

ENGLAND AND WALES / JUDGMENT

VJA, R v

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Case No: 201004261 D5 Neutral Citation Number: [2010] EWCA Crim 2742 IN THE HIGH COURT OF JUSTICE COURT OF APPEAL (CRIMINAL DIVISION) ON APPEAL FROM THE CROWN COURT AT CROYDON HIS HONOUR JUDGE AINLEY T20080253 Royal Courts of Justice Strand, London, WC2A 2LL Date: Friday 19 th November 2010 Before : LORD JUSTICE AIKENS MR JUSTICE OPENSHAW and THE RECORDER OF NORWICH

- ----- Between : R
- and - V J A
- ----- (Transcript of the Handed Down Judgment of WordWave International Limited A Merrill Communications Company 165 Fleet Street, London EC4A 2DY Tel No: 020 7404 1400, Fax No: 020 7404 1424 Official Shorthand Writers to the Court)
- ----- Ms Jane Bewsey QC for the Crown Mr Adrian Nadir Eissa for the Appellant
Hearing dates: 21st October 2010
- -----

Judgment

Respondent Appellant Lord Justice Aikens : 1. 2. On 21 October 2010 the court heard an application by Mr VJA for leave to appeal a ruling given by HHJ Ainley on 25 June 2010, at a preparatory hearing of the trial of this case. The order for a preparatory hearing had been made under section 7(1) of the Criminal Justice Act 1987 (“the 1987 Act”). The application for leave to appeal from the judge’s order was therefore made under section 9(11) of that Act. At the end of the hearing announced that we would refuse leave to appeal for reasons to be handed down at a later date. These are our reasons, to which all have contributed. The case is unusual because the facts giving rise to the charges against the applicant all occurred in 1984/1985. However, Mr VJA was only charged in January 2008 with the two offences he faces on the indictment with which we are concerned, viz. theft of US\$ 4 million (count 1) and inducing another to wait for payment by deception, contrary to section 2(1)(b) of the Theft Act 1978 (count 2). We will set out the relevant facts concerning the alleged offences first and then the chronology leading to the current proceedings before dealing with the arguments relating to the application for leave to appeal. The Facts giving rise to the charges against Mr VJA 3. 4. 5. 6. In the 1980s, Mr VJA was a businessman who controlled and ran a large number of companies that were involved in international trade, particularly with West African countries, and also with currency

transactions. There were two groups of companies. One was a group of public companies, which can be called the Grovella Group, and the second group consisted of private companies, called the Staxford group. Mr VJA was also the manager of another company called Amaron International Corporation, ("Amaron") which is a Panamanian registered company and not part of either of the other two groups. Mr VJA had a power of attorney in respect of the management of Amaron and so was, effectively, an officer of that company. Amaron was run from Guernsey. The day to day administration of the company was overseen by Mr MC Gould. However, Mr VJA ran his groups of companies and gave orders concerning Amaron from offices at Boston House, New Broad Street in the City of London. From 1982 Amaron had banking facilities with Johnson Matthey Bankers Limited ("JMB"), which was what was then called a "merchant bank". It provided finance facilities to companies that engaged in international trade. These included the purchase and sale on behalf of customers of currencies, either to facilitate a customer's international trade business or because the customer wished to hold positions in foreign currencies. JMB's foreign exchange business was conducted through its foreign exchange department or "FX department". From 1983 Amaron operated three accounts with JMB. These were, respectively, a sterling current account, a US dollar current account and a US dollar deposit account. Mr VJA and Mr Gould were the authorised signatories on all three Amaron accounts with JMB. 7. 8. 9. 10. 11. 12. 13. On 13 July 1984 Mr Gould, on behalf of Amaron, gave instructions to JMB to purchase two lots of US\$ 2 million for Amaron's account. The sterling cost of those two dollar purchases was £3,033,426.15. In fact, on 17 July 1984 JMB erroneously credited the Amaron US dollar current account with four separate amounts of US\$ 2 million, that is a total of US\$ 8 million. On the same day JMB debited Amaron's sterling current account by four separate amounts which together totalled £6,066,852.30. The credits and debits were, therefore, twice what they should have been if JMB had followed Amaron's instructions correctly. On 18 July 1984 JMB spotted the error so far as the Amaron sterling current account debits were concerned. JMB therefore credited Amaron's sterling current account with two amounts which together totalled £3,033,426.15. However, because of internal deficiencies, JMB did not correct the erroneous credit payment of the additional US\$ 4 million that it had made to Amaron's US dollar current account. That overpayment was only recognised by JMB staff on 25 September 1984. It is the Crown's case that Mr Gould spotted the overpayment on the Amaron US\$ current account shortly after 17 July 1984 and that he immediately informed Mr VJA, who told Mr Gould not to alert JMB to this error. The Crown alleges that Mr VJA then used his position as the de facto manager of Amaron to order Mr Gould to make withdrawals of sums from the Amaron US\$ current account so that the money could be used in connection with other companies controlled by Mr VJA. By mid September 1984 the whole of the wrongly credited US\$ 4 million had been withdrawn from the Amaron US\$ current account. Once JMB had spotted its mistake, on about 25 September 1984, it reversed the erroneous credit of US\$ 4 million made to the Amaron US\$ current account. The effect of this (because of the withdrawals from the US\$ current account in the meantime) was that Amaron's US\$ current account became overdrawn to the extent of US\$ 4.4 million. By this time JMB itself was in financial difficulties. It was therefore anxious that Amaron should quickly repay the US\$ 4.4 million overdrawn. However, on 30 September 1984 JMB collapsed. The Bank of England took the unprecedented step of buying the share capital of JMB for £1 and appointing a

new board of directors. JMB became, effectively, a subsidiary of the Bank of England and was renamed Minorities Finance Limited (“MFL”). At the time that the Bank of England bought JMB, the public and private companies controlled by Mr VJA and Mr VJA himself together owed JMB some £11.9 million. A police investigation into the collapse of JMB started in October 1984. It is the Crown’s case that, from early October 1984, Amaron, through Mr VJA and Mr Gould, told officials of JMB/MFL that Amaron had been confused about the position on its US\$ current account, because Amaron thought that the additional US\$ 4 million credit was the result of a “black market” Nigerian Niara/US\$ trade worth US\$ 4 million which had been credited to that account at the same time as the sterling/US\$ trade in July 1984. There were a number of meetings between Mr VJA and JMB/MFL officials from October 1984 to September 1985. Mr VJA produced documents which he said substantiated his statement that the additional US\$ 4 million credited to Amaron’s US\$ account came from black market Niara/US\$ trading. On the basis of these statements, JMB/MFL gave Amaron time to repay the \$ 4.4 million overdraft on the US\$ current account. In a letter dated 1 April 1986 Mr VJA promised to repay the outstanding balance plus interest over a four year period in quarterly instalments. Despite his repeated assurances, that was never done. 14. It is the Crown’s case that Mr VJA, in his position as officer/manager of Amaron, dishonestly appropriated the US\$ 4 million overcredited to the Amaron US\$ current account in order to use it for his own purposes and that at no time did he intend to repay JMB. Therefore, as Amaron was not entitled to the US\$ 4 million credit, Mr VJA stole that sum from JMB (count 1 of the present indictment). Further, the Crown’s case is that Mr VJA’s statements and production of documents to show that the US\$ 4 million was the result of Niara/US\$ trading was all a course of conduct by deception, which was intended to avoid repayment of the US\$ 4 million by deception (count 2). The Chronology leading to the current proceedings and the application to stay them for abuse of process 15. 16. 17. JMB/MFL attempted to recover the US\$ 4 million from Amaron but did not do so. A statutory demand on Amaron was made in February 1986. In the meantime JMB/MFL brought proceedings in the High Court, Queen’s Bench Division against Mr VJA personally in an attempt to recover the sum of US\$ 4 million. But on 17 December 1986 Mr VJA was made bankrupt. In late 1986 or early 1987 Mr VJA left the UK. When he did so he was aware that there was a police investigation into companies that he controlled. Mr VJA did not return to the UK until 2007. In 1986 the corporate empire controlled by Mr VJA collapsed as a result of Lloyd’s Bank withdrawing banking facilities. Directors of Grovebell Group PLC appointed Deloitte, Haskins & Sells (“Deloitte”) to carry out a full examination of the state of the Grovebell group’s finances. Deloitte produced its first report on 1 September

1986. Grovebell Trading Ltd was placed in voluntary liquidation by its directors in September 1986 and a liquidator appointed on 30 September 1986. The liquidator immediately referred his concerns about the probity of the public companies controlled by Mr VJA to the City of London police. The police conducted a first search of the Boston House offices on 30 September 1986 and removed a large quantity of material. There were further City of London police searches of the offices in October 1986 and December 1987. At some time in late autumn 1986, the City of London police decided to return some of the material seized from the offices at Boston House which they did not choose to retain as part of a continuing

investigation. That decision pre-dated searches in 1987. The bulk of the material was returned to the liquidator of Grovobell Trading Limited because it was thought that the majority of that material concerned that company. The liquidator, or rather the firm of accountants/insolvency practitioners of which he was a partner (Cork Gully) retained those documents until 2004, when Cork Gully finally disposed of all the documents. 18. Some material that was seized from Boston House was sent to what was then the Fraud Investigation Group, which was subsumed in the Serious Fraud Office ("SFO") in 1988. Material that came into the control of the SFO has been retained, 19. 20. 21. 22. 23. 24. either in its original form or in copy. Other material that was seized was retained by the City of London police, but not all of it has been retained to the present day. In the months after the search of Boston House, the City of London police were requested to give access to original documents seized to various solicitors and a firm of accountants acting for Mr VJA. They did so. On occasions copies of materials were requested and they were provided. During the period 1987 to 2007 Mr VJA was outside the UK. From time to time there were discussions between Mr VJA and the police to try and persuade him to return to the UK in connection with various matters concerning companies controlled by him. In August 2007 Mr VJA suffered a stroke whilst in Nigeria. He returned to the UK by air ambulance for treatment. He was arrested on 9 November 2007 by officers of the City of London police. In January 2008 he was charged with the two offences with which we are now concerned. The proceedings were transferred to the Crown Court at Southwark in early 2008. On 28 February 2008 the SFO gave notice under section 7(2) of the Criminal Justice Act 1987 of its application for an order by the judge that a preparatory hearing in the case be held. The grounds for applying state: "A Preparatory Hearing is requested so that preliminary matters may be addressed, including (but not limited to) the relevant disclosure provisions applicable to an investigation which commenced before 1 April 1997, the defendant's fitness to stand trial and a case timetable set to take into account the passage of time since the offences were committed and the age of the surviving witnesses". It is not clear from the court record when, if at all, a specific order granting this application was actually made. In this regard we note the provisions of Rule 15.4.(3) of the Criminal Procedure Rules 2010, which are the same as those in force in 2008, concerning the determination of an application for a preparatory hearing. We return to this point below. It seems to us likely that if an order was made, it was not until 22 May 2009, which is the date on which Mr VJA was arraigned in respect of the counts on the indictment with which we are concerned and also in respect of counts on two other indictments with which we are not concerned. He pleaded not guilty to all counts. It became clear at a hearing in April 2008 in the Crown Court at Croydon (to which the case had been transferred), that the defence would wish to apply to stay the proceedings on the grounds of abuse of process of the court. Before that could be dealt with, however, there was an issue of whether Mr VJA was fit to stand trial, which had to be decided. HHJ Ainley ruled that he was fit to do so on 27 February

2009. The trial proper is due to start in January 2011. HHJ Ainley heard the application to stay on the ground of abuse of process over a number of days between March 2010 and June 2010. The hearing finished on 14 June 2010 and the judge reserved his decision. He gave judgment on 25 June 2010. The judgment of HHJ Ainley on the application to stay the proceedings on the ground of abuse of process of the court 25. 26. HHJ Ainley stated the ground of the application at the start of his judgment. It was that “a very large number of documents have been lost or destroyed and without the evidence that they contain there cannot be a fair trial of the issues that arise on” the current indictment. The judge said that these documents concerned the “financial health of a number of companies connected with (or under the control of)” Mr VJA. The judge recited the cases of the prosecution and defence. He noted that it would be the prosecution case that companies under the control of Mr VJA were in severe financial straits in July/September 1984. It would be the contention of the defence that this was not so and, moreover, that Mr VJA made statements that he would repay the US\$ 4 million on the basis that companies under his control were in a financial position to make this possible. However, the defence argued, making that case was now going to be much more difficult, if not impossible, because of the failure of the prosecution authority to retain the documents taken from Boston House in 1986 and 1987. The defence argued that, in consequence, the trial would be unfair. The judge’s findings are as follows: (i) documents seized from Boston House that were thought to be relevant to possible proceedings against Mr VJA (or others) were passed to the SFO. Those documents deal with the financial status of Mr VJA and “the various companies”. They are still available: (6H). (ii) Those documents do not indicate the state of the bank accounts of some of the various companies. The defence had commissioned a report from a forensic accountant which stated the view that it would not now be possible, accurately and objectively, to assess the financial position of those companies: (7B). (iii) Much documentation has been retained which is capable of pointing towards what the financial state of the various companies might have been, although there are “gaping holes”: (7C). (iv) Although the police might (in hindsight) be criticised for handing over so much documentation to Cork Gully, “the primary reason why the documents no longer exist is because [Mr VJA] kept himself out of the way for a very long period of time. It was only when, presumably, nobody could foresee that there was any realistic likelihood of their ever being a trial....that they were got rid of”: (8C). (v) The disappearance of the documents raised “difficulties, perhaps difficulties in some instances in an acute form” for the defence. There were difficulties in the way of the defence putting forward in the clearest possible light and to the best advantage the issues that they wished to raise: (8E-F). (vi) However, the reason for that was “the voluntary choice of [Mr VJA] to absent himself from the jurisdiction for a period of ...about 17 years until these documents were destroyed”. Criticism of the police, prosecution authorities and Cork Gully were of “very minor importance” by comparison: (8G- H). 27. The judge therefore concluded, at 9A-B: “I do not consider, from the material that has been placed before me, that it would be impossible for a fair trial to be conducted. I consider that it can. I consider that the Court process will be capable of protecting [Mr VJA] from unfair advantage being taken of him because certain

documents have disappeared. Accordingly I am of the firm view that this application to dismiss as an abuse of process must fail and that the trial should take place on its scheduled date". 28. The application for leave to appeal HHJ Ainley's ruling was lodged on 2 July 2010. The proposed grounds of appeal 29. The Grounds of Appeal are set out in five paragraphs and signed by Mr Eissa, who appeared for the applicant before us. Paragraph 1 refers to the case of R v Hennessy

[1979] 68 Cr App R 419 and the statement of Lawton LJ at page 426 that those who conduct and prepare prosecutions owe a duty to the courts to ensure that all relevant evidence of help to an accused is led by them or made available to the defence. The ground submits that the prosecution failed to do so in this case, with the result that material that goes to the heart of the defence is no longer available. Paragraph 2 states that once the judge had found that the absence of material caused the applicant acute difficulties in the presentation of his defence, the judge should have stayed the proceedings. Paragraph 3 alleges an error of fact by the judge in his judgment, in that some material was handed over to the liquidator before the applicant left the UK. Paragraph 4 submits that the issue of whether the applicant can have a fair trial should not be determined by his own conduct in leaving the UK for 17 years. Paragraph 5 alleges that the judge was wrong in concluding that all the missing material was returned to the liquidator as the legal owner of it, because some material related to "the African companies" which were not in liquidation. 30. It will be seen that the Grounds of Appeal do not allege that the judge erred with regard to the principles of law applicable to an application to stay proceedings for abuse of the process of the court. Nor do they identify any other specific question of law that is said to arise out of the judge's decision. Effectively, the Grounds say, first, that the judge should have arrived at a different conclusion given his findings of fact and, secondly, that he erred in some findings of fact that he made which therefore led to him reaching a wrong conclusion. The relevant legislation and Criminal Procedure Rules 31. As already noted, this application for leave to appeal is made under section 9(11) of the Criminal Justice Act 1987. We have to consider the scope of the court's power to grant leave under that subsection, in the light of the provisions of section 7(1) and

(2) and section 9(3) of the 1987 Act. Those provisions state (as amended by the Criminal Justice Act 2003): Preparatory hearings

7. Power or order preparatory hearing

(1) Where it appears to a judge of the Crown Court that the evidence on an indictment reveals a case of fraud of such seriousness or complexity that substantial benefits are likely to accrue from a hearing (in this Act referred to as a "preparatory hearing") before the jury are sworn, for the purpose of—

- (a) identifying issues which are likely to be material to the verdict of the jury;
- (b) assisting their comprehension of any such issues;

- (c) expediting the proceedings before the jury; or
 - (d) assisting the judge's management of the trial, he may order that such a hearing shall be held; or
 - (e) considering questions as to the severance or joinder of charges.
- (2) A judge may make an order under subsection (1) above on the application either of the prosecution or of the person indicted or, if the indictment charges a number of persons, any of them, or of his own motion.
9. The preparatory hearing.
- (3) He may determine— (a)..... (aa) a question arising under section 6 of the Criminal Justice Act 1993 (relevance of external law to certain charges of conspiracy, attempt and incitement);
- (b) any question as to the admissibility of evidence; and
 - (c) any other question of law relating to the case; and
 - (d) any question as to the severance or joinder of charges
- (11) An appeal shall lie to the Court of Appeal from any order or ruling of a judge under subsection (3)(b) (c) or (d) above, but only with the leave of the judge or of the Court of Appeal. 32. 33. The procedure for dealing with preparatory hearings under section 7(2) of the 1987 Act and also under section 29(4) of the Criminal Procedure and Investigations Act 1996 is set out in detail in Part 15 of what are now the Criminal Procedure Rules
2010. The relevant rules have remained the same since the 2005 Rules which were in force at the time of the preparatory hearing and application before HHJ Ainley. From the material that we have seen, it would appear that the SFO complied with the provisions in Rules 15.1 and 15.2 when applying for a preparatory hearing. However, we have not seen any document indicating the decision of a judge granting the application for a preparatory hearing, as should have been produced by the Crown Court officer in accordance with Rule 15.4(3)(a) once the judge had decided to grant a preparatory hearing. Despite this apparent failure to comply with the Criminal Procedure Rules (which is most unfortunate), we are satisfied that the hearing before HHJ Ainley to stay the proceedings for abuse of process must have been part of a preparatory hearing within the scope of section 7(2) of the 1987 Act. Therefore there can be no doubt that the issue of whether there should be leave to appeal has to be determined by reference to section 9(11) of that Act. The circumstances in which this court can exercise its power to grant leave to appeal under section 9(11) of the Criminal Justice Act 1987: the House of Lords' decision in *Regina v H*. 34. In *Regina v H* [2007] 2 AC 270, the House of Lords considered the relationship between section 7(1) and 9(3) of the 1987 Act and the circumstances in which the Court of Appeal (Criminal Division) can exercise its power, under section 9(11) of the 1987 Act to grant leave to appeal a decision of a judge sitting in the Crown Court in the course of a preparatory hearing which was held

pursuant to section 7(2) of that Act. In that case the applicants had sought discovery of some records from the prosecution, who had rejected the request. The applicants then applied under section 8 of the Criminal Procedure and Investigations Act 1996 (“CPIA”) for an order requiring the prosecution to disclose the records requested. That application was heard in the course of a preparatory hearing. The judge rejected the application and the applicant applied to the Court of Appeal for leave to appeal under section 9(11) of the 1987 Act. The Court of Appeal considered that it was bound by previous Court of Appeal authority so that it had no jurisdiction to grant leave to appeal under section 9(11).

However, it did so in order that the matter could be considered by the House of Lords. 35.

36. The Court of Appeal certified three questions of law for the House’s consideration.

Essentially they were: (i) does an order or ruling of the judge from which an applicant seeks leave to appeal under section 9(11) of the 1987 Act have to be one made for one of the purposes set out in section 7(1) before an appeal will lie to the Court of Appeal under section 9(11); if so: (ii) can an order (either way) made under section 8 of the CPIA 1996 fall within those purposes; in any event (iii) can an order for disclosure under section 8 of the CPIA be the subject of an appeal under section 9(11)? All five of the Law Lords sitting on the appeal gave substantial speeches dealing with the questions posed. They were not unanimous in their approach or their answers. However, all recognised that the previous case law on the scope of sections 7 to 9 of the 1987 Act was, in Lord Scott of Foscote’s phrase, an “impenetrable thicket of interpretation through which it is now impossible to find a coherent path” so that a chain-saw should be taken to it: 282F.

37. We think that, for the purposes of the present application, the following principles can be derived from *Regina v H*. First, the purposes set out in section 7(1), for which a preparatory hearing may be ordered, should be interpreted broadly and generously.¹ Secondly, the orders that a judge may make “as part of” a preparatory hearing proper are limited to the specific matters set out in section 9.2 Thirdly, the judge should make an order under section 9(3) only if he reasonably considers that to make such a ruling would also serve a useful trial purpose within one of the purposes set out in section 7(1).³ Fourthly, the scope of what falls within section 9(3)(c) ie. “any other question of law relating to the case”, is restricted. Whether a ruling falls within that provision depends on the nature of the issue which the order or ruling decides.⁴ Fifthly, section 9(3)(c) does not cover rulings on disclosure “as such and without more”.⁵ The “question of law relating to the case” must relate to something more specific than the question of whether the judge misdirected himself and so vitiated his decision.⁶ The questions of law have to go “to the root of the case” of 1 Lord Nicholls of Birkenhead at [7]; Lord Scott of Foscote at [32]; Lord Rodger of Earlsferry at [50]; Lord Mance at [91]. 2 Lord Hope of Craighead at [22]-[23]; Lord Rodger at [55]; Lord Mance at [83] and [92]-[93]. Lord Nicholls and Lord Scott dissented on this point. 3 Lord Hope at [22]; Lord Rodger at [55]; Lord Mance at [99] 4 Lord Nicholls at [13]; Lord Hope at [22]-[23]; Lord Scott at [43]; Lord Rodger at [59]-[69]; Lord Mance at [110]. 5 Lord Nicholls at [12]-[13]; Lord Hope at [23]; Lord Scott at [43]; Lord Rodger at [59]; Lord Mance at [110]. The words in quotes are from Lord Mance’s speech. 6 Lord Nicholls at [13]; Lord Hope at [24]; Lord Scott at [41]; Lord

Rodger at [59]; Lord Mance at [111]. 38. 39. which Lord Mance gave some examples.⁷ Lastly, the Court of Appeal's jurisdiction to give leave to appeal under section 9(11) in respect of a determination made by the judge under section 9(3)(c) is limited to the types of question of law that fall within section 9(3)(c).⁸ The House dismissed the appeal because it concurred with the Court of Appeal's conclusion (albeit for different reasons) that it had no jurisdiction to grant leave to appeal the order of the judge on disclosure under section 8 of the 1996 Act. The House also made various comments about how judges should approach case management issues that arise before a trial proper begins when the case is one that falls within section 7(1) of the 1987 Act. Those comments must, by extension, also apply to cases that fall within section 29 of the 1996 Act. In particular the House considered whether, if there has been a successful application to have a preparatory hearing, all determinations by a judge thereafter must necessarily be within the context of that preparatory hearing. Lord Nicholls seemed to think that they must be,⁹ whereas Lord Rodger seemed to think the opposite.¹⁰ He said that a judge could deal with matters that are properly dealt with in a preparatory hearing and those that are not on the same occasion. So did Lord Mance.¹¹ Since that decision, Hughes LJ, Vice-President of this court, has pointed out that, nowadays, a judge hearing a case, whether within section 7 of the 1987 Act or section 29 of the 1996 Act or neither, has very wide powers of case management outside the preparatory hearing regime: see *R v I, P, O, I&G* [2009] EWCA Crim 1793 at [22]. Hughes LJ therefore counsels judges to be very cautious about directing a preparatory hearing under either of those two sections. The difficulties that can arise in trying to determine whether a particular ruling is properly made as part of a preparatory hearing, whether it comes within section 9(3)(c) of the 1987 Act and also whether, exceptionally, it gives rise to a right of interlocutory appeal under section 9(11) of that Act all emphasise why, with respect, that advice is very wise. Does the decision of HHJ Ainley constitute "any other question of law relating to the case" within section 9(3)(c) of the 1987 Act? 40. As a result of the House of Lords' decision in *Regina v H* it is accepted by Mr Eissa that this court's jurisdiction, pursuant to section 9(11) of the 1987 Act, to grant leave to appeal from HHJ Ainley's decision only arises if that decision is a "an order or ruling under" section 9(3)(c) of the 1987 Act as construed in that case. Mr Eissa accepts that HHJ Ainley's decision is not one under section 9(3)(b). So the question is whether the judge's determination on the application to stay the proceedings as being an abuse of process constitutes a ruling of the judge on "any other question of law relating to the case" under section 9(3)(c) of the 1987 Act, as construed by their Lordships in *Regina v H*.

41. We are quite satisfied that it does not do so. First, it is not argued that there is some independent issue of law that has to be determined prior to deciding the overall 7 Lord Mance at [96]. See also Lord Rodger at [60]. 8 Lord Nicholls at [14]; Lord Hope at [24]; Lord Scott at [35] and [43]; Lord Rodger at [71]; Lord Mance at [114]. 9 See [9]. 10 See [57] and [66]. 11 See [92]. question of whether there should be a stay because the proceedings are an abuse of the process of the court. Secondly, it is not argued that the judge erred in law in applying the well-known principles that he had to consider in deciding that overall issue. Thirdly,

there is no explicit argument in the proposed Grounds of Appeal that the decision of the judge was so unreasonable that no reasonable judge, properly directing himself, could have come to that conclusion. To the extent that it is implicit in them, in our view, in the context of this case and the issue decided by the judge, such an argument does not constitute “any other question of law relating to the case” under within section 9(3)(c) as interpreted in *Regina v H*, as Lord Scott of Foscote specifically stated at [41].

42. We would emphasise that we are not saying that even if issues were raised which are covered by the first two points made in the previous paragraph, they would necessarily come within the ambit of section 9(3)(c) as interpreted by the House of Lords in *Regina v H*. Those questions must await another case for decision. But, as it is, we are satisfied that, in this case, there is no issue of law relating to the case under section 9(3)(c) that can be the subject of an application for leave to appeal pursuant to section 9(11) of the 1987 Act. Further exercise of judgment 43. 44. 45. 46. It is our view that, even if there was a question of law that comes within section 9(3)
- (c) of the 1987 Act and so this Court has jurisdiction to grant leave to appeal pursuant to section 9(11), there remains a further exercise of judgment that this court must make before it decides whether or not to do so. The right to have an interlocutory appeal remains an exceptional right in Crown Court trials. Even if a question comes under section 9(3)(b) or (c), it is only in appropriate cases that the court should permit an applicant to exercise the right granted by section 9(11) of the 1987 Act. Even if we had been satisfied that this case raised a question of law which was one under section 9(3)(c) so that we had jurisdiction to grant leave to appeal, we would not have done so in this case. In the course of his reserved judgment (which we have already summarised at paragraphs 26 -28 above) the judge fully considered the facts of the case and came to clear findings. The search of Mr VJA's offices was made on 30 September 1986. The defendant left the country very shortly afterwards. Plainly the inference might properly be drawn that he fled to avoid arrest and prosecution. Thereafter, he resisted all attempts at extradition. There was no reason at all to think that he would ever return voluntarily. He only returned in November 2007 because he needed medical treatment following his stroke. His return was unforeseen, indeed it was unforeseeable. Following the seizure of the records from Mr VJA's offices, the police identified those which they considered might be relevant to the contemplated prosecution of him and handed them over to the SFO. Those records still remain available for inspection by the defence to be deployed at the trial, if so advised. 47. The police were faced with the problem of what to do with those papers which they had seized which they did not consider might be relevant. Their obligation was to return them, but they could not return them to Mr VJA, because he had fled the country. Nor could they could be returned to the majority of his companies, because they were by then in liquidation. So – as it seems to us very sensibly – the police delivered materials to Cork Gully, the well known and respected liquidators. Cork Gully retained the documents for a very long time; until 2004, when they were destroyed. If they had a duty to keep the records at all (which is far from clear) that duty can only have lasted for such time as was reasonable in all the circumstances. It seems to us that Cork Gully

cannot possibly have been under any duty to keep the documents until 2004, let alone until 2007, on the off chance that Mr VJA would unexpectedly return to the UK. The decision to destroy the documents in 2004 was entirely reasonable. 48. The judge accepted that Mr VJA will be disadvantaged in the preparation and presentation of his defence by this destruction of the records relating to his various companies but the judge held that he had only himself to blame for this state of affairs which was caused by his own conduct in fleeing the country and in giving every indication that he would never return. Furthermore, he considered that the trial process itself would be more than adequate to provide Mr VJA with a fair trial.

49. We have ourselves carefully considered the judge's ruling overall. We can find no fault with his approach, with his reasoning or with his conclusions. If we had jurisdiction to hear this case, we would have refused leave because it seems to us that the judge's decision was plainly correct on the material before him.

Conclusion

50. For these reasons, we dismissed the application for leave to appeal.

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