

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CN 02/2017

Appeal from Magistrates Court decision TE336/2016

[2017] SCSC 360

HAZEL LAFORTUNE

Appellant

versus

THE REPUBLIC

Heard: 06 April 2017

Counsel: Ms. L.Pool for appellant

Mr. K. Karunakaran, State Counselfor the Republic

Delivered: 13 April 2017

JUDGMENT

Vidot J

[1] The Appellant was charged with the offence of driving a motor vehicle with an alcohol concentration above the prescribed limit, contrary to Regulations 3(1) and 9(1) of the Road Transport (Sober Driving) Regulations 1995 (S.I 109 of 1995) of the Road Transport Act, Cap 206, punishable under Section 24(2) of the same.

[2] The incident happened on 19th May 2012 at Beau-Vallon, Mahe, when the Appellant who was driving vehicle registration No. S9349, was stopped by the Police. After a test of her

breath, the recorded alcohol content read 39 micrograms in 100 millilitres of breath exceeding the prescribed limit of 35 micrograms in 100 millilitres of breath.

[3] On the 03rd March 2017, the Appellant pleaded guilty to the charge and was accordingly convicted and sentenced. The Appellant was fined SR5000/- and her driving licence was suspended for 3 months.

[4] The Appellant now appeals against the sentence on the following grounds;

(1) That the sentence was;

- i. Wrong in law;
- ii. Wrong in principle;
- iii. Harsh and manifestly excessive in all the circumstances of the case.

(2) The Learned Magistrate failed to take into consideration the mitigating factors advanced in favour of the Appellant.

[5] The main gist of the grounds of appeal as per submission made by Ms. Pool, Learned Counsel for the Appellant is that Section 24(2) of the Road Transport Act provides for imprisonment or a fine or both in case of a conviction. She further argued that the Magistrate had no power to suspend the driving licence under Section 9(2) of the Regulations and that the power to suspend is only available if an accused has committed a 2nd offence within 6 months of the 1st offence as provided for under Section 3(1). In support of her arguments, Ms. Pool relied on the case of **Darrel James v Republic CN 26 of 2016**. She also argued that in all circumstances of the case the fine of SR5000/- is harsh and excessive.

[6] Mr. K. Karunakaran, Learned Counsel for the Republic conceded that the suspension of the license was wrong in law but maintained that the imposition fine was within the jurisdiction of the Magistrate and that the sum was not harsh and excessive in the circumstances.

[7] Ms. Pool had argued that the penalty section for a breach of Regulations 3(1) and 9(1) of the Road Transport (Sober Driving) Regulations 1995 (S.I 109 of 1995) of the Road Transport Act, Cap 206, is Section 24(2) which reads thus;

“A person guilty of an offence under this Act shall be liable on conviction to imprisonment for a period not exceeding 2 years or a fine not exceeding SR10,000/- or to both such imprisonment or fine”

[8] Section 27(1)(a) of the Road Transport Act gives the power to suspend a licence of a person convicted for any specified period. The section provides as follows;

(1) Any Court against 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 license, suspend his licence for any specified period, and, where the court thinks fit, declare the person to be disqualified from obtaining a licence for any further period after the expiry of a licence.

[9] Therefore, it cannot be disputed that the above referred section allows a disqualification or suspension of a licence. The Learned Magistrate in fact referred to that Section 27 (1) (a) when imposing suspension of the licence. The appeal in **Darrel James v Republic** (supra) was allowed because the Magistrate had not informed the accused who was unrepresented of the possibility of the suspension before he tendered a guilty plea.

[10] Ms. Pool further argued that Section 27 is subject to Regulations 9(2) of the Road Transport (Sober Driving) Regulations 1995, which reads as follows;

Subject to the Licences Act, where a person has been convicted of any offence under subregulation (1)(a) or (b), the court shall, on the conviction of the person of another offence under subregulation 1(a) or (b) within 6 months of being convicted of the first mentioned offence, unless for special reasons it thinks fit to order otherwise, suspend the driving licence of the person and disqualify the person from obtaining a driving licence for a period of not less than 12 months.

With respect to Ms. Pool, I don't share the view that a suspension of license cannot be imposed against a person who has been convicted if the person has not previously been convicted under subregulation 1(a) or (b). Regulation 9(2) makes it mandatory to suspend a licence in such circumstances unless special reasons exist. Section 27 on the other hand gives discretion to the Court to impose suspension of a licence. Therefore, I don't find the sentence to have been wrong in law and principle, since the Learned Magistrate was merely exercising that discretion.

[11] However, I do agree that the sentence was harsh and excessive in the circumstances of the case. I take note that it took 4 years before the case was filed in court and that the excess alcohol content was slightly above the prescribed limit. This being the case, it shall not be necessary to address the 2nd ground of appeal.

[12] I hereby allow the appeal by quashing the order of suspension of the driving licence of the Appellant but maintain the fine which I find was appropriate in the circumstances of the case.

Signed, dated and delivered at Ile du Port on 13 April 2017

M Vidot
Judge of the Supreme Court