

IN THE SUPREME COURT OF SEYCHELLES

**REPUBLIC
VS
PERCY DANNY VIDOT**

Revision side no: 05 of 2008

Mrs. Cesar for the Republic
Accused unrepresented

Burhan, J

JUDGMENT

This is a Revision application filed by the Attorney General in terms of section 328 of the Criminal Procedure Code Cap 54, in respect of the sentence imposed by the learned Magistrate on the Respondent (accused) in this case.

Section 328 of the Criminal Procedure Code reads as follows:

“The Supreme Court may call for and examine the record of any criminal proceedings before the Magistrate’s court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Magistrates’ Court.”

On perusal of the said record it is observed that the Respondent was charged as follows;

Engaging in an activity as a building contractor (specified under schedule 1) without a licence contrary to section 16 (a) as read with section 19 (4) and punishable under section 20 (1) (a) of Licenses Act Cap 113.

The particulars of offence are that Percy Danny Vidot, residing at Glacis, Mahe, on the 22nd day of September 2007, at Nouvelle Vallee Mahe, engaged in an activity as a building contractor, namely roofing a house without a valid licence.

The Respondent was convicted on his own plea of guilt and was sentenced to pay a fine of Rs 4000, to be paid by the end of October 2008. A default term of 2 months imprisonment was also ordered.

The Attorney General seeks to move in Revision against the sentence imposed on the Respondent, on the grounds that in terms of the Licenses (Amendment) Act No 9 of 1998, the sentence stipulated is a fine of not less than SR 5000 and not exceeding SR 50,000.

Section 20 (1) (a) of the Act prior to being amended by Act No 9 of 1998 read as follows:

Any person who is guilty of an offence under this Act shall on conviction be liable-

(a) in the case of an offence under section 19 (1) or section 19 (2) or section 19 (4) to a fine of R 20000 and to imprisonment for 2 years.

By Act No 9 of 1998 section 20 (1) (a) was amended by repealing the words " to a fine of R 20000" and substituting thereof the words "to a fine of not less than R5000 and not exceeding R 50000."

It is to be noted that the charge has no mention or

reference to the amending Act. It is important that in drafting the charge, the amending Act is referred to by the prosecution in the body of the charge itself, in order that the accused prior to pleading guilty and the court, would be properly informed of the sentence to be expected and imposed. However considering the date of the offence in this instant case, it is clear that the sentence applicable is that mentioned in the amending Act No 9 of 1998 and the sentence imposed by the learned Magistrate of a fine of SR 4000 is incorrect. It is apparent on the face of the record that the accused is a 1st offender and has pleaded guilty at the first instance, thereby saving the time spent by court in a protracted trial. Considering the circumstances of this case, this court is inclined to impose the minimum penalty prescribed by law. Accordingly the incorrect sentence imposed is set aside and the minimum fine of SR 5000 substituted in its place. The convict is given a period of 1 month to pay the difference in fine, in default a period of 2 weeks imprisonment is imposed.

The sentence stands revised accordingly.

M. N. BURHAN
JUDGE

Dated this 14th day of April 2010