Clarifying "cannabis" and "cannabis mixture":
***Saravanan Chandaram v Public Prosecutor* [2020] SGCA 43**

I. Executive Summary

How should cannabis and cannabis *mixture* be defined? Should the penalty on trafficking, importing, or exporting of cannabis *mixture* be calibrated based on the gross weight? Can the Prosecution charge an alleged offender with *both* knowledge of importing cannabis and cannabis *mixture*? These are some of the questions the Court of Appeal ("**CA**") answered in *Saravanan Chandaram v Public Prosecutor* [2020] SGCA 43.

In this case, the appellant, Saravanan Chandaram ("**Saravanan**") was found to have brought into Singapore, from Malaysia, ten "bundles". These were later reported by the Health Sciences Authority ("**HSA**") to contain not less than 1,383.6g of cannabis and not less than 3,295.7g of fragmented vegetable matter containing cannabinol ("**CBN**") and tetrahydrocannabinol ("**THC**"). In line with its current charging practice, pursuant to section 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("**MDA**") the Prosecution imposed against Saravanan one charge of importing cannabis ("**the Importation of Cannabis Charge**") and one charge of importing cannabis mixture ("**the Importation of Cannabis Mixture Charge**"). The High Court ("**HC**") convicted Saravanan on both charges. On appeal, however, the CA held that the Importation of Cannabis Mixture Charge could not be established and set aside Saravanan's conviction on this charge. However, it upheld his conviction on the Importation of Cannabis Charge.

In doing so, the CA discussed three main issues. *First*, it clarified the definition of "cannabis mixture" under section 2 of the MDA. *Second*, the CA confirmed that sentences for the offences of trafficking in, importing, and exporting cannabis mixture should be based on the *gross weight* of the cannabis mixture. *Finally*, the CA held that the Prosecution's current charging practice was impermissible ("**Dual Charging Practice**"). This referred to the Prosecution's charging practice when a single compressed block of cannabis-related plant material is certified by the HSA as containing (a) cannabis, as well as (b) fragmented vegetable matter containing CBN and THC. In such cases, the Prosecution considered imposing a charge of trafficking in, importing or exporting cannabis in respect of the portion certified by the HSA as consisting purely of *cannabis*, *as well as* a charge of trafficking in, importing or exporting *cannabis mixture* in respect of the portion consisting of fragmented vegetable matter that, while not specifically certified by the HSA as cannabis, had been found to contain CBN and THC.

II. Material Facts

In August 2014, Saravanan met an unidentified Malaysian man called "Aya". Saravanan knew that Aya was a drug syndicate leader in Malaysia who arranged deliveries of drug consignments to Singapore. He accepted Aya's offer to employ him as his driver. In November 2014, Saravanan was paid $5,000 to import and deliver ten bundles to a client in Singapore. Saravanan was also instructed by Aya to collect a car from a specified venue in Johor Bahru, and get its windows tinted. Aya allegedly told him that the bundles contained *tembakau* (tobacco in the Malay language) and were to be concealed in the car. Saravanan first consumed some methamphetamine with Aya and felt "very brave" thereafter. He then proceeded to hide the ten bundles in the car. The next day, he drove the car to Singapore. Saravanan was subsequently arrested at immigration.

In the HC, Saravanan admitted to bringing the bundles into Singapore, but claimed that he thought it contained contraband tobacco, and not controlled drugs. He stated that his involvement in the transportation of the bundles to Singapore arose out of his need to repay Aya a loan. Saravanan claimed

that he had previously turned down Aya's request to import controlled drugs into Singapore, due to the stiff penalties under Singapore law. He further stated that he was deceived into bringing the cannabis by Aya, and he would never have done so knowingly because he was aware that he could face the death penalty if caught. Saravanan further claimed that Aya had told him not to open the bundles since the customer in Singapore might complain if he received bundles that had been tampered with – thus when the officers at the immigration checkpoint asked him what was inside the bundles, he replied that they were tobacco.

III. The HC decision

Under section 18(1) of the MDA, if a person is found to have possession or custody over drugs, he is presumed to have them in his possession unless he manages to rebut that presumption (i.e. prove the contrary). Similarly, section 18(2) of the MDA provides that if the person is found to have drugs in his possession, he is presumed to know the nature of that drug, unless he manages to rebut the presumption.

In this case, it was undisputed that Saravanan possessed the bundles; the question was whether he knew that the bundles contained cannabis and cannabis mixture. The HC found that the presumption under section 18(2) had not been rebutted; indeed, the HC found that Saravanan had actual knowledge that he was carrying cannabis and cannabis mixture. *First*, there was no reason for Saravanan to trust Aya as they had only known about each other for three months and their relationship was restricted to work. Saravanan also knew that Aya was a drug dealer. *Second*, Saravanan had the opportunity to check and verify the content of bundles but failed to do so. *Third*, Saravanan went through considerable length to rent the car, tint the windows, and hide the bundles in order to avoid detection. He was also paid $5,000, a disproportionately high sum for the mere delivery of ten bundles of tobacco. *Fourth*, Saravanan did not mention in any of his statements the version of events that he had advanced at the trial. This gave rise to the impression that his version of events was only an afterthought. *Finally*, since the Defence's (i.e. Saravanan's) case was rejected, the HC accepted the Prosecution's version of events – that Saravanan knew that he was carrying Class A controlled drugs into Singapore. As such, the HC convicted Saravanan on both the Importation of Cannabis Charge, and the Importation of Cannabis Mixture Charge.

Regarding sentencing, the HC found that Saravanan was a mere courier.[1] Additionally, the Public Prosecutor issued him a Certificate of Substantive Assistance under section 33B(2)(*b*) of the MDA for substantively assisting the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore. Accordingly, instead of receiving the death penalty, Saravanan was given life imprisonment and 24 strokes of the cane.

IV. Issues on Appeal

The CA upheld Saravanan's conviction (and sentence) on the Importation of Cannabis Charge but set aside his conviction on the Importation of Cannabis Mixture Charge.

A. Importation of Cannabis Charge

The CA first disagreed with the HC's finding that Saravanan had actual knowledge that the bundles contained cannabis, as the reasons that the HC relied on did not afford a basis for such a finding. The HC's reasoning entailed finding weaknesses in the Saravanan's contentions, which together provided a patchwork of suspicious circumstances. This was insufficient to prove actual knowledge. The Prosecution could not merely rely on the Defence's failure to prove the accused person's ignorance of a

[1] Generally, under section 33B of the MDA, a drug trafficker is considered a "mere courier" if his or her involvement is restricted to transporting, sending or delivering a controlled drug. A courier is eligible for discretionary life imprisonment (rather than the death penalty).

relevant fact; it must discharge its burden to *prove* the accused's actual knowledge.

On the other hand, the CA agreed with the HC that Saravanan had failed to rebut the presumption under section 18(2) of the MDA that he had knowledge of the nature of the drugs. Saravanan's contention that he thought he was only transporting contraband tobacco was incredible. *First*, Saravanan knew that Aya was a "drug boss"; he had even helped Aya to collect "drugs money" from his clients. *Second*, Saravanan knew that he would be importing contraband items to Singapore. *Third*, Saravanan admitted to having been "scared" prior to the delivery, even consuming methamphetamine to "feel brave" – yet this was not something he felt the need to do on prior occasions when he collected "drug and illegal tobacco money" for Aya. *Fourth*, the sum that was paid to Saravanan was disproportionately large for a delivery that entailed transporting only contraband tobacco. *Fifth*, Saravanan claimed that he would not have transported the controlled drugs into Singapore because of the stiff penalties. However, if this was genuine, he would have most carefully considered the purported assurances made by Aya that he was only importing contraband tobacco, especially given what he knew about Aya. *Sixth*, the steps he took (under Aya's direction) to rent the car, tint the windows and conceal the ten bundles in its armrests were too elaborate for a mere contraband tobacco delivery.

Additionally, the CA specifically found incredible Saravanan's contention that he trusted Aya and relied on Aya's assurances that the bundles did not contain controlled drugs, given the circumstances in which Saravanan had come to know Aya and what he knew about Aya (as stated above). Moreover, their relationship was essentially confined to the work that Saravanan did for Aya. Thus when Aya asked Saravanan to deliver the ten bundles to a recipient in Singapore in highly suspicious circumstances, and purportedly told Saravanan that the bundles only contained contraband tobacco, it was simply incredible that the Saravanan would accept this at face value. As Saravanan's allegations were incredible to begin with, the evidential burden had not shifted to the Prosecution to rebut his claim under section 18(2),[2] and the presumption of knowledge under section 18(2) of the MDA remained unrebutted. Thus, the CA dismissed Saravanan's appeal against his conviction on the Importation of Cannabis Charge.

B. Importation of Cannabis Mixture Charge

To determine whether the Importation of Cannabis Mixture Charge could be established, and if so, the appropriate sentence to be imposed, the CA considered three broad issues. *First*, the CA had to consider the definition of "cannabis" and "cannabis mixture" under section 2 of the MDA. *Second*, the CA considered the applicable sentencing framework for the offences of trafficking in, importing and exporting cannabis mixture. *Third*, the CA considered whether the Importation of Cannabis Mixture Charge could be made out, in light of the manner in which a block of cannabis-related plant material was dealt with in the course of the HSA's testing and certification process. After consideration of these points, the CA allowed Saravanan's appeal against his conviction on this charge and set aside his conviction.

Before deciding these issues, the CA first provided some background on the HSA's testing and certification process. Upon receiving a block of compressed cannabis-related plant material, the HSA analyst weighs the block to determine its gross weight. Thereafter, the analyst will prise the block apart, separating it into three groups: individual plant branches ("**Group 1**"); fragments of plant parts ("**Group 2**"); and observable extraneous matter (including non-cannabis vegetable matter, plastic pieces, foil and string) ("**Group 3**"). The weight of the materials in Group 3 are measured separately and discounted altogether when computing the weight of the cannabis or the cannabis mixture concerned.

[2] Where the Defence's case has sufficient credibility, the evidential burden will then shift to the Prosecution to rebut the Defence's case, e.g. through calling witnesses.

To separate the block into the three groups, the HSA analyst will first conduct a *macroscopic* examination by looking for material with botanical features consistent with those of the cannabis plant. To be in Group 1, plant branches must be at least 2cm in length, with sufficient leaves, flowers, or fruits attached to them to allow the HSA analyst to conclude that they have the botanical features of cannabis. If plant parts are detached from each other, they will be assigned to Group 2.

Two further tests are then applied to Groups 1 and 2 – *microscopic examination* and *qualitative proces*s. The former entails an examination of the plant material under a microscope, to observe whether characteristics of botanical feature of cannabis are present; the latter involves a qualitative analysis of the plant material, to determine the presence of THC and CBN in Groups 1 and 2. The HSA will classify plant material from Group 1 as "cannabis" only if: (a) the plant branches exhibit the botanical features of the cannabis plant under *macroscopic* examination; (b) each plant branch exhibits characteristic botanical features of cannabis under a *microscopic* examination; and (c) THC or CBN are present in the material. Material from Group 2 that does not meet the criteria for cannabis but is found, on analysis, to contain THC or CBN, is classified as "cannabis mixture".

(1) Definition of "cannabis" and "cannabis mixture"
Section 2 of the MDA defines "*cannabis*" as "any part of a plant of the genus Cannabis, or any part of such plant, by whatever name it is called"; and "*cannabis mixture*" as "any mixture of vegetable matter containing [THC] and [CBN] in any quantity".

Cannabis. The CA held that cannabis leaves, flowers and fruits, *even if detached* from the branches, would fall within the definition of "cannabis" under section 2 of the MDA. It noted that HSA's testing and certification practices did not cohere with the definition of "cannabis" under section 2 of the MDA.

Cannabis mixture. The CA held that cannabis mixture consists of cannabis plant matter commingled with vegetable matter of indeterminate origin or known to be of non-cannabis origin, where the components cannot be easily distinguished or separated from each other.

Previous caselaw in Singapore had conflicting definitions of the term "*cannabis mixture*". In *Abdul Raman bin Yusof v Public Prosecutor* [1996] 2 SLR(R) 538 ("***Abdul Raman***"), the court held that *cannabis mixture* must mean a mixture of two or more distinct types of vegetable matter. However, the court in *Public Prosecutor v Manogaran s/o R Ramu* [1996] 3 SLR(R) 390 ("***Manogaran***") held that *Abdul Raman* had mistakenly confined the meaning of cannabis mixture, and that *cannabis mixture* primarily meant "an unadulterated mixture of vegetable matter of entirely cannabis origin".

In considering these definitions, the CA first noted the term "cannabis mixture" owed its existence to the enactment of the Misuse of Drugs (Amendment) Act 1993 (Act 40 of 1993), which made trafficking in, importing and exporting "cannabis mixture" offences. During the relevant Parliamentary debates, the then-Minister for Home Affairs stated that:

> "[T]he Central Narcotics Bureau has detected some cases in which cannabis was trafficked in mixed form, i.e., the plant is broken up and mixed with other vegetable matter such as tobacco. Currently, this does not attract the death penalty.
>
> To deter traffickers from trafficking in large amounts of cannabis in this form, a new capital offence will be created for this type of drug. As the amount of cannabis in such a mixture does not usually fall below 50%, it is proposed that for the purpose of capital offences, trafficking in a cannabis mixture should be in amounts of more than 1,000 grammes (as compared to more than 500 grammes in the case of cannabis alone). This will give an allowance of 500 grammes for any

non-cannabis material in the mixture."

The CA stated that the definition in *Abdul Raman* was preferable to the definition in *Manogaran*, because where one was faced with plant material that was unadulterated and entirely of cannabis origin, there was simply no "mixture" to speak of. Therefore, the conclusion in *Abdul Raman* that the term "cannabis mixture" only encompassed drugs containing cannabis plant material and some other vegetable matter was correct, and the CA specifically overruled *Manogaran* to this extent.

The CA then addressed the related issue of whether cannabis mixture should be confined to matter *consisting of components that could not be easily distinguished or separated from each other*. It first noted that there were two possible interpretations of "cannabis mixture" in this regard: either that "the components *cannot* be easily distinguished or separated from each other" or that "the components may be *readily* distinguished or separated." However, the latter interpretation would be illogical: if the plant material that was of either indeterminate or non-cannabis origin could be easily and readily separated from the cannabis plant matter, there would be no reason to treat such matter as part of a cannabis mixture.

The CA then considered Parliament's purpose in criminalising dealings in "cannabis mixture": to deter the trafficking, importation, and exportation of cannabis mixed with non-cannabis mixture, like tobacco, which is practically impossible to separate. Finally, the CA compared the possible interpretations against Parliament's purpose. It was significant that in response to the perceived threat of drug dealers mixing cannabis with tobacco or other non-cannabis plant material, Parliament's response was to include cannabis mixture as a drug under the MDA and criminalise dealings in it, while raising at the same time the threshold weights applicable to cannabis mixture for sentencing purposes by doubling them from the threshold weights applicable to cannabis. These measures would have been wholly illogical if what was referred to as cannabis mixture included non-cannabis material that could be easily separated from cannabis material: in that situation, the offender could easily be prosecuted for dealing in pure cannabis. Thus, the CA held that Parliament intended to deter the trafficking, importation and exportation of cannabis mixed with other vegetable matter that would be practically impossible to separate from cannabis fragments, but did not intend to legislate on obvious non-cannabis vegetable matter that could be readily separated from cannabis fragments and therefore disregarded.

(2) Applicable sentencing framework for trafficking in, importing, and exporting cannabis mixture

The CA addressed three issues here. *First*, whether cannabis mixture should be classified as a Class A controlled drug or a non-Class A controlled drug. *Second*, whether the gross weight of cannabis mixture should be used to calibrate the sentences for these offences. *Third*, whether calibrating the sentences according to the gross weight of the cannabis mixture violated Article 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("**Constitution**").

Class A controlled drug. The CA found that cannabis mixture was a Class A controlled drug, even though it was not specifically listed as such. Section 2 of the MDA defines "controlled drug" as "any substance or product which is for the time being specified in Part I, II or III of the First Schedule [of the MDA] or anything that contains any such substance or product". Since THC and CBN were controlled drugs under Part I of the First Schedule, this would bring cannabis mixture under the second limb of this definition. As to whether it was a "Class A" drug, section 2 of the MDA defined "Class A drug" as "any of the substances and products … specified in [Part] I ... of the First Schedule", which included CBN and CBN derivatives (which in turn included THC). Finally, "any preparation or other products containing a substance or product" specified in the definition was also considered a Class A controlled drug. Furthermore, to exclude cannabis mixture from the category of Class A drugs would be contrary to the

fact that only offences involving Class A controlled drugs attracted capital punishment. But Parliament specifically understood, and intended, to enact capital punishment for offences that involved *cannabis mixture*.

Calibration of sentences according to gross weight of cannabis mixture. The CA also held that the sentencing ranges for the offences of trafficking in, importing and exporting cannabis mixture should be calibrated according to the gross *weight* of the cannabis mixture concerned, and not the amount of THC or CBN contained in the cannabis mixture. Under section 2 of the MDA, cannabis mixture is defined as "mixture of vegetable matter containing [THC] and [CBN] *in any quantity".* The word "in any quantity" points the focus away from the concentration of THC and CBN in cannabis mixture for sentencing purposes. Furthermore, various sentencing thresholds related to unauthorised trafficking in, importing or exporting cannabis mixture are all based on the gross weight of the cannabis mixture. This suggested that Parliament's intent was for gravity of the offence to be assessed by reference to the gross weight of cannabis mixture.

Article 12 of the Constitution. The CA held that a sentencing framework based on the gross weight of cannabis mixture did not breach the constitutional guarantee of equality under Article 12(1) of the Constitution. Article 12 was concerned with equality of treatment. However, it is permissible to group individuals into classes, so long as such grouping is based on intelligible differentia that bear a rational or reasonable connection to the purpose of the legislation.

The CA held that the first requirement (*intelligible differentia*) was met, as the gross weight of cannabis mixture was objective, clear and understandable. The CA held that the second requirement (*bearing a rational or reasonable connection to the purpose of the legislation*) was also met. The CA reiterated the specific purpose of criminalizing dealing of cannabis mixture, which was to deter traffickers from trafficking in, importing or exporting large amount of cannabis material mixed with other vegetable matter. It first noted that there was nothing objectionable about using the gross weight of cannabis mixture to calibrate the sentences for the offences of trafficking in, importing and exporting cannabis mixture. It then noted that the quantification of the amount of THC and CBN in cannabis mixture was neither precise nor accurate, according to the HSA's own explanations. In fact, the HSA's testimony was that it was not possible to determine the precise proportion of cannabis material in a block of cannabis-related plant material, due to the inability to examine each and every plant fragment therein. Where a second type of plant material (such as tobacco) was mixed with the cannabis fragments, it was practically impossible to separate the cannabis fragments from the other plant material because of the small size of the cannabis fragments. The HSA was therefore unable to ascertain the proportion of cannabis material relative to the total weight of the block of plant material. Given the practical realities and limitations of the scientific testing methods, one had to rely on the gross weight of cannabis mixture as the proxy indicator for sentencing.

(3) Whether the Importation of Cannabis Mixture Charge can be established

To determine this matter, the CA discussed two issues. *First*, whether the fragmented vegetable matter in a compressed block of cannabis-related plant material could be said to fall within the definition of "cannabis mixture" ("**the Classification Issue**"). *Second*, could two separate charges of trafficking in, importing or exporting cannabis and trafficking in, importing, or exporting cannabis mixture be brought by the Prosecution; i.e. was the Prosecution's Dual Charging Practice (as explained above) permissible ("**the Charging Issue**")?

These issues arose from the situation whereby the HSA's testing procedure (as explained above) in effect

creates some part of the fragmented vegetable matter in the Group 2 material ("**Created Fragmented Vegetable Matter**"), when the HSA analyst inevitably, although often intentionally, breaks some of the cannabis plant parts. As a result, the contents of the block at the time it is analysed and handled by the HSA will be different from the contents of the block at the time of trafficking, importation or exportation. This gives rise to difficulties in bringing a charge pertaining to cannabis mixture in respect of such matter, because the matter *did not exist* as cannabis mixture at the time of trafficking, importation or exportation.

At the time of this case, for each compressed block of cannabis-related plant material the Prosecution's general charging practice was the Dual Charging Practice. Each of the ten bundles was analysed by the HSA analyst. From each bundle, the vegetable matter that satisfied the classification test for cannabis was collectively made the subject of the Importation of Cannabis Charge. The remaining fragmented vegetable matter that was analysed and found to contain THC and CBN was made the subject of the Importation of Cannabis Mixture Charge.

The Classification Issue. The CA first held there was nothing objectionable with treating the fragmented vegetable matter in a block of cannabis-related plant material as cannabis mixture, because cannabis mixture, as defined by the CA, included vegetable matter that was ultimately of indeterminate origin.

The Charging Issue. The CA then found that the Prosecution's Dual Charging Practice to be indefensible and, hence, impermissible. *First*, prior to the testing process, the Created Fragmented Vegetable Matter did not exist in that form. Hence, at the time of the offence, the accused person could not have committed the act of trafficking in, importing, or exporting cannabis mixture, in relation to the Created Fragmented Vegetable Matter. Even if the Created Fragmented Vegetable Matter would otherwise have been cannabis, the accused person could not be charged on the basis that such matter was cannabis, because, upon testing, it would not meet the relevant criteria for certification as cannabis.

Additionally, for the offence of trafficking in a controlled drug (under section 5(1)(*a*) of the MDA) or importation or exportation of a controlled drug (under section 7 of the MDA) to be made out, the Prosecution must prove that the accused had knowledge of the specific nature of the controlled drug – here, whether the drugs were cannabis, or cannabis mixture. However, given that the Created Fragmented Vegetable Matter did not exist in that form at the time that Saravanan brought the ten bundles into Singapore, and given that there was no basis for saying that the fragmentation – which occurred as a consequence of the HSA's testing procedure – was intended by Saravanan, the CA stated that it could not see how it could be held that at the time of the offence, Saravanan knew the nature of the Created Fragmented Vegetable Matter or knew that it was cannabis mixture.

This was compounded by the problem of the indeterminacy of the quantity of the Created Fragmented Vegetable Matter: it was impossible to ascertain accurately the quantity of vegetable fragments created during HSA's testing procedure, and the quantity of vegetable fragments already present in the bundles at the time of offence. Any estimate of the quantities of cannabis and cannabis mixture at the time of the offence, extrapolated from their respective quantities after the HSA's testing, would inevitably be arbitrary.

However, the CA found unobjectionable the Prosecution's suggested two alternative charging options when dealing with a block of cannabis-related material that contained (i) cannabis; and (ii) fragment vegetable matters containing CBN and THC. The first option was to charge the accused person solely in respect of the pure cannabis portion of the block certified by the HSA as cannabis, by separating the pure cannabis portion and discarding the rest ("**Option 1**"). The second option was to determine that the

composition of the block as a whole was a mixture of cannabis and other plant material of indeterminate or unknown origin and, on that basis, proceed with a single charge treating the entire block as cannabis mixture (less anything easily separated into Group 3) ("**Option 2**").

V. Lessons learnt

The CA's decision on the definition of cannabis mixture is a welcome clarification in criminal law. Moreover, in relation to a single block of cannabis-related drug material, offenders would from now on only face a *single* charge as related to cannabis *or* cannabis mixture. And if the Prosecution charges the offender under Option 1 (i.e. relating to pure cannabis), the weight of the pure cannabis will be less than the single block of cannabis-related drug material, as non-cannabis related material will be removed by HSA's testing procedure. Hence, under Option 1, offenders are likely to be charged with lower weight of pure cannabis. On the other hand, if the Prosecution charges the offender under Option 2 (i.e. relating to cannabis mixture), the offender will be meted out with a less severe penalty than offences involving pure cannabis of the same weight.

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