



18 June 2014

PRESS SUMMARY

R (Appellant) v Ahmad and another (Respondents) [2014] UKSC 36

R (Respondent) v Fields and others (Appellants)

On appeal from [2012] EWCA Crim 391; [2013] EWCA Crim 2042

JUSTICES: Lord Neuberger (President), Lord Sumption, Lord Reed, Lord Hughes, Lord Toulson

BACKGROUND TO THE APPEALS

These appeals concern the proper approach for the court to adopt, and the proper orders for the court to make, in confiscation proceedings where a number of criminals, some of whom may not be before the court, have between them acquired property or money as a result of committing an offence for which all or some of them have been convicted in the trial which led to the proceedings.

In the first appeal, the appellants, Shakeel Ahmad and Syed Ahmed (“the Ahmad defendants”) were convicted of a carousel fraud (which involves criminally misusing the collection system of VAT to extract money from the revenue authorities) and sentenced to seven years in prison. The Ahmad defendants had been the sole directors and shareholders of a company, MST, which was registered for VAT. MST participated in 32 circular transactions by which goods were purportedly sold, and later bought back by, companies in Ireland in circumstances which resulted in £12.6 million being fraudulently reclaimed from HMRC. After a confiscation hearing, Flaux J concluded that, for the purposes of the Criminal Justice Act 1988 (“the 1988 Act”), the benefit obtained by MST was the benefit obtained by the Ahmad defendants jointly. (While the 1988 Act has been repealed and replaced by the Proceeds of Crime Act 2002 (“the 2002 Act”), the 1988 Act still applies to crimes committed before the 2002 Act came into force). The Court of Appeal determined that the benefit jointly obtained by the Ahmad defendants was the loss suffered by HMRC, uplifted to £16.1m to adjust for inflation, and that each of the Ahmad defendants was liable for the whole of this amount.

In the second appeal, the three appellants, Michael Fields, Mitesh Sanghani and Karamjit Sagoo (“the Fields defendants”), and a fourth man, Wasim Rajput, were found guilty by a jury of conspiracy to defraud. The Fields defendants were each sentenced to five years in prison. The fraudulent conspiracy involved the use of a company, MDL, whose published accounts falsely recorded that it had over £1m in fixed assets in order to secure credit agreements to buy goods or obtain services. MDL made no payments under these agreements, and the majority of the goods disappeared. In the subsequent confiscation proceedings HH Judge Carr found that the total benefit arising from the conspiracy was about £1.4m, which had been acquired jointly by the Fields defendants. This figure was adjusted upwards to about £1.6m to allow for inflation and the judge made confiscation orders under the 2002 Act against each of the Fields defendants for the whole of this amount. The subsequent appeal to the Court of Appeal was unsuccessful.

The Ahmad defendants and the Fields defendants now appeal to this court. They do not challenge the quantification of the aggregate recoverable amount, or the finding that they obtained that amount jointly. What they challenge is the decision of the Court of Appeal that each of the appellants should be separately liable for the whole of that amount.

JUDGMENT

The Supreme Court unanimously allows the appeal in part. Lord Neuberger, Lord Hughes and Lord Toulson, with whom Lord Sumption and Lord Reed agree, give the judgment. The confiscation orders made in respect of each defendant should be amended to provide that they can be enforced only to the extent that the same sum has not been recovered through another confiscation order made in relation to the same joint benefit. However, the orders should not be amended to apportion the benefit between the respective defendants.

REASONS FOR THE JUDGMENT

Although the language of the 1988 and 2002 Acts is not identical, there is no material difference between them for present purposes [28]. A court considering an application for a confiscation order must address and answer three questions. The first question is whether a defendant has benefited from the relevant criminal conduct; the second question concerns the value, or quantification of the benefit; and the third question is what sum is recoverable from the defendant [34].

The first question: has the defendant benefited?

Section 76(4) of the 2002 Act provides that a person benefits from conduct “if he obtains property as a result or in connection with the conduct.” As Lord Bingham held in *Jennings v Crown Prosecution Service* [2008] AC 1046 and *R v May* [2008] AC 1028, the essence of benefit in that phrase is given by the word “obtains”, which in this context should be given a broad, normal meaning connoting a power of disposition or control rather than ownership [41-45].

In many cases it is unclear how many people were involved in the crime, what their roles were, and where the money went. As a result, if the court could not proceed on the basis that the conspirators should be treated as having acquired the proceeds of the crime together, so that each of them “obtained” the “property”, it would often be impossible to decide what part of the proceeds had been “obtained” by any or all of the defendants. It is one thing for the court to have to decide whether a defendant obtained any property, which is required by the 2002 Act. It is another for the court to have to adjudicate on the respective shares of benefit jointly obtained, which is not required [56].

Where property is obtained as a result of a joint criminal exercise, it will often be appropriate for a court to hold that each of the conspirators “obtained” the whole of that property. However, where the evidence discloses separate obtainings, the judge should make that finding [46-51].

The second question: what is the value of the benefit?

A defendant who steals property or obtains it by deception does not acquire ownership of that property. When valuing the benefit the court takes the market value of the property obtained, not because this represents the value of the thief’s legal interest in the goods, but because that is the value of what the thief has misappropriated [61].

The third question: what is the sum payable?

To take the same proceeds twice over would not serve the legitimate aim of the 2002 Act and, even if that were not so, it would be disproportionate. The enforcement of an order for the confiscation of proceeds of crime that have already been paid to the state would violate Article 1 of the First Protocol the European Convention on Human Rights, which protects the right to property [71].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

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