

7/96
Case No 407/95
/MC

**IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)**

In the matter between

YUSUF ABRAHAMS

APPELLANT

and

THE STATE

RESPONDENT

CORAM: VIVIER, HARMS JJA et ZULMAN AJA.

HEARD: 7 MARCH 1996.

DELIVERED: 7 MARCH 1996.

TRANSCRIPT OF REASONS ORALLY DELIVERED IN OPEN COURT
ON THURSDAY 7 MARCH 1996, BY VIVIER JA AND
CONCURRED IN BY HARMS JA AND ZULMAN AJA.

VIVIER JA:

The appellant was convicted in the Magistrate's Court in Johannesburg on a charge of contravening sec 5 (b) of Act 140 of 1992 in that he dealt in 27,417 kilograms of Mandrax containing methaqualone. He was sentenced to twelve years' imprisonment plus a further three years' imprisonment which was conditionally suspended for three years. His appeal against the conviction and sentence to the Witwatersrand Local Division was dismissed and with the necessary leave he now appeals to this Court against the sentence only.

The facts which are no longer in dispute are the following. On 5 August 1993 one Mwandu and one Mulanga, upon entering this country in a truck from Zimbabwe through the Messina border post, were found by the police in possession of a sealed packet containing the Mandrax tablets in question. Mwandu

carried a piece of paper containing the appellant's name and telephone number. The tablets were destined to be delivered to the appellant at an address in Johannesburg. The police decided to proceed with the delivery and for this purpose the tablets were placed in a large bag which was then locked and placed in the cab of the truck. Mwandu, who was the driver of the truck, proceeded on his journey accompanied by detective constable Nkuna. The truck arrived at the given address in Johannesburg the next day, after stopping at the Hillbrow Police Station where constable Ndlovu got into the truck and from where other policemen followed the truck in a police vehicle. At the given address Mwandu gave a pre-arranged signal by revving the engine of the truck twice. The appellant came out of the house and Ndlovu handed the bag containing the Mandrax tablets to him. The appellant turned to go back into the house and was arrested. After

being arrested he told the police that the tablets were not for him but were to be delivered to one Nazir who is the husband of his step-daughter. His defence that he was merely doing Nazir a favour and that he was not aware of the contents of the consignment was rejected by the trial Court and the Court *a quo*.

The Court *a quo* described the crime as an inordinately serious one. I agree. The consignment consisted of about 50 000 Mandrax tablets which would have caused misery and ruin to many. On the other hand the appellant is a first offender, he is almost fifty-five years old and the evidence was that he was no more than a courier. Upon searching the premises where the appellant was staying the police found the amount of R14 265-73 which the appellant claimed was his own money.

That the appellant must be heavily punished is clear. In my view a sentence of correctional supervision contended for on his

behalf in this Court would not be an appropriate sentence.

At the same time it seems to me that the sentence imposed by the magistrate is so severe that this Court is entitled to interfere.

In my view justice would be done if a sentence of nine years' imprisonment is imposed. I should point out, in any event, that the suspended portion of the sentence, coming after such a long term of imprisonment, seems to me to be inappropriate.

In the result the appeal succeeds. The sentence imposed by the magistrate is set aside and there is substituted for it a sentence of nine year's imprisonment.

W. VIVIER JA.