

1945

Present: Rose J.

DIAS, Appellant, and INSPECTOR OF POLICE, MATALE,
Respondent.

1,104—*M. C. Matale, 5,390.*

Legium—Possession of—No offence unless ganja is ingredient—Poisons, Opium and Dangerous Drugs Ordinance (Cap. 172), s. 28.

The possession of legium is not a contravention of section 28 of the Poisons, Ooium and Dangerous Drugs Ordinance unless there is some evidence to show that the legium is in fact a preparation within the meaning of that section.

A PPEAL against a conviction by the Magistrate of Matale.

H. W. Jayewardene, for the accused, appellant.

V. T. Thamotheram, C.C., for the Attorney-General.

November 9, 1945. ROSE J.—

In this case the appellant was convicted on two counts, charges contra sections 26 and 28 of the Poisons, Opium and Dangerous Drugs Ordinance.

As to the charge contra section 26, Counsel for the appellant says, and I agree with him, that there is no evidence to show that the appellant was in possession of any seeds, pods, leaves, flowers or any part of the hemp plant or of any other plant mentioned in that section. It seems to me, therefore, that the charge under that section cannot be sustained. As to the charge under section 28, it is alleged that the appellant was in possession of a tin of legium which the Crown suggests is a preparation of which the resin of ganja forms a part. That may or may not be so. But in his particular case the only evidence as to the finding of legium and as to what legium is contained in the evidence of Mr. Ekanayake,

Assistant Superintendent of Excise, who says, " I found a tin containing legium. I produce it (P 3) ". It appears that the Magistrate appreciated that there should be some evidence to show that legium is in fact a preparation within the meaning of section 28 of the Poisons, Opium and Dangerous Drugs Ordinance and it was no doubt for that reason that this exhibit was sent to the Government Analyst. In fact the report of the Government Analyst was not produced in evidence and is therefore not before the Court, but leaving that aside, on looking at the report of the Government Analyst was not produced in evidence and is therefore not as Counsel for the appellant says, that it is quite inconclusive for the purpose for which the Crown intends to use it. For that reason it would seem that the charges under sections 26 and 28 have not been proved.

Learned Crown Counsel asks me to use my powers under section 425 of the Criminal Procedure Code on the ground that in fact no miscarriage of justice has occurred by the conviction of the appellant. That is a matter within the discretion of an Appeal Court, but in this particular instance I do not propose to exercise that discretion. It seems to me that this is a case where the person in charge of the prosecution should have taken care to see that the charges were properly framed in accordance with the evidence which it was proposed to adduce.

For these reasons the appeal succeeds and the conviction and sentence are quashed.

Appeal allowed.
