

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Appeal No: 26 of 2016**

**[2017] SCSC 155**

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**DARREL JAMES**  
Appellant

Versus

**THE REPUBLIC**

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Heard:

Counsel: Mr. Nichol Gabriel for the Appellant  
Mr. Khalyaan Karunakaran for the Respondent

Delivered: 21<sup>st</sup> of February 2017

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**JUDGMENT**

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**Seegobin Nunkoo J**

- [1] The Appellant was charged of driving a motor vehicle with alcohol concentration above the prescribed limit contrary to regulation 3(1) and 9(1) of the Road Traffic (sober driving) Regulations 1995 (SI 109 of 1995) and punishable under section 24(2) of the road traffic Act Cap 206.
- [2] The accused pleaded guilty.
- [3] He was sentenced to pay a fine of Rs 8000.00 under section 24(2) of the Road Transport

Act and his licence was suspended and he was further disqualified from obtaining a licence for six months.

[4] The Appellant grounds of appeal are:

1. The sentence of suspension of the driving licence of the Appellant, imposed by the Learned Magistrate, is manifestly harsh, excessive and wrong in law.
2. The Learned magistrate erred in suspending the driving of the Appellant without considering the special reasons as to why the driving licence of the Appellant should not be suspended.
3. The fine of Rs 8000.00 imposed is manifestly harsh and excessive and wrong in principle.

[5] The court did take note of the fact that the appellant in this case had pleaded guilty on the first opportunity thereby saving the time of the court and that he was a first offender. He apologized to the court and also stated that he was the only driver in the family and drove to his children to school and his workplace was quite far from the school.

[6] Learned Counsel for the Appellant submitted that the law was not applied correctly to this case in so far as the Appellant was charged under 3(1) and 9(1) of the Road Traffic (sober driving) Regulations 1995 ) SI 109 of 1995 and punishable under section 24(2) of the road traffic Act Cap 206. He submitted that Section 24(2) does not provide for suspension. It is either fine or imprisonment or both.

[7] *Section 24 (2) is reproduced below:*

*A person guilty of an offence under this Act shall be liable on conviction to imprisonment for a period not exceeding two years or a fine not exceeding Rs 10,000.00 or to both such imprisonment and fine. Section 24 (2) is reproduced below:*

[8] It was not proper for the Court to impose a sanction under Section 27 specially when the Appellant pleaded guilty and was unrepresented.

[9] *Section 27 provides:*

*Any court before whom a person is convicted of any offence under this Act or any offence in connection with the driving of a vehicle-*

*(a) may, if the convicted person holds a drivers licence, suspend his licence for any specified period, and, where the court thinks fit, declare such person to be disqualified from obtaining a licence for any further period after the expiry of the licence*

[10] It is not being disputed that disqualification under Section 27 cannot be imposed.

[11] It is Learned Counsel's submission that had the Appellant been told that his licence was going to be suspended under Section 27 of the Road Transport Act then he would have re-considered his plea or might have decided to seek the advice of a counsel.

[12] *Regulations 3(1) and 9(1) read as follows:*

A person whose breath, blood or urine contains a proportion of alcohol which exceeds the prescribed limit is unfit to drive or to be in charge of a motor vehicle and shall not drive or be in charge of a motor vehicle on a road.

A person who contravenes regulation 3(1) is guilty of an offence and liable on conviction to the penalty under section 24(2).

[13] Counsel for the Republic was invited to make submission as to why Section 27 was not included in the charge sheet and the consequences of this section not explained to the Appellant by the Court.

[14] It was submitted that the Learned Magistrate was within her powers to impose the sanction under Section 27.

[15] I agree with Learned Counsel for Appellant that the sentence was harsh and excessive. I consider the fine of Rs 8000.00 imposed the lower court adequately meet the ends of justice in view of the mitigating factors recorded by the Learned Magistrate.

[16] The sentence as regards the disqualification is quashed the more so as it was not included in the charge sheet. I consider that an accused party must be fully informed of the offence of which he is being charged and also as to the consequences that flows from his guilty plea.

[17] I find guidance for this in what was said by Allcar Chief Justice in the case of *ETHEVE VS REPUBLIC S.C.SC 15/06*,

“I believe in every case where legal and unrepresented person appears before Court and wishes to tender a plea of guilt to an offence, the presiding officer is under a duty to inform the person about the consequences of the plea especially if he is minded to impose a custodial sentence or if there are mandatory sanctions that will necessarily follow...”

[18] There is a duty to explain the consequences of a guilty plea; this is noteworthy. I do not find from the record that this was done.

[19] I therefore quash the sentence in respect of the disqualification of the driver’s licence. To that extent the appeal is allowed.

Signed, dated and delivered at Ile du Port on **21<sup>st</sup> of February 2017**.



Seegobin Nunkoo  
**Judge of the Supreme Court**