

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 24
CO 68/2019

In the matter between:

THE REPUBLIC
(rep. by Ananth Subramaniam)

Prosecution

and

NURDIN MASHED KAMBA
(rep. by Clifford Andre)

Accused

Before: Burhan J
Heard: [12 December 2019]
Delivered: [17 January 2019]

SENTENCE

BURHAN J

[1] The convict Nurdin Mashed Kamba was convicted on the following charge on his own plea of guilt.

Count 1

Importation of a quantity of 627.45 grams of a controlled drug namely Cocaine having an average Cocaine content of 317.49 grams, contrary to section 5 of the Misuse of Drugs Act 2016 (MODA 2016).

[2] Learned Counsel for the convict Mr. Andre, made a plea in mitigation on behalf of the convict thereafter. The main grounds urged by learned Counsel were that the convict had pleaded guilty at the 1st opportunity which is a mitigating factor as per MODA 2016. He further submitted that his client on being arrested had fully co-operated with the officers

of the Anti- Narcotics Bureau (ANB) in respect of the controlled delivery and the reason for not arresting the “big fish” (the main culprit) was due to the ANB officers aborting the controlled delivery and not the accused. He also referred to the case of Marcus Da Silva Reis 2019 SCSC 1037 where the pure content of the imported controlled drug namely Cocaine was 545.04 and the sentence imposed was a term of 6 years imprisonment. He moved Court that as the pure quantity in this case was lesser than 545.04 grams his client be given a lesser sentence. He further submitted that the convict was 29 years of age and had done the illegal act of importation for monetary gain, due to financial difficulties he was facing at the time. He further submitted that the convict was to be payed a sum of US dollars 2500 for his part in the importation of the controlled drug.

[3] On the facts before Court, I am satisfied that the convict has expressed remorse and regret at the incident by pleading guilty, thereby expecting leniency from Court. He is a first offender. In regard to the quantity found in his possession at the time of importation, this Court is of the view that as the quantity is in excess of 250 grams, the offence is an aggravated offence. It is also apparent from the plea in mitigation that the controlled drug brought into the country was not for the personal consumption of the accused. This further aggravates the offence as the controlled drug was being brought for more sinister purposes than that of consumption by the convict himself. Therefore, even though the quantity is less than that of the Reis case, the fact that it is over 250 grams and not for personal consumption are sufficiently aggravating factors to maintain the said sentence.

[4] Having considered all the aforementioned acts in mitigation, the fact he is a first offender, the total quantity of controlled drug 317.49 and giving due consideration to his plea of guilt, which warrants a decrease in the recommended sentence, I proceed to sentence him as follows.

On Count 1 to a term of 6 years imprisonment.

[5] The convict is not entitled to remission due to the aggravated circumstances of the case.
Time spent in remand to count towards sentence.

Signed, dated and delivered at Ile du Port on 17 January 2020.

M Burhan J