

SOUTH AFRICA / JUDGMENT

S v Heavy Transport and Plant Hire (Pty) Ltd. and Others (373/88)

[1989] ZASCA 137 (3 October 1989)

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COURT

Supreme Court of Appeal

BEFORE

Corbett, Hefer, Nestadt, Steyn, Kumleben

CASE / FILE NUMBER

373/88

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CG CASE NUMBER: 373/88

IN THE SUPREME COURT OF SOUTH AFRICA (APPELLATE DIVISION)

In the matter between:

HEAVY TRANSPORT AND PLANT HIRE (PTY) LTD Appellant no 1
TWO WAY TRANSPORT (PTY) LTD Appellant no 2
ERIC ANDRE MULLER Appellant no 3
and THE STATE Respondent

CORAM : CORBETT, CJ., HEFER, NESTADT, STEYN, et RUMLEBEN, JJA.

HEARD: 7 SEPTEMBER 1989

DELIVERED: 3 OCTOBER 1989

JUDGMENT STEYN, JA.

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Appellants and a company, SA Trucking (Pty) Ltd, were charged in the regional court at Bloemfontein with two contraventions of sec 31 (1) (a) or alternatively of sec 31 (1) (b), of the Road Transportation Act, no 74 of 1977. SA Trucking (Pty) Ltd was accused no 1 and appellants accused no's 2, 3 and 4 respectively. Before they were called upon to plead all the charges against the first accused and the main charge against appellants were withdrawn. The original numbering of the accused was, however, retained. First and second appellants (accused no's 2 and 3 respectively) are Heavy Transport and Plant Hire (Pty) Ltd and Two Way Transport (Pty) Ltd. Both are companies duly incorporated in accordance with the relevant South African company laws. Both were represented at the trial by their servant, Eric André Muller, who was also charged separately (as accused no 4) in his capacity as their director and/or servant.

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Appellants pleaded not guilty to the two remaining (alternative) counts. (The charge sheet was cast in the form of a general section in which reference was made to an annexure, A, in which certain details pertaining to each count were set out. This annexure will be dealt with later.) These two charges were to the effect that on the 12th February 1985 and 26th June 1985 respectively a load of washing powder and a load of steel were conveyed for reward by appellants on a public road in the district of Bloemfontein, the load of washing powder in a trailer no ND 344020 drawn by a mechanical horse no HCW 290 T, driven by Rabie Dael, and the load of steel in a trailer no ND 125451, drawn by a mechanical horse no CHM 859 T, driven by Sazingani Mafuduka. It was alleged that the said drivers were servants of first and second appellants and that in so driving they acted in the course and within the scope of their employment and on the instructions of a director or servant of first and

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second appellants. It was further alleged that the said conveyance constituted road transportation otherwise than in accordance with the provisions of public permits no's OP 252235 and OP 220861 respectively. At the trial appellants were represented by an attorney, Mr JPP van der Berg. Despite their pleas of not guilty they were convicted on both counts. First appellant was sentenced to a fine of R200,00 on each count and second and third appellants were reprimanded. Appellants appealed unsuccessfully to the Orange Free State Provincial Division against their convictions. That Court however gave them leave for the present, further, appeal. The charge sheet was drawn, and the trial in the regional court conducted in Afrikaans. The judgment of that court was likewise delivered in Afrikaans. But the appeal to the Provincial Division was argued in English on behalf of the appellants and the judgment of

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that Court was also delivered in English. The present appeal was also argued in English on appellants' behalf and the aforementioned permits are in English. That is why, apart from quotations in Afrikaans from the trial record, this judgment is in English.

At the commencement of the trial Mr van der

Berg set out the bases of appellants' defence in the following verbal statement in terms of sec 115 of the Criminal Procedure Act, no 51 of 1977:

"Die grondslag van die beskuldigdes se verweer op beide aanklagte is as volg. Wat betref beskuldigdes 2 en 4, voer die beskuldigdes aan dat die padvervoer wat onderneem is gemagtig is in terme van die twee openbare permitte wat mettertyd aan u opgehandig sal word.

Alternatiewelik, en indien die Hof sou bevind dat daardie permitte nie die padvervoer, die onderhawige padvervoer, sou gemagtig het nie, dan is dit die beskuldigdes se verweer dat hulle nie die nodige opset gehad het om die misdryf hulle ten laste gelê te kon gepleeg het nie. Ten opsigte van beskuldigde 3 is die verweer van beskuldigde 3 dat hy, of dat die maatskappy dan liewers, nie padvervoer onderneem het nie, padvervoer soos per definisie in die Wet op

Padvervoer, onderneem

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het nie, en alternatiewelik, dat die beskuldigde nie die misdryf hom ten laste gelê, kon gepleeg het of kan pleeg nie. Dit is 'n juridiese onmoontlikheid vir daardie beskuldigde om die misdryf hom ten laste gelê, te kon gepleeg het. Verder alternatiewelik, dat indien daar op enige grondslag gevind kan word dat hierdie beskuldigde padvervoer per definisie sou onderneem het, dan is daardie padvervoer gemagtig in terme van die permit uitgereik aan beskuldigde 2 en verder alternatiewelik, dat die beskuldigde nie die nodige opset gehad het om die misdryf of misdrywe dan hom ten laste gelê te gepleeg het nie."

Thereafter the following list of written admissions made by appellants in terms of sec 220 of the Act was handed in as Exhibit A:

"1. ALGEMEEN

1.1 Dat beskuldigdes no. 2 en 3 behoorlik geïnkorporeerde maatskappye is ingevolge die Maatskappyyewet.

1.2

1.3 Dat beskuldigde no 4 h direkteur en dienaar was van beskuldigdes no 2 en 3 vanaf onderskeidelik Junie 1984 en September 1984 tot en met 22 Mei 1985.

1.4 Dat beskuldigde no. 4 sedert 22 Mei 1985 tot huidiglik 'n dienaar is van beskuldigdes no 2 en 3.

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2. AD AANKLAG 1:

2.1 Two Way Transport (Edms) Bpk. was ten tye van die beweerde misdryf en is tans nog steeds, die geregistreerde eienaar van voorhakperd met registrasie no HCW 290 T. 2.2 Heavy Transport & Plant Hire (Edms) Bpk. was ten tye van die beweerde misdryf en is tans nog steeds, die geregistreerde eienaar van h leunwa met registrasie no ND 344020, welke leunwa ten tye van die beweerde misdryf met voorhakperd HCW 290 T getrek was. 2.3 Heavy Transport & Plant Hire (Edms) Bpk. is die houer van 'n openbare padvervoerpermit no OP 252235 uitgereik deur die Padvervoerraad ingevolge die Wet op Padvervoer no 74 van 1977, ten opsigte van voertuig ND 344020. Laasgemelde permit is uitgereik op en geldig vanaf 2 Oktober 1984 vir 'n onbepaalde periode (Bewysstuk "B" aangeheg). 2.4 Die aanhangsels aangeheg by die permit (Bewysstuk "B") bevat die magtigings in terme van die gemelde permit. 2.5 Beskuldigdes no 2 en 4, maar nie beskuldigde no 3 nie, erken dat op die datum in kolom 2 van die aanhangsel tot die klagstaat (Aanhangsel "A") het die persoon vermeld in kolom 1 van die aanhangsel tot die klagstaat (Aanhangsel "A")

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die goedere genoem in kolom 4 van die aanhangsel tot die klagstaat (Bylae "A") vervoer met leunwa ND 34420 welke leunwa getrek is deur voorhakperd met registrasie no HCW 290 T, welke kombinasie voertuie bestuur is deur die persoon genoem in kolom 1 van die vermeldde aanhangsel onder magtiging van die permit vermeld in kolom 6 van die aanhangsel op die nasionale pad, wat 'n openbare pad is, tussen Winburg en Bloemfontein in die distrik van Bloemfontein en binne die regsgebied van die streekafdeling van die Oranje-Vrystaat.

2.6 Die persoon genoem in kolom 1 van die aanhangsel tot die klagstaat (Bylae "A") was 'n dienaar van of beskuldigde no 2 en/of no 3 en het gehandel in opdrag van 'n direkteur en/of dienaar van beskuldigde no 2 en/of beskuldigde no 3 en in die uitvoering van sy pligte. 2.7 Die goedere wat vervoer is (kolom

4) van die aanhangsel tot die klagstaat (Bylae "A") was versend vanaf Colgate Palmolive (Edms) Bpk. Bloemfontein ter aanvulling van laasgemelde se voorraad. 2.8 Die padvervoer wat so onderneem was het geskied met die wete dat dit teen vergoeding was.

3. AD AANKLAG 2:

3.1 Two Way Transport (Edms) Bpk was ten

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tye van die beweerde misdryf en is tans nog steeds, die geregistreerde eienaar van voorhakperd met registrasie no CHM 859 T. 3.2 Heavy Transport and Plant Hire (Edms) Bpk. was ten tye van die beweerde misdryf en is tans nog steeds, die geregistreerde eienaar van 'n leunwa met registrasie no ND 125451 welke leunwa ten tye van die beweerde misdryf met voormelde voorhakperd CHM 859 T getrek was. 3.3 Heavy Transport & Plant Hire (Edms) Bpk. is die houër van 'n openbare padvervoerpermit no OP 220861 uitgereik deur die Padvervoerraad ingevolge die Wet op Padvervoer, no 74 van 1977. Laasgemelde permit is uitgereik op en geldig vanaf 22 Augustus 1983 vir 'n onbepaalde periode. (Bewysstuk "C" aangeheg). 3.4 Die aanhangsels aangeheg by die permit, Bewysstuk "C", bevat die magtigings in terme van die gemelde permit. 3.5 Op die datum in kolom 2 van die aanhangsel tot die klagstaat (Bylae "A") het die persoon vermeld in kolom 1 van die voormelde aanhangsel, die goedere genoem in kolom 4 van die voormelde aanhangsel vervoer met leunwa ND 125-451 welke leunwa getrek is deur voorhakperd met registrasie no CHM 859 T, welke kombinasie voertuie bestuur is deur die persoon

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genoem in kolom 1 van die voormelde aanhangsel onder magtiging van die permit in kolom 6 van die voormelde aanhangsel, op die nasionale pad, wat 'n openbare pad is, tussen Winburg en Bloemfontein, in die distrik van Bloemfontein en binne die streekafdeling van die Oranje-Vrystaat.

3.6 Die persoon genoem in kolom 1 van die voormelde aanhangsel tot die klagstaat, (Bylae "A") was 'n dienaar van beskuldigde no 2 en/of beskuldigde no 3 en het gehandel in opdrag van 'n direkteur en/of dienaar van beskuldigde no 2 en/of beskuldigde no 3 en in die uitvoering van sy

pligte. 3.7 Die goedere wat vervoer is (kolom 4 van die aanhangsel tot die klagstaat, Bylae "A") was versend vanaf Robor Isando na National Trading Company, Bloemfontein, ter aanvulling van laasgenoemde se voorraad. 3.8 Die padvervoer wat so onderneem was, het geskied met die volle medewete van beskuldigdes no 2 en 4 en met die wete dat dit teen vergoeding was."

(NB: Par 1 .2 above was left blank in the original possibly due to a mistake in the numbering. It was common cause that the vehicle described in par 2.5 supra

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as "leunwa ND 34420" was actually trailer no ND 344020.) The aforementioned Annexure A to the charge sheet is in this form:

The authorizations ("magtigings") specified in

the annexures to each of the aforementioned permits, Exhibits B and C, are identical. They are the following:

"1 . Spare parts only when required for immediate bona fide repairs to broken down machinery or mechanical plant and not for installation or erection of any new machinery or mechanical plant being

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erected/installed or to replenish stock. This authority does not cover the conveyance of spare parts imported through any harbour and directly or indirectly transhipped after having been so imported: Within the Republic of South Africa.

2. Completely assembled switchboards and transformers manufactured or assembled in the Republic of South Africa: Within a radius of 560 (five hundred and sixty) kilometres from Durban G.P.O. 3. Agricultural machinery and tools, direct to farms for farming purposes: Within a radius of 240 (two hundred and forty) kilometres from Durban General Post Office. 4. Pile driving and drilling plant, for immediate use from one construction site to another or to and from workshops: Within a radius of 560 (five hundred and sixty) kilometres from Durban G.P.O. 5. Completely assembled units of roadmaking and excavating machinery direct to or from road construction or excavation sites for bona fide road construction or excavation purposes and not to be sold or offered for sale: Within a radius of 560 (five hundred and sixty) kilometres from Durban General Post Office and also between such construction sites and the nearest Railway Station thereto. 6. Individual items of earthmoving and roadmaking equipment excluding equipment for re-sale: From construction sites where equipment has been used to another

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used or to and from garages for repair: Within the Republic of South Africa.

7. Indivisible abnormal loads measuring in excess of 13,7 m in length or 3,05 m in width or 2,86 m in height provided that such loads are accompanied by the relevant abnormal load permit issued by the relevant Provincial Administration: Within the Republic of South Africa.
8. Only the completely constructed section of a wall, floor, ceiling, roof or framework of a pre-fabricated building when purposely made as integral part of a wall, ceiling, floor, roof or framework of such a pre-fabricated building, together with the tools of trade and any material required for the erection or assembling of the components, from the manufacturer's place of business at Durban, direct to construction sites situated within a radius of 240 (two hundred and forty) kilometres from Durban General Post Office.
9. Mechanical handling equipment, contractor's plant and equipment: Within the Republic of South Africa."

Three witnesses were called by the State. They

were Messrs EP van Eeden, inventory controller at ColgatePalmolive (Pty) Ltd, Boksburg; MA Sinclair, branchmanager of National Trading Company at Bloemfontein and

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AC Texeira, manager of SA Trucking (Pty) Ltd during the relevant period and a director of first and second appellants from May 1985 and September 1984 respectively. Their evidence was not disputed and disclosed the following. The consignment of washing powder (count

- 1) consisted of 1 kg and 500 g containers and was sent by Colgate Palmolive (Pty) Ltd, Boksburg, to that company's Bloemfontein branch (and not from the latter branch as stated erroneously in par 2.7 of the list of admissions, exh A). The consignment of steel (count 2) was indeed intended as a replenishment of stock at National Trading Company's Bloemfontein branch as stated in par 3.7 of exh A, but after receipt thereof a portion of that consignment was to be delivered by National Trading Company to a customer, Petrol Pumps, for use by the latter in the construction of installations, i.a. at petrol depots. Fourth appellant was at all relevant times in effective overall charge of first and second

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appellants' operations and gave the necessary permission for all road transportation undertaken by them. No evidence was presented by the defence which was limited to argument dealing with the admitted and undisputed facts on the bases aforementioned. Those bases were not persisted in during the process of appeal and further appeal. The contention relating to the absence of mens rea soon fell by the wayside. It was not persisted in either in the Court a quo or in the present appeal. It was correctly abandoned. It had no merit. The main defence concerning all three appellants was, however, maintained throughout (albeit on shifting grounds). Its essence is that the carriage of the goods in question was authorised by the phrase "contractor's plant and equipment" in para 9 of each of the aforementioned permits. That defence therefore turns

mainly upon an interpretation of the said phrase. The

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subsidiary defence, concerning only the second appellant (the erstwhile accused no 3), set out by Mr van der Berg as aforementioned, was also maintained throughout. I will deal with it at a later stage. To better appreciate the presentation of appellants' main defence in its ultimate form in the present appeal I will shortly trace the changes in its course and content during the aforementioned process of appeal and further appeal. Mr Findlay represented appellants in the appeal before the Court a quo, as well as in the present appeal. His contentions in the Court a quo on the main defence were the following. The words "contractor" and "equipment" in the aforesaid phrase each has various dictionary meanings and are, therefore, ambiguous. Each should consequently be accorded its wide meaning, and the word "equipment" should in addition be read disjunctively from the word "plant", and as being linked by "and" only to "contractor's". The latter should be accorded its

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wide meaning of one who enters into a contract or agreement, including the case of a trader who sells items of his stock to customers. "Equipment" should also be widely interpreted so as to include a trader's stock with which he "equips" himself for subsequent sales to his customers. It was common cause that the washing powder and steel were transported to dealers in Bloemfontein in order to supplement their stock-in-trade for sale to customers. In both instances the said goods therefore constituted "equipment" within the meaning of the said phrase, and their carriage was consequently authorised by the permits, exhibits B and C. Alternatively, but only in respect of count 2, Mr Findlay submitted that the classification of goods carried under the authorisation of a public carrier permit should be determined by the end-use thereof, and not solely by that to which it is put by the consignee. It being common cause that the portion of the load of steel destined for delivery to

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Petrol Pumps was intended for use by the latter in erecting structures under contract, that portion was, therefore, "contractor's equipment" within the meaning of the said phrase. In this Court Mr Findlay did not persist in his former contention as to the meaning of "contractor" and conceded that in the context of the said phrase it meant one who undertakes or contracts to do certain work. That concession was rightly made. (See eg. The Oxford English Dictionary and The Concise Oxford Dictionary.) Mr Findlay was consequently also constrained to concede that the respective consignees in the two aforementioned instances were not "contractors" and that the washing powder, and the steel not destined for Petrol Pumps, were not "contractor's equipment" within the meaning of the said phrase. To avoid the otherwise fatal effect of these concessions on the tenability of appellants' main contention, Mr Findlay however submitted that in

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construing paragraph 9 no regard should be had to the other paragraphs of the permits because each of them amounted to a separate authority, and that the said phrase should, in its turn, be construed on its own, without reference to the rest of paragraph 9. Developing this argument, he submitted that on a proper construction of the said phrase, the word "equipment" stood alone, not linked in any manner to the words "contractor's" and "plant", as if it were contained in an entirely separate paragraph, which, in the instant case, would then have to be par 10 in each of the said permits. Thus isolated, the word "equipment", which was ambiguous for the reason aforementioned, should be widely interpreted as including everything not mentioned elsewhere in those permits. So construed, "equipment" included the loads of washing powder and steel, and their carriage was consequently authorised by the respective permits. Mr Findlay also persisted in the aforementioned alternative argument

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relating to the steel destined for delivery to Petrol Pumps. In contending as set out above Mr Findlay relied throughout upon certain principles of law and decisions of our courts. The main principles relied upon were these. In the interpretation of a public road carrier permit the words used therein must be given their ordinary meaning (*MULLER t/a SA TRUCKING v TRENCOR SERVICES (PTY) LTD* 1985 (3) SA 213 (A) at 220 J - 221 A). Should such words however be ambiguous or reasonably capable of an interpretation favouring the permit holder, they should be accorded such favourable meaning in the light of the principles that "freedom of trade is a right recognised and protected by law" and that in criminal proceedings the accused holder of a public road carrier permit "is to be afforded the favourable or benevolent interpretation where the contents of the permit are vague or ambiguous". The two decisions mainly relied upon by

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Mr Findlay were *TRENCOR SERVICES (PTY) LTD v MULLER t/a SA TRUCKING* 1983 (4) SA 893 (C) and the unreported decision of the Eastern Cape Division in *HEAVY TRANSPORT AND PLANT HIRE (PTY) LTD AND ERIC ANDRE MULLER v THE STATE* (appeal no 1/85 ECD). In the first-mentioned case Rose-Innes J. came to the conclusion that cement carried by the holder of a permit authorising him to convey

"shaft-sinking equipment" would be covered by the permit

if intended to be used for the purpose of shaft-sinking but not otherwise. (There was no suggestion in that case that the cement there in issue was conveyed for such purpose.) In *MULLER t/a SA TRUCKING v TRENCOR SERVICES*

(PTY) LTD, *supra*, this Court dismissed the appeal, but without deciding whether the construction placed upon the word "equipment" by Rose-Innes J. was in fact correct. Eloff AJA. said the following at 221 A-E:

"The permit, as any other document of a like nature, has to be construed in accordance with the ordinary sense of the words used (cf

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GENTIRUCO AG v FIRESTONE SA (PTY) LTD 1972 (1) SA 589 (A) at 614 A-D).

I agree with the Court a quo that the evidence established that cement is frequently used in shaft-sinking operations. I also share its view that in that setting the word 'materials' would have been more appropriate to describe a commodity such as cement and I shall assume that the word 'equipment' is capable of a meaning sufficiently wide to include cement. And I have no doubt that it correctly rejected the contention that, because cement could be a component in shaft-sinking equipment, the appellant's permit should be construed so as to authorise the conveyance of cement regardless of the purpose for which it is to be used. In my opinion, the qualification of 'equipment' by the adjectival phrase 'shaft-sinking' clearly indicates the purpose for which the equipment is to be used. Such a combination is common in English parlance, eg. camping equipment, or building materials; in each case the adjective denotes an objective. 'Shaft-sinking equipment', in my view, denotes apparatus or material which either is exclusively used in shaft-sinking operations or, while capable of use for other purposes, is intended to be used for the purpose of shaft-sinking.

This view of the matter disposes of the contention advanced by appellant's counsel that the phrase in question is ambiguous and that it is accordingly possible to adopt the meaning 'equipment capable of use for shaft-sinking'."

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In the Eastern Cape case Mullins J. construed the phrase "contractor's plant and equipment" in par 9 of a permit with provisions identical to those of the permits, exhs B and C. First appellant was also the holder of that permit and conveyed a load of steel plates and bars consigned directly to a construction company for the use by it in the fabrication of steel sections for a factory it was going to erect. Mullins J. decided that little or no assistance could be derived from the other eight paragraphs of the permit in construing par 9 thereof, and came to the conclusion that the word "and" was used disjunctively in the said phrase, linking the word "equipment" only to the word "contractor's" but not also to the word "plant". He adopted the construction put on the word "equipment" in the Cape TRENCOR case, supra, and held that the aforementioned load of steel was "contractor's equipment" within the meaning of the said

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phrase and that the carriage thereof was, therefore, authorised by paragraph 9 of the permit.

Mr Findlay's aforementioned contentions are

untenable. Public road carrier permits are issued by the competent statutory authority for the purpose of achieving the main objects of the Road Transportation Act, No 74 of 1977 (the Act). Those objects are aptly summarised in LAWSA Vol 23 par 341, i.a. as follows:

"The operational principle underlying the Road Transportation Act is that the carriage of goods or persons for reward throughout the Republic should be regulated by the issuance of appropriate permits. ... The formulation of the Road Transportation Act, which succeeded the Motor Carrier Transportation Act of 1930, and the numerous amendments to both acts reflect various facets of government policy over the past few decades. Apart from co-ordinating and restricting unnecessary traffic on the already overburdened road system, a number of provisions in the present act clearly reflect what is, perhaps, the most important objective of the act, namely the protection of the South African transport services, without which, it is often contended, the outlying rural areas of the country, which are unlikely to attract much private initiative in the field

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of transport, would be unable to develop. There are also provisions which reflect the decentralization policy of the government, and a policy of petroleum fuel conservation."

The competent statutory authority which issued the permits exhs B and C was in the instant case a local road transportation board (board), as admitted by appellants in paras 2.3 and 3.3 of exh A. A board is empowered by sec 13 of the Act to entertain an application for a permit and is enjoined by sec 15(1) to consider a wide range of matters when dealing with such an application. The Act also prescribes what a permit has to contain. That is set out in sec 21(3). It is important to note that a board is pertinently required to take the public interest into account when considering an application for a permit (sec 15(1)(a) and (e)) and that it is endowed with a wide discretion in considering whether or not to grant the application and in deciding i.a. what class or classes of

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goods may be conveyed under the permit (sec 15(1)(m) and 21(3)(c)). To my mind it is clear that a board has the power to limit a permit to a specific class of goods which may be conveyed under its authority. Included in the concept of "class" would, eg., be goods of a particular nature or type and the purpose for which such goods are to be used. In construing a permit it is necessary to ascertain not only the intention of the issuing authority (in the instant case the board which issued the permits, exhs B and C), but also the nature and ambit of the authorisation. In this respect the process is akin to the interpretation of statutes. It is to my mind obvious that (as in the case of a statute) the whole permit will have to be looked at in the process of construction and that it will have to be construed in accordance with the ordinary sense of the words in the context in which they are used in the permit, bearing in mind the purpose and

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provisions of the Act. That is, I think, implicit in the aforequoted passage in the judgment of this Court in MULLER's case, supra. I now deal with Mr Findlay's aforementioned contention regarding the construction of the noun "equipment" as used in the said phrase. It is true that the word has a variety of dictionary meanings. Some of them were mentioned at p 897 of the Cape TRENCOR judgment. In WEST'S LEGAL THESAURUS/Dictionary the noun is accorded the

following wide series of meanings: "Furnishings or what is needed for the required purposes (defective equipment). Gear, supplies, fittings, accoutrements, paraphernalia, provisions, apparatus, material". THE CONCISE OXFORD DICTIONARY, however, defines it more compactly as follows: "equipping or being equipped; manner in which person or thing is equipped; outfit, tools, apparatus, necessary for expedition, job, warfare, etc". The context in which

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the word is used in the identical annexures to the permits, exhs B and C, will however, determine its correct construction. When each permit, or more precisely, the annexure thereto, is considered as a whole, a clear scheme becomes apparent in terms whereof the carriage of the following is authorized: (a) Machinery and its related spare parts and tools (paras 1, 3, 4, 5, 6 and par 9, at least in that part of it referring to mechanical handling equipment and contractor's plant);

- (b) (i) Completely assembled installations (switchboards and transformers), (par 2); (ii) completely constructed components of buildings, together with the tools of trade and material required for the erection thereof at the "construction site" (i.e. the building site). (para 8), and (c) Indivisible, abnormally large loads of specified dimensions (par

7) . It is clear that par 7 refers to

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single items which are either already constructed (e.g. a large boiler) or are abnormally large single components of a structure or machine (e.g. a very large single beam or shaft). This scheme clearly reflects the intention of the board. To my mind paragraphs 1-8 therefore afford valuable assistance in the construction of par 9, and I cannot agree with the aforementioned view of Mullins, J., in the Eastern Cape HEAVY TRANSPORT case, *supra*, that little or no assistance can be derived from those paragraphs. It is true that a separate authorisation is contained in each of them, as Mr Findlay contended, but they are nevertheless authorisations which are clearly linked by the aforesaid scheme. And that scheme is again reflected in the first part of par 9 which clearly refers to machinery. It is likewise reflected in the first portion of the aforementioned phrase which constitutes the second part of par 9. The word "plant" therein contained clearly also refers to machinery. THE CONCISE

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OXFORD DICTIONARY defines "plant" in its non-biological and non-socio-criminal senses as follows: "fixtures, implements, machinery, etc, used in industrial processes; factory." THE OXFORD ENGLISH DICTIONARY (Vol VII) gives the following illustration (by way of a quotation from a trade journal) of the meaning of "plant" used in the aforementioned sense: "1882. Engineer 24 Feb 133/2. The plant includes one steam crane, three steam travelling cranes, a steam fire-engine, a steam pump, two steam hammers, seven steam engines, three boilers, and a few hundred nailing machines." It is in this sense of denoting heavy machinery, that the word must be understood in the expression "contractor's plant". It therefore denotes the heavier items of machinery which a contractor requires for the performance of his work. Such items

would e.g. include concrete mixers, cranes, diesel or petrol engines, power generators and compressors. The lighter items needed by

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him, e.g. ladders, scaffolding, wheelbarrows, drills, spades, etc, would however be excluded from par 9 on the construction contended for by Mr Findlay. This would be an illogical exclusion in view of the fact that the carriage of light items such as spare parts and tools is authorised in paras 1, 3 and 8. It would be even more illogical to include in the same permit, in clear conflict with the aforementioned scheme, a further general authorisation permitting the carriage of a vast, unspecified range of goods, which would on Mr Findlay's suggested construction, inevitably include goods entirely unrelated to what is specified in the rest of the permit. The fact that such further, general, authorisation would also cover the carriage of a contractor's tools, etc, does not detract from the complete illogicality, and, in fact, the absurdity, of the construction contended for by Mr Findlay.

The logical construction of the said phrase in³²

the general context of the permit as a whole and in the particular context of par 9 thereof, would be that the word "and" is used conjunctively to link "equipment" with "plant", both being linked to the adjective "contractor's", as found by Malherbe, J., in the Court a quo. To my mind that is the correct construction. When "equipment" is so linked to "plant" and "contractor's" its meaning becomes clear. It then denotes the contractor's tools and other aforesaid lighter items he needs for the proper performance of his tasks. Such a meaning is also in accordance with the definition of "equipment" in THE CONCISE OXFORD DICTIONARY. The phrase so construed is unambiguous and its effect logical. In consonance with the aforementioned scheme it then also denotes the same class of goods as that referred to in the first portion of par 9 and in paras 1, 3, 4, 5 and 6 of the permit. In the field of industry to which the permit relates, the phrase so construed would in all

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probability also be the natural way of referring to a contractor's machinery and tools of trade. The carriage of the loads of washing powder and steel was, therefore, unauthorised and constituted contraventions of sec 31(1)(b) of the Act. First and third appellants clearly acted in concert in the commission of both offences and were rightly convicted. It follows that the aforementioned Eastern Cape HEAVY TRANSPORT case was wrongly decided. The load of steel plates and bars there in issue was not "equipment" within the meaning of the said identical phrase in that permit despite the fact of that load having been consigned directly to the contractor who intended using it for construction purposes. It was nothing more than construction or building material which was to be used by the consignee in the fabrication of components for the factory building it had contracted to erect. The steel destined for Petrol Pumps fell into the same category.

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The position is somewhat different as far as the Cape TRENCOR case, *supra*, is concerned. My difficulty there is that no reference is made in the judgment to the other terms (if any) of the permit in question. Without such information I cannot come to a conclusion whether the interpretation by Rose-Innes, J., of the phrase "shaft-sinking equipment" is correct or not. But I feel constrained to say that I nevertheless have strong reservations concerning its correctness. I now turn to the subsidiary defence which concerns second appellant (accused no 3) only. The gist of it is that although the two mechanical horses belonging to second appellant were used to draw the trailers carrying the loads of soap powder and steel, they did not fall within the definition of "motor vehicle" in sec 1 of the Act. Second appellant was also not the holder of any public road carrier permits. Mr Findlay contended, therefore, on the authority of *S v*

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SMITH 1986 (3) SA 714 (A), that second appellant was

consequently in law incapable of contravening sec 31(1)(b) of the Act and had been wrongly convicted. There is no merit at all in this defence. It is trite law that an accomplice can be convicted of a crime which the accomplice cannot commit as principal offender. The classic example is that of a woman assisting a male to rape another woman. On the admitted and undisputed facts it is clear that second appellant, through its officers and servants, knowingly assisted first appellant in the unlawful transportation of both the aforementioned loads. It was consequently an accomplice to the commission of both offences and was rightly convicted on both counts. The appeals of all three appellants are dismissed.

M T STEYN, JA.

CORBETT, CJ.)

HEFER, JA.)

NESTADT, JA.)

KUMLEBEN, JA.)

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