

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

vs.

**SERGE ROLLAND ESPARON**

Criminal Side No. 75 of 2008

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Mr. Durup for the Republic  
Mr. Hoareau for the Accused

**RULING**

**M. Burhan J**

Learned Counsel for the accused supported a motion filed by him on 26.1.2009 and moved court, that the four bricks (the term used by counsel in his motion) of dark substance and the Aluminum foil which formed the basis of the charge of trafficking in Controlled Drugs, be subject to a finger print test by an expert in order to establish the fact that the fingerprints of the accused person were not present and therefore the accused had not handled the said substance or foil. Learned Counsel based his application in terms of Article 19(2) (c) of the Constitution of Seychelles.

Article 19(1) of the Constitution of Seychelles guarantees the right of a person charged with an offence, to a fair hearing. Clause 2(c) provides that he *“shall be given adequate time and*

*facilities to prepare a defence to the charge*". It is clear that counsel for the accused is seeking that the aforementioned *facility* be provided in order that he could prepare his defence.

Learned Counsel for the prosecution having been given time to obtain instructions from the Attorney General objected to the said application. He informed court that the prosecution would not be relying on finger print evidence and as humidity temperature and other factors would affect fingerprints it was purposeless granting the application of the accused.

It is to be noted at the very onset that the items referred to by learned counsel for the accused namely the four dark bricks and Aluminum foil have not yet been produced as exhibits in the case nor has trial proper commenced. It is settled law that it is the duty of the prosecution to prove the case beyond reasonable doubt. The prosecution has categorically stated that it will not be relying on fingerprint evidence to establish their case. Therefore the only reasonable conclusions would be that the prosecution is not relying on such evidence as no fingerprints exist on the intended exhibits or even if existing it cannot be proved that the fingerprints are that of the accused person. Both conclusions would be held in favour of the accused. However the defence should make note of the fact, that the fingerprints of the accused not being on the intended exhibit, need not necessarily mean nor could it be conclusively held, that the accused had not handled

the said items .It is common knowledge that even though a person might handle an object, due to factors such as time, temperature, humidity, nature and type of object handled and manner in which the object was handled, an individual's fingerprints may not be detected. These are all matters to be determined at trial stage or at the conclusion of the trial. It is premature to decide such issues at this stage.

Furthermore the items taken into custody have been handled by several individuals during detection and analysis. After analysis the items have been carefully sealed and handed back to the police officer concerned by the Government Analyst. The items have not yet been produced in court as exhibits and any tampering with the seal at this stage could seriously jeopardize the prosecution's attempt to establish the chain of evidence linking the detection of the item, its analysis and its subsequent production in court. As such tampering with the seals at this stage could result in serious consequences and irreparable damage to the case of the prosecution.

In the case of ***R v. Lambert Metropolitan Stipendiary Magistrate.Ex Parte MC Comb (1983 Q.B.551 at 557*** Griffiths LJ defined the responsibility of the court in these circumstances as;

- (1) To take proper care to preserve the exhibits safe from loss or damage.
- (2) To co-operate with the defence in order to allow them reasonable access to

the exhibits for the purpose of inspection and examination.

(3) To produce the exhibits at the trial”.

In the case of ***The Republic v. Noddy Agathine SC Seychelles Criminal Side 38 of 2005***, Perera J (present Chief Justice) in refusing an application under Article 19 (2) (c) of the Constitution of Seychelles held “In allowing reasonable access, the court must exercise its discretion in a way that the purposes of justice are not compromised”.

In these circumstances and for the aforementioned reasons, this court is inclined to refuse the application of learned counsel for the accused, in order to ensure that the purposes of justice are not compromised. In any event no purpose will be served, as the fingerprints of the accused are deemed not to be on the intended exhibit unless the prosecution proves otherwise.

**M.N. BURHAN**

**JUDGE**

Dated this 6<sup>th</sup> day of February, 2009.