

**IN THE SUPREME COURT OF SEYCHELLES**

**Constitutional Court: CP 04/2013**

**[2013] SCSC**

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**MARJORIE SERRET**

Petitioner

versus

**ATTORNEY GENERAL**

Respondent

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Heard: 17 September 2013

Counsel: Unrepresented for petitioner

Mr. Rene Durup as amicus curae, Mr. Chinnasamy Principle State  
Counsel for respondent

Delivered: 29 October 2013

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**JUDGMENT**

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**Egonda-Ntende CJ**

**Burhan J**

[1] **Robinson J** This is a matter coming within the purview of the Constitutional Court on a referral made from the Supreme Court under Article 46 (7) of the Constitution of the Republic of Seychelles.

[2] Article 46(7) reads as follows;

*“Where in the course of any proceedings in any court, other than the Constitutional Court or the Court of Appeal, a question arises with regard to whether there has been or is likely to be a contravention of the Charter, the court shall, if it is satisfied that the question is not frivolous or vexatious or has already been the subject of a decision of the Constitutional Court or the Court of Appeal, immediately adjourn the proceedings and refer the question for determination by the Constitutional Court.”*

- [3] The background facts of this case are that on the 4<sup>th</sup> of July 2011 the Petitioner was imprisoned for a period of 7 days for contempt by a judge of the Supreme Court. The Petitioner served the term and appealed from the said order. The Seychelles Court of Appeal by judgment dated the 31<sup>st</sup> of August 2012 held in paragraph 15 of the judgment as follows.

*“ The proceedings of the 4<sup>th</sup> of July as set out at paragraph 8 above make it clear that the Trial Judge had erred in law in failing to follow appropriate procedures, the rules of natural justice and the Appellant’s fundamental human rights that are enshrined and entrenched in the Constitution resulting in a serious miscarriage of justice.”*

- [4] It held further in paragraph 16 of the said judgment that;

*“We therefore do not hesitate to allow the appeal, quash the conviction and grant the relief as prayed for in the notice of appeal”.*

- [5] It is pertinent to mention at this stage that the relief claimed by the Petitioner in the notice of appeal reads;

*“The Appellant prays the Honourable Court to be pleased to set aside the sentence of imprisonment passed on the 4<sup>th</sup> of July 2011”.*

- [6] The Petitioner thereafter proceeded to file a civil suit against the Attorney General representing the Government of Seychelles Civil Side 158/12 in the Supreme Court seeking relief by way of compensation, damages in a sum of SR 800.000.00 for fault arising from loss of liberty and violation of her constitutional rights to a fair trial.

[7] It is from this case that the referral has been made as the Petitioner has intimated her intention to the Supreme Court to seek relief under Article 19 (13) of the Constitution.

[8] Article 19 (13) of the Constitution reads as follows;

*“Every person convicted of an offence and who has suffered punishment as a result of the conviction shall, if it is subsequently shown that there has been a serious miscarriage of justice, be entitled to be compensated by the State according to law.”*

[9] It is apparent from the above that the highest court in this jurisdiction has already decided that the Petitioner has been the victim of *“a serious miscarriage of justice”*. There is no need for this court to further decide on this issue.

[10] A reading of Article 19 (13) assures the Petitioner relief by way of compensation in such an instance. The Petitioner in her claim before the Supreme Court seeks compensation in a sum of SR 800.000.00. Consideration of her evidence before this court clearly indicates that she was kept in a cell in the police station and thereafter taken and detained in prison for a period of seven days. She further stated that her incarceration had affected her reputation as a mother as she has three sons and three daughters. She also stated it affected her standing in society. She further stated the incarceration had also affected her emotionally and mentally and she had to quit her job. She stated her age was fifty three and the fact that she was sent to 7 days prison was still affecting her.

[11] The Petitioner also sought to bring to the notice of this court to the hardships she had undergone as a result of the decisions given by the learned judge at the trial. It is our view that any grievance in respect of such decisions should be taken up by way of appeal and are not relevant to the issue before us.

[12] It is apparent from the facts before us that the Petitioner had undergone punishment in the form of imprisonment for seven days as a result of a serious miscarriage of justice. She is therefore entitled to compensation in terms of Article 19 (13) of the Constitution. Having considered her evidence before this court we are of the view that in terms of Article 19 (13) of the Constitution a sum of SR 200.000.00 (two hundred thousand) should be paid by the State to the Petitioner Marjorie Serret as full and final settlement. We accordingly

order the State to pay to Ms Serret SR 200,000.00, interest on the said sum at the legal rate from the date of this judgment till payment in full and costs of this suit.

Signed, dated and delivered at Ile du Port on 29 October 2013

F M S Egonda-Ntende  
**Chief Justice**

M Burhan  
**Judge of the Supreme Court**

F Robinson  
**Judge of the Supreme Court**