

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M.267/84

897

BETWEEN N

MURPHY

Appellant

A N D THE POLICE

Respondent

Hearing: 4 July 1984
Counsel: C.M. Ruane for Appellant
A.M. McIntosh for Respondent

ORAL JUDGMENT OF ROPER J.

This is an appeal against conviction and sentence on a charge pursuant to s.45 of the Matrimonial Property Act 1976. The charge reads:-

"Knowing that proceedings were pending under the Matrimonial Property Act 1976 sold a family chattel, namely a motorcar."

The essential elements that must be proved in a case such as this are that proceedings were pending at the time of sale and the sale was made at a time when the person selling knew that the proceedings were pending.

Mr Ruane has made two main submissions. First, that there were no proceedings pending under the Act at the relevant time; and secondly that there was no "sale" as alleged in the information. On the facts, and assuming proceedings were pending, the Appellant could perhaps have been charged with "charging or disposing of a chattel" in terms of s.45 but I understand that the District Court Judge declined to amend the information to so read. On the 25th March 1983 an interim non-molestation order was made against the Appellant, and an order which purports to be made under s.45 but was probably made under s.43 of the Act, restraining him from disposing of the family chattels situated at Avenue, Christchurch.

The facts were that the Appellant transferred the car in question to his brother, it at that time having been re-possessed by Marac for non-payment under a hire purchase agreement. The brother paid Marac the \$600 owing, recovered the car and then handed it back to the Appellant. There was no change of registration back to the Appellant, it being claimed that it could not be done because the registration papers were being retained by the police. There is no evidence that any money was paid by the brother to the Appellant for this car which is said to have a value of about \$3,000. It could fairly be said that the transaction hardly had the elements of a sale but I think there are more fundamental objections to this conviction. There was a restraining order which, by its terms, was a final order. No proceedings had or have since been issued under the Matrimonial Property Act. In my view there were no proceedings pending at the time of sale as required by s.45 in the sense that there were no proceedings on foot and awaiting hearing. I cannot accept that the issue of the restraining order in itself amounted to "proceedings pending" for the purposes of s.45. It even seems doubtful whether proceedings could have been taken against the Appellant for a breach of the restraining order because it applied to family chattels at a particular address, Avenue, and at the relevant time the car as a family chattel was not at Avenue.

These are criminal proceedings in which the usual high standard of proof must be met. The prosecution failed to meet that standard.

I am satisfied that the conviction cannot stand. The appeal is allowed, the conviction is set aside and the sentence is quashed.



Solicitors:

Weston, Ward & Lascelles, Christchurch, for Appellant
Crown Solicitor, Christchurch, for Respondent