

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 421
CO47/2018

In the matter between:

THE REPUBLIC

(rep. Chinnasamy Jayaraj)

Republic

and

CHRISTOPHER FREMINOT

(rep. by Nichol Gabriel)

1st Accused

RICHARD LESPERANCE

(rep. by Alexia Amesbury)

2nd Accused

Before: Burhan J

Heard: [27th May 2020, 05th June 2020 and 15th June 2020.]

Delivered: [10th July 2020]

RULING

BURHAN J

[1] I have considered the submissions made by learned Counsel Mr. Gabriel and Mrs Amesbury on behalf of each of the accused at the close of the prosecution case, in regard to the contention that both the accused have no case to answer. I have also considered the submissions of learned Counsel for the prosecution Principal State Counsel Mr. Chinnasamy Jayaraj in reply to same.

[2] Both the aforementioned accused have been charged as follows:

Count 1

Importation of a controlled drug in contravention of the Misuse of Drugs Act 2016 contrary to and punishable under section 5 read with section 48(1) (a) and also punishable under the second schedule of the Misuse of Drugs Act.

Count 2

Conspiracy to import a controlled drug contrary to section 16 (a) and read with section 5 and section 48 (1) (a) of the Misuse of Drugs Act 2016 and punishable under second schedule of the said Act.

Count 3

Trafficking in a controlled drug in contravention of the Misuse of Drugs Act 2016 and contrary to section 16 (a) read with section 2 of the Misuse of Drugs Act 2016 and punishable under second schedule to the said Act.

Count 4

Conspiracy to commit the offence of trafficking in a controlled drug contrary to section 16 (a) read with section 7 and read with section 2 of the Misuse of Drugs Act 2016 and punishable under the second schedule to the said Act.

[3] *Archbold in Criminal Pleadings Evidence and Practice 2012 Edition 4-363* sets out the principle in a no case to answer application.

“A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict”

[4] In the case of *R vs. Stiven 1971 SLR 137*, it was held what court has to consider at the stage of no case to answer is whether:

- a) *there is no evidence to prove the essential elements of the offence charged.*
- b) *whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it.*

[5] The main contentions of learned Counsel on behalf of the accused are that:

- a) There was nothing to link the accused to the controlled drug which drug was sent by DHL delivery to one Brent Potret and not to either of the accused.
- b) There exists no forensic evidence linking either of the accused to the controlled drugs produced in Court.
- c) There is a discrepancy in the number of tablets retrieved and produced in court.
- d) The controlled delivery was not done in accordance with the provisions contained in section 34 of the Misuse of Drugs 2016. This was fatal to the case of the prosecution.
- e) As the evidence in regards to the control delivery had not been obtained legally, it amounts to being "*The fruits from the poison tree*" meaning that evidence illegally obtained from a source is also tainted and should be disregarded.

[6] I have considered the evidence before Court led by the prosecution up to date. The prosecution called several witnesses namely Officers Egbert Payet, Officer Padayachy, Kerry Hoareau, Vicky Dacambra and Nicole Franchette all from the ANB (Anti Narcotics Bureau) and Julia Volcere the Government Analyst. Although there exists a few contradictions in the evidence of the prosecution, it cannot be said that the evidence of the prosecution witnesses have been totally discredited by cross examination. In regard to whether these contradictions are of a material nature is best decided, at the end of the case.

- [7] Further on consideration of the evidence of the prosecution witnesses in its entirety, it cannot be said that the evidence is manifestly unreliable nor could it be said that the prosecution has failed to prove an essential element of the offence. It also cannot be said that on considering the evidence of the prosecution as a whole that they have failed to establish a link between both the accused and the controlled drug even though the parcel was addressed to be delivered to one Brent Potret. As to whether the link between the controlled drug and both the accused has been established beyond reasonable doubt is a matter to be decided at the end of the case.
- [8] It is the contention of both learned Counsel that as the controlled delivery was not conducted in conformity with provisions of section 34 of MODA 2016 and lacked the necessary authorisation, the evidence in regard to the controlled delivery, is illegal tainted and should be disregarded and is not admissible. However the cases of *Khan v U.K (2001) 31 E.H.R.R. 1016* and *R v P [2002] 1AC 146* *R v Leatham 1861 8 Cox Cc 498 at p501* and *Kuruma, Son of Kaniu v R [1955] AC 197*, PC held that evidence illegally obtained is admissible. These cases were followed in the case of *Republic v Jean Adrienne & Anr [2015] SCSC 258* and the conviction entered was even upheld by the Seychelles Court of Appeal in *Jean Francois Adrienne & Another v R (Criminal Appeal SCA 25 & 26/2015) [2017] SCCA 25*. What court must consider when it analyses the said evidence is to make a judicial assessment of the impact of the admission of such evidence on the fairness of the proceedings *Archbold Criminal Pleading, Evidence and Practice 2012 15-464* i.e. whether the evidence gathered as a result of the failure to follow this procedural law, if admitted at the discretion of court would result in unfairness to the accused. It is however too premature at this stage to come to such a finding and it would be best to decide this issue at the conclusion of the case.
- [9] In regard to the discrepancy in the number of tablets in each of the containers, it is clear from the evidence and inspection of the controlled drug in court that during the packing unpacking and numerous counting processes during the analysis and the trial, several tablets had broken into halves and smaller fragments as the tablets were powdery in nature. This was further explained by the Government Analyst in her evidence under oath.

[10] In the light of the above findings by this Court, it cannot be said that there is no evidence to prove the essential elements of the offence charged. Further at this stage, it cannot be said that the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it. Therefore this court is satisfied that there is a prima facie case against both the accused in respect of the charges framed against them.

[11] This court therefore proceeds to call for a defence from both the accused in respect of all the charges framed against them.

Signed, dated and delivered at Ile du Port on 10th July 2020.


M Burhan J