



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPLICATION NO.45 OF 2001

ALI VINU.....APPLICANT

(Original Accused No.4)

= V E R S U S =

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPLICATION NO.46 OF 2001

MOHAMED SALIM.....APPLICANT

(Original Accused No.3)

= V E R S U S =

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPLICATION NO.47 OF 2001

RASHID KARISA.....APPLICANT

(Original Accused No.1)

= V E R S U S =

REPUBLIC.....RESPONDENT

(From Original Conviction and Sentence in Criminal Case No.1794 of 2001 of the Senior Resident Magistrate's Court at Mombasa – H. Njiru, Esq., - S.R.M

R U L I N G

The three Applications 45/01, 46/01 and 47/01 were consolidated without objection and were heard together as they arose from the same trial before the Mombasa Senior Resident Magistrate. The Applicant in 45/01 was the 4th Accused, the Applicant in 46/01 was the 3rd Accused while in 47/01 the Applicant was the 1st Accused.

They all faced one charge of being in possession of Narcotic Drugs contrary to Section 3(1) as read with Ss.2(a) of Act 4/94. They pleaded guilty to the charge and were sentenced to serve 2 years imprisonment. On the facts read out and pleaded to by the Applicants it was alleged that they were in possession of 8 rolls of Cannabis Sativa which was found on the ground next to them.

Learned counsel for them Mr. Gakuhi submitted that it will be a main ground of Appeal that the plea was not unequivocal since there was no proof that the substance allegedly found was Cannabis Sativa. It will in addition be argued that the Applicants did not have it in possession if it was only found on the ground.

Learned State Counsel Ms. Kwena conceded the Application on the ground that it was incumbent on the prosecution to satisfy the Court even at that stage of plea that the substance the subject-matter of the charge was prohibited under the law.

I think she is right. The substance referred to in the charge-sheet is 8 cigarettes of Cannabis Sativa (bhang) while the facts relate to 8 rolls of the same substance. There is nothing to show that the substance was certified by a Chemist to fall under the Drugs prohibited under the Act. It was prejudicial to the Applicants.

In the circumstances, and in view of the concession by the Attorney- General, I would invoke my powers under Section 352A of the Criminal Procedure Code to allow all the three Appeals filed herein summarily instead of waiting indefinitely for the hearing. I set aside the conviction and sentences imposed on each Applicant.

I order that there shall be a retrial de novo before another court of competent jurisdiction.

In the meantime pending the mention of the case before the Chief Magistrate on 10.7.01 each of the Applicants shall execute his own bond of Kshs.20,000/- together with one surety of like amount.

Dated this 3rd day of July, 2001.

P.N. WAKI

J U D G E