

A **ATTORNEY-GENERAL**

v.

HARI CHAND

B [SUPREME COURT, 1968 (Hammett C.J.), 1st, 8th November]

Appellate Jurisdiction

Income tax—default in complying with demand of Commissioner under s.61 of the Income Tax Ordinance (Cap. 176—1967)—penalty—considerations relevant to assessment of appropriate fine.

C *Criminal law—sentence—default in complying with demand of Commissioner of Inland Revenue—fine—considerations relevant to assessment—difference between lenient and nominal penalty—Income Tax Ordinance (Cap. 176—1967) ss.61, 100(1).*

D In imposing a fine for the offence of failing to comply with a demand by the Commissioner of Inland Revenue under section 61 of the Income Tax Ordinance, a court must take into account not only the accused's ability to pay but also the gravity of the offence, the previous record of the accused and the prevalence of the offence. To impose a fine of 2/- for each day of default when the maximum fine for each such day is £20, is not merely to be lenient, but is to impose only a nominal fine.

Appeal by the Attorney-General against the amount of a fine imposed in the Magistrate's Court.

E B. A. Palmer for the appellant.

Respondent in person.

The facts sufficiently appear from the judgment.

F HAMMETT C.J.: [8th November, 1968]—

G In the Court below the respondent was charged, under section 100(1) of the Income Tax Ordinance, with the offence of failing to comply with the demand made by the Commissioner of Inland Revenue under section 61 of the Ordinance for a return of income to be filed and for certain information concerning his assets and liabilities. This information was required in order that the Commissioner could raise a proper assessment for tax purposes.

The respondent pleaded guilty and he was convicted and fined 2/- in respect of each day of the period of his default which extended over 53 days, making a total penalty of £5.6.0.

H The Crown has appealed against the sentence imposed on the ground that it is manifestly lenient having regard to the period of this continuing default and to the previous conviction of the respondent for a similar offence only six months earlier.

The facts are that by letter dated 20th December, 1967, the Commissioner of Inland Revenue called upon the respondent to furnish a statement of his assets and liabilities as at 31st December, 1966, and a return of his income derived during 1966. This information and return were required to be made by 7th February, 1968, but neither were supplied by the respondent by that date. He was prosecuted and on 20th May, 1968, was fined a total of £5.2.0 for his default. He still remained in default despite that prosecution until 12th July, 1968, when he filed his return of income.

On 7th August, 1968, he was prosecuted in respect of his second period of default which had lasted for another 53 days. At the hearing he did not offer any reason to account for his failure to furnish the information which had been called for.

The provisions of section 100(1) read as follows :-

"100(1). For every default in complying with the provisions of sections 61 or 104 of this Ordinance the persons in default shall each be liable to a fine not exceeding twenty pounds for each day during which the default continues."

The maximum fine prescribed by the Legislature for this offence is £20 a day each day during which default continues, which for a 53 day default amounts to more than £1,000. This is a clear indication of the gravity with which this offence is regarded by the Legislature affecting, as it does, the uniform collection of one of the Government's main sources of revenue, namely income tax.

A wide discretion is left to the Court in imposing the penalty for such offences.

In the exercise of its discretion the Court must, of course, have due regard to the means of the offender, but the penalty imposed must also have some reasonable bearing on the gravity of the offence.

In determining the quantum of the penalty, regard must be had not merely to the ability of the accused to pay the amount of the penalty fixed in respect of one day but also to his ability to pay the total of the fine imposed. It is clear to me, therefore, that the Court below, not unreasonably, considered first the total fine to impose, which it assessed at about £5, and then divided that figure by the number of days in default to arrive at a daily penalty of 2/- in respect of each of the 50 odd days concerned.

If the respondent's ability to pay a fine for one day's default had only been considered the penalty imposed might well have been fixed at, say, £5 for one day's default which in this particular case would then have resulted in a total penalty of over £250. This would clearly have been far more than the Court below considered the accused could pay.

In effect the Crown complains that in contemplating a total penalty in the neighbourhood of £5 for a continuing default of some 53 days the Court below erred and that such a penalty is manifestly inadequate. I am satisfied that this is so. It is not merely a lenient penalty but is, in my view, merely a nominal fine in these circumstances. It is out of keeping with and does not reflect the gravity of the offence with which the Legislature viewed it.

A The considerations which must be taken into account in imposing a penalty for such offences must include not only the accused's ability to pay but also the gravity of the offence, the previous record of the accused, and the prevalence of the offence. There may well be other considerations, and the prosecutor should have been armed with much more information, both as to the accused's means and the extent of his income and assets, than the rather scanty facts disclosed in the Court below and in this Court. Unless this is done a court is less able to make a balanced assessment of what would be an appropriate penalty in the particular circumstances of each case.

B Nevertheless, notwithstanding the paucity of facts and information given by the prosecution, both in the Court below and in this Court, I am quite satisfied that the nominal fines imposed in this case were quite inadequate and must be enhanced.

C After taking into account all the matters before me I allow this appeal. I set aside the sentence imposed in the Court below and in lieu thereof I impose a fine of 10/- a day for each of the 53 days in default, making a total of £26.10.0. I allow the respondent 7 days to pay and in default of payment a sentence of 2 months' imprisonment is imposed.