

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Prince v President of the Law Society of the Cape of Good Hope

Case CCT 36/00

Decided on 25 January 2002

Pre-Hearing Media Summary

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Thursday 17 May the Constitutional Court will resume hearing argument on whether adult Rastafari should be exempted from laws which prohibit the possession and use of cannabis (dagga). The statutes are the Drugs and Drug Trafficking Act 140 of 1992 and the Medicines and Related Substance Control Act 101 of 1965. In issue in this appeal from the Supreme Court of Appeal, is the constitutional validity of the prohibition on the use or possession of cannabis inspired by religion. Mr Prince, the appellant, alleges that as a practising Rastafarian he uses cannabis as a sacrament and challenges the prohibition as a limitation on his right to freedom of religion.

Mr Prince's initial challenge in the High Court was directed at the Law Society's finding that he was not a fit and proper person to be admitted as an attorney because he had previous convictions for possessing dagga and said he would continue using it. He argued that the prohibition violated his right to freedom of religion, to dignity, not to be unfairly discriminated against and to choice of profession. The High Court held that while the prohibition infringed Mr Prince's right to freedom of religion, that infringement was justifiable: the state had an interest in the strict regulation and control of dagga, a dangerous drug, and such regulation was in accordance with South Africa's international treaty obligations. The Supreme Court of Appeal dismissed Mr Prince's appeal, holding that the state has an interest in protecting society from the use of illegal drugs; and that the court had no power to grant an exemption to a statutory prohibition when its use or possession is inspired by religion.

When the appeal was first argued in the Constitutional Court last year, the question arose whether there was sufficient evidence to decide the constitutionality issue, and if not, whether the Court should call for more. The Court, per Justice Ngcobo, found the evidence insufficient and gave directions as to the information it required. Mr Prince was to submit information relating to, amongst other things, the nature of the Rastafari religion and its use of dagga; how much Rastafari used; how it was obtained; and whether the religion regulated, restricted and supervised use by its members. The government, in turn, was to submit information relating to difficulties that would be experienced in policing the religious exemption. The parties have now produced such additional evidence.

The appeal is opposed by the Director of Public Prosecutions of the Western Cape and the Minister of Health who has since joined in the proceedings. The Minister of Justice

and Constitutional Development and the Law Society of the Cape of Good Hope abide the decision of the court.