

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL APPEAL NO. 13/79

BEFORE: THE HON. MR. JUSTICE ZACCA, J.A.
THE HON. MR. JUSTICE MELVILLE, J.A.
THE HON. MR. JUSTICE CARBERRY, J.A.

REGINA v. RALPH DAVIS

Miss Sonia Jones for Appellant.

Mr. F. Smith and Mr. F.A. Parke for the Crown.

March 2, 6 and June 15, 1979.

ZACCA, J.A.

The appellant was charged with contravening Section 3(1) of the Exchange Control Act in that he being a person in the Island and not being an authorized dealer sold foreign currency amounting to 2,000 U.S. Dollars to one Tulsi Chatani, he not being an authorized dealer, for J\$4,000 without the permission of the Minister.

He pleaded guilty to the charge and the Resident Magistrate for the parish of St. Andrew inflicted a fine of \$8,100 or three months hard labour and also made an Order for the forfeiture of J\$4,000 which was found on the appellant, under paragraph 1(1) and 4(b) of Part II of the Fifth Schedule of the Exchange Control Act. The appellant has appealed against the Order for forfeiture of the J\$4,000.

The Court was informed that the 2,000 U.S. Dollars involved in this appellant's sale to Tulsi Chatani were forfeited when Tulsi Chatani pleaded guilty to a charge of buying the foreign currency from the appellant.

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For the appellant, Miss Jones submitted that there is no power under the Act to make an Order for forfeiture of the Jamaican Dollars found on him. On the other hand the Crown contended that not only the U.S. Dollars involved in the transaction but also the Jamaican Dollars could be forfeited.

Section 3(1) of the Exchange Control Act states:-

"Except with the permission of the Minister, no person, other than an authorized dealer, shall, in the Island, buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, any person other than an authorized dealer."

The creation of the offence and the penalty are to be found in Paragraph 1(1) and 4(b) of Part II of the Fifth Schedule of the Act which state:-

Paragraph 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 procures any other person to contravene any such restriction or requirement as aforesaid, shall be guilty of an offence punishable under this Act."

Sub-paragraph 4: - "A person who commits an offence punishable under this Part shall, subject to the provisions of this paragraph, be liable -
(a)
(b) on conviction on indictment, to imprisonment for not more than twelve months or to a fine or to both,
and where the offence is concerned with any currency, any securities, any gold, any goods, or any other property the court shall, subject to sub-paragraph (7) order the currency, securities, gold, goods or property to be forfeited."

It is to be observed that the words used in sub-paragraph

(4) are -

"where the offence is concerned with any currency" and not "where the currency is concerned with any offence."

If the words were in the latter form then it seems clear that the Jamaican Dollars could be forfeited as it would relate to or be concerned with the offence. See R. v. Menocal 1978 - 3 W.L.R.

602. However the offence is selling or buying foreign currency and therefore the offence is concerned with foreign currency.

There are various sections in the Exchange Control Act making it an offence to deal in certain ways with each of the classes of things listed in sub-paragraph 4. It would seem that if the offence charged had been the selling of gold instead of foreign currency, for Jamaican Dollars, then in order to forfeit the gold and the Jamaican Dollars the relevant words in sub-paragraph 4(b) would have to be read and construed in the following way: "and where the offence (the sale of gold) is concerned with any currency....., the Court shall order the gold and the currency to be forfeited." To construe the sub-paragraph in this way would be to import words into the Act. In our view a proper interpretation of the sub-paragraph would be "where the offence is concerned with any gold, the Court shall order the gold to be forfeited." In determining the issue one must ask the question: "what is the offence concerned with?" If it is concerned with the sale or buying of foreign currency, then it is only the foreign currency which can be forfeited. If it is concerned with gold then it is only the gold which can be forfeited. Had it been intended that not only the subject matter that makes the dealing illegal (- i.e. the foreign currency, gold etcetera) should be forfeited but also any consideration given in exchange for it, the section should have said so expressly.

We hold therefore that there is no power under sub-paragraph (4) to order the forfeiture of the Jamaican Dollars. To this extent the appeal will be allowed and the order for forfeiture of the 4,000 Jamaican Dollars vacated.