

Privy Council Appeal No. 3 of 1981

Carol Morin - - - - - *Appellant*

v.

The Director of Public Prosecutions - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 6TH DECEMBER 1982**

Present at the Hearing :

LORD DIPLOCK
LORD KEITH OF KINKEL
LORD ROSKILL
LORD BRIGHTMAN
SIR JOHN MEGAW

[Delivered by LORD ROSKILL]

The appellant appeals, with the leave of the Court of Appeal of Jamaica, against the dismissal by that Court (Leacroft Robinson P. and Henry and Melville JJ.A.) on 2nd May 1980 of his appeal against his conviction by the learned magistrate at the Resident Magistrate's Court for the Parish of St. Andrew, Jamaica on 17th January 1979. The learned magistrate had imposed a fine of Jamaican \$30,000 with an alternative of 3 months imprisonment with hard labour in default.

In so granting leave the Court of Appeal certified six points of law which this Board was invited to answer.

At his trial, the appellant had been charged with two offences against the Exchange Control Act of Jamaica ("the Act"). He was acquitted on the first charge but convicted on the second. The latter charge alleged that he had made a payment to the credit of a person resident outside Jamaica contrary to section 7(c) and paragraphs 1(1) and 3(b) of Part II of the Fifth Schedule to the Act. The particulars alleged that the appellant had on 26th July 1978 placed the sum of Jamaican \$10,000 to the credit of a man named Norman Mosesson, who was said to be resident outside Jamaica.

In convicting the appellant who did not give evidence at his trial but made a statement from the dock which the learned magistrate disbelieved, he found as facts that Mosesson was resident in the United States of America and that Jamaican \$10,000 had on 26th July 1978 been lodged by the appellant to the credit of Mosesson's bank account when the appellant knew that Mosesson was resident in the United States of America.

The principal but by no means the only evidence against the appellant regarding Mosesson's residence in the United States of America and the appellant's knowledge of that fact was contained in his answers to three questions respectively numbered 56, 57 and 58 given in the course of the appellant's interrogation on 27th July 1978 after he had been stopped earlier on that day at Norman Manley Airport when he was about to fly from Jamaica to Miami. This interrogation was conducted by a superintendent of police in charge of the Jamaican F.I.U. The record of the superintendent's evidence-in-chief which was uncontradicted reads:—

"I proceeded to ask questions. He replied to the questions. Questions and answers were recorded. At end of interrogation questions and answers were given to the accused. He was requested to read them. He read them, he signed them. I witnessed his signature. On these seven sheets of foolscap the questions and answers are recorded. I see accused's signature; it is on each page. My signature is at the last page"

These questions and answers, 64 in number, were admitted in evidence. Their Lordships have read them all though only the three questions and answers already mentioned are directly relevant to the present appeal. These questions savour of examination-in-chief rather than cross-examination. The answers were obviously readily forthcoming and there is no sign whatever of any pressure having been exerted upon the appellant to obtain the answers. Nor were the questions of such a kind as required any time to be allowed before satisfactory answers could be given, or indeed were given. Nor was any indulgence sought by the appellant in this respect.

The three crucial questions and answers were as follows:—

" 56. Q. What is this payment for?

A. Mr. Mosesson gave me this cheque to hold for him, but he told me not to lodge it to my account as he did not have enough funds in the Citibank Account. He later asked me to put into his Jamaican Account at Citibank \$10,000 which I did yesterday the 26th July, 1978 as an advance to Mr. Mosesson.

" 57. Q. How did you hope to recover from Mr. Mosesson the \$10,000 which you deposited on his Account?

A. Well Mr. Mosesson would have to refund me in Jamaican Dollars in Jamaica.

" 58. Q. Where does this Mr. Norman B. Mosesson live?

A. 25 Broad Street, New York."

The superintendent by whom this interrogation was conducted was one of the 25 people specified in a letter dated 27th July 1978 whereby the Bank of Jamaica acting under powers delegated to them by the Minister of Finance dated 22nd March 1977 gave a direction to the appellant that he "shall furnish to the persons designated in this direction any information in your possession or control, which the designated persons may at any time on or after the 27th day of July 1978 and until the 26th January 1979 require for the purposes of securing compliance with or detecting the evasion of the Exchange Control Act". That letter was duly served on the appellant before the interrogation began.

It was not disputed before their Lordships or indeed in the courts below that the delegation by the Minister of Finance to the Bank of Jamaica was in all respects proper. The attack mounted both in the Court of Appeal and before their Lordships was upon the form of the

direction from which their Lordships have just quoted. It was said that the direction failed to specify any time within which the appellant must answer the questions which were to be put to him under the sanction of prosecution were he to fail to answer them. The direction and the interrogation required answers to be given instantly. This was unlawful and the answers were inadmissible.

This submission necessitates consideration of certain provisions of the Act but their Lordships think it desirable before proceeding further to mention another matter. Learned counsel for the appellant sought to advance two further submissions, first, that there was on any view, with or without those three answers, insufficient evidence to justify the appellant's conviction and secondly that in so far as the answers could be said to amount to admissions they were involuntary in the circumstances in which they had been obtained.

Their Lordships declined to allow either matter to be raised in argument. As to the first, this was essentially a matter for the Court of Appeal of Jamaica and not for their Lordships. As to the second no argument was advanced nor indeed was any evidence given on this issue at the trial. Their Lordships declined to allow it to be raised before this Board for the first time.

Their Lordships find it necessary to emphasise yet again, as they have had to do in a number of recent cases and most recently in *Badry v. The Director of Public Prosecutions*, an appeal from Mauritius (Privy Council Appeals Nos. 4, 5 and 6 of 1981; judgment delivered 15th November 1982), that this Board does not sit as a court of criminal appeal. This rule applies equally to applications for special leave to appeal as to appeals when leave has been granted. See *Ibrahim v. Rex* [1914] A.C. 599 by Lord Sumner at pages 614, 615. It would have been contrary to long established practice for their Lordships to have allowed these two further matters to have been raised.

Their Lordships return to their consideration of the provisions of the Act. For ease of reference their Lordships set out the relevant provisions in full:

"7. Except with the permission of the Minister, no person shall do any of the following things in the Island, that is to say

(c) place any sum to the credit of any person resident outside the scheduled territories:

37.—(1) The provisions of the Fifth Schedule shall have effect for the purpose of the enforcement of this Act.

40.—(1) Any permission, consent or authority granted under this Act—

(d) may be limited so as to expire on a specified date, unless renewed;

(2) Any directions given under any provision of this Act—

(c) shall be given to such persons and in such manner as the Minister thinks appropriate, and if so given shall be valid for all purposes

(4) The Minister may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorize the delegation of any of his powers to any person, or class or description of persons, approved by him, and references in this Act shall be construed accordingly.

FIFTH SCHEDULE

ENFORCEMENT

Part I. General Provisions as to evidence and information.

1.—(1) Without prejudice to any other other provisions of this Act, the Minister may give to any person in or resident in the Island directions requiring him, within such time and in such manner as may be specified in the directions, to furnish to him or to any person designated in the directions as a person authorized to require it, any information in his possession or control which the Minister or the person so authorized, as the case may be, may require for the purpose of securing compliance with or detecting evasion of this Act.

(2) A person required by any such directions as aforesaid to furnish information shall also produce such books, accounts or other documents in his possession or control as may be required for the said purpose by the Minister or by the person authorized to require the information, as the case may be.”

It should be mentioned that, *mutatis mutandis*, the language of the Fifth Schedule is identical with the language of the corresponding part of the Fifth Schedule to the Exchange Control Act 1947 of the United Kingdom.

As their Lordships have already stated, the principal attack upon the direction and therefore upon the admissibility of the three answers was founded upon the contention that the direction was defective in that it did not specify a period or time within which the information sought must be given. It was argued that the direction merely specified the time “over which” the information sought had to be given and not the time “within which” the requirement had to be satisfied.

Their Lordships see no reason for construing the words “within which” in the direction otherwise than in accordance with their natural meaning and they decline to substitute one word for another. The direction limited the time within which the information might be sought to the period specified in the letter as contemplated by section 40(1). But their Lordships see no reason why the direction must also specify a time limit, whether of minutes, hours or days, within which the person interrogated must answer any or all of the questions which may be asked. To accept the submission advanced for the appellant would, as learned counsel for the appellant was ultimately constrained to admit, make oral interrogation virtually impossible, with the person interrogated always able to insist upon an interval of time, be it long or short, before answering some perfectly simple question. Moreover, to permit this indulgence would in many cases largely defeat any element of surprise which might form an important part of the interrogation. Each of the 64 questions was susceptible of an instant and simple answer and received from the appellant an instant and simple answer without any objection or demur on his part. As was pointed out during the argument, one purpose of this part of the Act is to prevent and to facilitate the detection of evasion of its provisions. Their Lordships see no reason for construing the relevant statutory language so as to defeat that obvious purpose.

But reliance was placed by learned counsel for the appellant on a passage from a speech by Lord Reid in *R. v. Harz* [1967] 1 A.C. 760 at page 816. Their Lordships do not find it necessary to set out the paragraph in question in Lord Reid’s speech. In that case admissions had been obtained by oral interrogation in the form of cross-examination which in the opinion of the House of Lords the Commissioners of

Customs and Excise had not been entitled to administer. But the statute there in question was in different language from that of the Act and Lord Reid, in the passage in question, part of which was in any event *obiter*, was not concerned with the demand for information made under the United Kingdom equivalent of the Act. Their Lordships draw attention to the fact that paragraph 1(1) of Part I of the Fifth Schedule to the Act authorises the requiring of "any information" while paragraph 1(2) "also" authorises the production of books, accounts or other documents as well as the furnishing of information. The relevant statutory language was markedly different from that in question in *R. v. Harz*.

Further, as was pointed out by their Lordships during the argument, if the submissions on behalf of the appellant as to the need for specifying a time within which answers must be given to questions asked during the interrogation were right, it is not easy to see why the "manner" of giving the information is not also required to be specified. Such a construction is in their Lordships' opinion impossible and would defeat the obvious purpose of this legislation.

Their Lordships therefore find themselves in respectful agreement with the view of the Court of Appeal that there is no merit in the appellant's contentions. The answers given to the three questions provided evidence upon which the learned magistrate was fully entitled to convict the appellant who as already stated chose not to give evidence and therefore not to explain, if it were possible for him to have done so, the answers given under interrogation.

Their Lordships have already mentioned that the Court of Appeal invited the Board to answer six questions of law. On the view their Lordships take not all these questions now arise, and they are of the opinion that the third question is not susceptible of a direct answer. Subject to those observations, their Lordships answer the questions as follows:—

1. Does paragraph 1(1) of Part I of the Fifth Schedule to the Exchange Control Act authorise the Bank of Jamaica as "delegatee" of the Ministry to give directions for information to be furnished to, and as required by, designated persons, class or description of persons? Answer: "Yes".

2. Is the person designated by the exercise of powers in the said paragraph 1(1) obliged to identify the specific information to be furnished as distinct from conducting an interrogation? Answer: "No".

3. Must directions under the said paragraph 1(1) allow time within which the information required is to be furnished? Answer: "It is perfectly legitimate for the direction to specify a time within which the information must be sought as was done in this direction. There is no need to specify a time within which the answers must be given. If a question is such that the required information cannot reasonably be expected to be given instantly, the interrogator should and no doubt would allow a reasonable opportunity to the person under interrogation to answer, as, for example, to obtain documents upon which the answer would be based, but in their Lordships' view there is no need for this to be specified in the direction".

4. Is evidence obtained in breach of any or all of questions 1, 2 and 3 (above) admissible? Answer: "This does not arise".

5. Can information furnished by an accused as a result of the exercise of the powers contained in paragraph 1(1) of Part I of the Fifth Schedule of the Exchange Control Act ever be proof of the truth of such information? Answer: "Yes".

6. If the answer to questions 4 or 5 is in the negative, would this be a substantial miscarriage of justice? Answer: "This does not arise".

Their Lordships will accordingly humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay to the respondent his costs of the appeal.

From 1/25/148

In the Privy Council

CAROL MORIN

v.

**THE DIRECTOR OF
PUBLIC PROSECUTIONS**

**DELIVERED BY
LORD ROSKILL**