

IN THE SUPREME COURT OF SEYCHELLES

Miscellaneous Application Side: MC 04/2014

[2014] SCSC

THE REPUBLIC

Applicant

versus

FABIO SOOPRAMANIAN

Respondent

Heard: 2,3,4,7 of July 2014

Counsel: Mr. Khalyaan Karunakaran, State Counsel for the Republic
Mrs. Alexia Amesbury Attorney at Law for the Respondent

Delivered: 7 July 2014

ORDER

Burhan J

[1] This is an application by the aforementioned applicant, seeking a court order under section 30 B (1)(b) of the Criminal Procedure Code (CPC) for the obtaining of finger print samples from the aforementioned respondent for forensic analysis and comparison.

[2] Learned counsel for the respondent complained that sufficient time had not been given to her to prepare her defence. At her request court made order that she be allowed to speak with the respondent and prepare the necessary documents to be handed over to court. The respondent's formal objections to the application were thereafter prepared and handed

over to court. Learned counsel for the applicant filed further papers in reply and both counsel made further oral submissions thereafter.

[3] Learned counsel for the respondent initially objected on the grounds that the application was not in conformity with section 30 B (8) of the CPC. This court made order that the applicant bring his application into conformity with section 30 B (8) of the Code. Learned counsel for the applicant did so and filed an application thereafter with affidavits as required by the said section. It appears learned counsel for the respondent objects to the fact that the same case number was given to this application but this objection has no bearing on the application as this is an administrative function of court and has nothing to do with the application per se. Learned counsel for the respondent has also contended that the new notice of motion is flawed as it does not disclose who the parties are but on a reading of the motion there is specific mention as to who the applicant and respondent are. The fact that the application has been made on paper belonging to the State has already been explained by learned State Counsel and the explanation is acceptable to court and as no material prejudice has been caused to the respondent on any of the aforementioned grounds, it cannot be said that the application is fatally flawed and should therefore be dismissed.

[4] It is the contention of the respondent as set out in his formal objections that he has already given two sets of finger prints and that the 2nd set of prints were taken for forensic purposes. It is his contention that the 3^d set of finger prints is being obtained to “frame” him. Learned counsel for the applicant has stated that the first set of finger prints were not properly taken and were destroyed in the presence of the respondent and thereafter a fresh set of finger prints were taken not for forensic purposes and now the applicant moves court for another set of finger prints for forensic purposes.

[5] It is learned counsel for the applicant’s contention that it is not possible to “frame” the respondent since prints that are recorded cannot be re-applied to an exhibit. The respondent’s complaint of being framed is on record and it would be a matter for this court to decide the truth of the allegation at the appropriate time. It is too premature at this stage to come to a finding in regard to this issue but his contemporaneous complaint made has been noted. It is apparent that his allegation is that named officers of the NDEA

Mr. Niall Scully and agent Nicole Franchette have threatened to lock him up for life if he did not provide certain information to them. However, it is apparent that the said exhibit is not with the officers of the NDEA but with the SSCR (Scientific Support and Crime Record Bureau) and therefore the allegation has no bearing on officers of the SSCR in whose custody the exhibit is at present as per the affidavit of CSP Reginald Elizabeth.

- [6] Learned counsel next contended that the respondent's constitutional right in terms of article 19 (2) (g) of the Constitution was being infringed as this application was intended to self incriminate the respondent. The application before court has nothing to do with article 19 (2) (g) of the Constitution as article 19(2) (g) relates to procedure during trial.
- [7] The law as contained in section 30 B (1)(b) of the Criminal Procedure Code provides for the taking of samples both intimate and non intimate during investigations and regulates the procedure as to how it should be done, therefore it cannot be said that the respondent's right to privacy has been affected. The law specifies that investigating officers could seek the necessary orders from court in respect of the obtaining of samples during the process of investigation. Further this court is satisfied that investigations could continue in any matter even though charges are framed against an accused.
- [8] For the purposes of record it is brought to the notice of learned counsel Mrs. Amesbury that on the 2nd of July 2014 her submissions had been recorded but it appears that learned counsel for the applicant's submissions had not been clearly recorded.
- [9] On the facts before court as set out in the application and supporting affidavits this court is satisfied that this is a matter that should be considered with a degree of urgency as it involves investigative procedure. This court is satisfied that the application is made in respect of a serious offence and the taking of the sample will help the investigating officers confirm or disprove the respondent's involvement in the said offence. I am satisfied that the application has the necessary authorization as required by law and although a finger print sample has already been taken for the purposes of record a further sample is required for investigative and forensic purposes.
- [10] I therefore make order authorising the taking of the finger print sample for the required purpose from the respondent. The respondent is informed of the order in open court.

Signed, dated and delivered at Ile du Port on 7 July 2014

M Burhan
Judge of the Supreme Court