E. PINCHO v. R.

COURT OF APPEAL (Fieldsend, P. Huggins and Davis, JJ.A.):
September 16th, 1994

Sentencing—forfeiture of vessel—drug smuggling—under Drugs (Misuse) Ordinance, s.20 may order forfeiture of vessel used for drug offences without owner's knowledge if he authorized use for tobacco smuggling—close connection between offences justifies order to deter owners from facilitating for drug smuggling—no order if unaware of any or relevant illegality

Sentencing—forfeiture of vessel—drug smuggling—possible future misuse of vessel relevant to exercise of discretion to order forfeiture

Sentencing—forfeiture of vessel—drug smuggling—no forfeiture under Imports and Exports Ordinance, 1986, s.124, of vessel used for drugs offence—commission of offence under Ordinance required in all cases by s.124(a)

The Supreme Court ordered the forfeiture of the appellant's boat under s.20 of the Drugs (Misuse) Ordinance.

The appellant owned a speedboat which he had purchased for the purpose of smuggling tobacco. Since he was handicapped and unable to use it himself, he employed others to crew the boat and paid them from the proceeds of the smuggling. He was aware that smuggling was illegal and had continued the trade for six years.

The police seized the boat on its return from a smuggling trip during which, unknown to the appellant, it had been used to assist in the importation of 254 kg. of cannabis resin. The crew members were convicted of the importation of a controlled drug, possession of the same with intent to supply, and simple possession (see 1993–94 Gib LR *N*–22).

The Crown applied for an order for the forfeiture of the boat pursuant to s.20 of the Drugs (Misuse) Ordinance and s.124 of the Imports and Exports Ordinance, 1986. Despite the appellant's attempt to show cause why the boat should not be forfeited, the court ordered its forfeiture under s.20. It held that this was justified because (a) of the appellant's knowledge that the boat was used for the illegal purpose of tobacco smuggling; (b) it would remove from use a boat which might otherwise continue to be used for smuggling by the appellant or others; and (c) it would deter others from allowing their boats to be so used. The relative insignificance of tobacco smuggling by comparison with drug smuggling was not a reason to refuse forfeiture, as it was nevertheless an offence and

the case demonstrated that smuggling could lead to participation in more serious offences.

The court also held that for the purposes of s.124 of the Imports and Exports Ordinance, it was unnecessary that the vessel in question had been used for the commission of an offence under that Ordinance (listed in paragraph (a)), and it sufficed that the owner of the vessel had suspected that the vessel was to be used for an offence against the Ordinance, as required by para. (c). This was the result of an amendment in 1990.

On appeal the appellant submitted that (a) the trial judge had taken into account irrelevant matters in the exercise of his discretion, *i.e.* the future use to which the boat would be put by the appellant or a person to which it might be sold; (b) the court had disregarded relevant matters, *i.e.* (i) the appellant's ignorance of the fact that the boat would be used for drugs offences, and (ii) the relative insignificance of unlicensed exportation of tobacco compared with importing for supply a large quantity of cannabis; (c) the judge's assumption that forfeiture would have a deterrent effect in relation to the importation of drugs was unsupported by evidence; (d) the court had failed adequately to consider the effect of forfeiture on the appellant's livelihood; (e) the penalty was disproportionate to the appellant's conduct and fell outside the scope of the court's discretion as illustrated by the authorities; and (f) s.124 of the Imports and Exports Ordinance was to be construed as requiring the commission of an offence under the Ordinance (as envisaged by para. (a)) *and* either para (b) or (c) to be met.

Held, dismissing the appeal:

(1) The appellant had failed to show cause, on the balance of probabilities, why forfeiture should not be ordered. The court had properly exercised its discretion to forfeit under s.20(1) of the Drugs (Misuse) Ordinance, on the basis that he had known that the boat was to be used for the illegal purpose of tobacco smuggling. Although the court appeared to have accorded undue weight to the significance of tobacco smuggling in itself, it had properly taken into account that tobacco smuggling could lead to participation in the far more serious offence of drug smuggling. The case was to be distinguished from one in which the owner of the relevant vehicle or vessel had not been put on notice that it was to be used for any illegal activity or in which the illegal activity contemplated had no relevance to that actually committed. The well-known, close connection between tobacco smuggling and the importation of drugs justified the making of the order in this case (page 363, lines 8–39; page 364, lines 14–23; page 366, lines 20–45; page 367, lines 28–36).

(2) The court had also been entitled to consider the possible future use to which the boat might be put. The appellant had admitted that he purchased the boat for its suitability for tobacco smuggling, and he was therefore likely to continue to do so if permitted. Moreover, the present case had shown that the smuggling of drugs rather than tobacco was a real

possibility, whether the appellant was aware of it or not. The court had properly held that forfeiture would act as a deterrent to boat owners who might otherwise rely on their lack of specific knowledge and fail to take sufficient precautions to prevent drug smuggling. For the same reason, the forfeiture was not disproportionate as a sanction. In the circumstances, the forfeiture was reasonable (page 362, lines 22–42; page 364, line 24 – page 365, line 4; page 367, lines 1–14).

(3) Forfeiture could not have been ordered under s.124 of the Imports and Exports Ordinance, 1986, since the offences actually committed were not qualifying offences under the Ordinance for the purposes of para. (a) of that section. Despite the 1990 amendments, the paragraphs of s.124 were not independent of each other. As a matter of common sense, the conditions of para. (a) as well as para. (b) (that the vessel was owned by or in the control of the offender) or (c) (that the owner knew or suspected the vessel was to be used for a qualifying offence) must still be met, since "the offence" referred to in para. (b) was necessarily that mentioned in para. (a) (page 365, lines 11–36).

Cases cited:

(1) *R.* v. *Maidstone Crown Ct., ex p. Gill*, [1986] 1 W.L.R. 1405; [1987] 1 All E.R. 129, distinguished.

(2) *R.* v. *Ressa*, 1993–94 Gib LR *N*–24, considered.

(3) *R.* v. *St. Alban's Crown Ct., ex p. Cinnamond*, [1981] Q.B. 480; [1981] 1 All E.R. 802.

Legislation construed:

Drugs (Misuse) Ordinance (1984 Edition), s.20(1):

> "Subject to subsection (2) the court by or before which a person is convicted of an offence against this Ordinance may order anything shown to the satisfaction of the court to relate to the offence, to be forfeited and either destroyed or dealt with in such other manner as the court may order."

s.20(2): "The court shall not order anything to be forfeited under this section, where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made."

Imports and Exports Ordinance, 1986, s.91(1):

> "No person shall, without the approval of the Collector, export or attempt to export tobacco from any place in Gibraltar except from the public quay at Waterport."

s.124, as amended by Ordinance No. 1 of 1990:

> "The court may order that any ship … be forfeited to the Crown if—
>
> (a) it was employed in the commission of an offence contrary to section …

(b) it was, at the time of the offence in the ownership or under the control of the offender, or one of the offenders where there are more than one; or
(c) it is shown to the satisfaction of the court that the owner of the ship … knew or suspected or had reason to suspect that the ship … was being employed in the commission of an offence against this Ordinance."

P. McDonnell for the appellant;
A.A. Trinidad, Crown Counsel, for the Crown.

DAVIS, J.A.: This is an appeal from the decision of Harwood, A.J. given on June 24th, 1994, ordering that the appellant's boat No. G865 be forfeited, pursuant to s.20(1) of the Drugs (Misuse) Ordinance. The facts relating to this appeal are set out in the learned judge's ruling and are as follows:

The appellant, who is handicapped and has been confined to a wheelchair for many years, bought the boat which is the subject of this appeal for £25,000 in December 1992 to replace an inferior craft which he has since sold. For approximately the past six years the appellant has, by his own admission, been in the business of smuggling tobacco. He bought the new boat for the purpose of this business. A licence is required for the exportation of tobacco from Gibraltar. The appellant has stated in evidence that he has not held a licence to export tobacco from Gibraltar for the past five to six years. He admits that he has been exporting tobacco illegally during this period for the purposes of his business of smuggling tobacco into Morocco and Spain.

Because he is handicapped, the appellant has never been able to use his boat himself. He therefore employed others to operate the boat and he paid them from the proceeds of each smuggling expedition. In evidence the appellant stated that his boat did two to three "runs" a week unless the weather was bad, earning about £900 per run. From this he paid the crew of the boat, a lorry driver and fuel costs. He said it was a profitable business.

On April 26th, 1993 the appellant and his assistants made arrangements to smuggle 25 boxes of Marlboro cigarettes to Ceuta using the boat. It was manned that night by Francisco Retamero Britto and Jose Luis Pincho. On the return journey early in the morning of April 27th, these two men used the boat to help a third man, who was in trouble with his boat, to transport 254 kg. of cannabis resin comprised in eight bales, from somewhere at sea to a cove on the east coast of Gibraltar, where the bales were off-loaded into shallow water for later collection.

The man to whom this assistance was given has perished at sea and has never stood trial, but Britto and Pincho, the crew of the appellant's boat, have been tried and convicted of three offences relating to their use of the boat, namely (a) unlawful importation of a controlled drug, contrary to s.15 of the Imports and Exports Ordinance as read with s.5(1) of the

Drugs (Misuse) Ordinance; (b) possession of dangerous drugs, contrary to s.7 of the Drugs (Misuse) Ordinance; and (c) possession of dangerous drugs with intent to supply, contrary to ss. 6(1) and 7(3) of the Drugs (Misuse) Ordinance. They were each sentenced to prison terms totalling four years and nine months.

At the conclusion of the trial the Crown applied for the boat used in the commission of the offences to be forfeited under s.20 of the Drugs (Misuse) Ordinance. This provides as follows:

> "(1) Subject to subsection (2) the court by or before which a person is convicted of an offence against this Ordinance may order anything shown to the satisfaction of the court to relate to the offence, to be forfeited and either destroyed or dealt with in such other manner as the court may order."

Section 20(2) provides that the court shall not order anything to be forfeited unless the owner of the thing, who applies to be heard, is first given an opportunity to show cause why an order of forfeiture should not be made.

Accordingly the appellant was given notice to show cause. He gave evidence, and the learned judge was addressed by Mr. McDonnell, counsel for the appellant, and by Crown Counsel, Mr. Trinidad.

It was common ground and the learned judge found that the appellant's boat, for the purposes of s.20 of the Drugs (Misuse) Ordinance, "related" to the offences of which Britto and Pincho were convicted and that it had been used on the night when those offences were committed and, on the appellant's own admission, on many previous occasions since its purchase in December 1992 in the commission of offences contrary to s.91 of the Imports and Exports Ordinance, 1986. He found, subject to the legal submissions made to him, that all the statutory ingredients for a forfeiture order existed and that it remained for him to decide whether, as a matter of the exercise of the court's discretion, an order for forfeiture should be made.

Having considered Mr. McDonnell's submissions to him the learned judge found that cause had not been shown to his satisfaction why, on the balance of probabilities, an order for forfeiture should not be made. He concluded:

> "Furthermore, an order of forfeiture will remove from circulation a boat of a type evidently known for its use for illegal purposes and best suited for fast travel between Gibraltar and the coast of Morocco. It will avoid all risk of involvement by that boat in the commission of any further offence, and it should act as a deterrent to other owners and users of similar boats against risking their involvement at least in the conveyance of drugs."

Accordingly, he ordered that the appellant's boat be forfeited.

The appellant appeals against this order on three interconnected grounds:

1. The decision was in breach of the *Wednesbury* principle, in that the learned judge erred by taking into account matters that he should not have taken into account and by disregarding matters that he should have taken into account.

2.(a) There was no evidence or grounds before the learned judge to justify the finding that a forfeiture order in this instance could have a deterrent effect in relation to the importation of drugs.

(b) There was no evidence to counteract counsel's arguments on proportionality and the impact that a forfeiture order would have on the appellant's livelihood.

3. The order for forfeiture made in this case was far outside the normal discretionary limits for such an order made by the courts in other cases involving similar offences and was so manifestly excessive as to comprise an error of law. Alternatively, it was so harsh and oppressive that no reasonable judge, properly directing himself, would have made it.

In his submissions to us, Mr. McDonnell's starting point was that the appellant had no prior knowledge that his boat was to be used by his crew, Pincho and Britto, on April 27th, 1993 for importing drugs into Gibraltar, and that he had not himself been convicted of any offence relating to the boat or otherwise in respect of the events of April 26th–27th.

On Ground 1 of this appeal, Mr. McDonnell submitted that the learned judge had erred in the exercise of his discretion in taking into consideration as a reason for ordering forfeiture the potential use of the boat in future, either by the appellant or anyone else to whom the boat might be sold.

In our view there is no merit in this argument. It was clearly the view of the learned judge, and it appears to be equally clear to us, that the activity of smuggling tobacco engaged in by the appellant in the waters surrounding Gibraltar is likely to extend to the illegal smuggling of drugs into Gibraltar in contravention of the Drugs (Misuse) Ordinance, as did in fact happen in relation to the appellant's boat on April 27th, 1993.

Whether the boat was sold, as the appellant said he intended if the boat should be released to him, or retained by him (as the learned judge believed to be more likely from the appellant's unconvincing demeanour in giving evidence), it appears to us that the use to which this boat was likely to be put in future was a matter which the learned judge was perfectly entitled to take into consideration in the exercise of his discretion. This was particularly so bearing in mind that the appellant said that he had bought the boat for the purposes of his tobacco smuggling business, as being the most appropriate boat for crossing the Straits at speed, even in rough waters.

As for the second limb of Ground 1, Mr. McDonnell went on to submit that the learned judge had erred in failing to take into consideration in the exercise of his discretion (a) the appellant's ignorance that his boat would

be used for a drugs offence, and (b) the relative insignificance of an offence of exporting tobacco without a licence contrary to the Imports and Exports Ordinance, 1986 when compared with an offence of possession, possession with intent to supply, or importation, of 254 kg. of cannabis resin contrary to the Drugs (Misuse) Ordinance and the relevant maximum penalties for those offences and the sentences imposed for those offences by the courts.

Here again it appears to us that there is no merit in Mr. McDonnell's argument. The learned judge accepted that the appellant had no knowledge that his boat was to be used in the commission of a drugs offence on the night of April 26th–27th, 1993. On the other hand, it was perfectly clear, on the appellant's own admission, that he knew his boat was to be used that night for the illegal activity of exporting tobacco from Gibraltar for the purpose of smuggling it to Ceuta.

Reference was made in this context to the case of *R.* v. *Maidstone Crown Ct., ex p. Gill* (1). In that case Dara Singh Gill applied for judicial review of the order of the Maidstone Crown Court that his two cars be forfeited following the conviction of his son for a drugs offence. It was held that no order of forfeiture should have been made in respect of one of the cars, which had not been used in the offence, and that as regards the other car, which *had* been used in the offence, no order of forfeiture should have been made because the applicant had had no reason to suspect that his son would use the car to transport prohibited drugs, and the order would not act as any form of deterrent to the son or to others.

Towards the close of his judgment, Lord Lane, C.J. said ([1987] 1 All E.R. at 134):

> "It may be that there will be cases where a man who lends a motor car should have been put on notice or on suspicion that the car was going to be used for some illegal purpose, and in those cases it may be perfectly proper for a judge to make orders of forfeiture in order to mark his disapproval of the failure to take the necessary precautions."

Unlike the applicant in *Gill*, who was found to have no reason to suspect that one of his cars was to be used by his son to transport prohibited drugs or for any other illegal purpose, the appellant knew perfectly well, on sending his boat out on the night of April 26th, 1993, that it was to be used for an illegal purpose, namely, the illegal export of tobacco for the purpose of smuggling, a not dissimilar purpose from the smuggling of drugs.

Mr. McDonnell points out that the illegal purpose in this case was the commission of the relatively minor offence of contravening s.91 of the Imports and Exports Ordinance, 1986, with which the appellant was never charged. In any case, the offence is usually dealt with in the magistrates' court where, although the maximum penalty for the offence is a fine of £2,000, a fine of £200 is normally imposed for a first offence.

In dealing with Mr. McDonnell's submission along similar lines to that made to us, the learned judge said:

> "Mr. McDonnell suggested I should have regard to the 'relative insignificance of the illegality of tobacco smuggling' as a consideration for not ordering forfeiture. That I decline to do for two principal reasons: In the first place, so long as the law of Gibraltar provides that it shall be an offence, it is not for this court to ascribe to it, generically, any degree of levity or other lack of due weight. That is a matter for Parliament. Secondly, the case giving rise to this application has illustrated with stark clarity the potential danger, hitherto perhaps not appreciated as fully as it should be, that tobacco smuggling of its very nature can—even unwittingly—involve its participants in offences of far greater seriousness."

Although the learned judge appears in this passage to give undue weight to the offence of illegal exportation of tobacco, as Mr. McDonnell suggests, the nub of this portion of the learned judge's decision is to be found in the second reason set out above—that tobacco smuggling, of its very nature, can involve its participants in offences of far greater seriousness. It is in this respect that we think the learned judge was entirely justified in taking into consideration, in coming to his decision to order forfeiture of the appellant's boat, the fact that the boat was being used in smuggling tobacco (an offence contrary to s.91 of the Imports and Exports Ordinance, 1986) and that the appellant knew this.

Accordingly, we see no merit in Mr. McDonnell's submissions on Ground 2 of this appeal (a) that the order for forfeiture of the boat could have any deterrent effect in relation to the importation of drugs; and (b) that such an order was quite out of proportion as a sanction in the present case and in the effect it would have on the appellant's livelihood.

We agree with the learned judge in the view expressed at the end of his ruling that forfeiture of the appellant's boat should act as a deterrent to other owners and users of boats engaged in tobacco smuggling from allowing their boats to be used in the conveyance of drugs—as occurred in this case—and in these circumstances we do not consider that an order of forfeiture in this case was unreasonable as being disproportionate.

With regard to Ground 3 of this appeal, Mr. McDonnell, in pursuance of his submission that forfeiture of the appellant's boat was so unreasonable and disproportionate in the circumstances of this case as to constitute an error in law, referred us to a number of cases by way of analogy and comparison. While we are grateful for his assistance in this respect, we do not consider that any of the cases cited are particularly helpful.

It cannot be said, in our view, that the order for forfeiture of the boat made in this case was either so manifestly excessive as to constitute an error in law or so harsh and oppressive as to be unreasonable: see *R.* v. *St. Alban's Crown Ct., ex p. Cinnamond* (3) ([1981] Q.B. at 484, *per* Donaldson, L.J.).

In our view, there is no merit in this appeal and we see no reason to interfere in the exercise by the learned judge of his discretion under s.20(1) of the Drugs (Misuse) Ordinance to order the forfeiture of the appellant's boat. This appeal is accordingly dismissed.

There remains, however, one matter of interpretation on which we think it may be helpful to express our view. From the opening paragraph of the learned judge's ruling in this matter it appears that the Crown applied for the appellant's boat to be forfeited under the provisions not only of s.20(1) of the Drugs (Misuse) Ordinance, but also of s.124 of the Imports and Exports Ordinance, 1986.

Had we reached a different decision as to the exercise of the learned judge's discretion under s.20 of the Drugs (Misuse) Ordinance, it would have been necessary to consider whether we should nevertheless have made an order for forfeiture under s.124 of the Imports and Exports Ordinance, 1986. Since there is obviously uncertainty about the true construction of that section, and the matter has been fully argued before us, it may be useful to give an indication of our view on it, which is as follows.

Prior to the amendment of s.124(a) by Ordinance No. 1 of 1990 it was, we think, the manifest intention of the legislature that forfeiture should be available under that section only where a ship, aircraft or vehicle was employed in the commission of an offence against one of the sections listed in that paragraph. Once this pre-condition was satisfied the court had to be satisfied, in addition, that the requirements of either para. (b) or (c) were met. If, as was suggested, para. (c) was always intended to stand on its own, the requirements of paras. (a) and (b) would have been combined in a single paragraph.

It was then argued that by replacing the semicolon and the word "and" at the end of para. (a), the amending statute completely altered the scheme of the section and that para. (c) now stands on its own. If para. (c) is to be read on its own, so must be para. (b), but that cannot be right because para. (b) refers to "the offence" and that must relate back to para. (a) in order to make any sense at all.

In our view, the intention of the 1990 amendment was not to change the scheme of the section, so that the requirements of para. (a) must still be satisfied in every case.

FIELDSEND, P.: I agree, and I would only add a few words on the case of *R.* v. *Maidstone Crown Ct., ex p. Gill* (1), to which the learned judge was referred. There the owner of a car had lent it to his son who used it to deliver a kilo of heroin. The car was a family car, used for social and domestic purposes, and the owner had no idea that his son would use it for anything other than the usual purposes which were untainted by any illegality. A forfeiture order was made on the conviction of the son.

The order was set aside on appeal on the basis that the owner had had no knowledge of or suspicion about the car being used for carrying drugs or for anything other than the usual purposes. It is, however, the *obiter dictum* ([1987] 1 All E.R. at 134) that gave rise to some arguments before us. There the learned Lord Chief Justice said:

> "It may be that there will be cases where a man who lends a motor car should have been put on notice or on suspicion that the car was going to be used for some illegal purpose, and in those cases it may be perfectly proper for a judge to make orders of forfeiture *in order to mark his disapproval of the failure to take the necessary precautions*." [Emphasis supplied.]

This passage was cited without the inclusion of the last 14 words (in emphasis) by *Bucknell & Ghodse on Misuse of Drugs*, Supplement No. 1, para. 17.05, at 19 (1986), as authority for the proposition that—

> "the Divisional Court appears to be saying that the discretion should be exercised in favour of an applicant owner unless he had some reason to suppose that the subject was going to be used for an illegal purpose (but not necessarily that it was going to be used in connection with a drugs offence)."

It is a fallacy to say that the discretion should be exercised against the applicant owner if he knew it was going to be used for *any* illegal purpose, as Mr. Trinidad sought to argue. For example, if a car were lent to another person for the unlicensed carriage for hire of another, that would not of itself be a reason for forfeiture if the borrower used it to carry drugs or if a passenger for hire carried drugs in it in his briefcase. Nevertheless, the nature of the known illegality is certainly relevant.

The main reason given by the Crown Court for making the forfeiture order was to deter other drug dealers from using cars other than their own to carry their wares. This the Divisional Court found—and rightly so—not to be a tenable reason.

But the facts in the present appeal are far from the facts in the *Gill* case (1). Here, the appellant was running an illegal export and import business—illegally exporting tobacco from Gibraltar and smuggling it into another country—and on April 26th–27th, specifically sending his employees to do this. It is common knowledge and well known to the court from the cases that come before it that there is a considerable drug trade from North Africa to Gibraltar operated by persons with launches such as the appellant's. It is also common knowledge from the same source that there is a close connection between tobacco smuggling and the importation of drugs. The temptations of great returns from drug dealing and the common graduation from tobacco to drugs is also well known.

There is a close parallel between the two types of illegality, and a person who runs a business such as the appellant's must be well aware of the dangers of tobacco smugglers succumbing to the temptation of returning to Gibraltar time after time with cannabis as ballast.

Even accepting Mr. McDonnell's argument that the learned judge was wrong in treating tobacco exporting as an offence comparable in seriousness to drug importation, he was clearly right in saying that the facts before him showed with stark clarity that, by its nature, tobacco smuggling can so easily involve participants in far more serious drug offences.

On the question of deterrence, too, the situation in the present appeal is quite different from that in *Gill's case*. Here, a forfeiture order will act as a deterrent to anyone who, whilst operating an illegal export business, feels he can rely on the fact that he had no knowledge or even reasonable suspicion that his launch might be used by his employees to run drugs. It will force him to take the strictest measures to ensure that this will not happen—something of which there is, on the evidence of the appellant, nothing to show that he tried to do.

HUGGINS, J.A.: I agree. I had initial doubts whether it was right, in relation to an application under s.20 of the Drugs (Misuse) Ordinance, to have regard to the fact that the boat was, to the knowledge of the owner, being used for a purpose which was illegal by virtue of the provisions of another Ordinance. In *R.* v. *Ressa* (2), where the owners of a fast launch were convicted of operating it without a licence contrary to s.9 of the Fast Launches (Control) Ordinance, 1987, Kneller, C.J., upon an application for forfeiture under s.12 of that Ordinance, clearly did not take into account the fact that the launch was being used for exporting tobacco, although he was told of it and it would seem that such export was at that time illegal because all relevant licences under the Imports and Exports Ordinance, 1986 had been withdrawn.

The issue is one of relevance. Would the fact that, on the judge's findings, the owner of the boat intended to continue using it for a purpose which was illegal under the Imports and Exports Ordinance make it more likely that an offence might be committed under the Drugs (Misuse) Ordinance? If so, the likelihood of the commission of the offence which was in fact committed should have been in the contemplation of the owner. It was not directly relevant that offences were intended in relation to tobacco: It was the likelihood that offences would be committed in relation to drugs which was material.

Having regard to the circumstances prevailing in Gibraltar, although not to "the nature of the boat," I think the learned judge was justified in the view he took.

Appeal dismissed.
