Privy Council Appeal No. 46 *of* 1961

Janme Jai Prasad and Jaimuni Prasad – – – – *Appellants*

v.

Comptroller of Customs – – – – – – – *Respondent*

FROM

THE SUPREME COURT OF FIJI

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JULY 1962

Present at the Hearing:
LORD COHEN.
LORD GUEST.
LORD PEARCE.
[*Delivered by* LORD PEARCE]

This is an appeal by special leave from the judgment and order of the Supreme Court of Fiji dismissing an appeal from the Senior Magistrate of Lautoka who convicted the appellants on charges of making false entries in forms required by the customs contrary to section 116 of the Customs and Excise Ordinance Cap. 166.

The customs entry forms related to the importation of three consignments of laundry blue from England. The appellants, who are brothers, are partners in a firm J. Prasad Brothers carrying on business at Lautoka as general merchants commission and shipping agents. Each of the customs entries in question described the value of the consignments as being 111/– per cwt., a value which was supported by invoices. The prosecution case was that other invoices showed the price to the consumer and the true value for import purposes to be 122/6 per cwt. Under the Customs and Excise Ordinance, section 64, the true and real value of imported goods is the price paid for the goods by the owner thereof as represented by the genuine invoice and other necessary documents, setting forth the true and real value of such goods. By section 137 " The production . . . of any other invoice account document or paper wherein goods are . . . mentioned as bearing a greater price than that set upon them in any such invoice " . . . (i.e. the invoice proffered to support the customs entry) " shall be prima facie evidence that such invoice was intended to be fraudulently used for customs purposes."

The two appellants did not give evidence and their exact status in the transaction is far from clear. They were described loosely as agents.

The prosecution called as witnesses the three consumers to whom the consignments went. They all paid at the rate of 122/6 per cwt. plus customs duty calculated on that price and freight and other charges. A possible view is that the appellants were the agents of the consumers in which case it was clear that they were making a secret profit and probably defrauding the customs in addition. But that view is hardly consistent with the evidence of the consumers. They maintained that they did not regard the transaction as a fraud on themselves since they had arranged with the appellants that the price should be that which was ultimately charged to them. They somewhat naturally assumed that the appellants were making a profit somewhere in the transaction.

Another possible view is that the appellants were principals, who bought from the English manufacturers at 111/– per cwt., having resold in advance

at the higher price of 122/6 to the consumers in Fiji. In that event the price on which duty should be calculated was 111/- per cwt., and there was no false entry. Invoices direct to the appellants from the English manufacturers support this view but additional invoices rendered to the consumers tell against this view.

A third possible view is that the appellants were agents for the English manufacturers, who took and transmitted to England the orders from consumers in Fiji and that instead of receiving salary or commission as agents they received as remuneration the difference between the selling price to the consumer (122/6 per cwt.) and a lower price (which perhaps one might describe as a wholesale price) charged to them by the manufacturer (111/- per cwt.), with a consequential profit on the customs duty charged, and also, perhaps, a profit on the freight charges since it seems that the wholesale price was C.I.F. whereas the price to the consumer was F.O.B. On this third view there would be a fraud on the customs, since the agents would never be the owners, and the price to the consumer would, it seems, be the test of value.

The learned magistrate dismissed the first count since on the invoice in the first transaction there was written " 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 " (the sellers) " For the Bank of New Zealand--signed manager ". Since £111 represented payment at the rate of 111/- per cwt. the magistrate said " 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 111/- C.I.F. per cwt. is false ". The first transaction is not without some effect on the view of the second and third transactions. On the second and third counts, however, which dealt with the other two transactions he found the first appellant guilty. On the third count he also found the second appellant guilty. All the alleged false entries were made by the first appellant who had the authority of the firm to make customs entries. Evidence showed that the second appellant had taken a part in arranging the third transaction with the consumers, but there was no evidence that he had anything to do with the customs entries or that he was aware of them. Under those circumstances whatever suspicions there may be, there was no evidence against him and it is clear that the conviction against him must be quashed.

Whether the first defendant should or should not be convicted seems to their Lordships to be a question which is not free from difficulty.

There is, however, a matter raised in this appeal which in their Lordships' view makes it impossible to uphold the convictions. While the evidence for the prosecution was being given the Magistrate made the following observations. When one of the consumers was giving evidence the Magistrate while pointing to the appellants said to the witness, " You have been diddled by these two people ". When the witness replied " I have got my goods as ordered ", the Magistrate said to the witness, in reference to the appellants, " I have no time for these two people ". He then addressed the appellants with the words " You two are crooks. It is a pity that this case doesn't carry a penalty of imprisonment ". When the final witness for the prosecution was giving evidence the Magistrate said to the witness " Don't you think these two people have cheated ? "

It is contended for the appellants that this premature condemnation of the appellants vitiated the trial. The Supreme Court of Fiji held that it constituted an irregularity and said:

> " 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).

In the outcome the appeal is dismissed."

Their Lordships feel unable to agree with that conclusion. The case was not without difficulty and a fair evaluation of the evidence of the witnesses was necessary. It is true that the appellants did not choose to give evidence, but it may well be that the Magistrate's openly expressed hostility deterred the appellants from venturing into the witness box. Had they done so it may be that the case might have worn a different aspect. Moreover, the witnesses may have been deterred from giving further answers beneficial to the appellants since it was apparent that the Magistrate resented their doing so. Their Lordships see no sufficient grounds for considering that no substantial miscarriage of justice has actually occurred. Even on the assumption that the appellants should or could properly be convicted that which occurred might fairly be said to be in itself a miscarriage of justice. A man however guilty is entitled to a trial before he is convicted. It must always be a question of degree how far judicial bias or hostility converts a trial into that which is no trial. Their Lordships appreciate that a judge sitting without a jury may without impropriety give vent to interim expressions of opinion which it would be gravely improper to express in a trial by jury. Nevertheless, in this case the Magistrate's hostility to the appellants before they had opened their case was so immoderate and apparent that there was no semblance of a fair trial. Their Lordships would adopt the view expressed by Ashworth J. in the Court of Criminal Appeal in *Reg.* v. *Edwards* (*The Times*, June 27th, 1961), " If this conviction were allowed to stand Edwards might rightly consider that guilty though he might well have been, he was deprived of that priceless asset which should be afforded to all accused persons—a fair trial. If the conviction were quashed, there was strong ground for supposing that dishonesty would, in this instance, have escaped punishment. Faced with a choice between two evils the Court felt that the most important factor in the matter was the maintenance of fairness and impartiality on the part of a Judge and as both these qualities were absent at this man's trial, the Court was constrained to allow the appeal."

It seems to their Lordships that in the present case for the same reason the convictions cannot be allowed to stand.

It was argued on behalf of the respondent that there is power under section 325 (1) of the Criminal Procedure Code Cap. 9, to order a new trial.

Their Lordships feel it unnecessary to express an opinion on that question. On the particular facts of this case, and in view of the difficulties to which they have referred, they do not consider that a new trial should be ordered.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be allowed and the convictions of each of the appellants quashed.

(86070) Wt. 8004/82 100 8/62 Hw.

In the Privy Council

JANME JAI PRASAD AND JAIMUNI PRASAD

v.

COMPTROLLER OF CUSTOMS

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LORD PEARCE

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