

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' MISCELLANEOUS APPEAL NO 1/2012

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE DUKHARAN JA
THE HON MRS JUSTICE LAWRENCE-BESWICK JA (Ag)**

**IN THE MATTER OF a case stated
concerning HARISH SAYANI and
ANOOP BACHWANI charged with
breaches of the Customs Act**

Norman Godfrey for Harish Sayani and Anoop Bachwani

Miss Maxine Jackson and Miss Cadeen Barnett for the Crown

17 & 18 April 2013

PANTON P

[1] These matters are listed before us as being by way of case stated. The learned Resident Magistrate for the parish of Westmoreland phrased the following question for determination:

“Does a Magistrate for the parish in which an offence is alleged to have being [sic] committed has [sic] jurisdiction to try the matter after the person charged for that offence has been brought before a Magistrate in another parish and that Magistrate simply transfer [sic] the matter to the

Court with jurisdiction, without complying with Section 40 of the Justice of the Peace Jurisdiction Act.”

[2] Mr Norman Godfrey, appearing for the Messrs Sayani and Bachwani, informed us that he did not think section 40 of the Justices of the Peace Jurisdiction Act applied to the instant situation. It was not difficult for us to agree with him as it is quite clear that that section applies only in the case of a preliminary examination into an indictable offence.

[3] Messrs Sayani and Bachwani are charged separately on informations sworn to on 17 August 2011 before the clerk of the courts, Saint James, in respect of breaches of the Customs Act that allegedly took place in the parish of Westmoreland on 29 July 2011. The appellants appeared before the Resident Magistrate for the parish of Saint James on 17 August 2011 and she promptly ordered that the matters be transferred to the Resident Magistrate’s Court for the parish of Westmoreland and for it to be mentioned at the Savanna-La-Mar court on 13 September 2011.

[4] The men duly appeared before the Resident Magistrate at Savanna-La-Mar and on several occasions thereafter. Finally, on 11 September 2012, that is, a year after their first appearance, Mr Delford Morgan, appearing for them, submitted to the Resident Magistrate that he had no jurisdiction to try the matters as section 40 of the Justices of the Peace Jurisdiction Act had not been complied with. As indicated earlier, there was no merit in that submission. However, Mr Godfrey is enquiring whether a summary matter may be transferred in the manner in which this was done.

[5] Section 283 of the Judicature (Resident Magistrate's) Act provides for the binding over or committal of a person charged with an indictable offence "to appear before the Magistrate within whose jurisdiction such offence is charged to have been committed ... ,there to be dealt with according to law". As regards summary offences triable before a Resident Magistrate, according to Mr Godfrey, and Miss Maxine Jackson appearing for the Crown, there does not seem to be the equivalent statutory provision. From our quick look at the legislation, we are tempted to agree with both counsel. Miss Jackson, in emphasizing the point, helpfully brought to our attention the Summary Jurisdiction (Procedure) Act of Belize which makes a specific provision in section 49 for the transfer of matters by a magistrate.

[6] We are of the view that the lack of a specific provision in the Jamaican legislation is of no moment in the particular circumstances of this case, for at least two reasons. Firstly, there has been a long-standing practice in the Resident Magistrate's Courts to make such transfers to the parish wherein jurisdiction clearly lies, if there is no obvious injustice to the person charged. In this case, the allegation is that the offences were committed in the parish of Westmoreland. That parish is therefore the primary place as far as jurisdiction is concerned. Secondly, the men are charged with breaches of the Customs Act, and section 245 of that Act states:

"Every offence under the customs laws shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which it actually was committed or arose, or in any place on land where the offender or person prosecuted may be or be brought."

In the circumstances, the matters have been properly transferred to the parish of Westmoreland.

[7] There has been sufficient delay in the hearing of these matters. The Resident Magistrate for the parish of Westmoreland is to proceed with the trial without further delay. The matters are accordingly remitted to the Resident Magistrate for the parish of Westmoreland for trial. Accordingly, Messrs Harish Sayani and Anoop Bachwani are hereby ordered to appear before the Resident Magistrate at Savanna-La-Mar on Tuesday 23 April 2013 for a trial date to be fixed.

[8] Before parting with this matter, it ought to be mentioned that for a case to be stated by a Resident Magistrate for the consideration of the Court of Appeal, it would seem that would have to be done under the provisions of the Criminal Justice (Administration) Act. However, section 55 thereof contemplates that a conviction would have been first recorded by the Resident Magistrate. Thereafter, the Resident Magistrate may reserve a question of law for the consideration of the Court of Appeal. It will therefore be readily seen that the procedure adopted in this matter was inappropriate.