

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 715

In the matter between:

THE REPUBLIC
(rep. by Mr Joji John)

and

FONSEKAGE MAHESH C FONSEK
(rep. by Mr Joel Camille along with
Mr Nichol Gabriel)

1st Accused

R.W.SURESH KUMARA
(rep. by Mr Joel Camille along with
Mr Nichol Gabriel)

2nd Accused

Neutral Citation: The Republic v *Fonsek & Or* (CO43/2019) [2019] SCSC 715 (2 September 2019).

Before: Govinden J

Heard: 2 September 2019

Delivered: 2 September 2019

SENTENCE

Govinden J

[1] The convict Mr R.W. Suresh Kumara, being the skipper of the Foreign Fishing HIRUN PUTHA has pleaded guilty to fishing without a fishing vessel licence contrary to Section 11(1) as read with Section 58 of the Fisheries Act 2014 and punishable under Section 58(a) of the same Act.

[2] The particulars of the offence are that R.W. Suresh Kumara a Sri Lankan National being the Captain/Master of the foreign Fishing vessel HIRUN PUTHA which has not been licensed under Section 11 of the Fisheries Act 2014 whereby the said foreign fishing vessel HIRUN PUTHA was used for fishing in the Seychelles waters on the 3rd day of August 2019.

- [3] In his plea in mitigation made on his behalf his Learned Defence Counsel, the convict claimed that he had been a fisherman for the whole of his life and that he has two daughters in Sri Lanka one being 9 years old and the other 3½ years old. And that any incarceration will create great hardship to his young family. He also claimed that though he has admitted the commission of the offence he had ventured accidentally in Seychelles waters at the time of the said offence.
- [4] Learned Defence Counsel pleading leniency from this Court. In his submission the convict had pleaded guilty to the charge upon the first opportunity. He did so as soon as the charge was amended and according to learned Counsel this has not only saved the precious time of the Court but also have saved law enforcement authorities precious time and resources, as in his submission in these sort of cases there is heavy burden on state resources both during the investigation and prosecution.
- [5] It is the further submission of learned Counsel for the defence in mitigation that the convict in pleading guilty has shown remorse for committing the offence.
- [6] Learned Counsel submitted further that there is a settled pattern of sentencing in cases based on similar facts as the one before this Court. In that regards the learned Counsel referred to the following cases, Republic versus Ben Attoomani CR19/2019, Rep versus Djamel Eddine, Cr107/2015, Rep versus Koswata Thamal CR16/2019 all being sentences rendered by the Supreme Court.
- [7] According to the Learned Defence Counsel in those cases upon the convict pleading guilty, the Court had ordered for a fine to be paid, the foreign fishing vessel to be forfeited to the state and as the fine could not be met by the convict for the fine to be levied from the proceeds of the sale for the foreign fishing vessel.
- [8] Learned Counsel submitted that as part of the sentences in those cases this Court had also ordered that the convict be declared as a prohibited immigrant and for him to be deported to his country of origin under the provision of the immigration degree.

[9] I have considered the mitigatory issues raised by Learned Counsel in favour of the convict. I also considered the pattern of sentences rendered by this Court in similar cases in the past. I have also brought to my mind consideration relating to the facts in circumstances of this case.

[10] In so doing I note that the convict is the first offender. I note further that he has pleaded guilty and have saved the precious time of the Court, the Police, the Prosecution and other State Agencies involved in this case. I note further the remorse shown by the convict as a result of the commission of this offence.

[11] I have further referred to the sentences rendered by the Supreme Court in similar cases as the one which is before this Court. Bearing all this in mind I feel that there will be no need to depart from the established pattern of sentencing rendered by this Court in cases based on similar facts.

[12] I will therefore sentence the convict as follows:-

(a) He shall pay a fine of Rs2000/-.

(b) I order the forfeiture of the vessel HIRUN PUTHA, it will be forfeited to the Republic of Seychelles in pursuant to Section 70(a) of the Fisheries Act.

(c) I order that the fishing gears of the fishing vessel HIRUN PUTHA to be also forfeited to the Republic of Seychelles in pursuant to Section 70(a) of the Fisheries Act.

(d) I order the sale of the fishing vessel HIRUN PUTHA and that of it fishing gear.

(e) The sale shall be effected by tender and the fishing vessel and its gear shall go to the highest bidder of which bids shall not be lower than the price valued by the valuer Mr Idney Basset in this case.

(f) The fishing vessel has been valued at SR769,000 and its gears at SR85,853.

(g) In view that it is apparent that the convict has no means to pay the fine I order that the fine be levied from the sale of the fishing vessel and its gear.

(h) I further recommend that the convict be declared as a prohibited immigrant in pursuant to the provisions of the Immigration Degree and that he be further repatriated to his country of origin as soon as possible on this status.

[13] I sentence him accordingly.

Signed, dated and delivered at Ile du Port 2 September 2019

Govinden J