

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 815...

CM24/2020

In the matter between:

THE REPUBLIC

(rep. by Mr G Thachett)

and

STEPHANE, MARTIAL MONDON

(rep. by Mrs Alexia Amesbury)

Accused

Neutral Citation: Republic v *Mondon* (CM24/2020) [2020] SCSC 815 (24th September 2020).

Before: Govinden J

Summary: Application for forfeiture of corpus delict; Section 153 of the Criminal Procedure Code (Cap 54)

Heard: 24th September 2020

Delivered: 30th October 2020

ORDER

GOVINDEN J

[1] The Applicant has by way of a Notice of Motion filed in pursuant to Section 153 of the Criminal Procedure Code (Cap 54) applied to this court for an order forfeiting to the Republic, the following boats of the Respondent. The boats were used to commit the offence for which the Respondent has been convicted and sentenced by this Court.

(1) The unregistered big boat appearing in the album of photographs, Exhibit P(12), on photographs no 21 and 22, which boat is being kept at the Ex-Coast Guard Jetty, Mahe and,

(2) The missing small boat, Mini Mahe, :Vey mon:, bearing registration no SZ1199 appearing in photo no 20 in Exhibit P (12).

The Applicant's case

- [2] The Motion is supported by the affidavit of Johnny Malvina, a Sub Inspector of Police being the head of investigation of the Anti-Narcotic Bureau (ANB) of the Seychelles Police Force. To establish the ownership of the vessels and the fact that they were used by the Respondent during the commission of the offence, the Applicant has made a number of averments relating to evidence arising out of the trial and ancillary applications made during the course of the trial.
- [3] It is the averments of officer Malvina that the Republic in CR44/2017, charged the Respondent along with other persons, for the offence of importation of a controlled drug, namely 33855.3 grams of cannabis resin in contravention of Misuse of Drugs Act, 2016 using two vessels belonging to Respondent.
- [4] According to him in an Affidavit dated 7th day of September, 2017 filed by Ryan Durup, in support of the motion to remand the Respondent in prison, at paragraph 11, it was stated that the investigations revealed that the Respondent instructed other to go and collect the drugs for him at the high seas, in an unregistered big boat belonging to him. At paragraph 14 of the said Affidavit, it was further stated that when the said big boat with drugs entered the Anse Royale bay, the Respondent accompanied by another persons, went to meet them in another small boat and that they both left to the shore with the drugs in the small boat. He further avers that two prosecution witnesses, namely Jude Beauchamp and Jude Labiche also testified to this fact and identified the photos of the boats involved, in their evidence before this Court.
- [5] He further deponed that during the course of investigations both boats, the unregistered big boat and the small boat – Mini Mahe “Vey Mon” bearing registration SZ 1199, belonging to Respondent and which were used in the commission of the offence, were seized by the Police and were kept at the Ex-Coast Guard Jetty, Mahe under Police custody. In the Affidavit of the Respondent dated 15th September 2017, filed along with

the motion for bail, at paragraph 3 and 12, it was admitted that the big unregistered boat was given to another suspect for the purpose of fishing. Further, at page 2 of the probation report dated 28th February, 2020, concerning Respondent, under the title – Employment History - the ownership of both boats were reported to be that of Respondent.

- [6] The deponent of the Applicant’s affidavit avers that the Respondent pleaded guilty to the charges on the 18th of February 2020 to the amended charge of importation of a controlled drug, namely 33855.3 grams of cannabis resin in contravention of Misuse of Drugs Act, 2016 on board, using two vessels belonging to the Respondent – 1st accused Stephan, Martial Mondon. It is further averred that he also admitted the facts of the prosecution including that of the two boats involved in the commission of the offence. According to him, this Court thereafter convicted the Respondent based on his plea and admission of guilty on the 18th of February 2020 and that the Respondent was sentence by this Court to 8 years imprisonment on the 3rd of April 2020.
- [7] Lastly, he avers that the Mini Mahe “Vey Mon” bearing registration SZ 1199, belonging to Respondent was missing from the Ex-Coast Guard Jetty since 22nd November 2017 and a Police search could not locate it so far.
- [8] On the basis, he prays that this Court forfeit to the Republic the boats of the Respondent, being the unregistered big boat and the missing small boat – Miin Mahe “Vey Mon”, upon its finding by the Police.

The Respondent’s case

- [9] On the other hand, the Respondent though he does not dispute having pleaded guilty to the offence he was charged with, contest the fact that the prosecution has managed to prove that the vessels belonged to him. According to his affidavit, the evidence adduced by the Republic is not enough to establish actual ownership.
- [10] According to the Respondent, despite the small boat having a registration number, the prosecution has made no efforts to look for evidence of registered ownership. He further

argues that since the small vessel has disappeared, this court cannot make an order on something that no longer exist.

[11] Lastly, the Respondent made reference to two previous cases where no forfeiture orders were applied for and made despite drugs having been seized on them. On the basis of these objections he prays that the Court refuse to grant the application for forfeiture as sought by the Applicant.

The Applicable Law

[12] The legal provision under which this application is made is found in Section 153 of the Criminal Procedure Code, which reads as follows;

Forfeiture.

153. In addition to any [sic] forfeiture specially provided for by this Code or any other law, the corpus delict when it is the property of the offender and all the things produced by the offence or which may have been used or were intended to be used for committing an offence, shall on the conviction of the offender become forfeited to the Republic.

Application and Analysis of the Applicable law

[13] This provision is operative upon the conviction of the accused person in a criminal trial. It applied to properties or the convict and all things produced by the offence or which may have been used or were intended to be used for the commission of the offence. If the prosecution proves these elements through a post-conviction application, then the “body of the offence” or corpus delict is subject to be forfeited to the Republic. Section 153(A)(1) provides for a mechanism that can be used by the Republic to ensure that such corpus is preserved, through an interim court order until the finalisation of the criminal trial.

[14] I have thoroughly scrutinized the content of the application and the affidavit in reply to the application. I have also considered closely the content of the submissions of both parties before the court, particularly on the issue of ownership of the two vessels. Having done so, I find that there exist overwhelming evidence that both vessels belong to the

Respondent. I am particularly perplexed that the Respondent would contest and deny their ownerships when he admitted that he was the owner of those vessel during the criminal trial. This is a case in which the record speaks for itself and a cursory look at the record should have convinced the Respondent of the futility of a contest of ownership. The affidavit of Johny Malvina is largely based on the criminal trial and other related applications of events that occurred and were recorded.

[15] Accordingly, I make an order forfeiting to the Republic, the following boats of the Respondent which were used for committing the offence for which the Respondent had been convicted and sentenced by this Court.

14.1 the unregistered big boat appearing in photographs No. 21 and 22 of Ext. P-12 Photo album and which boat is kept at the Ex-Coast Guard Jetty, Mahe, and

14.2 the missing small boat Mini Mahe, "Vey Mon" bearing registration SZ 1199 appearing in photograph No. 20 of Ext. P-12 Photo album, upon its finding by the Police.

[16] The Court further orders that all and any registrations of the vessels in the name of the Respondent be cancelled and the Republic of Seychelles be registered as their owners. In the event that the two vessel, be sold to any member of the public by the Republic following their forfeitures, the sale must be done by public auction and to the highest bidder.

Signed, dated and delivered at Ile du Port on 30th October 2020

Govinden J