

**Ernesta v Commissioner of Police
(2002) SLR 92**

Antony DERJACQUES Attorney-at-Law for the Plaintiff
Anthony FERNANDO Attorney-General
With Laura VALABHJI Senior State Counsel for the Defendant

Judgment delivered on 7 October 2002 by:

PERERA CJ: This is a delictual action in which the Plaintiff, a Music Composer and Singer, sues the Commissioner of Police in a vicarious capacity for acts allegedly done by Police Officers in seizing certain audio cassettes and CDs. He claims a total sum of R556,300 together with interest and costs.

The Plaintiff avers that he composed, published and distributed nine songs, by CDs and audio cassettes entitled "Fristasyon Nwel ek Lannen" to the Public, and that on 6 December 2001 numerous Police Officers led by one Mousbe of the Anti-Drugs Unit seized 10 CDs and 76 cassettes in two shops at Market Street, known as "OJs". He further avers that certain Police Officers went to several shops in Victoria and verbally ordered the shop owners not to sell and distribute the said cassettes. He also avers that Police Officers have seized the said cassettes in numerous houses and have publicly stated that they were "banned".

The Plaintiff has sued the Commissioner of Police in his vicarious capacity. He avers that the Commissioner of Police, pursuant to the provisions of the Constitution, administers and operates the Police Force, and hence he is liable for the acts and omissions of the Police Officers in the force.

The Defendant, in his statement of defence avers that "the Commissioner of Police" cannot be made vicariously liable for alleged acts of the Police Officers, and also cannot be made liable to the Plaintiff as he is not the master or employer of such officers. On the merits, the Defendant admits that Police Officers seized the cassettes as averred in paragraphs 3 and 4 of the plaint, but avers that it was done pursuant to valid search warrants issued under Section 96 of the Criminal Procedure Code. The Defendant avers that the cassettes were seized on reasonable suspicion that they contained seditious and defamatory material.

Can the Commissioner of Police be sued in a vicarious capacity?

Paragraphs 6 and 7 of the plaint are as follows:

6. The said Police Officers were acting during the course of their duties with the Defendant for which Defendant is vicariously liable in law.
7. Plaintiff avers that the Defendant's said acts are unlawful and render the

Defendant liable to Plaintiff in law.

Clearly, the Defendant is sought to be made liable solely for the acts of Police Officers who, it is averred were acting "*in the course of their duty*". Mr Derjacques, Learned Counsel for the Plaintiff conceded that the Commissioner of Police is being sued on the basis of the ruling in the case of *Commissioner of Police* (CS 214 of 1993). In that case, the Court considered two issues, (1) whether a Police Officer carrying out his duties was acting in the exercise of delegated authority, or both; (2) whether the 1993 Constitution established the Commissioner of Police as the overall head of the Police and provides that he shall be responsible for determining the operations of the Police in accordance with the law; (2) That the relevant provisions of the Constitution and the Police Force Act provide that Police Officers carry out their work on behalf of the Commissioner; (3) That the Police can be sued jointly with the Police Officer, who was the actual tortfeasor.

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Basically, a distinction must be drawn between delictual action by the Supreme Court in the exercise of its original Civil Jurisdiction matters that arise either under Article 46(1) or Article 130(1) which are determined by the Constitutional division of the Court. Matters that the cause of action in the present case concerns the Freedom of expression as guaranteed by Article 22(1) of the Constitution that the action instituted against the Commissioner of Police was by virtue of Article 18(10) of the Constitution, anyone unlawfully arrested or detained had a right to receive compensation:

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from the person who unlawfully arrested that person or from the person or authority, including the state, on whose behalf or in whose employment the unlawful arrest or detention was made or

by any other person or from the person or authority, including the state, on whose behalf or in whose employment the unlawful arrest or detention was made or

It was therefore submitted that although, in the instant case, the action was brought by Police Officers, and not by the Commissioner in person, it falls into the latter category.

assets were seized and the proceeds fell into the latter category.

Article 18(10) of the Constitution deals with arrests and detention which affect the Fundamental Right to Liberty. That Sub Article applies when there is a contravention of that right is canvassed before the Constitutional Court. The instant matter is a delictual action based on an alleged unlawful seizure of property. Liability for the contravention of a Fundamental Right and the payment of compensation therefor, is different from liability arising from a delictual act or omission, and the awarding of delictual damages.

In the *Eric Derjacques* case, Bwana J, considered Section 48(1) of the Police Act, 1964 of the United Kingdom which specifically provides that the Chief Officer of Police in any area shall be liable in respect of torts committed by Constables under his direction and control in the performance of their functions in like manner as a master is liable in

respect of torts committed by his servants in the course of their employment, and shall be treated as a joint tortfeasor. He also cited Section 48(2) of that Act, which provides that any damages or costs awarded against the Chief Officer of Police shall be paid out of the "Police Fund" Bwana J thought that the "spirit" of Section 48 of the U.K. Act has been incorporated in Article 18(10) of the Constitution of Seychelles. He therefore equated the Commissioner of Police to the Chief Officer of Police in an area in U.K, in respect of delictual liability in a vicarious capacity. That was a serious misdirection. Section 48 of the Police Act of the UK deals with the liability of Police Officers solely in tort. In Britain, there are 52 Police Forces, mainly organised on a local basis. Each Force is headed by Chief Constables who are answerable to the Police Authorities for the competence, efficiency and conduct of their force. The Police Force of Seychelles is differently constituted.

Further, Bwana J made the following contradictory finding:

The Constitution now allows individuals to sue even the State for damages without passing through a long complicated procedure as was formerly the situation. The State here includes the Government and institutions under it. Thus the Commissioner is not excluded.

Here, the Learned Judge considered the Commissioner of Police as being synonymous with "the State". Justifying the institution of the action solely against the Commissioner, he proceeded to state that "in cases like the present one, the Commissioner can be made to meet the costs or damage awarded only if he is made a party to such proceedings. Without that, Lance Corporal Patrick (who was not made a party to that action), if he loses his case, may find himself being required to pay damages for actions done in the course of his employment". Further considering the Commissioner as being synonymous with "the State", he stated:

It is my considered judgment, that the 1993 Constitution has changed the law in Seychelles regarding liability of the State and its organs for acts committed by its servants. It can (the State) be sued jointly. Therefore, in this case, the Commissioner of Police of Seychelles may be Jointly sued with Lance Corporal Patrick.

The ratio of that ruling therefore was that the direct tortfeasor could be sued jointly with the State that employs him, the State being represented by the Commissioner of Police. Hence although the Learned Judge relied on the Police Act 1964 of the U.K. which considered the Chief Officer of Police liable in a like manner of a master for the acts of his servants, yet came to a different conclusion. His finding that any damages or costs awarded to the Plaintiff could be recovered from the Police Fund only if the Commissioner of Police is made a party, adds confusion to the otherwise contradictory ruling, as the Police Fund in Seychelles, unlike its counterpart in the U.K., is a 'Police Reward Fund' established by Section 46(1) of the Police Force Act (Cap 172). Payments out of that fund are made for "rewards and gratuities to subordinate officers for good conduct or good service, and for such other purposes as the Commissioner of

Police may deem beneficial to the force". In no way can this fund be utilised to pay compensation for delictual acts as provided in Section 48(2) of the Police Act of the UK.

Bwana J, in the subsequent case of *Georges O'Reddy v Commissioner of Police* (CS 147 of 1994) decided on 19th September 1996) reiterated his view "that (the Commissioner of Police) is liable for the Act of his subordinate staff when carried out in the course of their employment."

What then is the position of the Commissioner of Police in a delictual action in which the cause of action is an alleged unlawful act committed by Police Officers? The Commissioner of Police is not the head of a Private Security Service, but is the repository of the coercive powers of the State. The Police is established under Article 159(1) of the Constitution. The Commissioner of Police is appointed by the Executive President and approved by the National Assembly to command the Police Force.

Section 5(1) of the Police Force Act provides that the force shall consist of the Commissioner of Police, and other subordinate Officers up to and including a Constable. Section 6 provides that –

The force shall be employed in Seychelles for the maintenance of law and order, the preservation of peace, the prevention and detention of crime, and the apprehension of offenders, and for the performance of such duties Police Officers may carry arms.

Article 161 of the Constitution also sets out the functions of the Police Force. Section 8 vests the Commissioner of Police with general powers to command, superintend, direct and control the force, subject to orders and directions of the President. Hence the Executive and the Legislature have invested the Commissioner with state power to maintain law and order in the country through the Subordinate Officers in the Police Force. In the case of *Ex-parte Commonwealth of Virginia* (100 US 339 at 346), the Supreme Court of USA stated thus:

A State acts by its Legislative, its Executive or its judicial authorities. It can act in no other way. The Constitutional provisions therefore must mean that no agency of the State, or of the Officers or Agents by whom its powers are executed, shall deny to any person within its jurisdiction or equal protection of the laws. Whoever by virtue of public function under a State Government deprives life or liberty without due process of the law or denies or takes away the equal protection of the laws, violates the Constitutional inhibition; and as he acts in the name and for the State's Power, his act is that of the State.

Hence the Commissioner of Police is an Executive Officer of the State. It was held in the case of *Velmurugu v A-G* (FRD (1) Page 180) (Sri Lanka) that:

"A claim for redress under Article 126 (Article 46(1) of our Constitution) for

what has been done by the Executive Officers of the State, is a claim against the State for which has been done in the exercise of the executive powers of the State. This is not vicarious liability; it is the liability of the State itself; it is not a liability in tort at all; it is a liability in Public Law of the State.

Lord Diplock in delivering the majority judgment in *Maharaj v A.G. of Trinidad* [1978] 2 All ER 670 at 677 stated-

It is against State action that fundamental rights are guaranteed. Wrongful individual acts unsupported by State authority are not reached by fundamental rights. Fundamental rights are claimed against the State and its instrumentality and not against private parties.

Therefore, a delictual action based in Private Civil Law cannot be instituted against the Commissioner of Police in his vicarious capacity as an employer of his Subordinate Officers. All Police Officers are in the employment of the State and are not employees of the Commissioner, who himself is a State employee. In the Sri Lankan case of *Ratnasara Thero v. Udugampola* (1983) 1. SR1 L. 461, a Superintendent of Police obtained a warrant and seized 20,000 pamphlets which the petitioner had intended to publish. They were suspected to contain seditious material. The Court held that

It was in the exercise of the Police powers vested in him that (the Police Officer) in the discharge of what he conceived to be his duty, (seized the pamphlets) and arrested the petitioner. He acted thus in the name of, and for the State. His action bears the stamp of State action even though he failed to observe the forms and rules of law. He has used the State power to commit the contravention which the Constitution prohibits. The Commission of the wrong has been rendered possible by the State power of which he was a repository and hence his action is that of the State.

On the basis of these authorities, and on a consideration of the provisions of the Constitution, and also of the Police Force Act of Seychelles, any Civil action based on any act or omission of a Police Officer must be instituted against the Government of Seychelles and not the Commissioner of Police. The Plaintiff in the present case therefore has no cause of action against the Commissioner of Police in a vicarious capacity.

Although this finding is sufficient to dispose of the case I shall proceed to consider the merits of the case as presently constituted.

The Merits

The Plaintiff is admittedly, a singer and composer of songs. In December 2001, he released a cassette entitled "Fristasyon Nwel ek Lannen" mainly through "O.J Enterprise", "C and A Trading" and "Rays Music Room". The lyrics were composed by

him. He stated that the "Fristrayon" he was singing about related to the shortages of goods in the Market. He stated that he chose Christmas time as that was the time people were more concerned with buying goods. He further stated that for the last 10 years or so, there has been a tendency to publish funny songs to amuse the people. One such song involved an imaginary character called "Felix". But what is attributed to that character was not always true. He stated that in his songs he is partly critical and partly humorous. The arrangement with the sales outlets was that the shop gets R25 for every CD sold and R10 for a cassette. The cassettes and CDs continued to be his property until sold.

The Defendant avers that the said cassettes were seized upon search warrants issued under Section 96 of the Criminal Procedure Code. This Section provides that:

where it is proved on oath to a Judicial Officer that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed... is in any building ... The Judicial Officer may by warrant authorise a Police Officer... to search the building... and if anything searched or be found, to seize it and carry it before a Court to be dealt with according to law.

The Defendant produced in evidence seven search warrants issued by a judge of the Supreme Court in Chambers. They are marked as exhibits D5, D6, D9, D10, D12, D14 and D15. These warrants were issued upon Complaints SWORN by a Police Officer that certain cassettes in the possession of shops in Market Street known as O.J Enterprise and C and A Trading, Rays Music Room at Albert Street, J and R Trading, in the premises of Sadec Jumaye, and the Musical Studio of David and Wilven Payet, contained seditious material, and material defamatory of the President. The cause of Action pleaded against the Defendant is unlawful seizure of property. Damages are claimed mainly for an alleged economic loss caused by the failure to sell these cassettes, the cost of these cassettes, and for moral damages.

The defence, admits seizure, but avers that it was done by following due process of the law upon reasonable suspicion that the cassettes and CD's contained seditious and defamatory material. Chief Superintendent of Police, Mr Antoine Belmont who commands the Criminal Investigation Unit testified that he obtained the search warrants upon swearing on oath, the contents of a complaint before a judge. He produced 76 cassettes and 2 CDs seized from "OJ Enterprise" and "C and A Trading" 7 such cassettes were also seized from "Rays Music Room" 1 cassette was seized from the premises of Sadec Jumaye. Although the Music Studio and the residence of David and Wilven Payet were searched, no cassettes or CDs were found. Mr Belmont testified that he received a cassette, marked exhibit D1 from a Police informer who complained that it contained seditious and defamatory material. He listened to it and was satisfied that the complaint was correct. Later he received complaints from members of the public as well. It was then that he decided to obtain the search warrants and to seize the cassettes and CDs for further investigation. After seizure, he noticed that although the cover and labels of all cassettes and CDs were the same, in one of the songs called

"Ros Felix" in cassette exhibit D2, the contents were slightly different from the same song in the cassette marked exhibit D1 which he originally received. He stated that after listening to the songs he was satisfied that the lyrics contained seditious intentions to bring the President into hatred or contempt and to excite disaffection against the Government and also to excite the People of Seychelles to violence or to do otherwise than by lawful means. That, he stated, was an offence under Section 95 of the Penal Code.

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Elaborating on his belief SP Belmont cited the following lyrics translated from Creole to English were:

cassette D1, when

1. Father Christmas, Father Christmas, Oh, make it rain, it is for the little blacks like me. se desalination
2. Father Christmas, Father Christmas, ask Felix what he has done with our dollars, even if there was no conference.
3. Father Christmas, Father Christmas, ask Felix how much he has paid for land to set up the Sheep Farm.
4. Felix has gone to Australia to spend his holiday, even if there was no conference, he took our 40,000. there was no
5. A few genius are making a sheep campaign, he has taken large plots of land to set up Sheep Farms.
6. Father Christmas bring me a crowbar, a crowbar very long for me to roll the big boulder.
7. Father Christmas, Father Christmas tell us how many millions South Africa paid Felix to release the mercenaries. Ah Felix, where are all those several millions, South Africa paid Seychelles when you released the mercenaries.
8. Fifteen years ago you acted only like a playboy, this year you are among the elderly "Twarzymaz", you better change your ways brother, go on retirement and give us peace.
9. All businessmen have packed up and left, the crisis is now getting more complicated, all your friends are becoming senile, take care we do not fall in the pit." "Felix, lift up your eyes, Felix, look on the mountain, Felix if you are a man of truth, tell for whom are all those big palace, Felix there is no milk, Felix there is no cheese, Felix there is no cream, tell us how these children will face. Last year you told us things would change, this year you would work miracles, next year we wonder what you will tell us, oh Felix, we have had enough". "Felix you try to dodge, this is playing hide and seek, Felix make things clear before life becomes more critical, Felix try to export instead of

importing, if they do not make an effort, soon the problem will become more serious." "Father Christmas, Father Christmas, give me a dam as gift, a large dam for several millions, same value as the Pajeros, Father Christmas, Father Christmas, oh, make it rain, because desalination is for the little blacks like me, Seychellois said build dams, they do not have money, there in the Assembly they vote for desalination, they are a majority, they have authority, I am pleading with you, Father Christmas, give a dam as gift. Father Christmas, bring me a crowbar, a crowbar very long for me to roll the big boulder, the so called mercenaries landed in Seychelles to invade our small Island, then they were captured, Seychellois said kill them, after he received his several millions he told us criminals, release them, Father Christmas, Father Christmas, tell us how many millions South Africa paid Felix to release the mercenaries, ah Felix, where are all those several millions South Africa paid to release the criminals.

10. Song entitled "Christmas Comparison"

Father Christmas, we must know children. Christmas is here, Christmas is here, see the problem our country is in, the situation is deteriorating, bring medicine to heal us, in the olden days here in Seychelles we got whatever we wanted, we lived well in harmony, there was pride all over, but nowadays everything has changed, no longer nowhere to run, all over we are in problems, not even know where to run, Father Christmas bring gifts, gifts of deliverance, last year there was no paper, but this year there is no water, Father Christmas, bring us gifts, gifts of deliverance, last year there were no matches, but this year there are no cigarettes, in the olden days there were so much in Seychelles, abroad we went whenever we wanted, Forex in the reserve was not lacking, baskets were full of everything, but nowadays when we are suffering, just ask oneself where to go, even hospitals have no medicine, Doctors have only panadol, Father Christmas, bring gifts, gifts of deliverance, last year there were no Doctors, this year there are no qualified nurses. I am praying for change in Seychelles, I am praying for our economy, oh my dear, give me your hand, pray Seychellois, may God bless our country, Father Christmas, bring us gifts, gifts of deliverance, last year there was no oxygen, this year the ambulance has a price.

11. Unite my sister, brother, mother and father also, all sincere friends, make this a better world, pray the lord, you who are in hell, for our creator to come and save this land, all the bad deeds of the Dictator, renounce this world.

The Plaintiff did not contest the accuracy of those translations. In his evidence he identified his voice in the songs from the cassettes played in open Court. He also admitted that the person he referred to as "Felix" was the President of Seychelles. He identified "Felix" in the lyrics quoted as 4 and 8 in particular as referring to the President. As regards the issue of sedition, the Plaintiff in explaining the difference in lyrics contained in D¹ and D² stated:

A. What I have done is, I have taken the album, the song, that I think is seditious and I did not put all the words in it

Q. Ah, that you think, is seditious?

A. No, I am talking about the other one. I am talking about the other one O.K?

The Plaintiff maintained that only the cassette exhibit D¹ contained seditious and defamatory material, and that on the advice of his lawyer that was not distributed for sale. He also stated that only the altered version contained in cassette exhibit D² was being sold through the various shops. But SP Belmont stated that he got it from a member of the public. However when both cassettes D¹ and D² were played in Open Court, the Plaintiff was unable to distinguish between the two for sometime. Ultimately he identified exhibit D² as the one he distributed for sale. As regards the reference to "rolling the big boulder in the lyric at 6 above, he stated:

A. O.K this is pure politics, where I, just to say that, during the past election, the Opposition Party has gained more People, and in the coming time we will gain more.

Q. So, the big rock is the Government, that you want to roll, the President.

A. That is not the President.

Q. No?

A. No it is the Government, the Government of the day.

SP Belmont stated that the cassette exhibit D¹ which he received from the Police Informer contained only three songs, but cassette exhibit D² has 8 songs. However when he applied for the search warrant and went to seize the cassettes and CD's he had no doubt that what he had received, (exhibit D¹), and those in the shops and premises from which cassette D² were seized were the same.

In the cassette, exhibit D², seized from the shops the following passages were marked in evidence. The translations into English, which were not challenged by the defence, were as follows:

1. All businessmen have packed up and left. There is no milk, there is no cream, there is no cheese, try to export instead of importing.
2. Felix lift up your eyes Felix look on the mountain. Felix if you are a man of proof, tell for whom are all those big Palaces. Felix there is no milk. Felix there is no cream, tell us how those children will be fed.

3. You better change your ways brother, go on retirement and give us peace. Last year you told us things will change, this year you would work miracles, next year we wonder what you will tell us, Oh Felix we have had enough.
4. Felix you are trying to dodge, this is playing hide and seek. Felix make things clear before life becomes more critical Felix try to export instead of importing, if any do not make any effort, soon the problem will become more serious.
5. Christmas is here, see the problem our country is in.
6. The situation is deteriorating, in olden days here in Seychelles we get whatever we wanted, we lived in harmony, there was pride all over.
7. But nowadays everything has changed, no longer nowhere to turn, all over we are in problems, don't even know where to run. Father Christmas, bring gifts, gifts of deliverance, last year there was no paper, but this year there is no water. Father Christmas bring us gifts, gift of deliverance, last year there were no matches, but this year there are no cigarettes. In olden days there were so much in Seychelles, In olden days there were so much in Seychelles, abroad we went whenever we wanted, forex in the reserve was not lacking & baskets were full of everything, but nowadays we are suffering, just ask oneself where to go, even hospitals have no Medicine. Doctors have only panadol.

These lyrics were identical with those on cassette exhibit D1, which the Plaintiff admitted contained seditious and defamatory material. The Plaintiff who listened to the cassette (D²) being played in Open Court, admitted all those lyrics. He stated that the reference to "Felix" differed in different contexts it was used. Sometimes it was the President, sometimes it was Mr Mancham. Questioned as to whom he referred in the lyric numbered 2 above, he stated that it was "Felix himself, who is "the new year man". He stated that the lyrics at 3 above, referred to the Government. However after being reminded that he had stated that 'Felix" was a person, the Plaintiff agreed but still maintained that he was not referring to the President. He further stated the lyrics at 4 above referred to members of the National Assembly. However he finally admitted that the reference to Felix in respect of a trip to attend a conference in Australia was to the President.

Mr Derjacques, Learned Counsel for the Plaintiff contended that there was no reasonable cause for the Police Officers to seize the cassettes and CDs as all that the Plaintiff was singing about was factually correct. He submitted that in that respect there can be no sedition or defamation of the President as being averred by the Defendant.

In the present delictual action, what arises for consideration is not whether the songs in

cassettes D1 and D2, and the CD's, contained seditious or defamatory material, but whether S.P. Belmont had reasonable cause to obtain search warrants and seize them for investigation.

The effect of the warrants

As Lord Wilberforce stated in the case of *R v IRC ex parte Rossminster Ltd* (1980) AC 952 at 1000 "there is no mystery about the word "warrant" it simply means a document issued by a person in authority ... authorising the doing of an Act which would otherwise be illegal."

In the case of *A-G of Jamaica v Williams* (1998) AC 351, suspecting that the Applicants were involved in the fraudulent importation of motor vehicles, a Police Officer applied for, and was issued with search warrants under Section 203 of seize documents. The Supreme Court of Jamaica found that the search and seizure was lawful and dismissed the action. On appeal, the Court of Appeal overruled that decision on the ground that the warrants failed to mention the statutory power under which they were issued and purported to give additional powers outside the ambit of Section 203. On appeal to the Privy Council, it was held that the Judge's statement in each warrant that he was satisfied of the existence of reasonable cause of suspicion must, *prima facie*, be accepted and is not rebutted by the alleged defects in the warrants, and that the legality of a search and the taking of documents properly authorised by statute and warrant could not be challenged. The Privy Council considered the dicta of Patterson J in the Supreme Court that "the oath of the Officer of his reasonable cause to suspect is what is required, and not the particulars upon which the suspicion is grounded", and also of Smith J that:

even if all the Justice had before him was a statement on oath by the officer that he had good reasons to believe that uncustomed goods were being kept or concealed on the premises aforesaid that would be sufficient to found jurisdiction for the issuing of the warrants by the justice.

The Board also approved the statement of Wright JA of the Court of Appeal that "there is no requirement for the Justice to make an assessment of the Officer's reasonable cause to suspect and to satisfy himself before issuing the warrant."

In Seychelles, the format of the search warrant is prescribed as form VIII of the fifth Schedule to the Criminal Procedure Code. The wording therein is that "whereas it has been made to appear to me." Hence there is strictly no requirement in law that the Judge or Magistrate who issues the search warrant should be satisfied that the Officer seeking the warrant has a reasonable cause. He can rely on his affidavit sworn on oath.

In the present case, S.P. Belmont had received cassette exhibit D¹ which in his opinion clearly had seditious and defamatory material. The cover, the label, and get up of that cassette and those on sale at the three shops were identical. (Exhibit D²). Section 54 (1) of the Penal Code provides that sedition is an intention to effect inter alia the following purposes:

- (a) To bring the President into hatred or contempt.
- (b) To excite disaffection against the Government, the Constitution or the People's Assembly.
- (c) To excite the People of Seychelles to attempt to procure the alteration, otherwise than by lawful means, of any matter in Seychelles established by law.
- (d)
- (e) To raise discontent or dissatisfaction amongst the People of Seychelles.

Section 185 provides that criminal defamation is “matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation....”

On the basis of the material and information he had in his possession, SP Belmont had sworn an affidavit before a judge on reasonable suspicion that the cassettes and CD's on sale or in the possession of members of the Public contained matters defamatory of the President and also matters amounting to sedition. Even if cassette D² was not published and sold through the shops, it was, on the basis of the evidence, in the hands of members of the public. Cassette D² also contains sufficient material to justify S.P. Belmont's suspicion, and his applying for and obtaining search warrants for the purpose of investigation. It is however left to a Criminal Court to consider whether in law, the offence of sedition under Section 54(1) of the Penal Code or of Criminal defamation under Section 185 had been established, if and when the Plaintiff is charged with those offences.

The Court holds that the Acts of the Police Officers did not constitute “faute” as averred in the plaint.

Accordingly, the Plaintiffs action is dismissed with costs.

Record: Civil Side No 348 of 2001