

**BOGAR v THE PEOPLE (1974) ZR 63 (SC)**

SUPREME COURT

DOYLE CJ, BARON DCJ AND HUGHES JS

19th, 26th FEBRUARY and 9th APRIL 1974

(Appeal No. 17 of 1974)

**Flynote**

**Criminal Law 5- Foreign currency - Failure to declare on arrival in Zambia - Whether offence under s. 141 (1) of Customs and Excise Act.**

**Headnote**

The appellant was convicted in the Subordinate Court of failing to declare large amounts of foreign currency on arrival in Zambia, contrary to s. 141 (1) (d) of the Customs and Excise Act, Cap. 662. The magistrate 10 properly found that the appellant has falsely declared far less currency than he was in fact carrying.

*Held:*

- (i) It is a condition precedent to a contravention of s. 141 (1) (d) of the Customs and Excise Act, Cap. 662, that the person concerned 15 is required to make or render a report or to supply information or to answer questions.
- (ii) The report or information or question must be one which the person can lawfully be required to make or supply or answer.
- (iii) In the circumstances obtaining in the present case there is 20 nowhere to be found any prohibition of the import of foreign currency; nor is there to be found any obligation to declare it if so requested notwithstanding that there may be no restriction on importation.
- (iv) Consequently the failure to disclose such currency is not an 25 offence under the section.

Legislation referred to:

Customs and Excise Act, Cap. 662, s. 141 (1) (d).

Exchange Control Act, Cap 593.

Exchange Control Regulations, Regs. 20, 22, 39 (1). 30

*D M Lewanika, Shamwana & Co.*, for the appellant.

*C Kawamba, Senior State Advocate*, for the respondent.

**Judgment**

**Baron DCJ:** delivered the judgment of the court: The appellant was convicted in the subordinate court on two counts of failing to declare foreign currency on arrival in Zambia contrary to section 141 (1) (d) of 35 the Customs and Excise Act, Cap. 662. At the conclusion of the hearing we allowed the appeal on both counts and set aside the convictions and sentences including the order of forfeiture and indicated that we would give our reasons later; we now give those reasons.

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The currency in question was 110,000 American Dollars and 7,000 Zaires. The appellant was sentenced to six months' imprisonment with hard labour on each count, four months of each being suspended, and the currency, the subject of the charges, was ordered to be forfeited.

On 5 appeal to the High Court the appeals against conviction were dismissed but the sentences of imprisonment were ordered to run concurrently instead of consecutively.

The section under which the appellant was charged reads:

"141 (1) Any person who -

- (d) being 10 required to make or render any report, statement, document, bill of entry, declaration, or return, or to supply any information demanded or asked for, or to answer any question, neglects or refuses to do so, or makes or renders any untrue or false report, statement, 15 document, bill of entry, representation, declaration, return or answer, or conceals or makes away with goods required to be accounted for by this Act or any law relating to customs or excise;

shall be guilty of an offence . . ."

It 20 is thus a condition precedent to a contravention of this section that the person concerned is required to make or render a report or to supply information or to answer questions. And it goes without saying that the report or information or question must be one which the person can lawfully be required to make or supply or answer, as the case may be; 25 it would be absurd to suggest for instance that a traveller in transit through Zambia could be charged with an offence under this section if he declined to tell a customs officer how much income tax he had paid in his country of residence the previous year. Although therefore there was ample evidence which entitled the learned magistrate to hold that 30 the appellant had falsely declared far less currency than he was in fact carrying this false declaration cannot constitute an offence under section 141 (1) (d) unless there is to be found either in the Customs and Excise Act itself or in some other legislation a prohibition on the importation of such currency or alternatively an obligation to declare it if so requested 35 by an authorised officer notwithstanding that there may be no restriction on importation.

The only legislation relevant to the matter is the Exchange Control Act, Cap. 593, and the Exchange Control Regulations promulgated thereunder. Regulation 39 (1) reads:

"39. (1) 40 Any person who, on any occasion, is about to leave Zambia or arrives in Zambia (which person is in this regulation referred to as 'the traveller') shall, if on that occasion he is required to do so by an authorised officer -

- (a) declare whether or not he has with him anything prohibited 45 to be imported or exported by or under any of the provisions of these Regulations;

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- (b) produce any permission or authority in his possession for the import or export of such thing;  
(c) produce any such thing as aforesaid;

...

By virtue of sub - Regulation (2) "authorised officer" includes any customs 5 or immigration officer.

Regulation 22 deals with the import of currency. Sub - Regulation (1) (a) prohibits the import of currency which is or has been legal tender in Zambia and sub - Regulation (1) (b) deals with the special case of import into Zambia of any foreign currency from the Republic of 10 Zaire. Nowhere is there to be found any prohibition of the import of foreign currency in the circumstances obtaining in the present case, and consequently the failure to disclose such currency is not an offence under section 141 (1) (d) of the Customs and Excise Act. It is to be observed that the appellant, had he attempted to re-export 15 the currency, might as a result of his failure to disclose his possession of it on arrival in Zambia have found himself in considerable difficulty; he fell within Regulation 20 (2) (a) and was therefore exempt from the restriction on the export of foreign currency, but because of his failure to disclose it on arrival he might have had difficulty in proving that he 20 had imported it and was therefore entitled to export it again. But that is by the way; those circumstances did not arise. Indeed, one can only speculate as to what the appellant intended to do with the currency after arriving in Zambia. We can well see the value of a provision which would require any traveller, whether or not ordinarily resident in Zambia, and 25 whether or not the import or export of such currency is prohibited or restricted in any way, to disclose all currency in his possession; but the Exchange Control Regulations in their present form contain no such provision.

For these reasons we indicated at the conclusion of the hearing that 30 the appeal would be allowed and the convictions and sentences including the order of forfeiture set aside.

*Appeal allowed*

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