

GYAN DEO v. REGINAM

GYAN DEO

v.

REGINAM

[SUPREME COURT, 1976 (Grant C.J.), 23rd January]

Appellate Jurisdiction

*Criminal law—appeal—circumstances in which appeal against conviction may be entertained following plea of guilty—Criminal Procedure Code (Cap. 14) s.290(1).*

*Interpretation—Ordinance—written law—whether words “by any Ordinance” in Penal Code (Cap. 11) s.113(1)(b) include subsidiary legislation and the regulations made under an Ordinance—Interpretation Ordinance 1967—Traffic Regulations 1974.*

*Criminal Law—making false statement—such statement must be contained in a document which the maker is authorised or required to make by an Ordinance for the time being in force—Penal Code (Cap. 11) s.113(1)(b)—Traffic Ordinance (Cap. 152) s.86—Traffic Regulations 1974.*

The appellant pleaded guilty to making a false statement contrary to Penal Code s.113(1) (b). He had completed a document recording the result of a driving test by stating dishonestly that the driver had passed. On appeal against both conviction and sentence—

*Held:* 1. An appeal against conviction can be entertained on a plea of guilty if it appears upon the admitted facts that the appellant could not in law have been convicted (*R. v. Forde* [1923] 2 K.B. 400 followed and applied).

2. In the Interpretation Ordinance 1967, “Ordinance” included any Ordinance or applied Act; “written law” included any Ordinance and all subsidiary legislation. In the Penal Code s.113(1) (b), the narrower term “by any Ordinance” did not encompass subsidiary legislation which included the Traffic Regulations 1974.

3. The appellant was not endowed with authority to make the document the subject matter of the charge either by any Ordinance or by the Traffic Regulations 1974.

Other case referred to:

*London County Council v. Aylesbury Dairy Company* [1898] 1 Q.B. 106.

Appeal against conviction and sentence in the Magistrate’s Court for making a false statement contrary to Penal Code s.113(1) (b).

GRANT C.J.: [23rd January]—

A On the 21st October 1975 at Labasa Magistrates Court the appellant was convicted on what purported to be a plea of guilty to making a false statement contrary to section 113(1)(b) of the Penal Code and on the following day was sentenced to eight months' imprisonment. The appellant has appealed against conviction and sentence.

B So far as the appeal against conviction is concerned, section 290(1) of the Criminal Procedure Code provides that no appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on such a plea by a magistrates' court, except as to the extent or legality of the sentence. However it is well established that an appeal against conviction can be entertained on a plea of guilty if it appears that upon the admitted facts the appellant could not in law have been convicted of the offence charge (*R. v. Forde* [1923] 2 K.B. 400 at 403); and it is on this proposition that the appeal against conviction is founded.

C The relevant portion of section 113 (1) (b) of the Penal Code provides that any person who knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular and the statement is made in a document which he is authorised or required to make by any Ordinance for the time being in force is guilty of a misdemeanour.

D The particulars of the offence with which the appellant was charged are that on the 7th March 1975 at Labasa in the Northern Division, being an examining officer, knowingly and wilfully made a statement false in a material particular by stating that Mohammed Basir (s/o Nur Mohammed) has passed authorised tests pertaining to a driving test, in a document, to wit, the document on which the results of driving tests are recorded, which said document he was authorised to make under the provisions of Traffic Regulations 1974 made under the provisions of section 86 of the Traffic Ordinance Cap. 152.

E The appellant admitted making a statement in the document produced by the prosecution in support of the charge and numbered exhibit 1, and admitted that the statement was false in material particulars, but counsel for the appellant submits that this was not a document which the appellant was authorised or required to make by any Ordinance for the time being in force. Counsel for the Crown concedes that the document in question is not one which the appellant was required to make by any Ordinance for the time being in force and, further, was unable to produce any extant Ordinance specifically authorising the appellant to make the document, but submitted that authorisation was implicit in the Traffic Regulations 1974.

F The rule of construction to be applied was well stated by Wright J. in *London County Council v. Aylesbury Dairy Company* [1898] 1 Q.B. 106 at 109: "Where there is an enactment which may entail penal consequences, you ought not to do violence to its language in order to bring people within it, but ought rather to take care that no one is brought within it who is not brought within it by express language."

G There is no definition of the word "Ordinance" in the Penal Code, but the Interpretation Ordinance No. 11 of 1967 provides that "'Ordinance' includes this, and any other Ordinance or applied Act". This description should be contrasted with the description of "written law" in the Interpretation Ordinance which provides that "'written law' means all Ordinances (including this Ordinance) and all subsidiary legislation". There is nothing in section 113 of the Penal Code inconsistent with the meanings assigned respectively to "Ordinance" and "written law" in the Interpretation Ordinance and I am satisfied that, had it been the intention to include in the

ambit of section 113(1) (b) of the Penal Code a document which a person was authorised or required to make by any subsidiary legislation, the term "by any written law" would have been used; and that by using instead the term "by any Ordinance" subsidiary legislation, which includes regulations, is excluded. A

I might add that, even if the Traffic Regulations 1974 had fallen within the ambit of section 113(1) (b) of the Penal Code, no offence would have been disclosed as these regulations nowhere authorise a person to make the document the subject matter of the charge. Certainly the appellant was not prohibited by the Traffic Regulations 1974 from making the document in question but that is not the test to be applied. Before a person can be convicted of an offence under section 113(1) (b) of the Penal Code it must be shown that he was by an Ordinance endowed with authority to make the document which contains the false statement. The appellant was not endowed with authority to make the document, the subject matter of the charge, neither by any Ordinance nor by the Traffic Regulations 1974. B

There may well be departmental regulations or instructions which required the appellant to faithfully complete the document in question and his failure so to do may well subject him to disciplinary proceedings and dismissal from the Civil Service. But that is not a matter for this court. C

As upon the admitted facts the appellant cannot in law stand convicted of the criminal offence charged I do not consider it necessary to deal with the grounds of appeal relating to sentence. D

The conviction is quashed and the sentence set aside.

*Appeal allowed. Conviction quashed and sentence set aside.*

E