

SAINT LUCIA

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 1 of 1992

BETWEEN:

BRANDON JOHN HENRY

Appellant

and

THE POLICE

Respondent

Before: The Honourable Chief Justice Floissac - President
The Honourable Mr. Justice Byron J.A.
The Honourable Mr. S. Singh J.A. (Ag.)

Appearances: Mr. M.P. Foster for the Appellant
Mr. E. Walker for the Respondent

1992: May 25, 26.

JUDGMENT

FLOISSAC, C.J.

The appellant was charged with unlawful possession of cocaine contrary to subsection 2 (which is required to be read together with subsection 1) of section 7 of the Drugs (Prevention of Misuse) Act No.22 of 1988 which provides as follows:

- (1) Subject to any Regulations under section 9 for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.
- (2) Subject to the subsection (5) and to section 30, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1)".

On the 9th September 1991, Magistrate K.C.St.Rose (sitting in the First District Court) purported to convict the appellant of the offence charged, sentenced him to imprisonment for a term of five years, imposed on him a fine of \$20,000 payable within two months and sentenced him to imprisonment for a term of twelve months in default of payment of the fine within the prescribed time. Whereupon the appellant appealed against his conviction.

In her reasons for her decision, the learned magistrate said:

"Having been found in possession of 79.55 grammes of cocaine the Defendant was deemed to be in possession for the purpose of Drug Trafficking in accordance with Section 7(4) of the Drugs (Prevention of Misuse) Act 1988.

While giving my decision in the case and having already deemed the Defendant to be in possession for the purpose of Trafficking, Counsel for the Defendant sought to raise a constitutional issue. It was submitted that as Section 7(4) of the Drugs Act placed the burden of proof on the Accused this was a breach of Article 8 of the Schedule to the St. Lucia Constitution Order.

I found that the submission was frivolous and vexatious, particularly as it was made at a point at which I had already deemed the Defendant a Drug Trafficker. I appreciated that this submission could hardly have been made much earlier but yet, having to refer it to the High Court may have put me into a position of having to reverse my own decision had the High Court ruled the Section unconstitutional.

In the circumstances I decided to proceed to impose sentence in accordance with Section 16 of the Act.

Having regard to the seriousness of the offence and quantity of the drug involved I sentenced the Defendant to five (5) years imprisonment and fined him \$20,000.00 in addition, this sum to be paid within two (2) months or in default twelve (12) months imprisonment."

It is evident from Her Worship's reasons for her decision that she completely misdirected herself as to the offence with which the appellant was charged and for which she was required to try the appellant. The appellant was charged and remained charged with the offence of unlawful possession of a controlled drug contrary to the said section 7(2). According to the Notes of Evidence:

"Prosecution seeks to have charge amended to 16(1). Mr. Foster objects strongly. Court does not allow amendment."

In spite of the nature of the charge and of her refusal to permit an amendment thereto, the learned magistrate erroneously proceeded to try the appellant for drug trafficking in contravention of section 16 of the said Act. The result is that she erroneously invoked the presumption of unlawful possessory purpose prescribed by section 7(4) of the said Act. Section 7(4) provides that:

"Subject to subsection (1) a person found in possession of the following controlled drugs in quantities of more than shall be deemed to be in possession of such controlled drug for the purpose of supplying it to another or for drug trafficking in contravention of section 16(1) unless the contrary is proved, the burden of proof being on the accused."

The presumption prescribed by section 7(4) is therefore relevant only in a case where the offence charged is a compound

offence one of the essential ingredients of which is an unlawful possessory purpose. The presumption is inapplicable to section 7(2) or to the simple offence of unlawful possession of a controlled drug. That simple offence does not require or involve proof of an unlawful possessory purpose. The presumption and the constitutionality or otherwise thereof are therefore irrelevant to the issues in this case.

In relying on the presumption and in punishing the appellant under section 16 and not under section 27 of the said Act, the learned magistrate evidently tried and convicted the appellant of the offence of drug trafficking and did not try the appellant for the offence of unlawful possession of a controlled drug - being the offence with which he was charged. For this reason, I would quash the conviction and set aside the sentence and fine imposed on the appellant.

However, the appellant should not be totally discharged. There was ample evidence which a magistrate might have believed and for which a magistrate properly directed could have inferred the appellant's unlawful possession of a controlled drug. In those circumstances, it is in the interests of the public, the prosecution and the appellant that the guilt or innocence of the appellant should be determined by a proper trial.

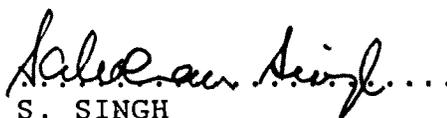
I would accordingly order a new trial in the interest of justice.



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V.F.FLOISSAC
Chief Justice



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C.M.D.BYRON
Justice of Appeal



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S. SINGH
Justice of Appeal (Ag)