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ROYAL COURT (Superior Number)

15th April, 1985.

A.G. -v- Mohammed Azizul Haque

Appeal against conviction by the Inferior Number on the 12th November, 1985, of assisting illegal entry, contrary to Section 25(1) of the Immigration Act 1971, as extended to the Bailiwick of Jersey by the Immigration (Jersey) Order, 1972, as amended.

Bailiff: "I will say at once that the Court dismisses the appeal. The appeal is really in two parts: first, a point of interpretation of Section 25(1) of the Immigration Act 1971, as extended to the Bailiwick of Jersey by the Immigration (Jersey) Order, 1972, as amended; and secondly, whether there was sufficient evidence of the making or carrying out of arrangements in Jersey by the appellant for securing or facilitating the entry into Jersey of Mr. Islam. So far as the first point is concerned, it has been argued on behalf of the appellant that in order to constitute the offence under Section 25(1) it is necessary for the illegal entrant, who is the object of the alleged securing or facilitating, to have suceeded in entering Jersey within the terms of the Act, that is to say, to have been given leave to land and not simply temporary leave subject to further enquiry and eventual refusal. Counsel for the appellant draws our attention to the title of the sub-section, "assisting illegal entry", but we do not believe that that title assists us because the real significance of the offence is to be found in the sub-section itself. He also draws our attention to the fact that the statement of offence in the indictment contains the words "assisting illegal entry", but we do not find much assistance there either becuase we believe that it is merely copying the title of the sub-section. We have therefore looked to the sub-section itself. The argument on behalf of the appellant is that every ingredient of that sub-section has to be proved, including the fact of entry, and because it is conceded on behalf of the prosecution that section 11, which restricts the meaning of the word "entry", applies also to section 25(1), it is argued on behalf of the appellant that there never

was an entry in this case because the Immigration Officers concerned were too vigilant, and that because there was no entry there was no offence committed within the terms of section 25(1). We are of the opinion that it is not necessary for an entry, in the terms of the meaning given to that word by the Law or by the Act, to be proved or to have been effected in order to constitute an offence under the sub-section. In our view, the essence of the sub-section, as the learned Solicitor General has said, is being knowingly concerned in making or carrying out arrangements and we agree that the remaining words are descriptive of the arrangements. The remaining words show what knowledge it is necessary for a defendant to have in order to be convicted and also the remaining words are descriptive of the purpose of the arrangements and, as I have said, we do not believe that it was ever intended by the legislature, nor do we believe that the words themselves indicate that there is any need, for entry to have been effected within the terms of the Act. In other words, we do not think that there is ambiguity and indeed it would be quite remarkable if, in fact, it could be said that there was any ambiguity, because if one could say that there was an ambiguity then it would mean that whether or not a person who was concerned in the making or carrying out of arrangements, whether or not he was guilty of an offence, would depend upon whether in fact the person he was helping managed, as I said during the hearing, to fool the Immigration Officer on duty, and that seems to us to be an interpretation of the intention of the legislature which simply cannot be upheld at all. It is quite different to the sort of case which was put to us by counsel; We accept that where there is genuine ambiguity then obviously the balance must come down in favour of the defendant in a penal statute, but here we can see no ambiguity at all. In this particular case, if the appellant was knowingly concerned in Jersey in securing or facilitating the entry of Mr. Islam, if he was, then the fact that a vigilant Immigration Officer prevented the arrangement from achieving ultimate success had nothing to do with the arrangements in which the appellant was concerned and it would be an absolute nonsense to suggest that if the

arrangement suceeds then you commit an offence and if it does not succeed you do not commit an offence. The word "entry" is clearly descriptive, together with other words, of the sort of arrangements which will render a person guilty of an offence.

As regards the second point, which is whether there was sufficient evidence of the appellant being concerned in the making or carrying out of arrangements in Jersey, and we accept that it has to be in Jersey, the Solicitor General has given a list of three matters of conduct, the telling of the same story of the possibility of opening up a restaurant as the reason for coming to Jersey, the writing down of Ali's name, which to the knowledge of the appellant was a false name, and which he admits having written in order that it should tally with the passport, and maintaining at the first interview with Mr. Mourant the story that Mr. Islam was in fact Mr. Ali, a story which he well knew to be wrong. The other evidence of what took place outside Jersey which was not challenged in the trial was merely explanatory of the evidence of those words and acts which took place within the jurisdiction and, as such, they were admissible to explain what took place within the jurisdiction. The Court is unanimous in finding that there was ample evidence of words and acts within the jurisdiction to fully justify the Court below in finding that there was a making or a carrying out of arrangements for facilitating the entry into Jersey of somebody whom the appellant knew to be an illegal entrant, which indeed he was, and therefore the appeal is dismissed".