

IN THE SUPREME COURT OF SEYCHELLES

CHERUBIN MORIN

V

THE REPUBLIC

Criminal Appeal Side No: 05 of 2012

Mr. B. Georges Attorney at Law for the Appellant

Mr.K. Khalyan State Counsel for the Respondent

JUDGMENT

Burhan J,

The Appellant in this case has been charged in the Magistrates' Court as follows;

Engaging in pig breeding activity without holding a licence from the Seychelles Licensing Authority contrary to section 16 (1) (a) read with section 19 (4) and punishable under section 20 (1) (a) of the Licences Act Cap 113.

The particulars of the offence are that Cherubin Morin a businessman of La Misere Mahe on the 24th of May 2007 at La Misere, Mahe engaged in the activity

of pig breeding without holding a licence from the Licensing Authority as specified under Schedule 1 of the Licenses Act Cap 113.

By judgment dated 27th February 2012 the learned Senior Magistrate found the accused guilty as charged and proceeded to sentence the accused to a fine of SR 7000/=.

Being aggrieved by the said conviction and sentence the Appellant seeks to appeal against the conviction and sentence on the following grounds;

- 1) The evidence revealed that the Appellant was laboring under a mistake of fact as to whether his permit was sufficient to engage in the activity even if he had no licence.
- 2) The learned Magistrate should have given the Appellant credit for his mistake and acquitted him of the offence charged.
- 3) Considering the circumstances of the case a conditional or absolute discharge would be the most appropriate manner of disposing of the case
- 4) The sentence of SR 7000 is manifestly harsh and excessive.

It is the contention of learned counsel for the Republic that in terms of section 5(1) of the Pig Production (Control) Act CAP 170 that it was imperative that a person breeding pigs should possess a licence from the Licensing Authority.

Section 5(1) of the Pig Production (Control) Act reads as follows;

No person shall breed pigs except under and in accordance with a licence granted by the Licensing Authority.

It follows therefore that a person breeding pigs should do so under and in accordance with a licence granted by the Licensing Authority.

Section 16(1) (a) of the Licenses Act (CAP 113) reads as follows;

Notwithstanding anything in any other Act, no person shall-

(a) engage in or carry on any activity, profession, trade or business specified in Schedule 1”

(b).....

(c).....

except under and in accordance with a licence granted by the Authority.

Schedule 1 refers to activity, profession, trade and business and pig breeding is included as item 23.

Section 19 (4) of the Licences Act reads as follows;

A person who contravenes section 16 (1) or when directed by the Authority, contravenes section 17(2) or contravenes any condition of a licence or contravenes any regulation of is guilty of an offence.

On a perusal of the evidence led at the trial, it is clear that the prosecution has led evidence to establish the fact that the Appellant was breeding pigs and the fact that the Appellant did not have a licence as required by law for pig breeding from the Licensing Authority. The main contention of the defence as borne out by the evidence of the Appellant is that he admits he was doing the business of pig breeding and fattening and had been provided with a permit from the Ministry of

Agriculture in 1987 which he produced as document D1. He admits not having a licence for pig breeding from the Licensing Authority. It appears from document D2 that the Ministry of Agriculture has issued another permit dated 18th October 2011 to the Appellant and his defence was that throughout he was not aware that he needed a licence from the Licensing Authority as he thought the said permit was sufficient.

It is pertinent to mention at this stage that while section 5(1) of the Pig Production (Control) Act refers to the necessity of a licence for the breeding of pigs, section 7(1) refers to a permit being issued for the purpose of fattening pigs. Perusal of defence documents D1 and D2 clearly show that the permit has been issued under section 7(1) of the Pig Production (Control) Act for the purpose of fattening of pigs. Therefore the law as it stands clearly indicates the necessity of a licence for the breeding of pigs and the necessity of a separate permit for the fattening of pigs.

A licence from the Licensing Authority is a requirement by law. Considering all the aforementioned facts the learned Senior Magistrate cannot be faulted for finding the Appellant guilty of the offence as the Appellant had failed to produce a valid licence as required by the law as set out above. Ignorance of the law is not an acceptable defence. Therefore the appeal against the conviction bears no merit and is dismissed.

Learned counsel next contended that the learned Senior Magistrate should have taken into consideration the triviality of the offence, its technicality and the minor loss to the treasury which learned counsel himself estimated to be SR 250.00 per annum and should have discharged the Appellant either absolutely or

conditionally. It is the view of this court that the Appellant has been running the said business admittedly since 1987. Licenses (Pig Breeding) Regulations came into force on the 31st of March 1987 and regulation 5 states that the said licence shall be valid for a period of 12 months. The Schedule of the regulation refers to the fees as SR 50 for processing an application and licence fee as SR 200. In total a sum of SR 250 per year. Further regulation 4(2) refers to a surcharge of 10% that could be charged for each month that has elapsed from the date of expiration of the earlier licence. In this instant case the Appellant admittedly has never obtained the said licence since 1987.

Therefore this court is of the view that the learned Senior Magistrate has imposed a just and appropriate sentence in fining the Appellant a sum of SR 7000 and in the aforementioned circumstances the sentence cannot be said to be harsh or excessive.

The appeal against conviction and sentence stand dismissed.

M. BURHAN

JUDGE

Dated this 5th day of April 2013