

J A M A I C A

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL No. 124/79

BEFORE: The Hon. Mr. Justice Leacroft Robinson - President  
The Hon. Mr. Justice Henry, J.A.  
The Hon. Mr. Justice Melville, J.A.

R. v. CAROL MORIN

Mr. Frank Phipps, Q.C. for the appellant.

Mr. F.A. Smith for the Crown.

January 18 & 23; May 2, 1980

ROBINSON, P.:

The appellant was convicted in the Resident Magistrate's Court for the parish of St. Andrew on the 17th January, 1979, for making a payment to the credit of a person resident outside of the Island, contrary to section 7 (c) of the Exchange Control Act and contrary to paragraph 1 (1) and 4 (b) of Part II of the Fifth Schedule thereto.

The evidence indicated that on the 26th day of July, 1978, the appellant lodged the sum of J\$10,000.00 in the First National City Bank in the parish of St. Andrew to the credit of one Norman Mosesson whose address was shown in the records of the Bank as being at 25 Broad Street, New York in the United States of America.

It was argued that the fact that the records of the Bank showed the address of Mr. Mosesson as being outside of the Island was not conclusive to prove that he was in fact resident outside of the scheduled territories, i.e. outside of the Island of Jamaica. It is however not necessary to express an opinion on this contention as the appellant himself admitted in answer to a question put to him by the police, that

he knew Mr. Mosesson to "live" at the same address as that given in the records of the Bank, i.e. 25 Broad Street, New York, and the only remaining question was whether that answer was admissible in evidence. It was elicited in the course of an interrogation of the appellant by one of three police officers pursuant to directions contained in a letter addressed to "Mrs." Carol Morin, but intended for, delivered to, received, accepted and acted upon by Mr. Carol Morin, requiring him to furnish to anyone of a number of named persons, designated in the said letter as persons authorised to require same any information in his possession or control which the person so authorised may require for the purpose, inter alia, of detecting evasion of the Exchange Control Act. These directions were issued by an authorised officer of the Bank of Jamaica to whom the Minister had delegated, as permitted by section 40 (4) of the Act, the powers given him by paragraph '1 (1) of Part I of the Fifth Schedule to the Act which reads as follows:

"1 - (1) Without prejudice to any 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 authorised to require it, any information in his possession or control which the Minister or the person so authorised, as the case may be, may require for the purpose of securing compliance with or detecting evasion of this Act."

The delegation was permitted by section 40 (4) of the Act, which provides as follows:

"40 - (4) The Minister may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers (other than any power to make orders or to give authority to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Act shall be construed accordingly. "

And section 40 (5) provides that -

"Any document stating that any permission, consent, authority or direction is given under any of the provisions of this Act by the Minister, and purporting to be signed on his behalf, shall be evidence of the facts stated in the document. "

It was not disputed that a proper delegation of the Minister's powers had been made to the Bank of Jamaica. In this appeal, however, it was contended that the directions issued by the Bank in the purported exercise of its delegated functions was ultra vires the provisions of paragraph 1 (1) of Part I of the Fifth Schedule as it was tantamount to an unauthorised curtailment of the freedoms of a citizen to subject him to interrogation by any one or more than one of as many as 25 persons over a period of 6 months as was provided for in the directions contained in the letter which was delivered to the appellant.

We do not think that there is any merit in this contention. The Minister is empowered to delegate or to authorise the delegation of any of his powers to any person or class of persons and in his Instrument of Delegation to the Bank of Jamaica, dated 22/3/77, he expressly authorised the Bank "for the avoidance of doubt ..... to delegate any or all of the powers hereby delegated to any person, class or description of persons selected by the said Bank as to which person, class or description of persons, approval is HEREBY unequivocally granted by the Minister. "

See Exhibit 11. Of the 25 persons designated in the letter (Ex. 12) 18 were members of the Jamaica Constabulary Force and the remaining 7 were actively connected, along with the policemen, to the Financial Investigative Unit (the F.I.U.) - which unit was primarily concerned with detecting evasion of the Exchange Control Act. They were all of a class or description of persons selected by the Bank, any one of whom might conveniently be assigned the duties required of the persons named in the letter. And, indeed, only 3 of the named members of that class participated in the questioning which was actually done by one only of the three.

What is more, the appellant was questioned, pursuant to the directions contained in the letter, on one occasion only and so by no stretch of the imagination could it be said that there was any abuse of the purpose and intent of the provisions of Paragraph 1 (1) of Part I of the Fifth Schedule.

The lodgment complained of was made on the 26th July, 1978. The questioning took place the following day (27th July, 1978). The relevant questions and answers (as disclosed in Ex. 15) were as follows:

- "
- Q. Where does this Mr. Norman B. Mosesson live?
- A. 25 Broad Street, New York.
- Q. What's the relationship between the both of you?
- A. I met him in New York in the early part of this year .....

There can therefore be no doubt, as found by the learned Resident Magistrate, that "at the time lodgment made accused knew Mosesson was resident in the United States of America."

Having regard to that finding, we can find no fault with the conviction.

The appeal against sentence having been abandoned, and rightly so as it too was devoid of merit, the appeal is dismissed. The conviction and sentence **are affirmed.**