

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2021] SCSC 67

CO 47/2018

In the matter between:

**THE REPUBLIC**

*(rep. by Chinasammy Jayaraj)*

**Republic**

and

**CHRISTOPHER FREMINOT**

*(rep. by Daniel Cesar)*

**1<sup>st</sup> Accused**

**RICHARD LESPERANCE**

*(rep. by Alexia Amesbury)*

**2<sup>nd</sup> Accused**

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**Before:** Burhan J

**Heard:** 27<sup>th</sup> May and 05<sup>th</sup> June 2020.

**Delivered:** 22 March 2021

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**SENTENCE**

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**BURHAN J**

[1] The aforementioned accused were 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 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 & section 48 (1) 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 with the Misuse of Drugs Act, 2016 and contrary to section 7 read with section 2 of the Misuse of Drugs Act, 2016 and read with section 22(a) of the Penal Code and punishable under Second Schedule of the Misuse of Drugs Act, 2016.

## **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 Second Schedule of the said Act.

[2] The controlled drug concerned in the said offence is 3,4methylenedioxyamphetamine The quantity taken into custody is 552.7 grams.

[3] After trial both accused were found guilty and convicted on all four Counts.

[4] At the request of learned Counsel a probation report was called and thereafter learned Counsel Mr. Cesar and Mrs. Amesbury made pleas in mitigation on behalf of the convicts. I have considered the facts contained in the probation report and the pleas in mitigation.

[5] According to the probation report, the first convict Christopher Freminot is 44 years of age. He has a background of studying electronics at the Seychelles Polytechnic but after working for a short time in the electronics field had ventured into the farming industry. It

appears he still maintains his innocence and has not expressed remorse or regret at what he has done. It appears further from the report that the first convict has a previous record of being convicted for the offence of Aiding and Abetting the Trafficking of a controlled drug. However the prosecution has not brought the details of this fact to the attention of court and therefore the procedure of informing a convict of his previous convictions could not be followed. He will therefore be treated as a first offender by this court considering this lapse on the part of the prosecution.

[6] I have considered the plea in mitigation made on his behalf by learned Counsel. I am aware the controlled drug concerned is a Class B drug. The convict has no children but is presently taking care of his aged father. It is to be noted that the recommended sentences apply only for offences of possession and trafficking and therefore learned Counsel for the convicts request that that the recommended sentences be applied, cannot be adhered to as the convicts have been convicted of additional charges of a more serious nature namely importation and conspiracy to import the controlled drug.

[7] Having considered the aforementioned facts, I am of the view that considering the seriousness of the charge of importation, a custodial term of imprisonment should be imposed on both convicts. I proceed to sentence the first convict Christopher Freminot as follows:

[8] Count 1- A term of four years imprisonment.

Count 2- A term of four years imprisonment.

Count 3- A term two years imprisonment.

Count 4- A term of two years imprisonment.

[9] Considering the nature of the charges and that they all arise from one transaction, I make order that all terms of imprisonment run concurrently. Time spent in remand to count towards sentence.

[10] I will now proceed to sentence the second convict Richard Lespearance. According to the probation report he is 38 years old, a first offender and was gainfully employed as a

clearing agent at the time of his arrest. He informs the probation that it was the first accused who had informed him to clear the parcel from DHL. He had treated the first convict as a client and done the clearing. He states he was unaware that the parcel contained controlled drugs but the evidence indicates, the parcel he attempted to clear was not in the name of the first convict and he was unable to produce the necessary documentation requested which had aroused the suspicion of the DHL officers. On being arrested however he had co-operated with the officers of the ANB in the arrest of the first convict Christopher Freminot. I am of the view that this is a very strong factor in mitigation.

[11] I have considered the plea in mitigation made on his behalf by learned Counsel. I am aware the controlled drug concerned is a Class B drug. The convict has two children aged 11 and 7 years. Although the recommended sentences do not apply to a charge of importation, having considered the aforementioned facts mainly the fact that his co-operation with the police led to the arrest of the first convict, I am inclined to treat the second convict in a more lenient manner.

[12] I proceed to sentence the second convict Richard Lesperance as follows:

Count 1- A term of eighteen months imprisonment.

Count 2- A term of eighteen months imprisonment.

Count 3- A term of twelve months imprisonment.

Count 4- A term of twelve months imprisonment.

[13] Considering the nature of the charges and that they all arise from one transaction, I make order that all terms of imprisonment run concurrently.

[14] Time spent in remand to count towards sentence.

Signed, dated and delivered at Ile du Port on 22 March 2021

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M Burhan J