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6/11/62

34/1962

1.

IN THE PRIVY COUNCIL

No. 1 of 1962

ON APPEAL

FROM THE HIGH COURT OF THE STATE OF SINGAPORE

B E T W E E N :

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

LIM CHIN AIK alias CHIN YAP alias
LIM HIN LEONG alias TWA KO AIK
alias LIM CHIN I alias LIM KIM
YAP alias LAM KAM IEK .. Appellant

- and -

68275 THE QUEEN Respondent

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CASE FOR THE APPELLANT

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(1) This is an Appeal by Special Leave to Appeal from an Order of the High Court of the State of Singapore, dated the 24th February 1960, dismissing the Appellant's appeal against his conviction by the Magistrate's Court of Singapore, dated the 17th August 1959, for an offence under the Immigration Ordinance.

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(2) The principal issue which arises in this appeal is whether on a proper construction of the Immigration Ordinance (C.102), where a prohibition order was made under Section 9 thereof prohibiting the entry into Singapore of the Appellant, where the Appellant remained in Singapore after the making of the order, but where there was no evidence of the order having been served on the Appellant or brought to his notice, the Appellant was rightly convicted of an offence under Section 6(2) of the said Ordinance.

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(3) The Immigration Ordinance as amended by Ordinance No. 22 of 1959 provides as follows :-

"S.6 (2): It shall not be lawful for any person other than a citizen of Singapore to enter the Colony from the Federation or having entered the Colony from the Federation to remain in the Colony if ... (b) such person has been prohibited by order made under S.9

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of this Ordinance from entering the Colony.

(3): Any person who contravenes the provisions of subsection (1) or (2) of this section shall be guilty of an offence against this Ordinance.

S.9 (1): The Minister may by order -

(a) where he deems it expedient to do so in the interests of public security or by reason of any economic industrial social educational or other conditions in Malaya (i) prohibit either for a stated period or permanently the entry or re-entry into the Colony of any person or class of persons ...

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S.57: Any person guilty of an offence against this Ordinance for which no special penalty is provided shall be liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand dollars or to both such imprisonment and fine ... "

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p.3, 1.1

(4) The charge against the Appellant was that having entered Singapore from the Federation of Malaya in May 1959 he did remain therein whilst prohibited by the Minister, under Section 9 of the Immigration Ordinance, from entering Singapore and thereby contravened Section 6(2), an offence under Section 6(3), punishable under Section 57 of the Ordinance.

p.4, 11.18-21

(5) Evidence was called by the prosecution that the Appellant was arrested on the 29th June 1959 at 46 Kandahar Street, Singapore. On the 2nd April 1959 an application made on his behalf for an entry permit for entry into Singapore had been refused. On the 28th May 1959 a prohibition order had been signed by the Minister under Section 9 of the Immigration Ordinance prohibiting the entry into Singapore of the Appellant on the grounds of the social condition of Malaya. After his arrest the Appellant had made a statement to a Deputy Assistant Controller of Immigration.

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p.5, 11.2-5

p.17, 1.1

p.5, 1.6

p.17, 1.25

p.5, 1.17

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p.19, 1.1 -

p.20, 1.50

p.20, 1.1

In this statement the Appellant said he was a Chinese born in China. He had settled in Singapore where he had 3 wives and 11 children. In 1952 he was suspected of smuggling, arrested in 1953 and

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expelled in 1954. Since then he had stayed in China, Hong Kong and Thailand. After his wives could not manage the shipping business which he used to carry on in Singapore, he had no alternative but to return to Singapore from Thailand. He stayed at an address in Johore in May 1959 whence he used to come to Singapore and return daily. About 10 days before his arrest he came to stay at 46 Kandahar Street permanently. He had no permit to enter Malaya or Singapore. His entry permit application was still pending.

p.20, l.27

p.20, l.33

p.20, l.34

The Appellant did not give evidence.

(6) The Magistrate convicted the Appellant on the 17th August 1959 and fined him \$1250 or 3 months imprisonment. On the only point now relied on by the Appellant, the learned Magistrate's grounds of decision were as follows:-

p.7, l.33

"Finally it was contended for the defence that the order should be personally served on the accused. Mr. Winslow replied it was unnecessary under S.9 of the Ordinance. My view was that the Ordinance was silent on the matter and that, once the order was made, it took effect whether the accused knew of its existence or not".

p.9, ll.11-17

(7) The Appellant appealed against his conviction to the High Court of Singapore on the grounds, inter alia, that it was against natural justice to have convicted him when the prohibition order was not personally served on him or brought to his notice.

p.11, l.16

(8) The High Court of Singapore on the 24th February 1960 dismissed the Appellant's appeal without giving reasons.

p.14, l.24

(9) The Appellant was granted Special Leave to Appeal by Order in Council of the 27th November 1961.

p.15

(10) It is respectfully submitted that the learned Magistrate and the High Court of Singapore erred in that, on a proper construction of the Immigration Ordinance, no one can be convicted of an offence under Section 6(3) until it is proved that a prohibition order has been served on him or otherwise brought to his notice, mens rea being an essential element of such an offence.

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(11) The Appellant respectfully submits that this appeal should be allowed with costs and his conviction be quashed for the following amongst other

R E A S O N S

BECAUSE there was no evidence that the prohibition order made under Section 9 of the Immigration Ordinance was served on the Appellant or otherwise brought to his notice and therefore there was no evidence of the commission of the offence charged.

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E.F.N. GRATIAEN.

DICK TAVERNE.

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HIN LEONG alias TWA KO AIK alias LIM
CHIN I alias LIM KIM YAP alias LAM
KAM IEK Appellant

- v -

THE QUEEN Respondent

CASE FOR THE APPELLANT

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London, S.W.1.