

(108/78)

E. du P.

THE STATE..... Appellant

and

STEPHEN JOHN CRAWFORD..... First Respondent

LESLIE GEORGE LAWRIE..... Second Respondent.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

THE STATE..... Appellant

and

STEPHEN JOHN CRAWFORD..... First Respondent

LESLIE GEORGE LAWRIE..... Second Respondent.

Coram: RABIE, MULLER, HOFMEYR, MILLER et DIEMONT, JJ.A.

Heard:

Delivered:

14 November 1978.

30 November 1978

J U D G M E N T

RABIE, JA.:

This is an appeal by the Attorney-General of
the Orange Free State in terms of sec. 311 of the
Criminal Procedure Act, 1977 (Act no. 51 of 1977).

The two respondents were charged in the
Magistrate's Court at Ficksburg with a contravention of

sec...../2

(i)). A suit-case and a motor car, the property of the first respondent, were declared forfeited to the State in terms of sec. 8(1)(b) of the Act. The evidence shows that on 11 May 1977 the respondents, travelling in the first respondent's motor car, entered the Republic from Lesotho at the border-post at Ficksburg, where passport officials found a suit-case containing 6 kilograms of dagga in the boot of the car. The respondents testified that they had bought the dagga in Lesotho, that they were regular smokers of dagga and that the dagga found in the boot of the car was intended solely for their own use in the Republic. The Magistrate appears not to have rejected their evidence that the dagga was intended for their personal use, but he found that their introduction of the dagga into the Republic of South Africa constituted "importation" thereof as meant in the definition of "deal in" in sec.

1(iv) of the Act, and that they were consequently guilty of having dealt in dagga in contravention of sec. 2(a) of the Act. The definition of "deal in" reads as follows:

"(iv) 'deal in', in relation to dependence-producing drugs or any plant from which such drugs can be manufactured, includes performing any act in connection with the collection, importation, supply, transshipment, administration, exportation, cultivation, sale, manufacture, transmission or prescription thereof".

The Afrikaans text - the Act was signed in Afrikaans - of the definition reads:

"(xi) 'handeldryf', met betrekking tot afhanklikheidsvormende medisyne of n plant waaruit sodanige medisyne vervaardig kan word, (beteken) ook n handeling verrig in verband met die insameling, invoer, lewering, oorlaai, toediening, uitvoer, verbouing, verkoop, vervaardiging, versending of voorskryf daarvan".

The...../5

The Court a quo, whose judgment has been reported - see 1978 (1) S.A. 640 (O.) -, held that the word "importation" appearing in the definition of "deal in" in sec. 1(iv) of the Act has a "commercial connotation", and that, since the respondents did not introduce the dagga into the Republic for any commercial purpose but with the intention of consuming it themselves, they were wrongly found to have dealt in dagga in contravention of sec. 2(a) of the Act. In coming to this conclusion, the Court a quo considered the use of the word "importation" rather than ~~of~~ words such as "bring into the Republic" in the definition of "deal in" to be a strong indication that the Legislature intended that the word "importation" should have a commercial connotation. This view of the meaning of "importation", the Court held, was supported by the "juxtaposition" of the words "importation" and "exportation" in the definition of "deal in", and

by...../6

by the use of the words "collection", "supply", "transhipment", "administration", "sale", "manufacture" and "prescription" appearing in the said definition. All of these words, the Court found, "have commercial or business connotations in more or less varying degrees". (See pp. 642 i.f. and 643 G-H) of the report). In the result it was held that the respondents were wrongly found to have dealt in dagga. The Court accordingly set aside their conviction of a contravention of sec. 2(a) of the Act and convicted them of a contravention of sec. 2(b). The sentences imposed by the Magistrate were set aside, and both respondents were sentenced to 2 years' imprisonment, all of which was conditionally suspended for 3 years. The forfeiture orders made by the Magistrate were also set aside.

Mr. Cillie, for the respondents, contended that, as was held by the Court a quo, the word "importation"

in...../7

in the definition of "deal in" has a commercial connotation,
~~and that, because the respondents did not introduce~~
the dagga into the Republic for a commercial purpose,
they cannot be said to have dealt in dagga in contravention
of sec. 2(a) of the Act. He based his argument on the
Afrikaans version of the definition of "deal in", i.e.,
"handeldryf", in sec. 1(xi) of the Act. He did so, he
said, because the Afrikaans word "invoer" clearly has a
commercial connotation, whereas the English word
"importation" does not necessarily have such a connotation.
(In the Oxford English Dictionary "importation" is
defined as meaning "(t)he action of importing or bringing
in", and it is indicated that the word may have a
commercial or a general meaning). There is no doubt,
of course, as was submitted by counsel, that "invoer",
as a noun, is commonly used in the sense of introducing
goods from one country into another for purposes of
trade, but I do not agree with the submission that the

word necessarily has that meaning when used with reference
to the introduction of goods from one country into

another. Nor do I agree with counsel's submission

that the primary meaning of the word is the introduction
of goods from one country into another for commercial

purposes. In support of his submissions, counsel

relied on the definition of "invoer", as a noun, in the

Woordeboek van die Afrikaanse Taal. It reads: "Die

inbring, importeer van artikels, koopware, ens. (uit

die buiteland) in 'n land of stad; import". This

definition does not indicate, in my view, that "invoer"

always has a commercial connotation. Nor does it

indicate that the primary meaning of the word is the

introduction of goods into a country for commercial

purposes. The word "import", mentioned in the

definition, is defined in the same dictionary as meaning

"Invoer van goedere uit die buiteland; goedere invoer,

invoerhandel..../9

invoerhandel". This may indicate that "import" has a commercial connotation, but, even if it does, it would not justify the view that "invoer" always has a commercial connotation, irrespective of the context in which it is used. In Kernwoordeboek van Afrikaans, by De Villiers, Smuts and Eksteen, it may be pointed out, "invoer" is defined as meaning "die inbring van goedere van n ander land", with no indication that such "inbring" must be for business purposes.

In the course of his argument as to the meaning of the word "invoer", Mr Cillie also referred to the dictionary meanings of certain other words, viz. "inbring", "invoer", "importeer", and "eksport". I do not propose to discuss these definitions, for it seems to me that, even if one accepts that the word "invoer" is commonly used to indicate the introduction of goods into a country for purposes of trade, one cannot escape the conclusion that the Legislature did not intend the

word to have that circumscribed meaning in the definition of "handeldryf" in sec. 1(xi) of the Act. I say this for the following reasons. The word "sale", one of the acts mentioned in the definition of "deal in", obviously has a commercial connotation when used in its ordinary meaning, but a reference to the definition of "sell" in sec. 1(xxi) of the Act shows that it is not required that a "sale" must necessarily be a business transaction before it is hit by the provisions of sec. 2(a) of the Act.

"Sell", it is provided, "includes.....disposing, whether for consideration or otherwise", and "sale" is said to have a corresponding meaning. In S. v. Gibson, 1974(4) S.A. 478 (A.) it was contended on behalf of the appellant that the performance of an act in connection with the "supply" (one of the acts listed in the definition of "deal in" in sec. 1(iv) of the Act) of dagga had to be an act for the purpose of a business

transaction...../11

transaction before it could be said to fall within the definition of "deal in" in sec. 1(iv). This Court rejected the contention and held (p. 480 H) that the fact that "sale" is stated in sec. 1(xxxi) to include disposal "whether for consideration or otherwise", "negatives any requirement that the various acts, listed in the definition of 'deal in', must be for the purpose of a business transaction". The Court's reasoning, it will be observed, applies to all the acts listed in the definition of "deal in" - i.e., including "importation" ("invoer") - and the decision is, therefore, authority for the view that the offence of dealing in drugs as created by sec. 2(a) of the Act is not limited to acts or transactions of a commercial nature. It follows that the respondents' introduction of the dagga into the Republic, even if, not intended for business purposes, constituted a dealing in dagga in contravention of sec.

2(a) of the Act. The Court a quo, it may be observed, did not have regard to the decision in Gibson's case, nor to the definition of "sell", or "sale", in sec. 1(iv) of the Act. (See also the judgment of this Court in S. v. Guess, 1976(4) S.A. 715, in which there is no suggestion that the "cultivation" of dagga - one of the acts mentioned in the definition of "deal in" - is hit by sec. 2(a) of the Act only when it is intended for business purposes, and S. v. Kgupane en Andere, 1975(2) S.A. 73(T.) - referred to in Guess's case at p. 717 G-H - where it has held by the Transvaal Provincial Division that the cultivation of dagga falls within the definition of "deal in" even if it is intended for the cultivator's own use).

In view of the foregoing it is held that the Court a quo erred and that the appeal must be upheld.

Counsel...../13

Counsel drew our attention to the fact that in terms of an amendment introduced by sec. 1 of Act no. 76 of 1978 a Court is no longer obliged to impose a sentence of 5 years' imprisonment for a contravention of sec. 2(a) of the Act if such contravention relates to dagga only. Counsel for both parties suggested that a lesser sentence than the one imposed by the Magistrate would meet the justice of the present case and that consideration should be given to the question whether the amending provision is applicable to the present case. It seems to be clear, however, that the provision is not of application to the present case, and this Court cannot on appeal impose a sentence which would at the time of the respondents' conviction not have been a competent sentence for the Magistrate to impose.

It is ordered as follows : The orders made by the Court a quo are set aside, and the convictions,

sentences...../14

sentences and forfeiture order of the Magistrate's
Court are re-instated.



P. J. RABIE

Judge of Appeal.

MULLER, J.A.)
HOFMEYR, J.A.)
MILLER, J.A.)
DIEMONT, J.A.)

Concur.