

IN THE SUPREME COURT OF NAURU

Criminal Jurisdiction

Criminal Appeal No. 3 of 1977

DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

v.

PAUL CHAN

Respondent

29th September, 1977 at 9.40 a.m.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Respondent: Mr. L. Keke .

For the Republic: Mr. D. Lang

Respondent present.

COURT: The Director of Public Prosecutions has drawn to the attention of the Court the fact that the offence charged in the third count is apparently outside the jurisdiction of the District Court to try because the maximum sentence which it carries is 14 years' imprisonment.

MR. LANG: I suggest that the only appropriate order is to quash the conviction and remit the matter to the District Court for a preliminary inquiry to be held.

COURT: So, on that basis, you would not seek to have either the conviction or the sentence upheld.

MR. LANG: That is so. There was a want of jurisdiction. Both conviction and sentence are a nullity and this Court should order accordingly.

COURT TO MR. KEKE: Do you accept what Mr. Lang has submitted on Count 3?

MR. KEKE: I thought that the District Court had jurisdiction. I now agree with Mr. Lang.

COURT: Very well. I shall quash the conviction on Count 3, and remit the matter to the District Court for a preliminary inquiry to be held.

MR. LANG: On the facts disclosed it was clear that there was a well-conceived plan by the appellant to defraud the Republic of money. It was extremely fraudulent. The appellant stole the tickets from his employer by using the forged purchase orders which he had stolen. Possibly Counts 1 and 3 should have been regarded as alternative but there were pleas of guilty to all of them.

The sentence for the first count is seriously inadequate. The offence charged in the second count was surely preparatory to the first and the sentence is probably appropriate on that basis.

MR. KEKE: The respondent was sentenced to six months' imprisonment on Count 1. Quite adequate. The respondent has no p.c. He is a young man. He is near to serving the end of his sentence. He intends to return home to get married and lead an honest life.

I ask this Court not to interfere with the sentence.

JUDGMENT:

Theft by a servant is a serious offence. When it is planned in advance and involves abuse of a position of trust it is particularly serious. The sentence should reflect that. In the present case the District Court appears to have given undue weight to the respondent's youth, previous good character and restitution. The sentence is manifestly inadequate.

The appeal in respect of the sentence imposed on the first count is allowed. That sentence is set aside and

a sentence of 18 months' imprisonment is substituted for it. The sentence on the second count is affirmed. The conviction on the third count is quashed and the sentence set aside for want of jurisdiction in the District Court. The matter of the third count is remitted to the District Court for a preliminary inquiry to be held, if the prosecution decides to proceed with the charge. In view, however of the relationship of that alleged offence with the offence of which the appellant has been convicted on the first count, it may well be considered unnecessary to proceed with that charge.

The order for the sentences to run concurrently is affirmed.

I.R. THOMPSON  
Chief Justice

29/9/77

(Sentence: Count 1 - 6 months imprisonment.  
Count 2 - 1 month imprisonment.  
Count 3 - 6 months imprisonment.)