

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: MA 07/2017**

**(arising in CO19/2017)**

**[2017] SCSC**

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**BETWEEN: SHINU JOSEPH NEDUMPARATH**

Applicantand

**THE REPUBLIC**

Respondent

**ARISING IN THE MATTER OF: THE REPUBLIC**

versus

**GCC EXCHANGE (SEYCHELLES) LIMITED**

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Heard: 11 July, 2017

Counsel: P. Pardiwalla for applicant

G. Thachett for respondent

Delivered: 24 August 2017

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**RULING ON MOTION**

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Dodin J

- [1]** The Applicant was initially jointly charged with GCC Exchange (Seychelles) Pty Limited, a company and 2 other individuals with 6 counts of failing to comply with provisions of the Anti-

Money Laundering Act (AML Act) CAP 251 as provided for by the AML Act or Regulations enacted thereunder. On the 22<sup>nd</sup> June 2017 the Republic withdrew the charges against all the individuals, including the Applicant but retained the charges against the company. By the time the charges were withdrawn against the Applicant, the Applicant had already moved the Court by filing a motion and affidavit in support for an order that money seized by the police under warrant on 14<sup>th</sup> March 2017 be returned to the accused company.

[2] The Republic object to the application for the return of the money raising three grounds:

- i. That the money seized from the company has nothing to do with the prosecution of criminal case CR19/2017;
- ii. That the motion is not maintainable in law and vague on facts and that there is no statutory provision enabling such a motion; and
- iii. That the affidavit of the Applicant is bad in law as there is no averment that he has been duly authorised or competent to swear the affidavit on behalf of the company.

[3] It is not in dispute that on the 14<sup>th</sup> March, 2017 at 01310 hours a search warrant was executed upon the premises of the company located on the first floor of Capital City Building in Victoria and the sums of Euro 308,650 and US \$ 385,620 were seized and taken away by the police. A copy of the search warrant issued under section 95 of the Criminal Procedure Code in compliance with form viii of the fifth schedule was produced by the Applicant:

#### **SEARCH WARRANT**

*(Section 95 of the Criminal Procedure Code).*

**To: The Commissioner of Police and all Police officers in the Seychelles Police Force.**

*Whereas it has been made to appear to me that the following article, namely **Large amounts of money unlawfully obtained/concealed and/or disguised Euro and USD /by/in respect of/which the offence of Alleged Money Laundering contrary to Sec 3(1)(c) of the Anti-Money Laundering Act** has been committed/which is necessary to the conduct of an investigation into the offence of **Alleged Money Laundering contrary to Sec 3(1)(c) of the Anti-Money Laundering Act** is in (here describe the building, ship, carriage, box, receptacle or place in which the article is deemed to be):*

***Concealed, kept, stored and or kept in the custody Mr Shinu N Joseph of GCC Exchange***

*This is to authorise and require you to enter upon and search the aforesaid building/ship/carrriage/box/receptacle/place and if found to seize the said article and carry it before a Court to be dealt with according to law.*

*You are further authorised to execute this search warrant at any hour.*

*Given under my hand this 14 day of 03 2017.*

*Chief Justice/Magistrate/ Registrar,  
Supreme Court, Justice of the Peace*

- [4] According to Inspector Flint Gappy the Investigating Officer and who swore the affidavit for the Republic and also questioned on personal answers, the money was seized upon a complaint made by the Financial Investigation Unit (FIU) and the money has been placed in the safe of the Central Bank of Seychelles where it is being kept.
- [5] The Applicant, Shinu Nedumpurath Joseph, also testified on personal answers that he is an employee of GCC Exchange Private Limited and he was dispatched to Seychelles as the then manager had left. He was issued with Gainful Occupation Permit on 1<sup>st</sup> March 2017 which he obtained on arrival in Seychelles on the 8<sup>th</sup> March, 2017. As per his affidavit, the money in question was daily transaction intake which could not at the time be banked as certain formalities were required to be completed by the Bank.
- [6] On the issue of whether the Applicant was authorised to swear the affidavit, I find that this question is not relevant to the motion at hand since the affidavit in support has not been sworn on behalf of the company but personally by the Applicant from whom the money was taken so that he could return the money to the company. I further note that at the time of filing the motion, he was one of the accused and hence an interested party in the proceedings at hand.
- [7] On the second issue as to such a motion can be made and can be competently dealt with by this Court section 98 of the Criminal Procedure Code is most enlightening with

regards to anything seized under a warrant of arrest issued pursuant to section 95 of the CPC:

*98. (1) When any such thing is seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.*

*(2) If any appeal is made, or if any person is committed for trial, the court may order it to be further detained for the purpose of the appeal or the trial.*

*(3) If no appeal is made, or if no person is committed for trial, the court shall direct such thing to be restored to the person from whom it was taken, unless the court sees fit and is authorised or required by law to dispose of it otherwise.*

**[8]** From reading the Warrant of Arrest and the Criminal Complaint dated 14<sup>th</sup> March, 2017, the money was clearly seized by the police investigating alleged money laundering by the accused persons contrary to section 3(1)(c) of the AML Act. Section 3 of the AML Act states:

*3. (1) A person is guilty of money laundering if, knowing or believing that property is or represents the benefit from criminal conduct or being reckless as to whether the property is or represents such benefit, the person, without lawful authority or excuse (the proof of which shall lie on him) —*

*(a) converts, transfers or handles the property, or removes it from the Republic;*

*(b) conceals or disguises the true nature, source, location, disposition, movement or ownership of the property or any rights with respect to it; or*

*(c) acquires, possesses or uses the property.*

**[9]** The accused persons were subsequently charged with reporting and training offences under section 15 of the AML Act read with section 53 of the same Act.

**[10]** Part III of the AML Act which established the FIU sets out all the powers and duties of the FIU and the procedures to be followed by the FIU in the exercise of its functions which includes the seizure of monies and other assets as well as having oversight of reporting entities. In fact it can be safely concluded that the FIU has vast powers to do

everything that the police could do and more and is more specialised in this field. Further, there is no evidence produced before this Court to show that the FIU has any interest in this case or the money seized under the search warrant. I am therefore led to the undeniable conclusion that the money was seized under warrant for the sole purpose of investigation in this case CR 19/2017 and that investigations have now concluded and charges levelled against the company.

**[11]** Pursuant to section 95 of the CPC and also reading section 98 of the of the same Act, such money seized under a search warrant must be brought before the Court giving the Court power to deal with the money as per the search warrant or as per section 98 of the CPC. There is no legal provision permitting the seizure and holding of money or other assets under section 95 by the police on behalf of the FIU or the Central Bank of Seychelles which have their own operating procedures.

**[12]** I therefore find that the money seized under the warrant of arrest was for the purpose of investigation of this case and the said money is not being kept in accordance with law. I further find as admitted by the prosecution that the money is not required for the prosecution of this case and that no charge has been levelled against the accused company in respect of the money. There is therefore no reason for the money to be retained until the conclusion of this trial. The motion is therefore granted.

**[13]** Consequently, I order that the sums of Euro 308,650 and US \$ 385,620 seized under warrant dated 14<sup>th</sup> March, 2017 and being kept at the Central Bank Building be returned forthwith to the accused GCC Exchange (Seychelles) Proprietary Limited located at Capital City Building in Victoria, Mahe, forthwith.

Signed, dated and delivered at Ile du Port on 24<sup>th</sup> August, 2017.

G Dodin

Judge of the Supreme Court