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## IN THE SEYCHELLES COURT OF APPEAL

**WAVEL RAMKALAWAN**

APPELLANT

versus

**THE REPUBLIC**

RESPONDENT



Criminal Appeal No: 15 of 1999

*[Before: Pillay, De Silva, & Matadeen, J.J.A]*

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Mrs. A. Georges for the Appellant  
Mr. R. Govinden for the Respondent

### JUDGMENT OF THE COURT

*(Delivered by De Silva, JA.)*

A charge of assault was laid before the Magistrate's court against the appellant contrary to Section 236 of the Penal Code. The substance of the charge was that the appellant on the 11<sup>th</sup> day of November 1997 within the precincts of the National Assembly unlawfully assaulted Barry Faure. The appellant and Barry Faure were both members of the National Assembly at the time of the alleged incident. Before the appellant pleaded to the charge, by a motion date 8<sup>th</sup> January 1999 an application was made on behalf of the appellant to stay proceedings before the Magistrate's Court. This application was made pursuant to Section 15 of the National Assembly (Privileges Immunities and Powers) Act, 1975. At the hearing of the motion, a certificate signed by the then Chairman of the Committee appointed by the National Assembly was produced as Exhibit D1. The appellant strongly relied on D1 in support of his application for the stay of proceedings in the Magistrate's Court. The prosecution, however, contended that D1 was invalid in law and objected to the application for stay of proceedings. The learned Senior Magistrate held against the

appellant and ruled that the certificate D1 was not valid in terms of Section 15 of the Act.

Thereupon the appellant made an application to the Supreme Court to review the aforesaid ruling in the exercise of the revisionary jurisdiction conferred on the Supreme Court under Section 328 of the Criminal Procedure Code. The learned Chief Justice made the following order on the application of the appellant:

“In terms of Section 328 of the CPC Cap 54 I order a revision of the order/ruling given by the Learned Senior Magistrate on 5<sup>th</sup> March 1999.”

After hearing submissions made on behalf of the prosecution and the appellant, the Supreme Court affirmed the finding of the learned Senior Magistrate and remitted the case to the Magistrate's Court.

The appellant has now preferred an appeal to this Court against the decision of the Supreme Court. Mr. Govinden, State Counsel, on behalf of the respondent has raised a preliminary objection, namely that the appellant has no right of appeal to this Court. Mr. Govinden submitted that the decision of the Supreme Court related only to an interlocutory issue, namely the validity of the certificate, (exhibit D1). Learned State Counsel relied heavily on the provisions of Section 342 of the Criminal Procedure Code in support of his submission. He emphasised that Section 342 of the Criminal Procedure Code confers a right of appeal from the Supreme Court to the Court of Appeal only to a person “convicted on a trial held by the Supreme Court” against his conviction and/or the sentence passed upon his conviction. In the present case the appellant has not even pleaded to the charge and the trial had not commenced.

On the other hand, Mrs. Georges, learned Counsel for the appellant, relevantly submitted that the matter before the Supreme court was an application to act in revision and to review the order made in the Magistrate's Court. Accordingly, Mrs Georges contended that the relevant provision of law was not Section 342 but Section 326(1) of the Criminal Procedure Code.

Section 326(1) reads as follows:-


“Any party to an appeal from the Magistrate's Court may appeal against the decision of the Supreme Court in its appellate jurisdiction to the Court of Appeal on a matter of law but not on a matter of fact or mixed fact and law or on severity of sentence.

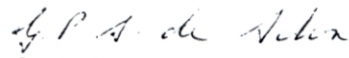
For the purposes of this Section the expression 'decision of the Supreme Court in its appellate jurisdiction' shall include a decision of that Court made in revision or on case stated.” (emphasis added)

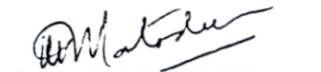
On a plain reading of the whole of Section 326(1) of the Criminal Procedure Code, it is clear that the submission of Mrs. Georges is well-founded and the appellant undoubtedly has a right of appeal to this Court.

The case of **Finesse v The Republic** (Criminal Appeal No. 1 of 1995, decided on 19/10/95) cited by learned State Counsel is of little relevance to the issue before us. That case was not concerned with an application made to the Supreme Court seeking the exercise of its revisionary jurisdiction. Therefore, there was no consideration of, nor even a reference to, Section 326(1) of the Criminal Procedure Code.

For the reasons given above, we overrule the preliminary objection.

  
**A. G. PILLAY**  
**JUSTICE OF APPEAL**

  
**G. P. S. DE SILVA**  
**JUSTICE OF APPEAL**

  
**K. P. MATADEEN**  
**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 11<sup>th</sup> day of **April** 2000.