

1952

Present : Swan J.

D. F. S. WEERASOORIYA, Appellant, and EXCISE INSPECTOR,
MULLAITIVU, Respondent

S. C. 863— M. C. Vavuniya, 24,912

Ganja—Is not a plant—Poisons, Opium and Dangerous Drugs Ordinance (Cap. 172), ss. 25, 26, 28.

Ganja is not a plant but a preparation or extract from a plant. It does not therefore, come within the definition of hemp plant the possession of which is punishable under section 26 of the Poisons, Opium and Dangerous Drugs Ordinance.

Samarasekera v. Soysa (1951) 52 N. L. R. 330, followed.

Wilson v. Kotalawela (1946) 47 N. L. R. 45, not followed.

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

T. K. Curtis, with *P. Somatilakam*, for the accused appellant.

A. Mahendrarajah, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 10, 1952. SWAN J.—

The appellant was charged with possession without a licence of " seeds, pods, leaves, flowers or other parts of the hemp plant commonly known as ganja weighing 9 ozs. 314 grains " in breach of section 26 read with sections 2 (2) and 76 (1)A of the Poisons, Opium and Dangerous Drugs Ordinance (Cap. 172 N. L. E.). The evidence of the prosecuting Inspector was that he found 9 ozs. and 314 grains of ganja in the person of the accused. The learned Magistrate convicted the accused and sentenced him to pay a fine of Rs. 200.

It is time that the Excise Authorities realized that the hemp plant as defined in section 25 means the plant commonly known as "*Cannabis Sativa L*" and that the word ganja, as will be seen from section 28, refers to a preparation or extract from the hemp plant. I shall quote the relevant portion of that section :—

" Any resin obtained from the hemp plant, or the preparations of or extracts from the hemp plant, commonly known as bhang, hashish or ganja, or any other preparation of which such resin forms a part. "

In the case of *Samarasekera v. Soysa*¹ Basnayake J. pointed out that ganja was not a plant but a preparation or extract from a plant, and stated that he was unable to subscribe to the view that " ganja " came within the definition of hemp plant in the Ordinance, as was held by Jayetilleke J. in *Wilson v. Kotalawela*². With the view of Basnayake J. in *Samarasekera v. Soysa*¹ I entirely agree.

It is clear therefore that the charge was in respect of possession of parts of the hemp plant, and the evidence of the possession of ganja. In these circumstances Mr. Somatilakam who argued the case for the appellant wants me to quash the conviction and acquit the accused. Learned Crown Counsel, however, wants me to alter the conviction to a conviction under section 28. That, I think, would not be fair to the accused. I would therefore quash the conviction and order a retrial upon a proper charge.

Conviction quashed.
