

Yip Chiu Cheung v Regina [16 June 1994]

Evidence

The appellant was accused of conspiracy with the intention of illegally trading drugs (heroin) which is against the Common Law and Part 4 of the Dangerous Drugs Ordinance Cap 134 of Hong Kong. The prosecution claimed that he had met a person in Thailand who was an undercover US officer. They agreed that the undercover officer would be a courier to deliver drugs via plane from Hong Kong to Australia. According to the officer's plan, he was going to visit Hong Kong, gather 5 kilos of heroin, and fly to Australia with it. The officer claims that during all his cooperation with the appellant, he informed Hong Kong and Australian authorities of his plans and they agreed they would not prevent him from delivering drugs from Hong Kong to Australia. Although the appellant had an intention to accomplish this plan, it was just a scheme and he has never visited Hong Kong in fact. It was claimed that he cannot be accused of conspiracy with the officer, as the officer himself has never committed a crime.

Problematics

The appellant's claim was dismissed, as the officer had no fraudulent intention and mens rea, and hence could not be claimed as a conspirator. It was claimed that it would be ethically wrong to consider that an agent had any kind of evil intention. It was asserted that there can be many cases when a secret agent, an undercover officer, or a law-enforcement officer assumes to get into the conspiracy to receive information about fraudulent plans, having no intention to participate in the crime, but receiving and forwarding the information that would prevent the crime to the authorities. This is mens rea as it is: an intention to commit a crime. An undercover officer had no intention to commit a crime and hence, there was no mens rea for conspiracy.

Resolution

There is no doubt that the undercover officer had the best intentions and motives. However, facts are dubious. It is also absolutely clear that the method the officer had chosen and the Hong Kong Police had agreed with was in committing a crime of illegal drug trade from Hong Kong. The undercover officer was going to and had an intention to transfer heroin via the airport customs and via plane to Australia.

The Crown cannot administrate and give sanctions to crimes. To establish the satisfaction of the court, the crime needed proof of export with no license only. Hence, it could have been committed by a secret agent who agreed to export with no license.

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