

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.
JEAN-PAUL ESPARON

Criminal Side No. 12 of 2007

Ms. Jumaye for the Republic

Mr. Renaud for the Accused

JUDGMENT

Gaswaga, J

This is an application for revision filed by the Attorney General in terms of section 328 of the Criminal Procedure Code (CPC), Cap. 54.

The respondent in the court *a quo* was charged with three counts to which he tendered a plea of guilty namely (i) Riding a motor cycle without a valid driving license contrary to section 12 (i) of the Road Transport Act, Cap. 206 as read with regulation 80 (f) and punishable under section 24(2) of the same Act; (ii) Riding a motor cycle on the public road without a valid road fund license contrary to regulation 34 (1) and 80 (f) of Cap. 206 and punishable under section 24(2) Cap. 206; and (iii) Riding a motor cycle on a public road without a policy insurance contrary to section 4(1) and punishable under section 4 (2) of the motor vehicle insurance (Third Party Risk) Act, Cap. 135.

The learned Magistrate convicted and sentenced the respondent to a fine of Sr.

1,000 in default to undergo imprisonment for three months on each of the three counts. That fine has already been fully paid. The Attorney General's application is particularly in respect of the sentence in count (iii) to which it was submitted by State Council Ms. Jumaye, and conceded by Mr. J. Renaud for the respondent, that the sentence aforementioned was contrary to the minimum required under the Act, (Cap 135). Sections 4(1) and (2) thereof read thus:

"4(1). Subject to the provisions of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Act.

*(2). If a person acts in contravention of this section he **shall be liable to a fine of Rs2000** or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment, and a person convicted of an offence under this section **shall** (unless the court for special reasons think fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification) **be disqualified from holding or obtaining a certificate of competency for a period of twelve months** from the date of the conviction."*

According to section 329 (1)(b) and (c) of the criminal Procedure Code, this Court, in exercising powers of revision, is empowered to make any orders it could make in exercising its appellate jurisdiction. But an appellate court will not interfere with the sentence passed by a subordinate court except in the following circumstances:

(a) Where the sentence is not justified by law, in which case it will interfere not as

a matter of discretion , but of law;

Where the sentence has been passed on wrong factual basis;

Where some matter has been improperly taken into account or there is some fresh matter to be taken into account; and

Where the sentence was wrong in principle, or manifestly excessive.

A perusal of the record from the lower court in the light of the above legal provision clearly shows that the learned Magistrate fell into error by not imposing the prescribed fine and suspending the respondent's driver's license. The legal provision is couched in mandatory terms. Therefore, that sentence is found to be wrong and cannot be justified in law. Consequently, the court will inevitably interfere with it in the manner herein to follow:

The sentence imposed on the respondent in respect of **count iii** is hereby overruled and set aside. Instead, **I order that the respondent pays a fine of Sr. 2000 in default to serve a period of three months in prison.** (For avoidance of doubt the Sr. 1,000 already paid into court on this count should count towards the new fine.)

ORDER

In addition, it is ordered that the respondent be, and is hereby disqualified from holding or obtaining a Certificate of Competency / Driver's License for a period of **twelve (12) months** from the date hereof.

D. GASWAGA

JUDGE

Dated this 25th day of February, 2010.