

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL APPEAL NO: 6/96

**BEFORE: THE HON MR JUSTICE RATTRAY, PRESIDENT
THE HON MR JUSTICE DOWNER, J A
THE HON MR JUSTICE HARRISON, J A (AG)**

SHAWN PHILLIPS VS REGINA

Miss. Carleen McFarlane for Appellant

Hugh Wildman, Deputy Director of Public Prosecutions for Crown

25th March & 15th April, 1996

HARRISON J A (AG)

The appellant pleaded guilty and was convicted on the 16th day of May, 1995, in the Resident Magistrate's Court for the parish of St. Ann on two informations for offences under the Dangerous Drugs Act. The first information charged him with having ganja in his possession, contrary to section 7C of the said Act; imposed was a fine of \$400,000 and in default of payment three years imprisonment at hard labour. The second information charged him with dealing in ganja, contrary to section 7B of the said Act; imposed was a fine of \$400,000 and in default of payment, three years imprisonment at hard labour. The sentences in default of payment were ordered to run concurrently.

He appealed against his sentence. The appeal was allowed and the sentences set aside. This court ordered that for the offence of dealing in ganja, a fine of \$11,200 or six months imprisonment be substituted and for the offence of possession of ganja,

a fine of \$5600 or six months imprisonment be substituted; the sentences in default of payment of the fine were to run concurrently; the appellant, having served ten months should be released forthwith.

The ganja concerned in this case was in the form of the substance "hashish". The learned Resident Magistrate recorded in his findings of fact that the "... quantity of hashish found in the possession amounted to 3lbs 12 ozs or 1.7kg."

Counsel for the appellant argued that the learned Resident Magistrate acted in excess of his jurisdiction in imposing the fines that he did. Counsel expanded her argument that under the mandatory provisions of the Dangerous Drugs Act, for the said offence of possession of ganja, contrary to section 7C, the maximum fine which could be imposed was \$5600, and for the offence of dealing in ganja, contrary to section 7(B), the maximum fine which could be imposed was \$11,200. The quantity of ganja involved was stated as 3lbs 8 ozs. This was the amount accepted by this court.

The court was asked to quash the sentences imposed and to substitute the appropriate sentences.

The relevant sections of the Act, are as follows:

"7B. Every person who -

(a) ... deals in ganja; ... shall be guilty of an offence and

(e) on summary conviction before a Resident Magistrate ... shall be liable -

(i) to a fine which shall not be less than one hundred dollars, nor more than two hundred dollars, for each ounce of ganja which the Resident Magistrate is satisfied is the subject matter of the offence, so however, that any such fine shall not exceed fifty thousand dollars; or

(ii) to imprisonment for a term not exceeding three years; or

(iii) to both such fine and imprisonment.

7(C) Every person who has in his possession any ganja shall be guilty of an offence and -

(a) ...

(b) on summary conviction before a Resident Magistrate, shall be liable -

(i) to a fine not exceeding one hundred dollars for each ounce of ganja which the Resident Magistrate is satisfied is the subject matter of the offence, so, however, that any such fine shall not exceed fifteen thousand dollars; or

(ii) to imprisonment for a term not exceeding three years; or

(iii) to both such fine and imprisonment," (Emphasis added)

The Dangerous Drugs (Amendment) Act, 1994, Law 30/94, amended section 7B of the principal Act, setting a new ceiling of five hundred thousand dollars (\$500,000) as the maximum fine.

Section 7B(e) now reads, inter alia:

"On summary conviction ... shall be liable -

(i) to a fine which shall not be less than one hundred dollars, nor more than two hundred dollars, for each ounce of ganja ... so, however, that any such fine shall not exceed five hundred thousand dollars; ..."
(Emphasis added)

Section 7C remains unamended.

Consequently, the maximum fine that could have been imposed under the said Act by the learned Resident Magistrate in respect of 56 ounces of ganja, using a tariff

of "..., one hundred dollars for each ounce ..." was \$11,200 for dealing in ganja and \$5600 for possession of ganja.

We agree that the learned Resident Magistrate exceeded his jurisdiction, in this respect, in that he did not have the power to impose the fines that he did.

We observed that in each case where the fine was imposed, the term of imprisonment, in default of payment was "... three (3) years imprisonment at hard labour."

Wherever in sections 7B or 7C of the said Act that the amount of fine to be imposed is recited, there is no express provision for enforcement, if the fine was not paid. The usual and accustomed words used in statutory provisions for this purpose are the words, "... in default of payment." No such phrase appears in either section of the Act.

The phrase,

"... or

(ii) to imprisonment for a term not exceeding three years; ..."

used in each of the said sections is the recital of a sentence, alternative to the fine, and cannot be interpreted as words of enforcement in default of payment of the fine; these words are not synonymous with the words, "... in default of payment ."

Accordingly, where the penal section is silent in respect of the enforcement in default of payment of a fine the learned Resident Magistrate must resort to the statutory provisions of the Judicature (Resident Magistrate's) Act for guidance.

Section 195 of the latter Act provides, inter alia:

"195 - (1) Where jurisdiction is given to any Court to impose a fine, and no express provision is made as to the mode of enforcing payment of the same, payment may be enforced by the Magistrate ordering

that in default of payment forthwith of such fine the person on whom such fine is imposed shall suffer imprisonment, with or without hard labour, for a period not exceeding six months."

Therefore the maximum period of imprisonment that could have been ordered in default of payment of the fine is six months and not three years, as done by the learned Resident Magistrate.

"Ganja" is defined in section 2 of the Dangerous Drugs Act, as including:

"... all parts of the plant known as cannabis sativa from which the resin has not been extracted and includes any resin obtained from that plant, ..."

"Hashish," with which the appellant was found is not defined in the said Act, but the inference from the said findings of fact, is that it is the resin extracted from ganja itself. The learned Resident Magistrate recorded, that:

"... In dealing with sentence ... taking into consideration that the accused was involved in the process of manufacturing the drug from a substantial amount of ganja and the court taking advice as to the recent amendment to the Dangerous Drugs Act imposed the following sentences: ..."

thereby implying that "one ounce" of ganja has no corresponding weight in relationship to one ounce of hashish. He incorrectly, sought to impose a fine for the possession of "hashish", no doubt to deal with what he saw as an anomaly in the Act; legislation is the only proper method.

For the above reasons the appeal against sentence was allowed.