

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**  
**V/S**  
**BENJAMIN CHOPPY**

Revision Side No. 07 of 2012

Mr. Lansinglu standing in for  
Mr. Benjamin for the Republic  
Mr. Pardiwala for the Accused  
Accused – Present

**D. Karunakaran, J.**

**RULING**

[1] This matter was brought to the attention of this Court at the instant of a request for Revision made by the Honorable Attorney General to call for and examine the records of the proceedings in Criminal Side 167 of 2010 before the Magistrates Court. This Revision request was made under section 328 seeking a remedy under section 329 of Criminal Procedure Code.

[2] First of all, I note with respect to the state counsel, even these proceedings of Revision before this Court on the face of it appears to be an abuse of process of the Court. In fact, the accused in the case before the lower court (now the respondent in this matter) allegedly committed a misdemeanor in 2006. The case had been procrastinated before the trial Court for over 5 years and the learned Magistrate

dismissed the charge in August 2011 as he felt that the prosecution was abusing the process of the court. Going by the record I quite agree with the view taken by the Learned Magistrate in this matter. A person's right to a fair hearing within a reasonable time is not simply a right which should remain in the glossy papers of the Text-Books on the Constitution. This right should practically be applied by the courts so that its benefit reaches the common-man. I believe the learned Magistrate has rightly applied the Constitution right for the benefit of the citizen, in that no criminal charge should be protracted for an unreasonable period, to the detriment of any accused person, especially in a charge involving minor offences or a misdemeanor. Mere delay which gives rise to prejudice and unfairness might by itself amount to an abuse of process - ***vide R Bow Street Stipendiary Magistrate Exp DPP QBD at p 319 Cr. L. Review 1990.***

[3] On the face of the records, I am satisfied that this matter has been protracted before the Magistrate Court unreasonably for more than 5 years especially, when the offence involved was simply a misdemeanor. Such delay, would undoubtedly give rise to prejudice and unfairness to the detriment of the accused person. Also, ***see Bell Vs. DPP of Jamaica (1985) 2 All. E. R p585 at 589 Privy Council*** in which it was held that the Courts enjoy a common law power to prevent abuse of process by unreasonable delay.

[4] In the circumstance, I quite agree with the approach taken by the Magistrate in this matter which cannot be faulted. I do not find any error in law or principle on the part of the Learned Magistrate in dismissing the case for abuse of process.

[5] For these reasons, I decline to entertain this petition for revision under section 329 of Criminal Procedure Code. The Revision application is dismissed accordingly.

**D. KARUNAKARAN**

**JUDGE**

Dated this 25<sup>th</sup> day of March 2013