

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 96
CO18/2019

In the matter between:

THE REPUBLIC
(rep. by Chinnasamy Jayaraj)

Republic

and

PERCY CHANG-TAVE
(rep. by Anthony Juliette)

1st Accused

NATASIA CHANG-TAVE
(rep. by Joel Camille)

2nd Accused

Presently between:

CM120/19

PERCY CHANG-TAVE
(rep. by Anthony Juliette)

1st Applicant

NATASIA CHANG-TAVE
(rep. by Joel Camille)

2nd Applicant

and

THE REPUBLIC
(rep. by Chinnasamy Jayaraj)

Respondent

Neutral Citation: *Chang Tave v Republic* [CO 18/2019 & CM 120/19] [2020] SCSC 96 (11 February 2020)

Before: Burhan J

Summary: Application dismissed. This Court finds that the Applicant has not proved to the satisfaction of this Court that proceeding in the main criminal trial would cause irreparable harm to the Applicant, nor that the Applicant's prayer to the Constitutional Court, if granted, would substantially affect the final result of the case.

Heard: 5 December 2019

Delivered: 11 February 2020

ORDER

Application dismissed.

RULING ON MOTION

BURHAN J

- [1] This is a Ruling on a Motion filed by the Applicant dated the 5th day of December 2019, seeking for an order of stay of proceedings in the main criminal trial in this case CR18/2019, until conclusion and determination of the pending Constitutional Court case bearing number CC 13 of 2019 filed by the Applicant and two others.
- [2] The Applicant stands charged on several counts in the criminal matter before this court CR 18/2019, for the offences of importation and trafficking in a controlled drug. As per the affidavit of the Applicant, the Applicant and the other Accused in CR18/2019 have filed a case before the Constitutional Court numbered CC 13 of 2019, challenging the constitutional validity of their continued detention and praying that the Constitutional Court grant them bail.
- [3] The Respondent in the present application argues that this application is not sustainable and should be dismissed on the following grounds:
- (i) That there is a strong likelihood that the constitutional case would be disposed of by the Constitutional Court before the trial takes place as the trial dates are set from 11th to 19th May 2020.
 - (ii) That irrespective of the outcome in Constitutional case, the outcome would not have any bearing or nexus on the trial being carried on.
 - (iii) That the Constitutional Court has not stayed the trial by this Honourable Court.

(iv) That the Application has no merits and is unsustainable.

[4] The court found in *Mein v Chetty (No 1) (1975) SLR 184* that it has an inherent power to stay proceedings to stop any abuse of the processes of the court. In *Seychelles National Party v Aglae SCC 7/2006, 27 March 2007*, the court held that there must be a legal basis for the court to grant a stay of proceedings, and further, that a stay may be granted as a temporary suspension of execution of proceedings pending the hearing of an appeal, or as a suspension of a case pending a court order.

[5] The constitutional matter has been set for hearing on 18th February 2020, well before the dates set for hearing of the main criminal case which dates are 11 to 19th May 2020. I therefore agree with Learned Counsel for the Respondent that there is a strong likelihood that the constitutional case would be disposed of by the Constitutional Court before the trial of the criminal case CR 18/2019 takes place.

[6] I further observe that in the pending constitutional matter, the Applicants have challenged their continued detention and move for the granting of bail on the basis that the rights of the child have been affected by the remand of the parents. It is the view of this court that the outcome of the constitutional matter in respect of the release of suspects on bail, would not have any bearing on the charges brought in the trail of the criminal case before me. Whether or not the Constitutional Court determines that the Applicant and her co-Accused should be granted bail, the trial would still proceed and such determination by the Constitutional Court would have no bearing on the final outcome of the criminal case.

[7] It was the view of the court in the case of *Government of Seychelles and Ors v The Seychelles National Party & Ors* (Application No. MA 34 & 35 of 2014 arising in SCA CP No. 04 of 2014) that an interlocutory order contemplated by section 12(2) of the Courts Act, is generally intended to last for a limited period, until the judgment concerning the issues before the court and the rights of the parties are determined. Such interlocutory stay orders are necessary to prevent irreparable harm from occurring to a party to the proceedings or property, during the pendency of a law suit. Further, the Applicant has failed to satisfy this court that the prayer to the Constitutional Court, if granted, would substantially affect the final result of the case. While the aforementioned

provision contemplated in this case relates to stay of proceedings in civil matters, the same principle applies in criminal matters.

[8] I further observe that the other issue before the Constitutional Court is in respect of the docket containing the statements of witnesses whom the prosecution relies on being handed over to the trial judge. It is the contention of the Petitioners in the said constitutional case that this would create bias in the mind of the trial judge, resulting in an unfair trial to the accused. However, this is a common occurrence in most jurisdictions and does not affect this trial only. If learned Counsel for the Applicants contention is accepted, not only this trial but all criminal trials in the Supreme Court of Seychelles would have to be put on hold, till the Constitutional Court decides this issue, which is not acceptable. Further if such stay of proceedings in all pending trials are given, the accused constitutional right to a fair trial within a reasonable time would be affected. I therefore reject the application for stay of proceedings on these grounds.

[9] After having carefully scrutinized the affidavit and supporting submissions and attachments in support of this Application, this Court finds that the Applicant has not proved to the satisfaction of this Court that proceeding with the criminal trial on the dates already referred to herein would cause irreparable harm to the Applicant, nor that the Applicant's prayer to the Constitutional Court, if granted, would substantially affect the final result of the case.

[10] I accordingly dismiss this Application.

Signed, dated and delivered at Ile du Port on 11 February 2020.

Burhan J