

1951

Present: Basnayake J.

SAMARASEKERA, Appellant, and SOYSA (Excise Inspector, Wadduwa), Respondent.

S. C. 1,316—M. C. Panadure, 14,752

*Poisons, Opium and Dangerous Drugs Ordinance (Cap. 172)—Sections 25, 26, 28—
“Ganja plant”—Is not hemp plant.*

“Ganja plant” does not come within the definition of hemp plant the cultivation or possession of which is prohibited by section 26 of the Poisons, Opium and Dangerous Drugs Ordinance.

APPEAL from a judgment of the Magistrate's Court, Panadure.

S. P. M. Rajendram, for the accused appellant.

L. B. T. Premaratne, Crown Counsel, for the Attorney-General.

January 31, 1951. BASNAYAKE J.—

The appellant is charged with cultivating and having in his possession two hemp plants in breach of section 26 of the Poisons, Opium, and Dangerous Drugs Ordinance (hereinafter referred to as the Ordinance).

The evidence for the prosecution is that on certain information received by Excise Inspector Soysa of Wadduwa a raid on the appellant's house was made about 6 a.m. on 22nd June, 1950. The excise party consisted of Inspector Soysa, Excise Corporal William Singho, and some others. They reached the neighbourhood of the appellant's house about 4.55 a.m. and were lying in wait. At 6 a.m. the appellant was observed to open his door, go towards the rear compound, return with a bucket of water, and pour it on some plants in an enclosure. The raiding party then went up and noticed two plants in a tin (P1). According to their evidence it was the two plants which were produced in Court that the appellant was watering. The Excise Inspector and the Excise Corporal both say they are “Ganja” plants. Excise Inspector Van 't West who conducted the prosecution in the Magistrate's Court also gave evidence, and he identified the plants as “Ganja” plants.

Now the section under which the appellant is charged provides that no person shall without a licence sow, plant, cultivate, obtain, or have in his possession any poppy plant, coca plant, or hemp plant, or collect or have in his possession the seeds, pods, leaves, flowers, or any part of any such plant.

Section 25 of the Ordinance defines the expression "hemp plant" as follows:—

"'hemp plant' means the plant known as *Cannabis sativa* L." "Ganja" according to section 28 is the name by which the preparation of or extracts from the hemp plant are commonly known. For the prosecution to succeed it must establish that the plant which was in the possession of the appellant was a hemp plant of the variety defined in the Ordinance, i.e., *Cannabis sativa* L. There is no such evidence in the instant case.

Learned Crown Counsel referred me to the case of *Wilson v. Kotetavela*¹, wherein it has been held that "Ganja" comes within the definition of hemp plant in the Ordinance. With great respect I find myself unable to subscribe to that view. "Ganja" is not a plant. It is a preparation of or extract from a plant. The case of *Ukku Banda v. Ukku Banda*², is a decision under section 16 of Ordinance No. 5 of 1899. In that Ordinance there was neither a definition of "Ganja" nor of "hemp plant". The Ordinance which I am called upon to consider states what it means by the "hemp plant" and "Ganja". A charge under section 26 should therefore refer to the plant by the name by which it is known to the law and the prosecution must establish by evidence of a qualified person that the plant possessed by the accused is a plant of the variety prohibited by section 26.

For the foregoing reasons the appeal is allowed and the conviction is quashed.

Appeal allowed.
