

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO63/2010**

**[2016] SCSC 667**

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**THE REPUBLIC**

Versus

**SONY PROSPER**

First Accused

**SONY DINE**

Second Accused

**MAXIME WILLIAM**

Third Accused

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Heard:

Counsel: Mr. Hemanth Kumar M. for the Republic

Mr. Elvis Chetty for First Accused

Mr. Nichol Gabriel for Second Accused

Mr. Kieran Shah for Third Accused

All Three Accused – Present

Delivered: 22 September 2016

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**RULING**

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**Robinson J**

[1] This ruling on submission of no case to answer concerns only the Second and Third Accused.

- [2] Second and Third Accused have pleaded not guilty separately to the charge that at Mont Plaisir, Anse Royale, Mahe, on 25 September, 2010, with common intention, were found in possession of controlled drug namely 395.8 grams of cannabis herbal material which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purposes of trafficking contrary to section 5 read with section 14 (d) and section 26 (1) (a) of the Misuse of Drugs Act CAP 133 and the second Schedule referred thereto in the said Act.
- [3] In the alternative to the said charge, Second and Third Accused have pleaded not guilty separately to the charge that on 25 September 2010 with common intention aided and abetted First Accused to give administer transport send deliver or distribute 395.8 grams of cannabis herbal material contrary to section 27 (a) read with section 2 and section 5 and section 26 (1) (a) of the Misuse of Drugs Act CAP 133 read with section 23 of the Penal Code and punishable under section 29 (1) of the Misuse of Drugs Act CAP 133 and the Second Schedule referred thereto in the said Act.
- [4] After the close of the prosecution case, Learned Counsel for Second and Third Accused, respectively, have made a submission of no case to answer on behalf of their respective Accused.
- [5] I have considered the submissions of counsel with care. The court has to look for the existence of evidence capable of establishing the charge prima facie.
- [6] When one considers the evidence in this case it cannot be said that the evidence of the prosecution witnesses has been so discredited by cross examination that no reasonable tribunal could convict. It cannot be said that there is no evidence to prove the essential elements of the offence charged.
- [7] The prosecution evidence is that on 25 September, 2010, at about 6 p.m., Second Accused was observed just inside the entrance to an alley. Second Accused could not see who was observing him because he was facing the opposite direction facing the sea. After that a taxi entered the alley which Second Accused standing near the road followed. Third Accused was the driver of the taxi. The taxi was then seen coming out of the alley with Second Accused in the passenger seat. Second Accused was the same man who had been observed in the alley following the taxi. The taxi turned onto the road and headed


towards the sea, and shortly afterwards it stopped. First Accused emerged from the bush with a plastic in his hand. The man got in the taxi.

[8] There was communication between the National Drugs Enforcement Agency (herein the "NDEA") agents, the prosecution witnesses, at the scene. As the NDEA jeep was coming up the road towards Mont Plaisir, the taxi performed a U-turn where there use to be a "coconut factory". The NDEA jeep, following the taxi, sounded its horn to get the taxi to stop. Agent Kenneth Joseph stepped onto the road in front of the approaching taxi displayed his badge and drew his pistol and pointed it at the driver in an attempt to get it to stop. The taxi came to a stop close to agent Kenneth Joseph. First, Second and Third Accused were in the taxi. First Accused was sitting in the rear seat of the taxi. Agents Berard Hoareau and Kenneth Joseph saw First Accused throwing a red plastic out of the window of the taxi. First, Second and Third Accused were told to get out of the taxi. Agent Kenneth Joseph picked up the plastic which had landed in the gutter. Agent Kenneth Joseph opened the plastic. According to the prosecution evidence, the exhibits, including the herbal material, suspected to be controlled drugs, found in the red plastic, were shown to First, Second and Third Accused and the agents present at the scene. First, Second and Third Accused were arrested, cautioned and their constitutional rights read to them.

[9] According to the prosecution evidence upon analysis the herbal material was cannabis and was found to weigh 395.8 grams.

[10] On a consideration of the evidence, the court is satisfied that the prosecution has made out a case sufficiently to require the Second and Third Accused to make a defence. Accordingly there is a case to answer by the second and third Accused.

Signed, dated and delivered at Ile du Port on 22 September 2016

  
Fiona Robinson  
Judge of Supreme Court

