

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 171
CO 48/2019

In the matter between

THE REPUBLIC
(rep. by Ananth Subramanian)

and

1. MYRA JEAN

2. MERYL PADAYACHY
(rep. by Anthony Derjacques)

Neutral Citation: *R v Jean & anor* (CR 48/2019) [2020] SCSC 171 (2 March 2020).
Before: Twomey CJ
Summary: Issuing cheque without any provision contrary to section 299 A (1) (a) of Penal Code- sentence- first offender-
Heard: 10 February 2020
Delivered: 2 March 2020

ORDER

Each convicts is sentenced to pay a fine of SR 20, 000/- and in default of payment of the fine each be imprisoned for a period of 6 months. The fine is to be paid on or before 30 April 2020. Out of the fine the sum of SR30, 000 is to be paid to the complainant, Jerry Morin as compensation.

SENTENCE

TWOMEY CJ

[1] The two convicts were charged with issuing a cheque without any provision contrary to section 299 A (1) (a) read with Section 22 (a) of the Penal Code and punishable under the same.

- [2] The particulars of the offences are that, the convicts being partners and trading in the name of Petit Papillon of OJ Mall, Market Street, Victoria, on the 5 March 2018 at Victoria, Mahe issued Mauritius Commercial Bank (MCB) cheque bearing no. 000108 pertaining to the account of Petit Papillon, account number 000505323 of MCB, Victoria, Mahe, for the sum of SR500,000 to one Jerry Morin, without any sufficient provisions in the bank resulting in the said cheque returned for insufficient funds.
- [3] The two convicts pleaded guilty to the charge and were convicted of the same.
- [4] The facts of the offence were outlined by Counsel for the Republic and were accepted by the convicts. The two convicts, as business partners trading in the name of Petit Papillon in Market Street, chose to rent out premises belonging to one Jerry Morin at ex Flamboyant discotheque and entered into a lease agreement with him for this purpose. On 5 March 2018, they jointly issued a cheque pertaining to Petit Papillon's bank account at the MCB in the sum of SR 500,000 representing rent and a deposit for the lease agreement. The cheque was presented by Mr. Morin at the bank on 19 March 2018 and was dishonoured as there were insufficient funds in the account. The two convicts were subsequently charged with the offence as above.
- [5] A Probation Report was requested to assist the court in its sentencing duty and the same was provided by the Probation Office. In that report, the Probation Officer states that the First Convict is thirty years old with two children aged three years and three months. She is a first time offender and is currently unemployed. She had together with her sister wanted to expand her business and had applied for a loan for that purpose. Anticipating the success of the loan application they had issued a post-dated cheque to the owner of the premises to be leased. The application had fallen through and hence the offence committed.
- [6] The second convict is twenty-five years old with two children aged four years and six months. She is currently working as a manager at Falcon Insurance Company. She corroborates her sister's narrative of the incident. They were to pay SR 100, 000 monthly for rent and renovate the building at their own expense and applied for a loan form MCB for this purpose. They did not deal with the complainant directly but with his secretary.

They had told the secretary not to present the cheque until their loan was approved. However, the cheque was banked.

[7] Both accused are contrite and express their intention never to get involved in business again. They apologise to the complainant and hope they will be able to pay him compensation

[8] It is my view that when passing sentence in this case the Court has to consider a sentence which will ensure that the convicts do not repeat such or similar offences in the future.

[9] Keeping in mind all of those considerations and bearing in mind the substantial amount for which the cheque was made out for, I am of the view that in this case a fine will meet the requirements of justice. The matter of any debt or damage to the complainant will have to be taken up in the civil courts.

[10] I therefore sentence each convict to pay a fine of SR 20, 000/- and in default of payment of the fine each be imprisoned for a period of 6 months. The fine is to be paid on or before 30 April 2020. Out of the fine the sum of SR30, 000 is to be paid to the complainant, Jerry Morin as compensation.

[11] The convicts have the right of appeal against both conviction and sentence within thirty working days of this order.

Signed, dated and delivered at Ile du Port on 2 March 2020.

Twomey CJ