

1979 July 6

[A. LOIZOU, MALACHTOS, SAVVIDES, JJ.]

MAHMOUD HOUSSEIN MAHMOUD ATIA,
Appellant,

v.

THE POLICE,
Respondents.

(*Criminal Appeal No. 4C46*).

Criminal Law—Sentence—Narcotics—Two years’ imprisonment for importing and possessing narcotics—Large quantity of cannabis resin found in possession of a foreigner, who was a drug addict—Seriousness of offences and the social evil that narcotics bring—Sentence rather on the lenient side—Appeal dismissed. 5

The appellant, a Sudanese sailor, pleaded guilty to the offences of importing and possessing cannabis resin and was sentenced to concurrent sentences of two years’ imprisonment. The total weight of cannabis resin found in his possession was 811.20 grams. He admitted that he was a drug addict and during his detention in the Central prisons he was treated appropriately by the prison psychiatrist. 10

Upon appeal against sentence:

Held, (after stressing the seriousness of the offence and the social evil that narcotics bring in any country in which they are illicitly imported and found) that there is no merit in this appeal; that the sentence imposed is rather on the lenient side, considering the large quantity of cannabis resin found in the possession of the appellant and is very reluctantly not increased; and that, accordingly, the appeal must fail. 15 20

Appeal dismissed.

Cases referred to:

- Maos v. Republic* (1971) 2 C.L.R. 191;
- Loizou v. Republic* (1971) 2 C.L.R. 196;
- Howell v. Republic* (1972) 2 C.L.R. 111; 25
- Makki v. Republic* (1972) 2 C.L.R. 76.

Appeal against sentence.

Appeal against sentence by Mahmoud Houssein Mahmoud Atia who was convicted on the 14th May, 1979 at the District Court of Limassol (Criminal Case No. 5738/79) on two counts
 5 of the offences of importing cannabis resin, contrary to sections 3,4, 21 and 24(1)(a) and (2) of the Narcotic Drugs Law, 1967 (Law 3/67) and of possessing cannabis resin, contrary to sections 3,6, 21 and 24(1)(a) and (2) of the Narcotic Drugs Law, 1967 (Law 3/67) and was sentenced by Korfiotis, D.J. to two years'
 10 imprisonment on each count to run concurrently.

Appellant appeared in person.

R. Gavrielides, Counsel of the Republic, for the respondents.

A. LOIZOU J. gave the following judgment of the Court. The appellant, a Sudanese sailor on motor vessel "JUNE" was
 15 sentenced to two years imprisonment on each of the two counts to which he had pleaded guilty—the sentences to run concurrently—for the offences of:

- (a) the importation of cannabis resin, contrary to sections 3, 4, 21 and 24(1)(a) and (2) of the Narcotic Drugs
 20 Law, 1967 (Law No. 3 of 1967), and
- (b) of possessing cannabis resin, contrary to sections 3, 6 21 and 24(1)(a) and (2) of the same Law, and regulation 5 of the Narcotic Drugs Regulations, 1967, P.I. No. 115 of 1967.

25 He has appealed against the sentences imposed on the ground that they are manifestly excessive in the circumstances.

The relevant facts of the case as they appear from the record are these: On the 13th April, 1979, at Limassol, the appellant in company with a fellow sailor visited the coffee-shop of a
 30 certain Michael Constanti and left there 5 blocks of cannabis resin. The said coffee-shop keeper informed the Police which arrived promptly and took delivery of them, and lay in waiting for him as his friend was still there. Half an hour later the appellant returned and upon being searched by the Police a
 35 small piece of cannabis resin which he admitted to have taken from one of the blocks, was found in the socks of his left foot. On the same day a search was carried out in the cabin of the appellant on board of the said ship and in the pocket of his trousers a small quantity of cannabis resin was also found. The

total weight of the cannabis resin so found was 811.20 grams. The appellant was arrested and remanded in custody pending Police investigations. From the Central Prisons, however, where he was detained at the time, he was transferred to the Psychiatric Institutions Athalassa under a Court Order because, as stated by Dr. Theoclitou, a psychiatrist at the aforesaid Institutions, "he could not stand on his feet, had a neurosis and he developed fits". 5

On examination the appellant was drowsy, dirty and neglected. He was found to be suffering from confusional state as a result of drug withdrawal. He was treated appropriately and the confusional state cleared up soon. He was discharged from the Psychiatric Institutions on the 12th May, 1979, but Dr. Theoclitou continued to see him in prison in his capacity as the Prisons Psychiatrist and found the appellant as still complaining of various anxiety and depressive symptoms for which he is under appropriate medication. 10 15

The appellant made no secret of the fact that he had been using drugs like "hashish" and "pango" from a very young age as this was accepted in his culture, and that when he came to Europe he became addicted to "mandrax" and various other drugs. His addiction was stressed by him in this Court as a mitigating factor in the circumstances. 20

There is nothing, apart from the large quantity of the cannabis resin found to suggest that same was not intended for marketing. Neither the prosecution nor the Judge referred to such aspect of the case. 25

We need hardly stress the seriousness of such offences as those to which the appellant has pleaded guilty and the social evil that narcotics bring in any country in which they are illicitly imported and found. 30

By way of example we consider it appropriate to refer to a number of cases which show the approach of the trial Courts and of this Court with regard to offences punishable under the Narcotic Drugs Law, 1967 and the Regulations made thereunder. 35

In the case of *Maos v. The Republic* (1971) 2 C.L.R. 191 this Court stressed that the possession of narcotics was becoming a social menace and confirmed a sentence of two and a half years

imprisonment imposed on a charge of possessing 17 grams of cannabis sativa. The problem was stressed also in the case of *Loizou v. The Republic* (1971) 2 C.L.R. p. 196 where the Court once more pointed out that the problem of narcotics was becoming a social problem and that Courts should deal severely with offences connected therewith. In the case of *Howell v. The Republic* (1972) 2 C.L.R. 111, this Court upheld a sentence of one year's imprisonment imposed on an English soldier, aged 19, a first offender, for the unlawful possession of 7.5 grams of cannabis sativa. In *Ibrahim H. Makki v. The Republic* (1972) 2 C.L.R., p. 76, an observation was made that a sentence of eight months imprisonment imposed upon a conviction for unlawful possession of 0.8 grams of narcotics was very much on the lenient side.

In the present case we are of the unanimous view that there is no merit in this appeal and that the sentence imposed is rather on the lenient side considering the large quantity of cannabis resin found in the possession of the appellant and we very reluctantly do not increase it. The drug addiction of the appellant has been properly looked after both in the Psychiatric Institutions and by the Prison Psychiatrist and we only hope that the appellant will avail himself of this opportunity and co-operate sufficiently so that the treatment given to him for his own good and for that of society in general, will be successful.

The appeal, therefore, is dismissed.

Appeal dismissed.