

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 725

CR 25/2020

REPUBLIC

(rep. by Joji John)

versus

M A SHAN MADUSHANKA

(rep. by Clifford Andre)

Neutral Citation: *Republic v Madushanka* (CR 25/2020) [2020] SCSC 725 (5 October 2020).

Before: Dodin J.

Summary: Fishing without a foreign fishing vessel license

Heard: 30, 31 July, 11 & 17 August 2020

Delivered: 5 October 2020

ORDER

SENTENCE

DODIN J.

[1] The accused M A Shan Madushanka was convicted for the following 4 offences under the Fisheries Act:

Count 1 – Statement of offence

Using a foreign fishing vessel which is not licensed under Section 11 of the Fisheries Act, for fishing in the Seychelles waters contrary to Section 58 of the Fisheries Act as amended by Act 20/2014 read with

Section 69 of the same Act and punishable under Section 58 of the Fisheries Act, 2014.

Particulars of offence

M. A Shan Madushanka, a Sri-Lankan national being the Skipper/Master of the Sri-Lankan fishing vessel “SAMPATH’ bearing registration number IMUL-A-0911KLT and which has not been licensed or authorized under Section 11 of the Fisheries Act, used the said fishing vessel for fishing in the Seychelles waters on the 13th day of April 2020 at around 1442 hrs at in position 03’ 38’ 32” S 056 11’ 65”E approximately 33 NM North East of Denis Island, Mahe.

Count 2 – Statement of offence

Tampers or wilfully destroys, damages, renders inoperative or otherwise interferes with the vessel monitoring device or the vessel tracking device of a fishing vessel contrary to Section 64 (1) (c) of the Fisheries Act 2014 and punishable under Section 64 (1) of the Fisheries Act, 2014.

Particulars of offence

M. A Shan Madushanka, a Sri-Lankan national being the Skipper/Master of the Sri-Lankan fishing vessel “SAMPATH’ bearing registration number IMUL-A-0911KLT and which has not been licensed or authorized under Section 11 of the Fisheries Act, tampered or wilfully destroyed, damaged, rendered inoperative or otherwise interfered with the vessel monitoring device or the vessel tracking device of fishing vessel namely ‘SAMPATH’.

Count 3 – Statement of offence

Fails to supply information which is required to supply contrary to Section 64 (1) (h) of the Fisheries Act, 2014 and punishable under Section 64 (1) of the Fisheries Act, 2014.

Particulars of offence

M. A Shan Madushanka, a Sri-Lankan national being the Skipper/Master of the Sri-Lankan fishing vessel 'SAMPATH' bearing registration number IMUL-A-0911KLT and which has not been licensed or authorized under Section 11 of the Fisheries Act on the 15th day of May 2020 at Seychelles failed to supply information regarding the presence of the vessel SAMPATH in Seychelles waters on 13th April 2020.

Count 4 – Statement of offence

Fails to supply information which is required to supply contrary to Section 64 (1) (h) of the Fisheries Act, 2014 and punishable under Section 64 (1) of the Fisheries Act, 2014.

Particulars of offence

M. A Shan Madushanka, a Sri-Lankan national being the Skipper/Master of the Sri-Lankan fishing vessel 'SAMPATH' bearing registration number IMUL-A-0911KLT and which has not been licensed or authorized under Section 11 of the Fisheries Act on the 15th day of May 2020 at Seychelles failed to supply information regarding the missing of fishing gears in the vessel SAMPATH which was found at the time of interception of the said vessel.

[2] The convict is 30 years old. Lived with his mother who is bedridden and two sisters. He is the sole breadwinner in the family. Learned counsel moved the Court to impose a lenient sentence and to release the vessel.

[3] I have given careful consideration to the mitigating factors in this case. I also note that the amount of fish observed and retrieved from the vessel was very minimal. Section 58 of the Fisheries Act provides for a minimum fine of SCR 2,500,000 for the offence of fishing in Seychelles waters without a licence for a vessel which is not more than 25 meters in length. The “Sampath” is 14.5 meters in length. Considering the circumstances of this case, I find it fit to impose a sentence less than the prescribed minimum on the convict.

[4] I therefore impose the following sentences in respect of each conviction.

Count 1 – fishing without licence, a fine of SCR 350,000.

Count 2 – Tampering or wilfully destroyed, damaged, rendered inoperative or otherwise interfered with the vessel monitoring devices or the vessel tracking device of a fishing vessel a fine SCR 30,000

Count 3 - Failing to supply information which is required to be supplied,(presence in Seychelles waters) SCR 30,000

Count 4 - Failing to supply information which is required to be supplied (missing fishing gears) SCR 30,000.

Total fine SCR 440,000.

[5] Further and in compliance with section 67 of the Fisheries Act I find that the Government of Seychelles has spent the sum of SCR 55,080 for the upkeep of the convict until the conclusion of the case for which conviction has ensued. I find that that sum should be reimbursed to the Government. I therefore award the sum of SCR 55,080 to the Government of Seychelles as prayed.

[6] The convict shall pay the total fines and award within 30 days of today failing which the vessel may be seized and sold from which proceeds the fines and award shall be retrieved and the remainder shall then be paid to the convict.

Appeal against both conviction and sentence within 30 working days.

Signed, dated and delivered at Ile du Port Victoria on 5 October 2020.

Dodin J