

IN THE SEYCHELLES COURT OF APPEAL

WAVEL RAMKALAWAN

APPELLANT

versus

THE REPUBLIC

RESPONDENT

Criminal Appeal No: 15 of 1999

[Before: Ayoola, P., Silungwe & De Silva, JJ.A]

.....
Mrs. A. Georges for the Appellant

Mr. A. F. T. Fernando, A.G, for the Respondent

JUDGMENT OF THE COURT

(Delivered by Silungwe, JA.)



The issue in this appeal is whether the Supreme Court (Juddoo, J.) was right when it upheld, on review, a decision of a Senior Magistrate to the effect that a certificate issued by a former chairman of a committee of the National Assembly was not valid, having regard to section 15(2) of the Peoples' Assembly (Privileges, Immunities and Powers) Act, 1975 (Cap. 163) (the Act).

A brief history of the case is that on September 12, 1998, the appellant appeared before the Magistrate's Court, charged with assault occasioning actual bodily harm, in contravention of, and punishable under, Section 236 of the Penal Code, upon an allegation that on November 11, 1998, within the precincts of the National Assembly, he had unlawfully assaulted Barry Faure and thereby occasioned him actual bodily harm. Both the appellant and his alleged victim were members of the National Assembly at the material time. Before a plea could be taken, Mrs. Georges learned counsel for the appellant (then accused), moved the following motion for a stay of the proceedings:

"The defendant having appeared as a witness before a Committee of the National Assembly in the determination of matters subject of the proceedings herein, will produce a certificate under the hand of the Chairman of the Committee that the defendant was required to answer questions put to him by the Committee and answered them."

The certificate (Exhibit D1) dated November 18, 1998, was thereafter produced. The application to stay the proceedings was resisted by the prosecution on the ground that the certificate was not valid. This preliminary objection was accepted by the trial magistrate whose decision was, as previously indicated, upheld by the Supreme Court, and led to the present appeal.

The only ground on which the Supreme Court's decision is challenged is:-

"The Learned Judge erred in concluding that the Learned Senior Magistrate came to the conclusion when he found that the certificate issued by Mr. Georges Bibi (Exhibit D1) was not a valid certificate on the ground that:-

- (i) *because the Committee and its Chairman had become functus officio on 18 November 1997 a certificate could not be issued under section 15 of the National Assembly (Privilege, Immunities and Powers) Act, 1975;*
- (ii) *the relevant time for a witness to request a certificate is when 'he gives evidence before the Commission (sic) or at the latest before the Commission (sic) has tabled its report to the National Assembly' and thereafter ceases to exist;*
- (iii) *the averment in paragraph 3 of the certificate (Exhibit D) to the effect that the Honourable Wavel Ramkalawan fully and faithfully answered all questions put to him to the satisfaction of the Committee, was open to doubt."*

Expatriating upon paragraphs (i) and (ii) of the ground (and overlooking paragraph (iii) which is not of immediate relevance), Mrs. Georges urges the Court to overturn the Supreme Court's decision, otherwise, she reasons, section 15 of the Act would be without purpose. It is fitting to examine the import of section 15:-

"15(1) Every witness before the Assembly or an authorised committee who shall answer fully and faithfully any questions put to him by the Assembly or such committee to its satisfaction shall be entitled to receive a certificate stating that such witness was upon his examination so required to answer and did answer any such questions.

- (2) *Every certificate under subsection (1) shall, in the case of a witness before the Assembly, be under the hand of the Chairman, and in the case of a witness before a committee, be under the hand of the chairman thereof.*
- (3) *On production of such certificate to any court of law, such court shall stay any proceedings, civil or*

criminal, except for a charge under section 102 or 122 of the Penal Code, against such witness for any act or thing done by him before the time and revealed by the evidence of such witness, and may, in its discretion, award to such witness the expenses to which he may have been put."

At this stage, the relevant portions of section 15 are subsections (1) and (2) since our present enquiry is focussed on the validity or otherwise of the certificate that was issued by Mr. Georges Bibi, erstwhile chairman of the National Assembly committee.

The words contained in section 15(1) and (2) are precise and unambiguous and are, therefore, to be understood in their natural meaning. In the words of Tindal, C.J., in **Sussex Peerage** case (1843-1845) 65 RR 11 at 51:-

"[I]f words of a statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense."

On a proper reading of subsections (1) and (2) of the section, it is clear that a witness who gives evidence, either before the Assembly or its authorised committee, and satisfies the requirements of subsection (1), is entitled to a certificate as a matter of course, that is to say: the speaker of the Assembly or the chairman of an authorised committee, as the case maybe, should issue such certificate either on request by the witness or ex mero motu after evidence has been given but before presentation of the report, in the case of the committee chairman. This is so because the life of such committee is limited and comes to an end, and so also does its chairmanship, on the tabling of its report before the Assembly. There is thus merit in the contention of the learned Attorney-General to this effect. The Speaker of the National Assembly may, however, in terms of section 35 of the Act, "at all times exercise the powers conferred upon him by this Act even though the Assembly may have been prorogued or dissolved." Section 36(2)(b) provides that:-

"36(2)(b) For the duration of any period during which the Chairman is absent –
(i)
(ii)
(b) the powers vested in the Chairman by section 15 and 31 shall be vested in the Clerk."

The word "absent" is defined in Section 36(1)(a), (b) and (c) to mean:-

"(a) that the office of Chairman is vacant; or

(b) *that the Chairman is incapable of, or is from any cause prevented from, performing the duties of the office of Chairman; or*

(c) *that the Chairman is absent from Seychelles."*

It is obvious that when exercising the Speaker's powers, the Clerk will do so from records of the Assembly. In our view, as the speaker presides over the proceedings of the Assembly, once the chairman of an authorised committee tables the committee's report before the Assembly (and thereby ceases to be its chairman) the Speaker "shall" exercise his powers under section 15(2), including those conferred upon the former committee chairman and, in his absence, the Clerk shall exercise such powers from the records of the Assembly. This interpretation is consonant with the purpose of section 15 which entitles the witness to a certificate either to be issued at once or subsequently.

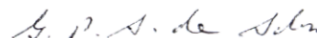
On the strength of the reasons given above, the result of the appeal should be evident. Thus, the certificate issued by Mr. Georges Bibi, the former chairman of the committee, was null and void and of no effect whatsoever, for lack of capacity. In the circumstances, the judgment of the Supreme Court is upheld with the result that the appeal is dismissed.



E. O AYoola
PRESIDENT



A. M. SILUNGWE
JUSTICE OF APPEAL



G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 3rd day of November 2000.