YEO v VICTORY

Supreme Court
Unsworth, C.J.
5 August 1970

Importation — when importation complete — Dangerous Drugs Ordinance. s.3.

On 3 August 1970, the appellant was convicted on his own plea of importing a dangerous drug, contrary to s.3 of the Dangerous Drugs Ordinance (No. 20 of 1966). He appealed against conviction on the ground that his plea was equivocal, as the importation had been completed before he came on the scene.

Held: Importation, in s.3 of the Dangerous Drugs Ordinance, is a continuing act and continues at least until the drug has been unloaded from a ship.

Note. The history of the appeal is as follows. On 7 August, the appellant gave notice of the appeal against sentence, giving as the ground of appeal that he, being unrepresented, was induced to plead guilty "under erroneous impressions as to my punishment." On 24 September, notice of motion was taken out for an order of certiorari to quash the conviction.

---

1 [1934] A.C. 252.

On 1 October, notice of appeal against conviction was given and an application was filed for leave to appeal out of time. On 5 October, the Chief Justice gave leave to appeal out of time and then heard together the appeals against conviction and sentence. He gave judgment on 14 October, dismissing the appeal against conviction and allowing in part the appeal against sentence. The application for certiorari was withdrawn. The judgment is reported only for the interpretation of the word "importation."

The Dangerous Drugs Ordinance was repealed and replaced by the Misuse of Drugs Ordinance, 1973 (No. 6 of 1973), s. 5 of which corresponds with s. 3 of the earlier ordinance.

Cases referred to in the judgment

R. v Tottenham Justices, ex p. Rubens [1970] 1 All E.R. 879.
Pons v Cole 1946 Misc. No. 18.
Leaper v Smith and Elliott (1721) Bunb. 79.
Canada Sugar Refining Co. v The Queen [1898] A.C. 735.

Appeal

This was an appeal against conviction and sentence passed by the magistrates' court on a charge of importing a dangerous drug.

A.B. Serfaty for the appellant.
J.T. Williams for the respondent.

14 October 1970: The following judgment was read—

This is an appeal against conviction and sentence by the appellant who was convicted on his own plea in the magistrates' court of importing Indian hemp, commonly known as marijuana, contrary to s. 3 of the Dangerous Drugs Ordinance and sentenced to six months imprisonment. The grounds of appeal against conviction are that the verdict should be set aside on the ground that the plea of guilty entered was equivocal in the light of the evidence before the court and the verdict is unsafe or unsatisfactory.

The facts of the case in so far as they are relevant to the purposes of this appeal are that on 2 August 1970, three persons, namely, Carter, Ryan and Sharp brought a quantity of marijuana from Tangier to Gibraltar in the Mons Calpe. The police as a result of information received went on board the Mons Calpe (apparently unknown to the three men) and treated the

bag of marijuana with anthracene powder. In the meantime, whilst the drug was still on board the Mons Calpe, Sharp and a man named Williamson met the appellant at the Piazza in Gibraltar and told him about the marijuana. They asked him to give them a lift to the ship and he agreed. The appellant remained in the car whilst the two men went on board to get the marijuana. The police later questioned the appellant who denied an allegation of complicity but on being examined it was found that there were signs of anthracene powder on his hands and clothes. He made a statement which was as follows:—

> "I was at the Piazza having a chat with a couple of friends when Mr. Sharp and his friend I believe his name is Williamson greeted me. Sharp asked me if I could take him to the wharf in my car to collect some stuff. I agreed and took him and his friend to the Mons Calpe. On arrival they got out and they climbed on board and came back. Williamson was carrying a plastic bag containing the stuff but I did not see if Sharp was carrying anything. Before Williamson got inside the car he dropped the satchet, and I picked it for him from inside my car's boot. We then drove to North Mole. We then turned back and went in the direction of the Mons Calpe and the two of them hid the stuff, in a Commer van. We then drove down and were picked up at Waterport by the Police."

It was argued on behalf of the appellant that he could not be convicted of the importation of the marijuana as the importation had in fact been completed before he came on the scene. In these circumstances it was submitted that the learned stipendiary magistrate should have refused to accept the plea of guilty after these circumstances had become apparent in accordance with the principles in *R. v Tottenham Justices, ex p. Rubens*[1]. In support of this counsel referred to the definitions of "Import" and "Gibraltar" in the Interpretation Ordinance and submitted that importation had been completed when the Mons Calpe arrived at the dock in Gibraltar.

Counsel for the Crown on the other hand submitted that the arrival of the Mons Calpe at the dock was not the end of importation as the goods must pass through the customs barrier.

The only authority referred to on the meaning of importation was the case of *Pons v. Cole* [2] where it was held that importation continued after goods had been landed from a ship. In that case it was argued that the expression "Gibraltar" should be defined in accordance with the Interpretation Ordinance but the learned judge held that it should be interpreted in accordance with a definition in the Revenue Ordinance which defined the term as meaning the City and Garrison of Gibraltar excluding the port and harbour thereof. I do not think that this case is conclusive either way in considering the present case as the ratio decidendi was based upon a definition of Gibraltar contained in the Revenue Ordinance which has now been repealed.

---

[1] [1970] 1 All E.R. 879. [2] 1946 Misc. No. 18.

I have considered two cases since the adjournment and given counsel the opportunity to comment on them. The first of these cases is *Leaper v Smith and Elliott* [1], where it was held on the facts of the case that an importation should be deemed to have taken place when a ship was within the limits of the port and before actual arrival. The use of the word "deemed" seems to me to imply that normally importation is not regarded as completed when a ship reaches territorial waters. The second case is the Privy Council decision in *Canada Sugar Refining Co. v The Queen* [2] where it was held that on a true construction of the Canadian Custom Tariff Act, 1894, the words "when such goods are imported into Canada" mean when the goods are landed. I think the case is helpful in considering the general principles involved though the actual decision depended upon the wording and construction of the particular Canadian statute.

I have given consideration to the purpose and scope and wording of the Dangerous Drugs Ordinance in the light of the arguments of learned counsel and the principles appearing from the cases mentioned above, and the conclusion which I have reached is that importation within the meaning of s. 3 of the Dangerous Drugs Ordinance is a continuing act and continues at least until the drugs concerned have been unloaded from a ship.

In the circumstances mentioned above I am of the view that the facts disclosed by the prosecution showed that the appellant had aided or abetted the importation before the act of importation had been completed and accordingly the learned magistrate did not err in accepting the plea of guilty entered by the appellant. There was, in my view, an unequivocal plea and the appeal against conviction is dismissed.