



THE COURT OF APPEAL

Neutral Citation Number: [2015] IECA 182

Appeal No. 2014 1389

[Article 64 transfer]

**Peart J.
Sheehan J.
Mahon J.**

IN THE MATTER OF THE CRIMINAL JUSTICE (MUTUAL ASSISTANCE) ACT 2008, SECTION 51.

IN THE MATTER OF CRIMINAL PROCEEDINGS BEFORE THE COURTS OF THE UNITED KINGDOM

AGAINST

BERNADETTE MARGARET ROSE DEVINE

IN THE MATTER OF A REQUEST SENT BY THE CROWN PROSECUTION SERVICE OF THE UNITED KINGDOM

Between

The Minister for Justice, Equality and Law Reform

Respondent

- and -

Bernadette Margaret Rose Devine

Appellant

JUDGMENT delivered by Mr. Justice Alan Mahon on the 31st day of July 2015

1. This is an appeal against the judgment of the High Court (Feeney J.) delivered on 18th April 2012 including part of a ruling made in the course of these proceedings before the High Court on 22nd March 2012, and the consequential Orders made by the High Court (Birmingham J.) on 22nd October 2013.

The background

2. The detailed history of these, and related proceedings in England, are set out in the judgment of Feeney J. delivered on 18th April 2012. It is therefore only necessary for me to provide a brief summary of that history for the purposes of this judgment.

3. The appellant was convicted of five counts of Fraudulent Evasion of value added tax contrary to s.72(1) of the United Kingdom Value Added Tax Act 1994 on 6th July 2001 at Middlesex Crown Court. She was sentenced to six years imprisonment. A Confiscation Order was made by Middlesex Crown Court on 5th August 2003 against the appellant in the sum of £1,446,368.68. The fraud perpetrated by the appellant, together with another individual, Mr. Daniel O'Connell, involved the importation into the United Kingdom of certain goods without the payment of VAT. The avoidance of the VAT was facilitated by the provision of documents purporting to show that the goods, computer parts, were to be exported onwards to Ireland. However, what occurred was that some of the goods were indeed exported into Ireland but immediately re-imported into the U.K., and other goods were never exported to Ireland but kept in the U.K. The goods were then sold to U.K. based companies for prices which included VAT. The appellant was the owner of these companies, and these companies then proceeded to reclaim the VAT from H.M. Customs and Excise. Sums close to £19 million were reclaimed in this way. The amount of £1,446,368.68 which was the sum relevant to the Confiscation Order represented only a fraction of the original VAT fraud. The Confiscation Order identified certain assets of the appellant including properties in Counties Sligo and Roscommon which were owned by the appellant or in which she had an interest.

4. On 27th January 2005, the appellant was refused leave to appeal her conviction and an application for leave to appeal against the Confiscation Order was adjourned, pending the outcome of another appeal which raised a similar point of law which was then current before the House of Lords. By 21st December 2005, that appeal had been dealt with by the House of Lords and on 21st December 2005, leave to appeal the Confiscation Order was refused by the Court of Appeal and the respondent notified the United Kingdom authorities of her intention to discontinue her appeal against the Confiscation Order.

5. On 27th November 2006, the High Court in England made an Order converting the Management Receivership Order into an Enforcement Receivership Order with power to realise the appellant's assets in satisfaction of the outstanding Confiscation Order.

6. On 26th July 2007, the Enforcement Receiver paid the sum of £317,000 into the Court representing the realisation of the appellant's assets in the U.K. Enforcement proceedings were commenced against the appellant for non payment of the outstanding amount in May 2007 and the appellant failed to attend at a number of hearings and was subject to a Bench Warrant. Finally, on 2nd October 2007 the appellant attended court and was requested to sign a Power of Attorney enabling the Enforcement Receiver to realise the appellant's assets which were outside the U.K., including assets in Ireland. The respondent refused to do so and, as a result thereof, the judge activated the default sentence of five years imprisonment which formed part of the Confiscation Order of 5th August 2003. By the date that the default sentence was activated, the appellant had completed her initial sentence and had been released from custody. The appellant was imprisoned as a result of the default sentence being activated, and after she had served fifty per cent of the five year sentence she was released from prison on 1st April 2010.

7. Notwithstanding the fact that the appellant had served the default sentence, the debt identified in the Confiscation Order remained due and owing, and the balance, (less the amount of £317,000 paid by the Enforcement Receiver), remains due and owing

and continues to accrue interest. The entire amount paid as of August 2010 was £317,658 leaving a balance on the original amount, together with accrued interest, of £1,738,900. Interest continues to accrue thereafter at a daily rate.

8. The first proceedings in this jurisdiction arising out of the conviction and orders made against the appellant in the U.K. resulted from an application by the U.K. to the authorities in Ireland for a Restraint Order over the appellant's property in this jurisdiction. On 7th March 2005 an order was granted ex parte by the High Court in this jurisdiction pursuant to the provisions of the Criminal Justice Act 1994 (as modified by the provisions of the Criminal Justice Act 1994 (s.46(6) Regulations 1996). The Restraint Order made within this jurisdiction identified various items of property which were claimed to be the appellant's property including a bank account, various properties, land and assets held by companies of which it was claimed that the appellant was the beneficial owner.

9. By motion dated 15th December 2005, the appellant sought an order from the High Court seeking to set aside the Restraint Order made on 7th March 2005. That motion was granted on an affidavit sworn by the appellant's solicitor on 14th December 2005, and the basis upon which the order was sought to be set aside was the absence of an undertaking as to damages. That motion was heard by the High Court in June 2006. The High Court held that it had jurisdiction to make an order in the absence of an undertaking as to damages and that the failure by the appellant to furnish an undertaking as to damages did not, per se, invalidate the order, or on its own constitute a reason for setting it aside.

10. The order of the High Court on 27th June 2006 was appealed. That appeal was delayed as the order was not perfected until 2nd April 2007. A Notice of Appeal was served on 23rd April 2007. A certified copy of the judgment was not available until February 2008. Thereafter the books of appeal were lodged.

11. On 1st September 2008, the Criminal Justice (Mutual Assistance) Act 2008 came into force and thereafter the legislation governing international co-operation and mutual assistance.

12. The Restraint Order of 7th March 2005 granted under the Criminal Justice Act 1994 (as modified) remains in force. That order had been made on foot of a U.K. letter of request of 20th September 2004 which identified that, as of that date, the proceedings against the appellant as defendant in the U.K. proceedings relating to the confiscation of her assets had not been concluded. Those proceedings concluded on 21st December 2005, when the appellant notified the U.K. authorities of her intention to abandon her appeal.

13. On 20th May 2010 the appellant brought a motion seeking to strike out the proceedings which were the proceedings in which the *ex parte* Restraint Order had been made by the High Court in this jurisdiction. The motion of 20th May 2010 sought an order striking out those proceedings for want of prosecution and when those proceedings came before the court on 19th July 2010, the court was advised by counsel for the respondent that a request from the U.K. authorities for a Confiscation Co-operation Order pursuant to the Act of 2008 was anticipated, and on that basis adjourned the motion.

14. A letter of request dated 18th August 2010 was received from the U.K. authorities and was directed to the Irish Central Authority and the Minister for Justice, Equality and Law Reform. That letter sought the assistance of the Irish authorities in securing a court order in support of the U.K. Confiscation Order. On foot of the request contained in that letter of request, the respondent commenced the proceedings on 15th October 2010 and on that date sought an *ex parte* order by way of motion grounded on affidavits seeking a Confiscation Co-operation Order pursuant to the provision of s.51 of the Act of 2008. An *ex parte* order was made on 15th October 2010, and the matter was made returnable for 1st November 2010. The appellant did not file any affidavit in response to the application for a Confiscation Co-operation Order and a hearing date of 14th January 2011 was scheduled. On that date the appellant indicated that she intended to rely on a number of legal grounds and, in particular, that the proceedings were barred by virtue of the Statute of Limitations 1957. The matter was adjourned to enable written submissions to be delivered by the parties.

The grounds of appeal

15. This appeal is based on a number of grounds, and which can be summarised as follows:-

(i) The essential proofs as required by s.50 of the 2008 Act are absent.

(ii) The Confiscation Orders in question are penal orders and are, thus, caught by s.11(7) of the Statute of Limitations, which stipulates a two year limitation period. The appellant maintains that these proceedings are thereby statute barred because, the appellant maintains, the cause of action accrued on 21st December 2005. The respondent, while maintaining that s.11(7) of the Statute of Limitation does not apply to the confiscation proceedings, maintains that in any event the accrual of the cause of action is 31st August 2010 being the date when the U.K. authorities made its request to the Irish authorities. Therefore, the respondent argues, even if s.11(7) of the Statute of Limitations did apply to the confiscation proceedings, such proceedings commenced well within the period of two years after such request was made.

The issue of the proofs required by s.50 of the 2008 Act

16. The hearing of the action before Feeney J. commenced on 21st March 2012. The learned judge heard legal argument in relation to the contention by Dr. Forde S.C. *"that two essential proofs are missing"* in relation to the proceedings. One of these concerned s.50(2)(b) of the Act of 2008.

17. Section 50 of the Criminal Justice (Mutual Assistance) Act 2008 provides as follows:-

"1. An external confiscation order may be transmitted by or on behalf of the Court that made it to the Central Authority with a request for its enforcement.

(2) The external confiscation order shall be accompanied by:

(a) a duly certified copy of the order,

(b) a statement by or on behalf of the court that made the order:

(i) that it is in force and not subject to appeal, and

(ii) that if the person against whom it was made did not appear in the proceedings concerned, notice

thereof was received by the person in good time, to defend the proceedings.

(c) a brief description of the conduct constituting the offence which resulted in the make of the order, and,

(d) any required translations, and

(e) shall include any further information required by the relevant international instrument."

18. Section 51 of the Act of 2008 states:-

"1. The Central Authority, on receipt of an external confiscation order and accompanying documents, may cause an application to be made to the High Court for an order (a "confiscation co-operation order") for the confiscation of the property in the State to which the external confiscation order relates.

(2) The application shall be accompanied by the request, the accompanying documents and any other related documents or by copies thereof.

(3) On the application the Court may, subject to subsection (4), make a confiscation co-operation order.

(4) The court may not make a confiscation co-operation order unless:-

(a) it is satisfied:

(i) ...

(ii) as to the matters mentioned in section 50(2)(b), #

(iii) ..."

19. Section 50(2) of the Act of 2008 provides that "the external confiscation order shall be accompanied by ... (b) a statement by or on behalf of the court that made the order:-

(i) that it is in force and not subject to appeal, and

(ii) that, if the person against whom it was made did not appear in the proceedings concerned, notice thereof was received by the person in good time to defend the proceedings..." (emphasis added).

20. As to certain matters identified in the two subsequent sub paragraphs, the appellant contends that s.50(2) has not been complied with, and that its compliance is mandatory, and that in its absence the request for the enforcement of the Confiscation Order must fail. The respondent, on the other hand, maintains that s.50(2) is satisfied by the "Witness Statement" of Ms. Pennie Snape dated 14th July 2010. In that "Witness Statement" Ms. Snape describes herself as "a solicitor for Her Majestys Crown Prosecution Service, with the Proceeds of Crime Unit, 7th Floor, Rose Court, 2 Southwark Bridge, London, SE19HS". In it Ms. Snape states the following:-

1. I make this statement in support of a letter of request for assistance on behalf of the Crown Prosecution Service of the above address for the confiscation of assets held by or on behalf of Bernadette Margaret Rose Devine (hereinafter known as the defendant) or assets owned by companies that are owned, or controlled by the defendant, pursuant to the Criminal Justice Act 1990 (as modified by the Criminal Justice Act 1990 (United Kingdom) Order 1996). The request for assistance sent pursuant to section 74 of the Proceeds of Crime Act 2002, to the Secretary of State with a view to it being forwarded to the Government of Ireland is exhibited in this statement at PS/01.

2. ..

3. Save as otherwise stated, or the context indicates otherwise, I make this witness statement from material on my file that has been supplied to me in the course of the prosecution and confiscation proceedings against the defendant.

4. I am a solicitor employed within the Proceeds of Crime Unit of the Crown Prosecution Service which has since 1st January 2010 incorporated the Revenue and Customs Prosecutions Office. I have conduct of the enforcement function of the CPS in relation to the confiscation order made against the defendant by the Birmingham Crown Court on 5th August 2003. I make this statement pursuant to s.50(2) of the Criminal Justice (Mutual Assistance) Act 2008 and in support of our request to register the external confiscation order against the defendant, to confirm that the defendant's confiscation order, made on 5th August 2003, is still in force and not subject to appeal.

5. On 5th August 2003 at Middlesex Guild Hall Crown Court, a confiscation order was made against the defendant in the sum of £1,446,368.68 (this being the value of a realisable asset). She was found to have benefited from her offences to the value of £18,759,430. In making the order it was specified that it should be satisfied by 31st August 2004. A term of five years imprisonment was imposed in default of payment.

6. Ms. Devine was refused leave to appeal against her conviction on 27th January 2005. Application for leave to appeal against the confiscation order was postponed pending a decision by the House of Lords relevant to the issues in her case. On 21st December 2005, leave to appeal the confiscation order having been refused by the court of appeal, Ms. Devine notified her attention to abandon the appeal.

7. ..

8. ..

The Witness Statement is signed by Ms. Snape.

21. As is indicated in Ms. Snape's statement, the Confiscation Order was made on 5th August 2003 at Middlesex Guild Hall Crown Court. Section 50(2)(b) identifies as a requirement of s.50(2) that the external confiscation order shall be accompanied by "a statement made by or on behalf of the court that made the order".

22. In her statement, Ms. Snape does not identify herself as a representative of the Middlesex Guild Hall Crown Court (or indeed the Courts in England generally), nor does she state that her witness statement, or anything contained therein, is made by her *on behalf of the court that made the order*. Neither is there a statement from any other individual which on its face, satisfies the requirement of s.50(2) of the Act of 2008.

23. The respondent contends that the s.50(2)(b) requirement is sufficiently satisfied by the witness statement made by Ms. Snape in her capacity as a solicitor with the Crown Prosecution Service, and as an Officer of the Court. That contention is supported by the fact, undoubtedly true, that Ms. Snape was and is fully conversant with the facts and history of these proceedings, from the time of their inception in the U.K. courts and that everything she states is accurate and correct. While the appellant does not dispute the truth or accuracy of what Ms. Snape states, she nevertheless relies on her contention that Ms. Snape did not, and could not, in her capacity as a solicitor with the Crown Prosecution Service make a *statement by or on behalf of the court*... Dr. Forde S.C. points to the fact that the Crown Prosecution Service is the independent prosecuting authority in England and Wales and undertakes a similar role to that of the Director of Public Prosecutions in this jurisdiction and as such is not ordinarily authorised to make a statement or provide information on behalf of a court.

24. The submissions made on behalf of the respondent by Ms. Butler S.C., both in the High Court and again in this court, in relation to this issue are well illustrated by reference to exchanges as between the learned High Court judge and Ms. Butler S.C. in the course of the hearing of the case on the first and second days, the 21st and 22nd March 2012.

"Feeney J.: By or on behalf of the court. What we have is an affidavit from a solicitor.

Ms. Butler: You have an affidavit of a solicitor who is, of course, an officer of the court.

Feeney J.: Yes, but it is not on behalf of the court, is it?

Ms. Butler: Well, I say that it is sufficient to meet the requirement that this matter be put before this court on behalf of the court in the United Kingdom. Put before this court by an officer of the courts in the United Kingdom.

Feeney J.: One would normally expect, by or on behalf of the court either to be signed by the court or by the Court Registrar, would you?

Ms. Butler: Not necessary, Judge, because if you are asked what the point relates to is the completion of any appeals process, and that is not something which for example, if a judge of the High Court had made an order which was subject to appeal, had been appealed and the parties thereafter settled the appeal or withdrew the appeal. It is not really something which this court would make an order in relation to. ..

Feeney J.: Ok. Well, I can hear argument in relation to that. So, you say that an averment by a solicitor that an appeal was withdrawn. Ideally one would have hoped that there would be a copy of the notice of withdrawal would be exhibited as part of the ..

Ms. Butler: Yes, Judge, but at this stage what this court has to be satisfied of, and the rationale for the requirement is a confiscation co-operation order that can only be made if there is final confiscation order in the foreign jurisdiction."

25. On the second day of the hearing a further exchange took place as follows:-

"Feeney J.: What do you say then in relation to the point which is raised concerning s.50(2)(b) of the 2008 Act?

Ms. Butler: In relation to that I reiterate the submission I made yesterday which is that the statement which has been reduced by Ms. Snape, who is a solicitor and an officer of the court, is in fact the best evidence because she has personal knowledge of what has happened in connection with this matter.

Feeney J.: But is that a statement on behalf of the court?

Ms. Butler: Well, I say that it is and it is sufficient to meet that requirement, particularly in circumstances where there is no dispute but that what she has stated is correct. The reality of the situation is that once the court has made the order and the appeal is taken, only the parties to the appeal or, in fact, the higher court will know what happens to that appeal. It is not something which ..

Ms. Butler: And it is the witness statement of Pennie Snape. She is a solicitor for the Crown Prosecution Service with the Proceeds of Crime Unit. She makes the statement in support of a letter of request for assistance on behalf of the Crown Prosecution Service for the confiscation of assets held on behalf of the respondent. The request is sent pursuant to the Proceeds of Crime Act in the United Kingdom to the Secretary of State with a view to it being forwarded to the Government of Ireland. The reference to the appeal is at para. 6 over the page ."

26. In his Ruling in relation to this issue on 22nd March 2012, Feeney J. held that the witness statement of Ms. Snape did indeed satisfy the requirement of s.50(2)(b) of the Act of 2008. He said:-

"That brings the court to the fourth and final point which as been raised, which is raised that a statement by or on behalf of the court must be made in accordance with s.. this is the court in the United Kingdom .. in accordance with s.50(2) of the Act of 2008. A statement by or on behalf of the court that the order is in force and not the subject of an appeal when one turns to the actual statement, which is in Annexe B of the Pennie Snape. It is clear firstly that she is a solicitor, but more significantly in para. 4 of her statement she actually identifies that the statement is made pursuant to s.50(2) of the Criminal Justice (Mutual Assistance) Act 2008 and in support of her request to register the external confiscation order. In those circumstances giving the expressed reference contained in that statement and giving the information contained in her statement in para. 6 in relation to leave to appeal being refused and the fact that on 21st December 2005 leave to appeal the confiscation order having been refused Ms. Devine notified her intention to abandon the appeal. The court is therefore satisfied that the necessary proof of a statement made by or on behalf of the court, a statement made pursuant to s.50(2) of the Act of 2008 has been established in the statement which is annexed to an affidavit before the court, a statement of Pennie Snape which is dated 14th July 2010. In those circumstances the proofs which have been questioned and raised in court by counsel on behalf of the respondent has been dealt with in response by counsel for the applicant to the satisfaction of the court on the grounds which I have identified in this brief

ex tempore judgment. Thank you."

27. The learned High Court judge found as particularly significant Ms. Snape's reference in her witness statement to s.2 of the Act of 2008, which stated thus:-

I make this statement pursuant to s.50(2) of the Criminal Justice (Mutual Assistance) Act 2008 and in support of our request to register the external confiscation order against the defendant, to confirm that the defendant's confiscation order made on 5th August 2003 is still in force and not subject to appeal".

28. The learned High Court judge did not make any reference to Ms. Snape being, in her capacity as a solicitor, an officer of the court. This is probably because the term "officer of the court", while denoting heightened obligations of trust, honesty and candour when interacting with the courts, is in many respects a meaningless term in any practical sense. Whatever meaning it may have, it certainly does not bestow on a Solicitor, albeit one engaged in a public service role concerned with the administration of justice, the capacity to represent a court or to make a statement on behalf of a court.

29. Section 50(2) states that certain documentation, including the aforesaid statement by or on behalf of the court *shall* accompany the external confiscation order. Section 51(2) states that the application to the court (in this case the High Court in Ireland) shall be accompanied by *the accompanying documents*. Section 51(4) stipulates that the court may not make a confiscation co-operation order unless it is satisfied *as to the matters mentioned in section 50(2)(b)*.

30. In *McGrath v. McDermott* [1988] I.R.258, Finlay C.J. stated:-

"The function of the courts in interpreting a Statute of the Oireachtas is .. strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to a consideration of the purpose and intention of the legislature to be inferred from other provisions of the Statute involved, or even of other Statutes expressed to be construed with it. The courts have not got a function to add to or delete from expresses statutory provisions so as to achieve objectives which to the courts appear desirable"

31. McCarthy J. in the case of *Texaco (Ireland) v. Murphy* [1991] 2 I.R. 449 commented (at p. 456).

"Whilst the court must, if necessary, seek to identify the intent of the legislature, the first rule of statutory construction remains that words be given their ordinary literal meaning".

32. In his judgment in the case of *Byrne v. Commissioners of Public Works in Ireland* [1994] 1 I.R. 91 Lynch J. took a largely purposive approach to the interpretation of a particular piece of legislation. He said:-

"Statutes must be so construed as to make them operative. If it is possible the words of a Statute must be construed so as to give them a sensible meaning. A Statute must, if possible, be construed in a sense which makes it operative and does not defeat the manifest intention of the legislature and nothing short of impossibility so to construe it should allow a court to declare a statute unworkable... where the main object and intention of the Statute are clear, it should not be reduced to a nullity by a literal following of language which maybe due to want of skill or knowledge on the part of a draftsman unless such language is intractable".

33. In the case of *Cork County Council v. Whillock* [1993] 1 I.R. 231 which concerned an issue relating to the interpretation of the Malicious Injuries Act 1981, Egan J. stated (at p. 239):-

"There is abundant authority for the presumption that words are not used in a Statute without a meaning and are not tautologous or superfluous, and so if effect must be given, if possible, to all the words used, for the legislature must be deemed not to waste its words or say anything in vein".

34. To the extent that the Criminal Justice (Mutual Assistance) Act of 2008 might be described as a penal Statute, it is well established that such Statutes must be construed strictly in order to give the benefit of the doubt to the individual as against the State. (See *Mullens v. Harnett* [1988] 2 I.L.R.M. 304). The application of the presumption beyond criminal statutes was emphasised by O'Higgins J. the same case when he said:-

"Penal statutes are not only criminal statutes, but only statutes that impose a detriment".

35. The application of strict construction to taxation Statutes was confirmed in *Inspector of Taxes v. Kiernan* [1982] I.L.R.M. 13. At p. 15 Henchy J. stated:-

"When a word or expression is used in a Statute creating a penal or taxation liability, then if there is looseness or ambiguity attaching to it, it should be construed strictly so as to prevent the fresh imposition of liability from being created unfairly by the use of oblique or slack language".

36. In the recent decision of this court in the case of *The Minister for Justice and Equality v. Palonka* [2015] IECA 69, the issue that fell to be decided related to s.16(1) of the European Arrest Warrant Act 2003, and which provide that an order for the surrender of a person to a issuing State can be made "provided that":-

(a) ..

(b) ..

(c) *the European Arrest Warrant states, where appropriate, the matters required by s. 45 (inserted by s.23 of the European Arrest Warrant) application to third countries (and amendment) and extradition (amendment) Act 2012.*

(d) ..

(e) ..

37. In his judgment, Peart J. stated (at para. 29):-

"The provisions of section 45 are very clear. Under section 16(1)(c) of the Act surrender is prohibited unless the European arrest warrant states, where appropriate, the matters required to be stated by section 45. One of those matters is the information to be provided at point 4 where, in this case, point 3.2 of the Table is relied upon. That information is absent. It has not been provided. The warrant therefore does not indicate the matter required by point 4 of point (d) of the Table. Section 16(1)(c) of the Act is therefore not satisfied. To give the section a purposive interpretation in the light of the stated objectives and provisions of the Framework Decision would in this case fly in the face of clear national legislation."

38. And

"To so interpret the legislation would be to ignore the plain and ordinary meaning of the words used by the Oireachtas to express its intention. The section does not permit any derogation or discretion in relation to compliance with s.45, or any part of it. It is stated in mandatory and clear times".

39. At para. 32, Peart J. commented:-

"It must be recalled that these surrender applications are 'sui generis' in nature. They are regarded as inquisitorial rather than adversarial proceedings. It is the Court itself which inquires into the correctness or otherwise of the application for surrender, and whether all the requirements are met."

40. Peart J. referred to the case of *Attorney General v. Parke* [2004] IESC 100 wherein Murray C.J. (as he then was) stated:-

"The role of the requested State, indeed its duty, is to give effect to a lawful request from a requesting State, once it is determined that the request fulfils the criteria laid down by the relevant legislation The responsibility for bringing a person named in the warrant before the High Court clearly rests with the authorities in the State. Once that is done the task in determining whether all legal requirements for the making of an Order pursuant to section 47 [Extradition Act, 1965] are fulfilled rests with the High Court Judge. That is an inherently inquisitorial function".

41. The Criminal Justice (Mutual Assistance) Act 2008 enacted into Irish domestic law the provisions of various treaties and conventions to which Ireland is a signatory, including the agreement between the Government of Ireland and the Government of the United Kingdom Concerning Mutual Assistance in relation to Criminal Matters (Done at Dublin on 26th November 1998). Article 5 of the Treaty provided for the "Execution of Requests". Article 5(1) provided that a *request shall be executed as permitted by and in accordance with the domestic law of the Requested Party, and, to the extent not incompatible with such law, in accordance with any procedures specified in the request.* Article 5(4) provides that *Requesting Party shall inform the Requested Party promptly of any circumstances which may affect the request or its execution or which may make it inappropriate to proceed to given affect to it.* Article 10(2) provides for a request for assistance in enforcing an order being accompanied by *"an original order or by a copy of the order, certified by a judge or officer of the court that made the order or by the central authority.."* It went on to require that certain information be provided, including:-

(b) that no appeal is pending in respect of the order or any conviction to which that order may relate

and

(c) the person in respect of whom the order was made appeared in the court proceedings, or if not, received sufficient notice thereof in accordance with the law of the requesting party.

42. While the aforesaid provisions in the Treaty appear to be the basis for the provisions of s.50 and s.51 of the Criminal Justice (Mutual Assistance) 2008, s.50(2) clearly and unequivocally imposes a requirement that the external Confiscation Order shall be accompanied by, *inter alia*, a statement by or on behalf of the court...

43. Whether it was appropriate or necessary to impose an obligation to provide a *statement by or on behalf of the court..* is not a matter which can be properly considered by this court. It is not suggested that this requirement is meaningless or is impractical or impossible to comply with, or that it renders the operation of the Statute (or any part thereof) sterile or redundant. The fact is that there exists a clear and unequivocal requirement stipulated in legislation, and a failure to comply with that requirement effectively prevents a court from enforcing an external Confiscation Order.

Conclusion

44. I am satisfied of the following:-

(i) Section 50(2) of the Act of 2008 imposes an obligation on the Requesting Authority to confirm specific information in a *statement by or on behalf of the court that made the Confiscation Order.*

(ii) Such a statement is absent from the documentation occupying the external Confiscation Order in this case. The Witness Statement of Ms. Snape does not satisfy this requirement.

45. The appeal should therefore be allowed. Having regard to the documentation submitted, and for the reasons stated therein, the respondent is not entitled to a Confiscation Co-operation Order pursuant to s.51(3) of the Criminal Justice (Mutual Assistance) Act 2008 in respect of the property located within this jurisdiction and as set forth in the schedule to the order of the High Court of 22nd October 2013 and perfected on 27th August 2014.

46. It is, in these circumstances, unnecessary for this court to consider the additional grounds of appeal herein.