

Quin v Lim [2005] NTSC 43

PARTIES: QUIN, Paul

v

LIM, Hang Meng

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: APPEAL FROM THE COURT OF
SUMMARY JURISDICTION
EXERCISING TERRITORY
JURISDICTION

FILE NO: JA 1 of 2005 (20213470)

DELIVERED: 12 August 2005

HEARING DATE: 9 August 2005

JUDGMENT OF: RILEY J

CATCHWORDS:

PRACTICE AND PROCEDURE – PROSECUTION

Prosecution under s 17 Dangerous Goods Act (NT) – whether learned magistrate erred in law ruling that the complaint invalid – whether complainant had consent of Chief Inspector to institute proceedings – whether consent was subject to limitational precondition that the proceedings be commenced by the named officer – the nomination of a named person did not in any way limit the scope of the consent – the proceedings whether instituted by the named officer or some other officer were proceedings to which the Chief Inspector had given written consent.

Dangerous Goods Act (NT), s 10, s 17, s 41
Interpretation Act (NT), s 42

Traveland Pty Ltd v Doherty (1982) 63 FLR 41 at 46 and 49, applied
Morrison v Dartbrook Coal Pty Ltd & Anor (2002) 116 IR 252 at 273, applied

REPRESENTATION:

Counsel:

Appellant: J.W. Adams
Respondent: I. Rowbottam

Solicitors:

Appellant: Office of the Director of Public
Prosecutions
Respondent: Withnall Maley & Co

Judgment category classification: B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Quin v Lim [2005] NTSC 43
No JA 1 of 2005 (20213470)

IN THE MATTER OF the *Dangerous
Goods Act*

AND IN THE MATTER OF an appeal
against decision handed down in the Court
of Summary Jurisdiction at Darwin

BETWEEN:

QUIN, Paul
Appellant

AND:

LIM, Hang Meng
Respondent

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 12 August 2005)

- [1] The respondent to these proceedings, Hang Meng Lim, is the subject of a complaint issued on 22 July 2003 alleging various offences committed on 24 July 2002 contrary to s 17 of the Dangerous Goods Act. The matter came on for hearing before the Court of Summary Jurisdiction on 8 December 2004 at which time a preliminary point was taken as to the form of the

complaint. It was submitted that the complaint was invalid and should be struck out. The matter was argued and the learned magistrate proceeded to dismiss the charge on what he described as a “jurisdictional ground”.

- [2] The matter comes before this Court by way of appeal alleging that the learned magistrate erred in law in ruling that the complaint was invalid and in dismissing the same.
- [3] The proceedings are governed by the Dangerous Goods Act as it existed at that time. The Act has subsequently been repealed and replaced by the Dangerous Goods Act 1998 which, notwithstanding its title, commenced operation on 18 August 2004.
- [4] The argument before his Worship was based upon s 41 and s 10 of the Act. Those sections were in the following form:

“41. Consent to prosecutions

A person shall not institute proceedings in respect of an offence against this Act without the written consent of the Chief Inspector.

10. Delegation

- (1) The Chief Inspector may, from time to time, by instrument in writing, delegate to a person such of his powers and functions, other than this power of delegation, as are specified in the instrument.
- (2) A delegation referred to in subsection (1) may be made generally or for any particular case or class of cases.

- (3) A power or function delegated under this section may be exercised or performed, in accordance with the terms of the delegation, by the person to whom the delegation is made.
- (4) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Chief Inspector.”

[5] The consent to prosecution which was provided to his Worship for the purposes of the present proceedings was as follows:

“I, Neil Kenneth Watson, the Chief Inspector, in pursuance of Section 41 of the Dangerous Goods Act, consent to Constable Karen Sanderson instituting proceedings in respect of offences against the Act alleged to have been committed by Hang Meng Lim, DOB 02/04/1965.”

[6] Notwithstanding the reference to Constable Sanderson, the complaint that was issued against the respondent was in the name of the appellant in these proceedings, Paul Quin. Although the consent to prosecution document named Constable Sanderson as the person to whom consent was given for instituting proceedings the court was not told of any other involvement on her part in the proceedings.

[7] The argument presented on behalf of the respondent, and accepted by his Worship, was that s 41 of the Act required that proceedings were not to be commenced without the written consent of the Chief Inspector. The notice upon which reliance was placed as providing the necessary consent was said to be subject to a limitational precondition that the proceedings be commenced by the nominated person, namely Constable Sanderson. It was

submitted that the proceedings were not so commenced and were therefore invalid. In support of the submission reference was made to s 42 of the Interpretation Act as it then existed. That section was in the following terms:

“42. Partial Exercise of Power

Where an Act confers a power to make, grant or issue an instrument of a legislative or administrative character, the power may be exercised in whole or in part and subject to such conditions, qualifications and limitations, if any, as are specified in the instrument.”

It was submitted that the consent in these proceedings was subject to the limitation that they were to be instituted by an identified individual.

Proceedings otherwise commenced, as here, would be without consent and, consequently, invalid.

- [8] It was further submitted that, if the notice was viewed as an attempt to delegate the power to consent under s 10 of the Act, that power was required to be exercised by Constable Sanderson and it was not. Constable Sanderson had not herself provided any consent to the proceedings as required by s 41 of the Dangerous Goods Act. It was submitted that, whichever approach is adopted to the document, the commencement of the proceedings in the name of Mr Quin was invalid.
- [9] In relation to the submission that there may have been a delegation of power, there was never any suggestion by or on behalf of the appellant that Constable Sanderson had any relevant authority to consent to the

prosecution under s 41 of the Dangerous Goods Act or that she sought to do so. No reliance was placed by the appellant upon any conduct of Constable Sanderson. The argument that this may have been an attempt at delegation by the Chief Inspector to Constable Sanderson was not adopted by the appellant at any stage of the proceedings.

[10] On behalf of the appellant, in this Court, it was submitted that the argument confused the issue of delegation of powers (s 10) with the issue of consent to prosecute (s 41). In my view that is correct. The document with which we are concerned was entitled “Consent to prosecution”. Its terms were directed to the issue of consent and there was nothing within the document to suggest that it served to delegate a power to Constable Sanderson. No issue of delegation arose.

[11] The real issue for determination is whether the document satisfied the requirement of s 41 of the Act that proceedings be instituted in respect of an offence against the Act with “the written consent of the Chief Inspector”. The document clearly provided the written consent of the Chief Inspector for proceedings under the Act to be instituted against the respondent. The concern that is raised is that the consent was, on its face, directed to Constable Sanderson and the proceedings were in fact instituted by the appellant. It was the submission of the respondent that the notice limited the exercise of the power to institute proceedings to Constable Sanderson. The submission continued that, in order for the consent to be effective, the proceedings had to be commenced by her as the nominated person.

Reference was made to s 42 of the Interpretation Act which I have set out above.

[12] As the appellant submits, the section is expressed in broad terms and requires only that consent be given for the prosecution of an offence against the Act. There is no requirement to name the person who is to institute the proceedings and the name of that person is not of any consequence. The purpose of the section is to ensure that no prosecution is commenced without the knowledge and consent of the Chief Inspector. The requirement that consent be obtained prior to the institution of proceedings is to protect the individual or corporation in danger of being charged by ensuring that a prosecution will only be instituted with the written consent of the Chief Inspector: *Traveland Pty Ltd v Doherty* (1982) 63 FLR 41 at 46. The section is procedural and does not form any part of the offence. In the circumstances of this legislation the purpose is to control the commencement of such proceedings and that is achieved by requiring the sanction of a responsible person, the Chief Inspector, before proceedings may be pursued. In *Morrison v Dartbrook Coal Pty Ltd & Anor* (2002) 116 IR 252 at 273 Haylen J considered some of the earlier authorities in relation to similar provisions and then said:

“The importance of this line of authority is that the emphasis is upon avoiding frivolous or vexatious prosecutions and ensuring that proper consideration is given to allowing a prosecution to commence: these are broad and general considerations and, importantly, do not direct attention to compliance with administrative steps, nor are such administrative steps deemed to be necessary as a matter of principle in order that there be a valid consent.”

[13] In this case there is no suggestion that the prosecution was not in fact consented to and thereby authorised but, rather, the issue is whether that authorisation was limited to proceedings being commenced by Constable Sanderson. The identification of the constable in the circumstances of this particular case does not add anything to the consent. No purpose is served in restricting the scope of the consent to apply only to a proceeding instituted by Constable Sanderson. The section does not require that the name of the person who is to institute the proceedings be included in the notice and, indeed, the name of the person is not of any consequence. The person who institutes the proceedings may take no further part in them. The consent is not required by the section to be conferred upon a named person but rather is concerned with permitting the institution of proceedings. The naming of Constable Sanderson in the circumstances is mere surplusage. It does not in any way limit the scope of the consent.

[14] In my view, reference to s 42 of the Interpretation Act does not assist the respondent. This is not a case of the partial exercise of a power. This is not a case where the Chief Inspector has imposed a relevant limitation in issuing an instrument. Whilst Constable Sanderson has been named in the document there is nothing to suggest that the proceedings could only be instituted in her name. The impact of the document is to provide consent to proceedings issued under the Dangerous Goods Act against the respondent pursuant to the requirement found in s 41 of the Act. The requirement of s 41 has been satisfied by the consent to prosecute provided by the Chief Inspector. In the

circumstances it matters not whether the proceedings be instituted by Constable Sanderson or any other appropriately qualified person.

[15] The decision of the learned magistrate to dismiss the proceedings was wrong in law. The proceedings, whether instituted by Constable Sanderson or some other officer, were in nature and in substance proceedings to which the Chief Inspector had given appropriate written consent: *Traveland Pty Ltd v Doherty* (supra) at 49.

[16] The appeal is allowed.
