

9.11.84

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN

BEFORE THE HON. SIR JOHN SUMMERFIELD CBE QC JP CHIEF JUSTICE

CASE NOS. 1605-1606/83

APPEAL NO. 48/83

REGINA VS.

ANNA M. STALLA DE ZENKER &

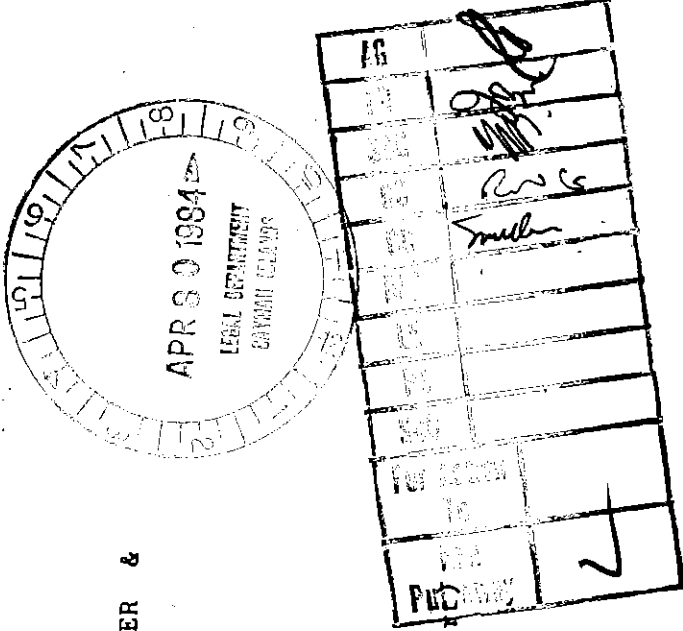
THOMAS MUNROE

IMPORTATION OF GANJA

POSSESSION OF GANJA

Mr. Smellie for appellant (with him Miss Dilbeck)
Mr. Voaden for respondents.

J U D G M E N T



This is an appeal by way of case stated at the instance of the Attorney General against the refusal of the trial Magistrate to order the forfeiture of a vessel, the Wind Song, pursuant to section 14 (2) of the Misuse of Drugs Law.

Both respondents who were on the Wind Song at the relevant time pleaded guilty to the offence of unlawful possession of ganja and the offences of unlawful importation of ganja. A third person on the boat was charged with the same offences, but no evidence was offered against him and he was discharged.

The respondent Munroe was the owner and Captain of the Wind Song and in view of the wording of section 14(2), it is only necessary to consider the facts in relation to him. He is the only relevant respondent and will be referred to as the respondent. The relevant facts are not in dispute.

The Wind Song sailed from Jamaica and arrived at George Town dock at about 7:00 a.m. on 14th November 1983. It's original destination was elsewhere. There had been no intention to visit Grand Cayman, but a shortage of fuel and ice developed on the journey and the respondent decided to put into Grand Cayman to replenish those items. He brought the boat in voluntarily. On arrival the boat was searched. In a sock was found one half pound of ganja. The respondent accepted that that ganja was his. The case against him proceeded on the basis that the ganja was the only ganja that was in his actual or constructive possession and that it was for personal use only. Another small quantity of ganja found on

board was attributed solely to the other respondent and not to the respondent. It is plain from these facts that the Wind Song brought that half pound of ganja into the territorial waters of the Cayman Islands.

For the offence of possession the respondent was sentenced to one day's imprisonment and a fine of \$3000.00 or 6 month's imprisonment in default. For the offence of importation he was sentenced to a concurrent one day's imprisonment and a fine of \$25.00 or 3 day's imprisonment in default.

The learned Magistrate clearly treated the offence of importation as incidental to the charge of possession.

The Wind Song which the learned Magistrate refused to order forfeit is said to be worth between U.S. \$40-60,000.

Section 14 (2) reads as follows:-

"Where a person is convicted of an offence against this Law, and the court by or before which he is convicted is satisfied that any vessel which was in his possession or under his control at the time of his apprehension -

(a) has been used in connection with or for the purpose of committing or facilitating the commission of such offence, or

(b) was intended by him to be used for that purpose,

the court shall order the forfeiture to the Crown of such vessel."

It is common ground that this vessel had no connection with the offence of possession in the circumstances of this case. One need only examine the offence of importation in relation to section 14 (2).

The respondent was the convicted person (for the offence of importation). It is clear from the agreed facts that this vessel, the Wind Song, was in his possession (and also under his control) at the time of his apprehension. The only reasonable view to take of the agreed facts is that the Wind Song was "used in connection with" the importation of the half pound of ganja or "facilitated" the commission of that offence. It was an essential element in the commission of the offence of importation. In the circumstances of the case the offence of importation could not have been committed without the boat being connected with or facilitating its commission. Without the boat entering the territorial waters the offence of importation would not have been committed. It matters not that the importation was subsidiary or ancillary to the possession of the ganja. The section makes no mention of primary purpose or secondary purpose.

All the conditions of section 14(2) are fulfilled on the agreed facts and the consequence is mandatory - forfeiture.

One recognizes that the penalty becomes wholly disproportionate to the

offence and gives the appearance of an injustice. But that, unfortunately, can be the consequence of taking the discretion away from the courts and providing for mandatory penalties. This has been demonstrated with other provisions of the Misuse of Drugs Law and the only remedy would appear to be a petition to the Governor for the exercise of the prerogative of mercy.

I have been invited to mitigate the harshness of the operation of this provision by interpreting it in a way which would introduce parameters to its operation. The case of Seaford Court Estates Ltd. Vs. Asher 1949 2 All ER 155 has been cited as authority for a court so interpreting a harsh provision. With respect, that case is no authority for interpreting a statute otherwise than in accordance with its plain and ordinary meaning when the language and intent is clear. The language and intent of section 14(2) (having regard to the legislative history of this provision) could not be clearer. I have to give effect to its plain meaning. I cannot introduce conditions for its operation. That is for the Legislature,

Accordingly, the Wind Song is ordered forfeit.

Sir John Summerfield

Dated this 27th day of April 1984.