

R V Canterbury Crown Court, Ex Parte Regetford Ltd (2000)

[2001] HRLR 18 : [2001] ACD 40 : Times, February 6,

21/12/2000

Barristers

Nicholas Fairbank

Court

Divisional Court

Summary

The House of Lords decision that the Divisional Court could not review a refusal to award a defendant costs following a trial on indictment was not incompatible with a Convention right.

Facts

Application for judicial review of a decision of HH Judge Rooke QC refusing to make a defendant's cost's order after a case was withdrawn from the jury. The applicant was prosecuted under the Fire Precautions Act 1971 for contraventions of requirements of a fire certificate and elected trial by jury at the Crown Court. The applicant demonstrated at trial that it had not been liable under the certificate at the material time. The case was withdrawn from the jury and verdicts of not guilty were entered. The judge refused to make a defendant's costs order on the grounds that the applicant had failed to notify the change in occupancy of the premises and had not stated that it was not the occupier in a defence statement served some months prior to the trial. This application raised a jurisdiction point. There was binding House of Lords authority that a decision refusing to award a defendant costs following a trial on indictment could not be reviewed by the Divisional Court by virtue of s.29(3) Supreme Court Act 1981 (Re Sampson (1987) 1 WLR 194). The applicant submitted the following: (i) s.29(3) of the 1981 Act had to be read to allow judicial review of a refusal to grant a defendant's costs in light of the Human Rights Act 1998; and (ii) a refusal to allow a defendant's costs on acquittal could impugn a defendant's innocence and infringe Art.6 European Convention on Human Rights.

Held

It was not altogether satisfactory that a defendant who obtained no order for costs after acquittal had no remedy even if the judge had plainly been wrong. Although Art.13 of the Convention had not been incorporated into English law, failure to provide a remedy seemed to risk rendering the United Kingdom in breach of its treaty obligations, which was a situation that the courts should strive to avoid. (2) Section 29(3) of the 1981 Act could only be incompatible with an identified Convention right. Section 29(3) of the 1981 Act was concerned with judicial review and there was no Convention right to have decisions reviewed. The interpretation placed on s.29(3) of the 1981 Act in Sampson (supra) could not be said to be incompatible with a Convention right. Section 3 of the 1998 Act did not compel the court to place a

different interpretation on s.29(3) of the 1981 Act. Accordingly, there had been no breach of a Convention right in refusing the applicant its costs. (3) In any event, it was not arguable that the judge's decision had been wrong or Wednesbury unreasonable. Application dismissed.

Permission

Lawtel 