

Case No 488/93
/mc

**IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)**

Between:

MARK DAVIDS

APPELLANT

- and -

THE STATE

RESPONDENT

CORAM: BOTHA, VIVIER et HOWIE JJA.

HEARD: 12 September 1994.

DELIVERED: 20 September 1994.

J U D G M E N T

VIVIER JA:

The appellant pleaded guilty in the Cape Town Regional Court to a charge of stealing 2000 new, unmarked number plates from a firm called C A Number Plates and Signs and was duly convicted on this charge. One Bhamjee, who appeared with him, pleaded guilty to the alternative charge of contravening sec 37(1) of Act 62 of 1955 and was found guilty on that charge. Both were sentenced to three years' imprisonment, such imprisonment to be subject to the provisions of sec 276(1)(i) of the Criminal Procedure Act No 51 of 1977 ("the Act"). Both appealed against their sentences to the Cape Provincial Division. The appellant's appeal was dismissed but Bhamjee's sentence was altered to three years' corrective supervision in terms of sec 276(1)(h) of the Act. With the necessary leave the appellant now appeals to this Court against his sentence.

Little appears from the record about the circumstances in which the number plates were stolen as neither accused testified before sentence was passed. From the appellant's statement in terms of sec 112(2) of the Act, the report of Lieutenant Germishuis of the Department of Correctional Services and other information placed before the trial Court, only the following is known. The appellant, who worked for the said firm as a storeman, removed the number plates, valued at R16 800, from the firm's premises over a period of four months from the beginning of December 1990 to the end of March 1991, and handed them to Bhamjee, a fellow employee, who sold them to an outside person. Bhamjee pocketed all the cash proceeds of the theft.

The appellant was 19 years old when the crime was committed and he has no previous convictions. He passed standard 8 at school and at the time of the trial he worked as a labourer and

earned R200 per week. Germishuis found both the appellant and Bhamjee to be suitable for correctional supervision and he recommended that a sentence of correctional supervision in terms of sec 276(1)(h) of the Act be imposed in respect of both.

Bhamjee was 34 years old when the crimes were committed and he also has no previous convictions.

In the case of Bhamjee the Court *a quo* held that the regional magistrate had misdirected himself in regarding Bhamjee's role as that of a thief instead of a statutory receiver. It went on to impose a sentence of correctional supervision upon him. In the appellant's case the Court *a quo* found no misdirection and confirmed his sentence of imprisonment. The result was a disturbing disparity between the sentences. There are clearly no personal factors warranting the disparity because a sentence of correctional supervision had been recommended for the appellant as well. The

Court **a quo** tried to justify the disparity solely on the ground that Bhamjee was a receiver and the appellant a thief. It has, however, often been pointed out that it is not possible to lay down anything like a hard and fast rule when it comes to assessing the respective blameworthiness of the receiver and the thief; in any particular case the crime of the thief or the crime of the receiver may be more serious than that of the other. (**R v Sunday** 1954 (4) SA 487 (A) at 489D-490B.)

In the circumstances of the present case it would be quite wrong to pass a heavier sentence upon the thief than upon the receiver. It seems to me that their blameworthiness is about on a par, and that is the way they were treated by the regional magistrate who gave them the same sentence. Both Bhamjee and the appellant worked for the complainant firm. Bhamjee was older and clearly wiser than the appellant. It is highly probable that Bhamjee not

only knew that the number plates were stolen but that he was fully involved in the whole operation. The degrees of participation of the two were thus more or less equal. Moreover, Bhamjee was the only one to gain financially from the theft. Once Bhamjee's sentence was altered, therefore, the appellant's sentence could not stand.

The appeal against sentence succeeds. The sentence is set aside and the matter remitted to the regional magistrate for the imposition of a sentence of correctional supervision in terms of sec 276(1)(h) of the Act, unless, as a result of a change in the appellant's circumstances this is no longer a proper sentence.

W VIVIER JA.

BOTHA JA)
HOWIE JA) Concur.