

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**versus**

**JUSTIN EMMANUEL LEON**

Case No: CR 10 of 2010.

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Mr H. Kumar for the Republic

Mr N. Gabriel for the Accused.

Accused Present.

**RULING**

**Dodin. J**

1. The accused Justin Emmanuel Leon is charged with one count of trafficking in 39.4 grams of cannabis resin contrary to section 5 read with section 14(d) and section 26(1)(a) of the Misuse of Drugs Act as amended by Act 14 of 1994 and punishable under section 29 read with the second schedule of the same Act.
2. At the close of the prosecution's case, learned counsel for the accused made a submission of no case to answer maintaining that the charge against the accused was defective in that it did not contain a statement of offence as required by law and only contained the particulars of offence. Learned counsel submitted that section 114 of the Criminal Procedure Code provides that a count or a charge or information shall commence with a statement of offence charged called a "Statement of Offence" which shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms and without necessarily stating all the essential

elements of the offence and if the offence charged is one created by enactment, shall contain a reference to the section of the enactment creating the offence.

3. Learned counsel submitted that the 2<sup>nd</sup> charge framed against the accused made only reference to Particulars of offence and nothing referred as statement of offence was stated. Learned Counsel however pointed out that the principle established by the case of R v McVitie [1960]44 Criminal Appeal Report 201 is that failure to particularize an essential ingredient of an offence in a charge does not make the charge bad but only defective. However learned counsel argued that the Court must consider whether the defect embarrassed or prejudice the accused and if so and the defect cannot be cured by section 187 of the Penal Code, then the Court must find that the defect is fatal and renders the entire proceedings a nullity and hence dismiss the charge against the accused.
4. Learned counsel concluded that in this case, failure to particularize the 2<sup>nd</sup> charge remaining against the accused after the dismissal of the 1<sup>st</sup> charge, the prosecution has failed to abide by the strict provisions of section 114 of the Criminal Procedure Code and since at this stage no amendment can be made to cure the defect, the court must find that the charge against the accused is fatally defective and moved the Court to dismiss the same forthwith.
5. Learned counsel for the prosecution submitted the alleged defect pointed out by the defence does not affect the integrity of the proceeding and the charge as it is merely a typographical error which cannot be treated as irreparable. Learned counsel maintained that the statement of offence and the particulars of offence are clearly spelt out in the second count although by error the words Statement of Offence had been inadvertently place above the 1<sup>st</sup> count which has now been dismissed and only the word Particulars of offence appear above the 2<sup>nd</sup> count.

6. Learned counsel submitted that the error pointed out by the defence is not fatal to the charge as amending the same would change any aspect of the charge in any way except placing the heading properly. Learned counsel concluded that the submission of no case therefore has no legal merit and should be dismissed accordingly.
  
7. Section 114 of the Criminal Procedure Code provides as follows with regards to drawing up charges and information:

*114. The following provisions shall apply to all charges and informations and, notwithstanding any rule of law or practice, a charge or an information shall, subject to the provisions of this Code, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this Code -*

- (a) (i) *A count of charge or an informational shall commence with a statement of the offence charged, called the statement of offence;*
  
- (ii) *the statement of offence shall describe the offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by enactment, shall contain a reference to the section of the enactment creating the offence;*

*(iii) after the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary;*

*Provided that where any rule of law Act limits the particulars of an offence which are required to be given in a charge or an information, nothing in this paragraph shall require any more particulars to be given than those so required;*

*(iv) the forms set out in the fourth schedule to this Code or forms conforming thereto as nearly may be shall be used in cases to which they are applicable, and in other cases forms to the effect of conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case;*

*(v) where a charge or an information contains more than one count, the counts shall be numbered consecutively.*

8. The rules of drafting charges are extremely important in criminal trials. These rules engender clarity and accuracy in the accused and his counsel's understanding of the charges brought by the Republic or prosecuting authority. They also help the accused and his counsel prepare sufficiently for his defence. These rules, if enforced and jealously guarded, would not only ensure that justice is done, but will be seen to be done.
9. The rules for drafting a charge exist to recognize the rule of natural justice and fair trial as can be seen in the case of Ridge v Baldwin [1964] AC 40 where Lord Morris said:

*“it is well established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet.”*

10. The same principle is maintained in the Malaysian case of Yoh Meng Heng v Public Prosecutor [1970] 1 MLJ 14 where Ong Hock Sim J. stated:

*“It is essential that a person accused of a charge should be given sufficient particulars to know just what the charge against him is, so that he may rebut it. It is embarrassing to the defence not to know just what he is alleged to have contravened.”*

11. In another Malaysian case of PP v Lee Pak [1937] MLJ 256 the Appellate Court stated:

*“A charge should be so drawn that the accused should know exactly the case which he has to meet and that he should not be left guessing as to which of a number of alternatives he is alleged to have offended against. If a charge is so badly framed that the accused is misled thereby, an appellate court will have no hesitation in quashing a conviction based on such a charge.”*

12. The issue in this case is not about the content or clarity of the charge leveled against the accused but the lack of distinction between the statement of offence and the particulars of offence. I am satisfied that the contents of the charge are clear and raise no ambiguity as to what the accused and his counsel have to deal with in the defence of the accused. The question is whether the lack of a heading or a misplaced heading

affects the integrity of the charge which would result in a serious defect as submitted by the defence.

13. Considering section 114 of the Penal Code, the provisions require the Statement of Offence and the Particulars of offence be set out and be distinct and clear in language. However although Section 114(a)(i) states that the statement of offence must be so called, it does not state that it must be so headed. Therefore it cannot be said a failure to place headings above the statement and particulars of offence would be fatal to the charge where the statement and particulars of offence have been properly set out.

14. Furthermore, section 187 allows amendment to be made to a charge up to the close of the case for the prosecution in a Magistrate's Court but does not place such limit on the Supreme Court provided that such amendment can be made without causing injustice. Since the substance of the charge has been properly set out and the accused had properly understood and pleaded to the same, the placing of a heading to the charge would not in any way alter the content of the charge and would not result in any injustice to the accused.

15. Consequently, I conclude that the accused was not prejudiced in any way despite the error and therefore the submission of no case to answer based on the same must fail. The submission of no case is dismissed and the accused is called upon to make his defence accordingly.

**C.G. DODIN**

**JUDGE**

Made on this 5<sup>th</sup> day of April, 2013.