JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 32/05

BEFORE : THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE K. HARRISON, J.A.
THE HON. MRS. JUSTICE McCALLA, J.A.(Ag.)

ROY PAHARSINGH
MICHAEL HYLTON
V. REGINA

Garth McBean for the appellant Paharsingh.

Anthony Pearson for the appellant Hylton.

Mrs. Simone Wolfe-Reece for the Crown.

January 31, February 1, 2 and 10, 2006

PANTON, J.A.

1. The appellants were convicted on October 8, 1999, in the Resident Magistrate's Court for the Corporate Area, on an indictment containing four counts. On the first and fourth counts, they were both convicted of conspiracy to defraud, whereas the appellant Paharsingh was convicted, having been charged alone, on the second and third counts of the offence of obtaining money by false pretences. Each appellant was sentenced on each count to twelve months imprisonment, suspended for two years.

2. Although the appellants filed notice of appeal on October 20, 1999, the transcript of the proceedings did not reach the Court of Appeal until September 26, 2005. Having examined the transcript, we are at a loss as to why it has taken such an inordinately long period of time for the matter to have reached this Court. We have noticed several lapses of this nature from time to time in the Resident Magistrate's Courts, and wish to remind the various officers in the Resident Magistrate's Courts of their responsibilities. The Judicature (Resident Magistrates) Act is clear as to the action that is to be taken by Resident Magistrates and Clerks of the Court when an appeal has been filed in a criminal case. In addition, if Court Administrators are to serve any meaningful purpose, they ought to assist in seeing to proper administration in this regard. In this particular case, the conduct of the relevant officers is wholly unacceptable and ought not to be repeated.

3. The trial lasted twenty-one days over a period of twenty months. Fifty-four documentary exhibits were admitted in evidence. Notwithstanding the delay in transmitting the record to the Court of Appeal, the exhibits were not copied and there was a delay during the hearing of the appeal while copies were made of the most important exhibits. We noted also that during the trial, the Resident Magistrate, sitting alone, conducted a voir dire. We wish to remind judges that a trial within a trial is appropriate only in cases tried before a judge and jury. See **R. v. Cargill** and **Roberts** 24 J.L.R. 217.

4. The appellant Paharsingh is a businessman. He describes himself as a sole trader who operates under the business name Paharsingh Engineering Works. The business is located in Spanish Town. The appellant Hylton was employed up to 1997 as Director of the Sugar Industry Research Institute (SIRI), which is a department of the Sugar Industry Authority (SIA), a statutory body. The case presented against them arose from their actions in their respective occupational roles. Arising from what has been called the Mills Commission of Enquiry, a new system for testing sugar canes was introduced. This system was independent of the farmer as well as the factory, and was to be controlled by the SIA. It required new equipment called core sampling equipment, which was not available in Jamaica. Eventually, a supplier was identified in the form of Inter American Transport Equipment Company, Florida. Their agent in Jamaica was Paharsingh Engineering Works. Hylton played a significant role in the ordering of the equipment and spare parts from IATEC through Paharsingh Engineering Works. Hylton and Paharsingh developed a close friendship to the extent that Paharsingh, on a regular basis, loaned large sums of money to Hylton, who from time to time claimed to have had foreign exchange dealings with Paharsingh although there is no evidence to suggest that either was licensed as a dealer in foreign exchange. There is little wonder that their relationship attracted the attention of the customs authorities.

5. It is convenient at this stage to recite the particulars of the four counts, as they do explain the nature of the allegations that formed the basis of the charges.

Count 1 –

"(both appellants) on divers days between November 1994 and July 1995 in the parishes of Manchester and St. Catherine, conspired together to defraud the Sugar Industry Authority of monies by causing and/or procuring monies to be paid by false pretences by the Sugar Industry Authority to Roy Paharsingh in respect of customs duties allegedly paid by the said Roy Paharsingh to the Collector of Customs for goods imported into the Island of Jamaica by the said Roy Paharsingh on behalf of the Sugar Industry Authority".

Count 2 –

"Roy Paharsingh in or about the month of July, 1995, in the parish of St. Catherine, with intent to defraud obtained from the Sugar Industry Research Institute, a department of the Sugar Industry Authority the sum of $38,519.36 by falsely pretending that the said sum was due and payable to the said Roy Paharsingh by the Sugar Industry Research Institute in respect of customs duties paid by the said Roy Paharsingh to the Collector of Customs in respect of goods imported into the Island of Jamaica by the said Roy Paharsingh for and on behalf of the Sugar Industry Research Institute".

Count 3 – "Roy Paharsingh on or about the 27th day of January, 1995, in the parish of St. Catherine with intent to defraud, obtained from the Sugar Industry Research Institute, a department of the Sugar Industry Authority, the sum of $203,719.44 by falsely pretending that the said sum was due and payable to the said Roy Paharsingh by the said Sugar Industry Research Institute in respect of customs duties paid by the said Roy Paharsingh to the Collector of Customs in respect of goods imported into the Island

of Jamaica by the said Roy Paharsingh for and on behalf of the Sugar Industry Research Institute".

Count 4 – "(both appellants) on divers days between 1991 and 1996 in the parishes of Manchester and St. Catherine conspired together to defraud the Sugar Industry Authority of monies by causing and/or procuring the Sugar Industry Authority to pay to the said Roy Paharsingh grossly exaggerated prices for goods imported into the Island by the said Roy Paharsingh from Inter American Transport Equipment Co. of Miami, Florida in the United States of America for and on behalf of the Sugar Industry Authority".

6. On page 266 of the record, counsel for the Crown in the Court below conceded that there was no evidence that Hylton had knowledge of the duties that were payable. In view of that, we are surprised that the learned Resident Magistrate went on to convict the appellants on Count 1. In this Court, Mrs. Wolfe-Reece, gave what may be described as luke-warm support for the conviction on this count. We are not surprised at that, given the established legal position in a situation such as this. If both appellants are charged with conspiring together, and not with anyone else, it follows that if Hylton had no knowledge, and so could not be convicted, then there can be no proper conviction of Paharsingh. This statement has support from the case **R. v. Manning** 12 Q.B.D. 241.

7. So far as the other count of conspiracy is concerned, count 4, there is no doubt that there was evidence of a substantial increase in the price charged by Paharsingh over the price quoted by IATEC. This may be seen by examining

exhibits 5A, 5B, 19A, 19B and 24. However, there is no evidence coming from any source to indicate comparable prices for the same items. That being so, it is not possible for there to be a proper conclusion that the prices were grossly exaggerated. In any event, Paharsingh seems to have been given free rein by IATEC to determine the prices at which he was prepared to sell. See exhibits 43, 44 and 47.

8. In respect of count 2, exhibits 8 and 17B are the relevant documents. Exhibit 8 shows actual payment of $48,884.70 as customs duty on the hydraulic press. Exhibit 17B (invoice 1658) shows a billing for, and receipt of, $87,404.06 as customs duty, apparently on the same item. However allowance has to be given for Paharsingh's claim that he had already paid duty on the other materials that were used in building the chassis on which the press was placed. The prosecution submitted that there was just one complete item, but the evidence is to the contrary; that is, there were other materials. Paharsingh said that he had paid the additional duty some time before. The prosecution has submitted that there is a burden on him to produce the evidence of payment. Under normal circumstances, that submission could not be faulted. However, Paharsingh maintained that the customs officers are in possession of his documents, they not having returned all the documents that they seized when they raided his establishment. It goes without saying that, in that factual situation, the learned Resident Magistrate could not have been sure that Paharsingh had not paid the appropriate duty.

9. On Count 3, the exhibits for consideration are 6A, 7 and 16B. The total cost is quoted as US$9,708 on exhibit 7. The C78 form (exhibit 6A) shows payment of J$13,999.11. Exhibit 16B shows a total cost of US$43,587. When the various conversions into Jamaican dollars are done, and the duty calculated, it is to be noted that the duty payable on the US$43,587 is J$217,718.55. By deducting the duty that was actually paid, there is a balance which is the amount stated in the indictment. Mr. Mc Bean submitted that there were more items on exhibit 16B than were on 6A, hence the increase in the duty claimed and received by Paharsingh. However, on careful examination of exhibit 6A, it will be seen that most of the items thereon were zero rated and so did not attract duty. That fact is unimpeachable. Accordingly, the learned Resident Magistrate was correct in finding Paharsingh guilty on this count.

10. The result of the appeals is as follows:

The appeal is allowed in respect of counts 1, 2 and 4. The convictions are quashed and the sentences set aside. The appeal is dismissed in respect of count 3. The conviction and sentence thereon are affirmed.