

Privy Council Appeal No. 30 of 1976

The Director of Public Prosecutions - - - Appellant

v.

Nancy Sanchez-Burke - - - Respondent

FROM

THE COURT OF APPEAL OF JAMAICA

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 19TH APRIL 1977

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Present at the Hearing :

LORD DIPLOCK

LORD SIMON OF GLAISDALE

LORD SALMON

LORD EDMUND-DAVIES

LORD RUSSELL OF KILLOWEN

(Delivered by LORD DIPLOCK)

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The respondent, Nancy Sanchez-Burke, was tried before the Resident Magistrate's Court for the Parish of St. Andrew on an indictment charging her with two offences of doing an act preparatory to the making of a payment outside the Island in contravention of section 8(1) of the Exchange Control Act. She was convicted on both counts and sentenced to a fine of \$500 or three months on each count and an order was made that the money, valued U.S.\$8,807 and Can.\$4,000, was forfeited. From these convictions she appealed to the Court of Appeal of Jamaica on a number of grounds. One of these was that the Resident Magistrate had no jurisdiction to try on indictment the offences with which the respondent was charged. The Court of Appeal allowed the appeal upon this ground which made it unnecessary for them to consider any of the other grounds relied upon by the respondent. They allowed the appeal, set aside the convictions and the sentences, but granted leave to the appellant, the Director of Public Prosecutions, to appeal to Her Majesty in Council upon the ground that the proceedings involved a question of exceptional public interest, namely:

"Whether or not the jurisdiction defined and conferred by the provisions of Part II of the Fifth Schedule of the Exchange Control Act empowers a Resident Magistrate to hear and determine the Offences specified in paragraph 1(1) thereof :

- (i) In his Special Statutory Summary Jurisdiction (see Interpretation Act Section 3); and
- (ii) On indictment generally as well as in relation to such Offences as independently of the Act are indictable misdemeanours at Common Law in particular Conspiracy to contravene the Statute."

The Exchange Control Act, which is modelled on the United Kingdom Exchange Control Act of 1947, provides by section 37(1) that :

"The provisions of the Fifth Schedule shall have effect for the purpose of the enforcement of this Act."

The relevant provisions as to offences are to be found in the following paragraphs of Part II of the Fifth Schedule:

1. (1) Any person in or resident in the Island who contravenes any restriction or requirement imposed by or under this Act, and any such person who conspires or attempts, or aids, abets, counsels or procurēs any other person, to contravene any such restriction or requirement as aforesaid, shall be guilty of an offence punishable under this Part :

.....

1. (3) Any person who commits an offence punishable under this Part shall be liable
  - (a) on summary conviction, to imprisonment for not more than three months or to a fine or to both:
  - (b) on conviction on indictment, to imprisonment for not more than one year or to a fine or to both,

and where the offence is concerned with any currency, any security, any gold, any goods or any other property, the court may, if they think fit so to do, order the currency, security, gold goods or property to be forfeited.

.....

2. (2) Proceedings against any person in respect of an offence punishable under this Part may be taken before the appropriate Resident Magistrate's Court in the Island having jurisdiction in the place where that person is for the time being.

In their Lordships' view, these provisions give to the Resident Magistrate's Court for the Parish in which the accused is found, a jurisdiction to try, either summarily or on indictment, any of the offences created by paragraph 1(1) of Part II of the Fifth Schedule of the Exchange Control Act.

The main source of jurisdiction of a Resident Magistrate's Court is the Judicature (Resident Magistrates) Act. That Act given to a Resident Magistrate's Court the power to try upon indictment the offences specified in section 268(1) of the Act. It does not give to a Resident Magistrate's Court as such jurisdiction to try offences summarily, though section 63 imposes upon a Resident Magistrate the duty to attend as Magistrate all Courts of Petty Sessions in the Parish or Parishes in which he is for the time being assigned.

It is, however, competent to the Parliament of Jamaica to grant to a Resident Magistrate's Court additional jurisdiction; and that, in their Lordships' view, is what has been done by the above provisions of the Fifth Schedule of the Exchange Control Act.

By section 3 of the Interpretation Act, the expression "on summary conviction" appearing in paragraph 1(3) (a) means "before a court of summary jurisdiction" and a "court of summary jurisdiction" means:-

- "(a) any justice or justices of the peace to whom jurisdiction is given by any Act for the time being in force, or any Resident Magistrate sitting either alone or with other justices in a Court of Petty Sessions;
- (b) a Resident Magistrate exercising special statutory summary jurisdiction."

The expression "special statutory summary jurisdiction" is not defined in the Interpretation Act or elsewhere, but in their Lordships' view its meaning is quite clear. It means jurisdiction bestowed by any statute upon a Resident Magistrate sitting as a Resident Magistrate's Court and this, in their Lordships' view, is what is done by the combined effect of paragraph 1(3)(a) and paragraph 2(2) of Part II of the Fifth Schedule of the Exchange Control Act.

As respects the jurisdiction of a Resident Magistrate's Court to try on indictment an offence specified in paragraph 1(1), similar considerations, in their Lordships' view, apply.

The combined effect of paragraph 1(3)(b) and paragraph 2(2) is to confer upon a Resident Magistrate sitting as a Resident Magistrate's Court jurisdiction to try these offences on indictment. There is no need to seek for any further source of jurisdiction in section 268 of the Judicature (Resident Magistrates) Act.

In addition to contravention of any restriction or requirement imposed by or under the Act, the offences specified in paragraph 1(1) include the inchoate offences of conspiracy, attempt, aiding, abetting, and counselling or procuring. The jurisdiction expressly conferred upon a Resident Magistrate's Court by paragraph 2(2) thus includes those inchoate offences which, if they had not been expressly specified in paragraph 1(1), might have fallen within the category of common law offences referred to in section 268(1)(f) of the Judicature (Resident Magistrates) Act. But as they are specified as offences in paragraph 1(1), there is no need to resort to any supplementary source of jurisdiction in section 268 of the Judicature (Resident Magistrates) Act.

Their Lordships would accordingly give to the question posed by the Court of Appeal the answer that the jurisdiction defined and conferred by the provisions of paragraph 2(2) of the Fifth Schedule of the Act empowers a Resident Magistrate to hear and determine the offences specified in paragraph 1(1) thereof-

- (i) summarily in his special statutory summary jurisdiction, and
- (ii) on indictment generally.

Their Lordships will humbly advise Her Majesty that the judgment of the Court of Appeal be set aside and that the case should be remitted to the Court of Appeal to resume the hearing of the appeal upon the other grounds set out in the respondent's Notice of Appeal of 19 February, 1976.