

(1988) 09 KL CK 0045

In the High Court Of Kerala

Case No : Criminal M.C. No's. 684, 700 and 726 of 1988

Kunju and Others

APPELLANT

Vs

State of Kerala and another

RESPONDENT

Date of Decision : 16-09-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20

Citation : (1988) 2 KLJ 547

Hon'ble Judges : P. C. Balakrishna Menon, J;K. G. Balakrishnan, J

Bench : Division Bench

Advocate : T. G. Lellulal, S. Shyam, P. R. Leslie Stephen, K. Rainge and Lilly Leslia, for the Appellant; V. Bhaskara Menon, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Menon, J.—The petitioners in these cases invoke Section 482 of the Code of Criminal Procedure to quash the proceedings in C. C. Nos. 20/1988, 123/1987 and 10/1988 respectively on the file of the Judicial First Class Magistrate's Court, Adimali. The Magistrate has taken cognizance of an offence punishable u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985) (hereinafter referred to as Act) against each of these petitioners on the basis of the final report submitted by the police after investigation. The charge sheets submitted by the Investigating Officer in CC Nos. 20/1988 and 10/1988 show that the respective accused had in contravention of the provisions of the Act cultivated cannabis plant, thereby committing an offence punishable u/s 20 of the Act. The charge sheet in C. C. No. 123/1987 discloses also an offence u/s 55 (c) Abkari Act (Act 1 of 1077).

2. These cases have been referred for decision by a Division Bench, as Sreedharan J doubted the correctness of the decision of a learned single Judge of this court in Crl. M. C. No. 944 of 1987. The learned single Judge had in the said case quashed the proceedings of Magistrate initiated under the Act for the reason

that in the absence of a notification u/s 8 of the Act, there is no offence in cultivating cannabis plant. The learned single Judge assumes that cultivation of cannabis plant is only for the purpose of production of ganja and in the absence of the notification referred to in the proviso to Section 8, the prohibition against the cultivation of cannabis plant does not take effect. Section 20 of the Act reads:

20 Punishment for contravention in relation to cannabis plant and cannabis.-
Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,-

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable,-

(i) where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall be liable to fine which may extend to fifty thousand rupees;

(ii) where such contravention relates to cannabis other than ganja, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

3. The cultivation of cannabis plant will be an offence u/s 20 of the Act, if it is done in contravention of any provision of the Act or any Rule or Order made or condition of licence granted thereunder.

4. The learned Single Judge in Crl. M. C. No. 944/1987 has relied on the proviso to Section 8 of the Act in taking the view that no offence is committed u/s 20 of the Act unless there is a notification issued by the, Central Government in terms of the proviso. Section 8 of the Act reads;

8. Prohibition of certain operations.-No person shall--

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate any opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance.

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provisions imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf.

5. The prohibition u/s 8 of the Act against the cultivation of cannabis plant for the production of ganja or for any of the other purposes relating to ganja mentioned in the proviso can take effect only from the date notified by the Central Govt. in the official gazette.

6. Both sides agree that no notification as contemplated by the proviso aforesaid has been issued until this date. Cultivation of cannabis plant for the purpose of production of ganja or for its use in any of the forms mentioned in the proviso will not therefore be an offence u/s 20 of the Act. We cannot, however, assume that cultivation of cannabis plant is only for the production of ganja or its use as are referred to in the proviso to Section 8 of the Act. Cannabis is defined in Section 2(iii) as follows:

2(iii) "cannabis (hemp)" means-

(a) charas, that is, the separated resin, in whatever form whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) ganja, that is, the flowering or fruiting tops- of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;

Section 2(iv) defines "cannabis plant" to mean any plant of the genus cannabis. The definition shows that ganja is a product obtained out of flowering or fruiting tops of cannabis plant. Charas, hashish oil or liquid hashish are obtained out of the plant's resin. Clause (c) of the definition refers also to other forms of mixtures obtained out of the products of cannabis plant.

7. Modi in his Medical Jurisprudence and Toxicology, 20th Edition at page 710 refers to Bhang, Siddhi, Patti, or Sabji manufactured out of dried leaves and flowering or fruiting tops of the cannabis plant, used as an infusion in the form of a beverage, which produces intoxication of a sensuous character. Other products made out of cannabis plant referred to are majun a sort of confection prepared from bhang after treating it with sugar, flour, milk and butter. The author refers to the highly intoxicating effect of majun sold in the bazar in small lozenge-shaped pieces. Charas or hashish is referred to as a concentrated product obtained out of the resin exuding from the leaves and stems of the cannabis

plants. The author refers to this product as the most potent intoxicant when smoked with tobacco.

8. It is, thus clear that cultivation, of cannabis plant cannot be assumed to be merely for the production of ganja referred to in the proviso to section 8 of the Act. The cultivation can also be for the production or manufacture of any of these highly intoxicant and toxic materials. If the cultivation of cannabis plant by the accused in these cases is only for the production of ganja, it is open to them to raise the plea in defence that in the absence of a notification referred to in the proviso to section 8 they are not guilty of any offences u/s 20 of the Act. The cultivation of cannabis plant is also an offence punishable u/s 55 of the Abkari Act. Under these circumstances, it cannot be said that the charge against accused does not disclose any offence to attract Section 482 of the Code of Criminal Procedure. The Criminal Miscellaneous Cases are accordingly dismissed.