

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 51/2011

[2014] SCSC 9

THE REPUBLIC

versus

NIVARD CESAR
Accused

Heard: 3 January 2014
Counsel: Mr. Ananth, Assistant Principal State Counsel for the Republic
Mr. Gabriel for the accused
Delivered: 3 January 2014

SENTENCE

Karunakaran J

[1] I gave careful consideration to all mitigating factors submitted by the defence counsel Mr. Nichole Gabriel. I also gave diligent thought to the fact that at the time of commission of this particular offence, there was a mandatory minimum of 5 years imprisonment prescribed for the offence. I meticulously analysed the law on the issue as to the interpretation of the penal provisions in Statutes.

- [2] First of all, I note the offender is relatively a young person; he has a family and children. He has pleaded guilty to the charge saving the precious time of the Court. He has shown remorse. He has given a promise to Court that he would never repeat or reengage in any unlawful drug related activities in future. Moreover, I consider the judgment of the Court of Appeal giving guidelines to the sentencer on the interpretation of the mandatory provisions found in Statutes – vide - *Ponnu versus The Attorney General*.
- [3] Upon a careful consideration of the provision of law, it seems to me, there are three possible interpretations that could be given to the penal provisions in this matter. Strictly speaking, a person who has been convicted for the offence should be punished in accordance with the penal provision that existed at the time of the commission of the offence. In this case obviously the offender should be given mandatory minimum of 5 years imprisonment, if the Court accepts the first interpretation. Following the amendment to the Misuse of Drugs Act, now, at the time of sentencing the offender the penal provision is changed; that is if the offender has committed the offence first time the Court has a discretion. It may impose any appropriate sentence as there is no mandatory minimum term. The third interpretation is that if the offender is deemed to have committed the offence for the second time as per the amended provision, he should be given the mandatory minimum term of imprisonment prescribed by law. Among these three possible interpretations given to the penal provisions in respect of this offence, according to Maxwell on “Rules of Statutory Interpretation”, the interpretation which is more beneficial that goes in favour of the offender, should be taken into account and applied.
- [4] In this particular case, the most beneficial interpretation that goes in favour of the offender is the one that is based on the amendment: The Court should consider him as first offender in view of the fact that the amendment has been made subsequent to the commission of the offence. In the circumstances, I am of the view that the second interpretation is the most preferable and favourable one among all interpretations and it should be applied accordingly. Hence, I hereby sentence the accused person to undergo 2 years imprisonment. The accused has already served two years in custody. I therefore order his immediate release from prison, that is today.

[5] The case is closed.

Signed, dated and delivered at Ile du Port on 3 January 2014

D. Karunakaran
Acting Chief Justice