

**COMMONWEALTH OF DOMINICA**

**IN THE COURT APPEAL**

**MAGISTERIAL CRIMINAL APPEAL NO. 6 OF 1996**

**BETWEEN:**

**JACKY EUGENE**

**APPELLANT**

**V**

**THE POLICE**

**RESPONDENT**

**BEFORE:**

**The Hon. Mr. C.M. Dennis Byron**

**Chief Justice (Ag.)**

**The Hon. Mr. Satrohan Singh**

**Justice of Appeal**

**The Hon. Mr. Albert Matthew**

**Justice of Appeal (Ag.)**

**Appearances:**

**Mrs. Dyer for the Appellant**

**Ms. Baptista for the Respondent**

**1996: September 17th; 18th**

**JUDGMENT**

**DENNIS BYRON, C.J. (Ag.)**

The appellant, being the Master of a vessel namely "MV YANCKY", was convicted, by His Worship Magistrate Moise, for failing to stop when required to do so by Customs Officer Albert Bethel contrary to section 75(1) & (4) of the Customs (Control & Management) Act Cap 69:01 of the Dominica Revised Laws of 1990. The learned Magistrate ordered that the appellant pay \$1000.00 immediately or in default two months imprisonment; that the boat and its tackling be forfeited and that luggage found on the boat as well as money found on the person of passengers on the boat be forfeited.

At the hearing of this appeal a number of points which negated the jurisdiction of the Court to make the orders in these proceedings were raised by the appellant and conceded by the respondent.

1. There was no evidence that the commencement or conduct of these proceedings were authorized by the Comptroller of Customs as required by law.

Section 103(1) of the Act prescribes:

"Subject to the powers of the Director of Prosecutions under the Constitution and to subsection (3), no proceedings for an offence under any customs enactment, or for condemnation

under the Sixth Schedule, shall be commenced except -

- (a) by order of the Comptroller; and
- (b) in the name of an officer."

The record revealed that the proceedings were commenced in the name of customs officer Adolphus David, but, there was no indication whatsoever that they were commenced by order of the Comptroller of Customs as required by section 103(1) (a).

Section 106 reads

"Any proceedings before a Magistrate's Court in relation to an assigned matter may be conducted by an officer or any other person authorized in that behalf by the Comptroller."

The proceedings, which were an assigned matter, were conducted by Inspector Albert, but there was no indication that the Comptroller had authorized him or anyone else to conduct them. In his reasons the learned Magistrate had said that the Customs Department had authorized the police to lead the prosecution of this matter. This clearly indicated a misunderstanding of the law as the authority was conferred by the statute on the Comptroller and on no one else. There is no technical requirement as proof of the Comptroller's authorization is made very simply by a statement on oath as provided by section 111.

"111(1) An averment in any proceedings under a customs enactment-

- (a) that those proceedings were instituted by order of the Comptroller; ...
- (b) that any person is or was appointed or authorized by the Comptroller to discharge, or was engaged by the orders or writs of the concurrence of the Comptroller in the discharge of, any duty;...

shall, until the contrary is proved, be sufficient evidence of the matter in question."

It was the duty of the learned Magistrate to satisfy himself that the Comptroller had authorized the commencement and conduct of these proceedings. As such authorization was a statutory condition precedent, its absence invalidates the proceedings.

2. The Magistrate heard this case together with a number of cases brought by Police Constable Bardouille against this appellant and 6 other persons for offences against the Dangerous Drugs legislation. Section 22 of the Magistrate's Code of Procedure Cap 4:20 of the revised Laws of Dominica 1990 reads:

"Every complaint shall be for one matter only and not for two or more matters. But it shall be lawful for the prosecutor to lay one or more complaints against the same person at the same time. And the Magistrate hearing the complaint may, where he considers it necessary, deal with the complaints either together or separately."

This section makes provision for the Magistrate to have a discretion to hear more than one complaint at the same time. However the discretion seems to be limited to cases brought by the same complainant, and does not empower the Magistrate to hear cases brought by different complainants together. It was,

therefore, contrary to the Magistrate's Code of Procedure for the case brought by Customs officer David to be heard together with the cases brought by Police Constable Bardouille.

3. The Magistrate had no jurisdiction to order forfeiture in the proceedings before him. Section 8 of the Sixth Schedule prescribes that separate civil proceedings are required for condemnation in forfeiture.


"8. Proceedings for the condemnation of any thing shall be civil proceedings ~~made~~ may be instituted

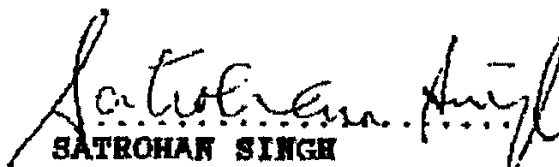
(a) in any Magistrate's Court having jurisdiction in the place ....

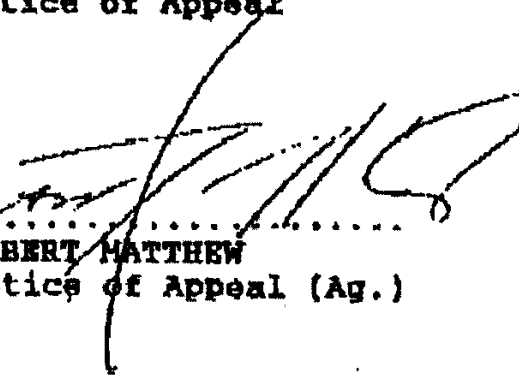
(b) in the High Court."

The legislation separates the criminal sanction for the offence and the forfeiture of goods that are seized. In order for goods seized under the power of any customs enactment to be condemned in forfeiture separate civil proceedings must be instituted in accordance with the provisions of the sixth schedule. The learned Magistrate therefore did not have jurisdiction to order the forfeiture of anything in these criminal proceedings. Further the luggage and money found on the persons of the passengers were not liable to forfeiture under section 75 of the Act as they were not connected with the offence for which the appellant was charged. These were exhibits in the cases brought by P.C. Bardouille and had no connection with this offence.

In the circumstances we have to accept that the learned Magistrate exceeded his jurisdiction and the proceedings were invalid. The conviction, sentence and orders for forfeiture must be set aside.

  
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C.M. DENNIS BYRON  
Chief Justice (Ag.)

  
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SATOHAN SINGH  
Justice of Appeal

  
.....  
ALBERT MATTHEW  
Justice of Appeal (Ag.)