

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 330

Cr. No 23/2020

In the matter between

THE REPUBLIC

(rep. by Joshua Revera)

And

RAMESH NILANGA

(rep. by Clifford Andre)

Neutral Citation: *R v Nilanga* Cr.23/2020) [2020] SCSC 330 (22 June 2020).

Before: Twomey CJ

Summary: fishing without a foreign vessel licence - guilty plea-mitigation

Heard: 8 June 2020

Delivered: 22 June 2020

ORDER

The accused is fined SR400,000. SR100,000 is to be defrayed from this amount for the expenses incurred by the State for maintaining the crew. If the SR 400,000 is not paid by the end of July 2020, the vessel is to be forfeited to the State in lieu of payment for the fine.

SENTENCE

TWOMEY CJ

[1] The convict has pleaded guilty to using a foreign fishing vessel which is not licensed contrary to section 11(1) of the Fisheries Act 2014 as amended (the Act), for fishing in Seychelles waters contrary to section 58 of the Act and punishable under section 58(a) of the Act. The particulars are that on the 13th day of March 2020, in Seychelles waters at a

position of 85 nm ESE of the south point of Mahé, Seychelles, the convict, a Sri Lankan national, being the skipper/master of the fishing vessel “Sampath” used the said fishing vessel that was not licensed or authorised for fishing in Seychelles waters.

- [2] A Seychellois surveillance air force aircraft was conducting patrols when it spotted the fishing vessel. The occupants of the aircraft observed the vessel, which was without a flag, actively fishing in Seychelles waters. The coast guard patrol boat was alerted, deployed and intercepted the fishing vessel. The boarding team, found a crew of seven on the boat including the master who were all Sri Lankan nationals. They also found fishing gear, water, food, fuel and fresh fish in the storage compartment of the boat. The crew members were all arrested and brought to St. Anne Island where they were checked by the health authorities and later detained by court order. Six of the crew members were subsequently released without charge. The fishing vessel measuring 14.5 feet, the fresh fish and the fishing gear were seized.
- [3] The value of the fishing vessel is set at SCR700,000, and the government of Seychelles has expended SR100,000 to maintain the seven crew members thus far. The convict accepts all these facts but states that the value of the vessel is much less in Sri Lankan terms.
- [4] In his plea of mitigation, the convict, aged 33, claims that he is a first time offender and that he is deeply remorseful for his actions. He is married with two children aged 10 and 8 years old and is the sole breadwinner of his family.
- [5] Counsel for the Republic has stated that the vessel is of a length overall not exceeding 24 meters and the offence conducted with such a vessel attracts a fine of not less than SCR2, 500,000 under section 58 of the Act.
- [6] In *Republic v Fonsek & Anor* (CO 43/2019) [2019] SCSC 715 (02 September 2019), the Court recognised that there is an established pattern of sentencing in such cases given the constraints of the provisions of the Fisheries Act: a fine and the forfeiture of the vessel to the State.

[7] However I do note that in *Republic v Attoomani* (CR 19/2019) [2019] SCSC 584 (15 July 2019), the Supreme Court in similar circumstances stated that:

“In Poonoo v Attorney General (2011) SLR 423 the Court of Appeal reiterated that sentencing is an intrinsic judicial power involving the human deliberation of the appropriate conviction to be given to a particular offender in the circumstances of the case. In line with that authority therefore, I wish to impose the sentence I find appropriate in this case.”

[8] In this regard, I take into account the plea in mitigation by Learned Counsel for the accused and the remorse shown by the accused. He has also indicated that the owner of the boat is willing to pay the fine to be imposed by the Court in this case. He has pleaded with the court not to forfeit the vessel.

[9] I note before proceeding any further that it is not contested that the boat’s owner is not the convict. I also note that the exemptions to forfeiture as set out in the Criminal Procedure Code and as explained in the case of *Republic v Tarani & Ors* (CM 25/2020 (arising from CO 25/2016)) [2020] SCSC 290 (17 June 2020) are not applicable in the present case as forfeiture at the discretion of the Court is expressly provided for by section 70 of the Act.

[10] Counsel for the Republic has not commented on the forfeiture discretion as provided for by section 70 (1) of the Act.

[11] In the circumstances, I sentence the accused to a fine of SCR400,000. SR100, 000 is to be defrayed from this amount for the expenses incurred by the State for maintaining the crew. If the SR 400,000 is not paid by the end of July 2020, the vessel is to be forfeited to the State in lieu of payment for the fine.

[12] I further recommend that the convict be repatriated to his country of origin or residency as a prohibited immigrant as soon as is reasonably practicable unless the fine as ordered is paid and he be allowed to leave on the vessel.

[13] The convict has a right of appeal against the conviction and sentence in this case.

Signed, dated and delivered at Ile du Port on 22 June 2020

Twomey CJ