IN THE SEYCHELLES COURT OF APPEAL

Phillip Cedras — Appellant

v/s

The Republic — Respondent

Criminal Appeal No. 11 of 1988

Mr. J. Renaud for the Appellant
Mr. D.S. Lucas for the Republic

JUDGMENT OF THE COURT

The appellant was charged with the offence of trafficking in dangerous drugs contrary to section 4(A) (1) and (2) and section 5 and punishable under section 26(1)(b) of the Dangerous Drugs Act Cap. 186. The particulars of the offence are that the appellant "on the 8th day of February 1987 at Baie St. Anne, Praslin, was trafficking without lawful authority in dangerous drugs namely, had in his possession 61 g 570 of Cannabis which amount exceeded 15 grams".

The appellant was tried before the Magistrate's Court and on the 20th January 1988, the Magistrate convicted him of the offence and sentenced him to five years' imprisonment, The appellant appealed to the Supreme Court against his conviction and sentence. His appeal was heard and dismissed by Chief Justice E.E. Seaton. He now appeals to this Court against the appellate decision of the Supreme Court.

The appellant filed several grounds of appeal. But at the hearing of this final appeal, counsel for the appellant abandoned some of those grounds and consolidated the others into one composite ground of appeal. Counsel conceded that the appellant's possession of more than 15 grammes of cannabis is not an issue and that the

sole issue in this appeal is whether the appellant was charged under the right section of the Dangerous Drugs Act.

Counsel submitted that the appellant should have been charged with possession of dangerous drugs contrary to section 4 and was improperly charged with and convicted of trafficking in dangerous drugs contrary to section 4 A(1).

Counsel invited this Court to reduce the sentence to three years' imprisonment. This can only be done under section 26A which provides as follows;-

> " Where a person is charged with an offence under section 4A and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under section 4, he may be convicted of that offence although he was not charged with it."

Accordingly, the sole issue in this appeal is whether or not the appellant was properly charged with and convicted oftrafficking in dangerous drugs contrary to section 4A (1) in circumstances where there is no evidence of "trafficking" as defined in section 2, but it could be and was in fact proved that the appellant had in his possession more than 15 grammes of cannabis.

To resolve this issue, it is hardly necessary to journey beyond the confines of section 4A itself. The marginal reference reads "Trafficking in Part II drugs." The section itself provides as follows:

"4A. (1) Any person who, on his own behalf or on behalf of any other person, whether or not such other person is in Seychelles -

(a) traffics in a drug to which this Part applies;

(b) offers to traffic in a drug to which this Part applies; or

(c) does or offers to do any act preparatory to, or for the purpose of, trafficking in a drug to which this Part applies,

is guilty of an offence

(2) Any person who is proved to have had in his possession more than 15 grammes of cannabis or cannabis resin, shall, unless he proves otherwise, be presumed to have had such drugs in his possession for the purpose of trafficking therein."

Section 4A(1) therefore prohibits three distinct acts each of which the marginal reference declares to be trafficking namely (a) trafficking per se (i.e. trafficking as defined in section (2) (b) offering to traffic and (c) doing or offering to do an act preparatory to or for the purpose of trafficking.

Possession of a dangerous drug is an act - albeit a continuous act involving the physical custody or control of the drug. If a person is in possession of a dangerous drug for the purpose of trafficking, he is evidently doing an act for the purpose of trafficking and such act is clearly caught by section 4A (1)(c). Subsection (2) of section 4A is an integral part of section 4A and was intended to complement section 4(A) 1(c) by creating a presumption of possession for the purpose of trafficking in cases of possession of more than 15 grammes of cannabis.

Since the appellant was proved to have had possession of more than 15 grammes of cannabis, he was presumed under section 4A(2) to have had such drug in his possession for the purpose of trafficking therein. He failed to rebut that presumption and was therefore properly convicted under section 4A(1) or specifically under section 4A(1)(c).

The statement of the offence with which the appellant was charged and the particulars of the offence could have been more informative and might have clearly indicated that the appellant was being charged under section 4 (A)(1)(c). However, this is an omission caught by section 331 of the Criminal Procedure Code (Cap. 45) and rule 74 of the Court of Appeal Rules1978 which collectively protect judgments from errors, omissions and irregularities which do not affect the merits and do not occasion a failure of justice.

In view of the fact that the Appellant was made aware of the nature of the charge and having regard to the fact that the objection to the omission complained of "could and should have been raised at an earlier stage in the proceedings", there has been no failure of justice.

This appeal is therefore dismissed.

Dated this 24th day of April, 1989.

A. MUSTAFA

C. D'ARIFAT
JUSTICE OF APPEAL

V.F. FLOISSAC
JUSTICE OF APPEAL