

STATE (O'REILLY) v DELAP

✓ 120

THE HIGH COURT

1985 No. 398 S.S.

BETWEEN

THE STATE (AT THE PROSECUTION OF BRENDAN O'REILLY)

PROSECUTOR

AND

DISTRICT JUSTICE SEAN DELAP

RESPONDENT

Judgment of Gannon J. delivered the 20th December, 1985.

The prosecutor Brendan O'Reilly was convicted by the respondent District Justice Sean Delap in the District Court of the offence of driving a motor vehicle in a public place without insurance and a fine of £350 was imposed. On the 15th of July 1985 the prosecutor obtained from D'Arcy J. a Conditional Order of Certiorari directed to the respondent to send before this Court for the purpose of being quashed the conviction and order and all records and entries relating thereto on the following grounds:-

- "(1) that the conviction is bad on its face in that the penalty which the respondent purported to impose is in excess of that provided for in the Road Traffic Acts 1961 and 1968 and accordingly made without jurisdiction and contrary to natural justice;
- (2) that the said penalty is in excess of the maximum penalty prescribed and set out in the summons;
- (3) that the said order is bad and misleading on its face being uncertain as to the penalty imposed."

Cause was shown by the respondent by notice dated the 2nd of August, 1985 in the following terms:-

- "1. The order of the respondent is good and valid in law and made within jurisdiction.
- 2. (a) It is denied that the conviction is bad on its face in that the penalty which the respondent purported to impose is in excess of that provided for in the Road Traffic Acts 1961 and 1968 and accordingly made without jurisdiction and contrary to natural justice.
 (b) The said conviction and sentence was made in accordance with law being the Road Traffic Act 1961, Road Traffic Act 1968 and Road Traffic (Amendment) Act 1984 and accordingly was made within jurisdiction and in accordance with natural justice.
- 3. The omission of reference to the Road Traffic (Amendment) Act 1984 and its penalty on the summons does not affect the jurisdiction of the respondent herein to apply the law of the land to the prosecutor.
- 4. It is denied that the said order is bad and/or misleading on its face and it is denied that the order is uncertain as to the penalty imposed."

The prosecutor now applies to this Court for an order making absolute the Conditional Order granted by D'Arcy J. notwithstanding cause shown.

The order to which exception is taken and which is sent forward to this Court was made by District Justice Delap on the 1st of July, 1985 and is in a type written form with blanks which were completed by typing in the name of the prosecutor as defendant and his address and the date of the hearing in the District Court and sets

out the complaint in the same words as those used on the summons for the attendance of the prosecutor in Court. It does not however set out the following concluding words in the summons namely:-

"Contrary to the form of the statute in such case made and provided maximum penalty six months imprisonment. £100 fine. Disqualification. Endorsement."

The curial part of the order follows in the following words:-

"And I did adjudge that the said defendant be convicted of the said offence and be imprisoned in the Mountjoy Prison in said district for the period of _____ and pay for penalty the sum of £350 within 3 months and in default of payment of the said sum within the said period that he be imprisoned in the Mountjoy Prison in the said District for the period of 6 months unless the said sum be sooner paid; and that he be disqualified for holding a driving licence for the period of _____ and that particulars of the said conviction be endorsed on the driving licence (if any) held by the defendant."

The following words in the above portion of the order are stroked out, namely, the words "in said" following the reference to Mountjoy Prison where it first appears and the words "and that he be disqualified for holding a driving licence for the period of _____ and that". The offence of which he was convicted is created by section 56 (1) of the Road Traffic Act 1961 being the first section of Part VI of that Act. By subsection (3) of section 56 the penalty is prescribed in the following terms:-

"Where a person contravenes subsection (1) of this section, he and, if he is not the owner of the vehicle, such owner shall each be guilty of an offence and shall be liable on

summary conviction to a fine not exceeding one hundred pounds or, at the discretion of the court, to imprisonment for any term not exceeding six months or to both such fine and such imprisonment."

The amendment to that section effected by section 53 of the Road Traffic Act of 1968 does not affect the offence charged nor the provisions for penalty. The Road Traffic (Amendment) Act No. 16 of 1984 is an Act entitled "an Act to provide for increased penalties in respect of certain offences under the Road Traffic Acts 1961 to 1978 and for certain other matters relating to road traffic". By section 3 of that Act the penalties prescribed in section 56 (3) of the 1961 Act are increased by the substitution of a fine not exceeding £1,000 for the fine of £100 imposed by the 1961 Act. It would seem therefore that so far as the prosecutor is concerned with reference to the offence with which he was charged and of which he was convicted the only amendments to the Road Traffic Acts 1961 and 1968 which are of relevance is the amendment of subsection (3) of section 56 of the 1961 Act by the increase of the amount of penalty by way of fine.

The certified copy of the order of the respondent District Justice furnished to this Court for the purpose of these proceedings by the Chief Clerk of the District Court in accordance with the rules of the District Court appears to be a form so prepared as to be available for general use subject to amendment to accord with the facts of particular cases. The copy furnished indicates that some amendment was effected for the purpose of deleting a reference to imprisonment and the disqualification for driving. The deletion attempted with reference to imprisonment is incomplete and the blanks for particularity are unfilled. It is by reason of these matters that one of the grounds upon which it is sought to quash

this order is stated that the order is bad and misleading as being uncertain as to the penalty imposed. I think that in this incomplete form and the partial deletion it is sufficiently clear that it is not intended by this order to impose any punishment of imprisonment and consequently I would not regard this ground as being established.

In relation to the other two grounds I am of opinion that cause shown must be disallowed, as it is not sufficient that the order merely conforms to the limitations of jurisdiction when it is inaccurate in showing jurisdiction on its face. That the order must show jurisdiction has been declared a requisite of a valid order in the judgments of the High Court and of the Supreme Court in the State (Cunningham) -v- O'Flonn and others 1960 I.R. 198. In the course of delivering his judgment with which all the other members of the Supreme Court agreed O'Dalaigh J. says as reported at page 215 and 216 as follows:-

"The learned President in his judgment in the present case accepted it as well settled that at common law a justice's conviction in respect of an offence created by statute must show that the matters charged do constitute a criminal offence by referring to the statute which makes them such or at least to the fact that there is such a statute. What the President says is this:-

"The District Court is, of course, a statutory court unknown to the common law; and the offences in question are likewise the creation of statute and unknown to the common law. The prosecutor invokes the common law rule, which is undisputed, that any conviction by such a court of an offence unknown to the common law must show

jurisdiction, and must show that the matters charged do constitute a criminal offence, by referring to the statute which makes them such, or at least to the fact that there is such a statute."

The District Court is a Court of limited local jurisdiction established by the legislature pursuant to the provisions of the Constitution, Article 34. 3. 4^o. The orders of the District Court as a matter of record should be seen to be in accordance with the jurisdiction of the Court. If one of the limitations of jurisdiction relates to the range of punishment within limits prescribed by statute the order of the Court prescribing a punishment must be seen to be within such limit. The order of the District Court of conviction of an offence created by statute must not only show that the offence was a statutory offence but also that the punishment on conviction is within the limitation imposed by the statute. While the use of the phrase "contrary to the statute in such case made and provided" might suffice when the wording of the statute is followed an inaccurate or incorrect designation of the statute would constitute a bad or erroneous record. In the order made by the respondent the statement of jurisdiction is inaccurate and incomplete and consequently bad on its face.

Obviously the error on the order was due to some want of care in drawing up the order rather than in the pronouncement in Court. However, the conviction and sentence are matters of record and consequently if wrong an order of certiorari should follow as a matter of course, there being no room for the exercise of judicial discretion in relation to certiorari. See the State (Vozza) -v- O'Floinn and Others 1957 I.R. 227.

It has been held by the Supreme Court in the State (de Burca) -

O'hUadhaigh 1976 I.R. 85 that the conviction and sentence are not severable. In that case the District Court order related only to sentence in respect of which the entry was mistaken and the order was bad and was quashed on certiorari. Although the order was expressed to relate only to sentence the effect of the quashing of the order was that the conviction also was quashed. However, fresh proceedings could be brought. In the result I am of opinion that the conditional order in this case must be affirmed and made absolute and cause shown disallowed.

S.G.
20/12/85