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IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO. 201/76

BEFORE:

THE HON. MR. JUSTICE HENRY J.A.
THE HON. MR. JUSTICE ROBOTHAM J.A.
THE HON. MR. JUSTICE ROWE J.A. (Ag.)

REGINA

v

KARL WYNTER

Mr. R.N.A. Henriques for the appellant

Mr. Henderson Downer, Dep. Director of Public Prosecutions for the Crown

November 24, 25, 1977, January 27, 1978

ROWE J.A. (Ag.)

In 1973 commercial banks in Jamaica were authorised to sell foreign currency up to a maximum of $10,000 to each customer without the prior express approval of the Bank of Jamaica. The system is operation at the Duke Street branch of the Bank of Nova Scotia provided that on the production of relevant supporting documents, for example, Trade Board Licences, a Foreign Exchange form would be completed and on payment of the equivalent amount in Jamaican currency, a bank draft would be prepared by an authorised officer and countersigned by another authorised officer whose duty it was to satisfy himself or herself as to the correctness and regularity of the transaction. At the end of each banking day the requisitions for the foreign exchange would be filed away in the bank's vault, while the Foreign Exchange forms and supporting documents after an audit and reconcilation of the days foreign exchange business, would be forwarded to the Bank's head office.

At all material times in 1973 and 1974, the appellant Karl Wynter was the Accountant at the Duke Street branch of the

Bank of Nova Scotia with authority to assist a customer to write up Foreign Exchange forms; to prepare drafts on foreign banks, and to sign or countersign the said drafts.

The appellant was prosecuted before the Resident Magistrate on an indictment containing eight counts. The first six counts alleged breaches of section 8 (1) and the contravention of Part II section 1 (1) and 3 (b) of the Fifth Schedule of the Exchange Control Act. Each count charged that except with the permission of the Minister, being a person resident in Jamaica he authorised the payment in United States dollars (sum stated) on a bank draft bearing a given date, which act was preparatory to making the said payment outside the Island.

The prosecution relied upon the following factors to prove the several charges:-

(a) In each case the bank draft was written up by the appellant and either signed or countersigned by him.

(b) No requisitions in respect of any of these drafts were found at the time of the police investigation. In July or August of 1974 the then Bank Manager had directed Vernice Lyn a clerk in the bank to search for and secure all the requisitions for foreign exchange for period September 1973 to May 1974. While she was engaged in this exercise, the appellant observed and enquired of her on whose authority she was gathering the requisitions. Some time later Miss Lyn went on leave and on her return the requisitions had vanished.

(c) The Bank of Jamaica requested the Bank of Nova Scotia to submit the documents in connection with the sale of foreign exchange at the Duke Street branch in 1973-1974 and the only documents produced in response to this request were the negotiated foreign drafts.

(d) The evidence of Valerie Gayle, Assistant Accountant, in relation to drafts the subject of Counts 1-4 in which she said inter alia "when defendant wrote up a draft and brought to me my practice was to countersign the draft. Normally I would just sign without doing anything else." Later she said "usually there is form Foreign Exchange with supporting documents. Normally I would only countersign when there are supporting documents. I would not scrutinize documents but I would be sure that there are accompanying documents under the draft."

(e) The evidence of Derek Lazarus, then Assistant Manager of the Duke Street bank, who countersigned the draft in relation to Count 5 whose evidence was:-

> "When I countersigned draft exhibit 5, I checked to see whether there was Foreign Exchange form approved by the Bank of Jamaica. I examined for seal and authorised signature. I would not have countersigned if Foreign Exchange form not in order."

(f) Glossmie Chin's evidence in relation to Count 6, although she said in cross-examination in reference to the impugned draft:-

> "I would have seen supporting document before signing this draft. I would have satisfied myself that the document is in order before I signed the draft."

(g) A series of cautioned statements made by the accused and admitted in evidence.

At the end of the Crown's case, after hearing a no case submission from defence attorney, the Resident Magistrate found the appellant not guilty on Counts 5 and 6 of the indictment. The patent basis for the verdicts of acquittal on Counts 5 and 6 is that on the evidence, having regard to the system in force, the appellant was perfectly justified in issuing the drafts in question.

When the statements made by the accused to the police were fully examined before us, the learned Deputy Director of Public

Prosecutions could not maintain his earlier submissions that those statements in anyway showed a connection with the drafts the subject of Counts 1-4. Miss Gayle said that she saw documents supporting the drafts that she countersigned. She had full opportunity to carry out the proper checks but did not. Can the inference be reasonably drawn that those documents, if scrutinized, would have been found to be imperfect? To do so would be to draw a positive adverse inference against the appellant based on what may be termed a neglect of duty, albeit, unintentional on the part of Miss Gayle. On the facts outlined at (a), (b) and (c) above, nothing in them points directly to wrongdoing on the part of the appellant. He was a person authorised to write up and sign drafts drawn on foreign banks; the disappearance of the requisitions cannot be brought home to him; the nakedness of the return to the Bank of Jamaica cannot be brought home to him.

The Resident Magistrate fell in error when in her findings of facts she said:-

> "Witness Valerie Gayle assumed that the relevant supporting documents were brought in by the customer but saw none."
>
> (Underlining mine).

There is a clear difference between "seeing none" and "seeing some" but not scrutinizing them for their contents. Accordingly we are of the view that the appellant is entitled to succeed on ground 4 of his Grounds of Appeal which is in these terms:-

> "The Learned Resident Magistrate erred as a matter of law when she held that the Crown made out a prima facie case for the accused to answer Counts 1-4 of the indictment."

The bank at which the appellant was employed is situated in Kingston. He was arrested at the Central Police Station and later bailed there to appear before the Resident Magistrate's Court, Half Way Tree. At the end of the Crown's case, the appellant's attorney submitted that the Resident Magistrate for St. Andrew had no jurisdiction to hear and determine the case. That submission

though overruled formed the basis for the third Ground of Appeal viz:-

> "The Learned Resident Magistrate erred as a matter of law when she held that she had jurisdiction to hear and determine the charges preferred against the accused."

We considered this ground of general importance in relation to the interpretation of Part II of the Fifth Schedule of the Exchange Control Act and arranged for that ground to be re-argued before a bench of five judges. The full Court of which we were all members heard arguments in the cases of R v Roger York, and R v Karl Wynter and in relation to this question of venue jurisdiction held:-

> "Insofar as venue jurisdiction is concerned the effect of paragraph 2 (2) is to confer that jurisdiction on the Resident Magistrate's Court having jurisdiction in the place in which a defendant is to be found at the time of commencement of the trial, that it is the function of the Court to determine where a defendant is to be found but that ordinarily this would be either at his home or at his place of work or at the place in which he is in custody at the time but could also be at any other place where he was arrested or served with a summons in the matter or which he gave as his address when being bailed for the offence."

Applying that decision on the interpretation of section 2 (2) of Part II of the Fifth Schedule of the Exchange Control Act, to the facts of the instant case, the Resident Magistrate had jurisdiction to hear and determine Counts 1-7 as there was evidence before the Magistrate that the appellant resided in St. Andrew.

Count 7 of the indictment charged that the appellant failed to surrender some U.S. $642.00, which were found in his safety deposit box and which he admitted, in a statement to the police, he had had for some seven months. This offence although committed wholly in Kingston, could by virtue of section 9 (2) of the Criminal Justice Act be tried in St. Andrew where the appellant was properly indicted for another offence triable in the parish viz, that stated in Count 8. In any event Mr. Henriques did concede that the conviction on Count 7 would stand or fall on his submissions in relation to ground 3 and in our view the conviction on that count must stand.

The last count of the indictment charged that the appellant:-

> "On divers days during the year 1973, in the parishes of Kingston and St. Andrew being an Agent of the Bank of Nova Scotia Jamaica Ltd., corruptly accepted for himself $20,000 as an inducement or reward for an act in relation to his principal's affairs, namely to buy and sell foreign currency."

In 1974 the appellant's salary as Chief Accountant was $8,700 p.a. and that of his wife about $6,000 p.a. The police investigations revealed that between July 1973 and February 1974 the appellant lodged $21,000 in fixed deposits in the St. Thomas Building Society and the Jamaica Permanent Building Society.

The facts contained in the statements which the appellant gave to the police, which statements were admitted in evidence by the Resident Magistrate after a trial within a trial, and the admissibility of which was not further challenged before us notwithstanding a formal ground in that regard, were to the effect that one K.C. Chin gave to the appellant between $300 and $500 on each occasion that the appellant sold him foreign currency. These "gifts" were made as frequently as every working day in a given week and continued for a period of some seven months. To effect the transactions of purchasing foreign currency K.C. Chin would on occasions himself come to the bank and at times he would invite the appellant to his business premisses on Molynes Road where the appellant would, and here we quote from one of his statements, "pick up both form Foreign Exchange, Managers cheques or cash. When he ask me to come around to pick up these cheques or cash the amount of money always range between $3,000 and $7,000."

On this unchallenged evidence, indeed evidence coming from the mouth of the appellant, the Resident Magistrate was entitled to infer that the appellant accepted sums of $300-$500 on those occasions when he visited K.C.Chin's shop at Molynes Road and collected the relevant documents and money to enable the foreign exchange transaction to go through. There was therefore a factual basis for the allegation in Count 8 that the offence was

partly committed in St. Andrew.

We find no merit in the appellant's contention that section 13 (1) of the Corruption Prevention Act only applies to servants or agents of the Crown. The terms "agent" and "principal" are widely defined in section 13 (2) of the Act in the terms:-

> "Agent" includes any person employed by or acting for another".
> "Principal" includes an employer".

Prima facie section 13 (1) is of general application and it is so widely worded that a multiplicity of relationships may be encompassed by it. In the case of Morgan v Director of Public Prosecutions (1970) Criminal Law Review p. 696, the Divisional Court of the Queen's Bench Division had no difficulty in holding that an employee of a company who was also the convenor of shop stewards in the company was "an agent" within the meaning of section 1 (1) of the Prevention of Corruption Act, 1906, which is in identical terms with the Jamaican statute.

The further point argued for the appellant is that the section requires some impropriety to be established in the exercise of one's functions or duty in order to constitute an offence of corrupt acceptance under the section. The word "corruptly" as used in the section does not mean dishonestly. As the trial judge directed the jury in R v Smith, (1960) 2 Q.B. 423.

> "Corruptly" there means with the intention to corrupt. In other words, if I offer you a reward in order that you should do something which may help me, or if I am offering and hoping that the offer will induce you to act in the way which I want you to act, I am doing it "Corruptly".

This direction was approved on appeal by Lord Parker C.J. At page 429 of the report of R v Smith - above, Lord Parker said:-

> "The mischief aimed at by the Act, as the judge told the jury, was to prevent public officers or public servants being put in a position where they are subject to temptation."

We should mention here that the Corruption Prevention Act is divided into Part I and Part II. The Act in Part I deals primarily with public bodies, whereas Part II deals with the

"Prevention of Corruption of Agents". The term "Corruptly" is used in both Parts of the statute and ought to be given the same meaning wherever used in that Act.

It is inconceivable that the appellant who had earlier spurned a tempting proposition made by one Richard James, was not put on his enquiry when he was approached by K.C. Chin. Equally inconceivable is it that the appellant holding a position of Accountant with the Bank, at a salary of less than $200 per week, could be accepting as much as $500 per day from a customer who had promised to show favour to his bank, without himself succumbing to the temptation to show favour to his benefactor in whatever ways the benefactor indicated. The appellant's visits to Molynes Road and his acting as a messenger boy for K.C. Chin is itself some indication of the hold which the daily "gifts" had purchased.

We are of the view that there was evidence on which the Resident Magistrate could convict the appellant on Count 8.

On the question of venue jurisdiction, it having been stated in Count 8 of the indictment that the offence was committed in Kingston and St. Andrew, the provisions of section 12 of the Criminal Justice Act would save the count from being reversed on appeal for want of a proper venue whether or not there was evidence that Molynes Road was in the parish of St. Andrew.

Before parting with the appeal we desire to say that the infliction of a fine of $100 or one month's imprisonment on Count 8 bears no proper relation to the gravity of that offence. There being no appeal against sentence on Count 8, this Court is powerless to substitute a substantial term of imprisonment which the offence deserves.

In the event the appeal is allowed in relation to Counts 1-4 of the indictment. The convictions thereon are quashed and the sentences set aside. The appeal is dismissed in relation to Counts 7 and 8 on which the convictions and sentences are affirmed.