

IN THE SUPREME COURT OF SOUTH AFRICA

(Natal Provincial Division)

HELD AT PIETERMARITZBURG.

APPEAL 119/61.

DATE: 23/10/61.

B. NAIR

vs.

THE STATE

JUDGMENT.

HENOCHSBERG, J:

Appellant, an Asiatic male, was charged before the Magistrate, Durban, on a main and three alternative counts. He pleaded not guilty on all counts, but was found guilty on the second alternative and was sentenced to three months imprisonment suspended for three years on condition that he was not convicted of a similar offence committed within that period.

As the charge is somewhat lengthy I do not propose to go through it in detail, but will refer to such portions of it as I think are essential to this judgment. The charge itself starts off with a preamble setting out that the African National Congress is, and was declared to be, an unlawful organisation for a period which was extended for twelve months, with effect from the 7th of April, 1961, and it is alleged that on the 6th of June, 1961, at Durban Appellant did wrongfully and unlawfully carry on in the direct interest of the African National Congress activities in which the Congress was, or could have engaged at or before the date on which it became an unlawful organisation, to wit, by doing the acts mentioned in the Main Count, and those acts are thus described as the charge was eventually amended "By writing letters for, and/or by

signing letters, which letters had printed on them the letterhead African National Congress, and/or by sending letters which he had so written or signed for the Secretariat of the said unlawful organisation, to firms or persons in the district of Durban, to wit Messrs. Clover Dairies (Pty) Ltd., Hebox (S.A.). (Pty) Ltd. Daily Office Cleaning Services, and that therefore the Appellant was guilty of the offence of contravening section 3(1)(a)(iv), as read with sections 11(c) and 11(i) of Act No. 44, of 1950, as amended, and as read with sections 1 and 2 of Act No. 34 of 1960, and as further read with the said Proclamation.

Now the gravamen of this charge is that the Appellant should have been carrying on activities that the unlawful organisation, was, or could have engaged upon before it was declared an unlawful organisation. What actually happened was that Appellant signed ^{certain} letters to the persons named in the charge on note paper which is headed in large letters Congress Alliance (Natal.) That is the heading of the letters in question. On the left-hand side of the note paper, in small print, appear these words "African National Congress. Natal Indian Congress. S.A. Congress of Trade Unions, and S.A. Congress of Democrats". Those are obviously names of organisations in some way or other connected with the Congress Alliance (Natal) which in itself is a separate organisation, and the letters are signed Congress Alliance (Natal), signed B. Nair for Secretariat. Obviously, therefore, those letters were not signed for the Secretariat of the African National Congress, the unlawful organisation mentioned in the charge, but for the Secretariat of the Congress Alliance (Natal) There is no evidence as to the

relationship between that Congress and the other bodies mentioned in small print on the left-hand side of the note paper upon which these letters were written. There is no evidence of record to show that anything that was done by Appellant was done for or on behalf of the unlawful organisation.

What is more the Magistrate finds as a fact in his Facts found Proved and Reasons for Judgment that the Appellant signed these letters on behalf of the organisation called the Congress Alliance (Natal), and he also finds as a fact that the printed letterheads on the paper used for these letters included, amongst other organisations represented by the Congress Alliance (Natal), the African National Congress.

I do not see how it can be said that the African National Congress could have carried on the activities in which the Appellant is said to have engaged at the time when he was said to have committed this offence. When the point was put to Mr. Talbot, who appeared for the State, he rightly, in my view, conceded that he could not maintain that these letters were either written for, or signed for the Secretariat of the unlawful organisation.

In these circumstances it seems to me that the conviction and sentence cannot be upheld and the Appeal therefore succeeds.

HENNING, J: I agree.

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Ans. That are committed
must result in probably
Camp and one of them.

Not grounds of appeal as
judgment is being given.

Must form part of
the record.

Mr. Lowenstein // Sinteris

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