evidence, which were not challenged. It was not suggested in the evidence admitted on appeal that the Appellants did not give evidence for any reason connected with the remarks complained of, or that they thought it would be useless to give evidence after such remarks had been made. In the absence of any explanation by the Appellants, it is submitted that the only proper course for the Magistrate to take was to convict upon the charges relating to the second and third consignments.

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12. The Respondent respectfully submits that this appeal should be dismissed and the judgment of the Supreme Court of Fiji affirmed, for the following, amongst other

R E A S O N S

1. BECAUSE there was sufficient evidence upon which the appellants could have been convicted.
2. BECAUSE the learned Senior Magistrate drew the correct inferences from the documents proved in evidence.
3. BECAUSE the Appellants suffered no miscarriage of justice.
- 10 4. BECAUSE the remarks of the Senior Magistrate complained of could have made no difference to the outcome of the proceedings.

MERVYN HEALD