

Samad Ramoly

Appellant

v.

The Queen

Respondent

FROM

THE SUPREME COURT OF MAURITIUS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
26TH MARCH 1990

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD BRANDON OF OAKBROOK
LORD TEMPLEMAN
LORD OLIVER OF AYLMEYTON
LORD GOFF OF CHIEVELEY

[Delivered by Lord Bridge of Harwich]

Mr. B.S. Ramoly was convicted by the Intermediate Criminal Court at Rose Hill of 29 offences of smuggling contrary to section 167 of the Customs Act. His appeal against conviction was dismissed by the Supreme Court of Mauritius, but he was granted leave to appeal to Her Majesty in Council. Mr. B.S. Ramoly has since died. Pursuant to a certificate granted by the Supreme Court it was ordered by Her Majesty in Council that Mr. Samad Ramoly, the personal representative of Mr. B.S. Ramoly, be substituted as the appellant on the record. For convenience their Lordships will refer to the late Mr. B.S. Ramoly as the defendant.

The subject of each count in the indictment was a consignment of textiles which had been imported into Mauritius subject to the restriction that they were to be stored in a bonded warehouse and to be re-exported to the Comores Islands. As the trial court found, the defendant "knowingly and deliberately and in bad faith evaded this restriction in each case" by obtaining possession of the goods from the bonded warehouse on the strength of forged documents and putting them into circulation for home consumption, so that they were not re-exported to the Comores Islands.

The offence of smuggling enacted by section 167 of the Customs Act depends on the following definitions in section 2:-

"Smuggling' means any importation, introduction, exportation or attempted importation, introduction, exportation of goods with intent to defraud the revenue, or to evade any prohibition of, restriction on, or regulation as to, the importation, introduction, exportation of any goods;

'Import' means bring or cause to be brought into Mauritius;

'Time of importation' means the time at which the aircraft or ship importing goods actually lands in Mauritius or comes within 12 nautical miles of the coast."

The point raised by the appeal is purely technical. It relates to the form in which the offence of smuggling charged in each count in the indictment was expressed and the way in which the case was presented by the prosecution in the courts below. Each count was framed in the following form:-

"... that on [a specified date] [the defendant] did wilfully and unlawfully smuggle [the relevant goods], the importation of which was subject to a restriction, to wit:-
that the said goods should be stored in a bonded warehouse to be re-exported to the Comores Islands, with which the [defendant] failed to comply."

In *Ah Kam Ah Yam v. The Queen* [1973] Mauritius Reports 133 it was held by the Supreme Court of Mauritius that a distinction was to be drawn in the definition of "smuggling" between the meanings of the words "importation" and "introduction". "Importation" refers to the bringing of goods into Mauritius; "introduction" refers to the removal of goods from Customs control after importation.

The appellant's complaint is that the date of the offence charged in each count of the indictment was the date of the importation of the relevant consignment, not the date when the goods were removed from Customs control by the defendant and, it is said and appears to be correct, that the prosecution was presented and argued in the courts below, on the footing that the importation was a continuous process. Instead, it is objected, the defendant should have been charged with the introduction of the goods on the date in each case when he obtained possession of them from the bonded warehouse.

Their Lordships are content to assume that the technical objection is well-founded. But it does not

assist the appellant's case. Section 97(2) of the District and Intermediate Courts (Criminal Jurisdiction) Act provides:-

"No conviction shall be quashed on the ground of any defect in substance or in form in the information, warrant or summons, or for any variance ... unless the court is satisfied that the appellant has thereby been misled or deceived and prejudiced in his defence."

The defendant was undoubtedly guilty of smuggling by removing the goods from Customs control with intent to evade the restriction subject to which they had been imported. Neither the form of the counts in the indictment nor the way in which the case was presented for the prosecution can have misled or deceived him or prejudiced him in any way.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs.