

Abuse of Process in Confiscation Proceedings

Appellant's Absence due to Chronic Illness

R v Bhanji (Jayesh Jobanputra) [2011] EWCA Crim, 1198

13th May, 2011

The appellant was convicted for smuggling cigarettes and evasion of duty. The court of appeal had reduced the appellant's sentence from three years to enable his immediate release due to medical evidence which showed that it was an exceptional case requiring mercy. The crown then applied for a confiscation order. The appellant's application to stay the proceedings was refused. The appellant was unable to attend the confiscation proceedings due to his chronic illness.

The issue was whether it was an abuse of process for the Crown Court to conduct the confiscation hearing when the appellant was unable to attend. The Court of Appeal found that it was not. Confiscation proceedings were not a criminal trial to which the presumption of innocence applied but they were part of the sentencing process. The court found at paragraphs 7 and 16 of the judgment that in all the circumstances though the proceedings fell short of what was desired they did not go over the boundary of fairness. Whether or not the appellant had received a fair hearing in all the circumstances is the appropriate test for future cases of this nature.

Quinton Newcomb Barnaby Hone

Chambers of Michael Hubbard Q.C. and Karim Khail Q.C.

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