

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 357
MC 66/2020

In the matter between:

THE GOVERNMENT OF SEYCHELLES
(rep. by Steven Powels)

Applicant

and

ANDREW MATHIOT
(rep. by Joel Camille)

Respondent

Neutral Citation: *Gov of Sey v Mathiot* (MC 66/2020) [2021] SCSC 357 (28th June 2021).

Before: Burhan J

Summary: The belief evidence of Mr. Hein Prinsloo can be accepted as it is supported by the evidence by affidavit of Sergeant Malvina and Sergeant Jean and the attached photographs on which grounds his belief evidence is based. In this instant case there exists more than prima facie evidence and I am satisfied that the Applicant has established on a balance of probability that the property constitutes benefit from criminal conduct and its value is over SCR 50,000.00. The Respondent has failed to give any credible explanation as to the origin of such an amount of cash and the explanation given by him for reasons contained herein are rejected. He has failed on a balance of probability to establish that the specified property is not from proceeds of crime.

Heard: 16th April 2021, 11th and 16th June 2021

Delivered: 28th June 2021

ORDER

Relief as claimed by the Applicant granted.

ORDER

BURHAN J

- [1] This is an application by the aforementioned Applicant seeking an interlocutory orders pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the Respondent from disposing of or otherwise dealing with whole or any part of the property namely SCR 83,817.00 (eighty three thousand eight hundred and seventeen) details set out in annexure A. The application also seeks an order pursuant to section 8 of the POCA appointing Mr. Hein Prinsloo to be receiver of the said property. It also sought that notice be served on the Respondent.
- [2] Accordingly notice was served on the Respondent and an entry of appearance was filed on behalf of the Respondent by Attorney at Law Mr. Joel Camille on the 14th of September 2020 and thereafter his reply affidavit was filed on the 29th of September 2020. The Applicant filed a detailed response affidavit dated 14th December 2020. Thereafter the matter was fixed for hearing and after hearing was concluded both parties' tendered submissions.
- [3] The law as contained in the section 4 of the POCA requires proof that:
- a) A person is in possession or control of –
 - (i) Specified property and that the property constitutes, directly or indirectly benefit from criminal conduct; or
 - (ii) Specified property that was acquired , in whole or in part , with or in connection with the property that directly or indirectly constitutes benefit from criminal conduct and
 - (b) The value of the property or the total value of the property referred to in sub paragraphs (i) and (ii) of paragraph (a) is not less than R 50,000.

- [4] It is apparent from the annexure A that the item sought to be forfeited is cash amounting to SCR 83, 817.00. There is no challenge from the Respondent regarding the value of the cash seized by the Officers of the ANB at the time of the raid on the premises referred to herein. Therefore the value as required under section 4 (b) POCA is established.
- [5] What is challenged by the Respondent is the contention of the Applicant that the money was proceeds from criminal conduct.
- [6] It is the contention of the Respondent as borne out by the facts set out in his affidavit that the Officers of the ANB had searched his parent's house at Belonie where he too lived, on the 21st of July 2020, alleging that they had information that there were controlled drugs on the premises. However no controlled drug was found but in a store where he stored his Pet bottles a sum of SCR 83, 817.00 was found. He further states in his affidavit that he had informed the officers that the money was from his Pet bottle redeeming business and money realized from the sale of fruit and vegetables he grew. The Respondent further states that his Pet bottle business has been going on for the past three years and that all collected Pet bottles are sold to one Mr. Leroy Ernesta. He further states in his affidavit that even on earlier occasions Officers of the ANB had raided his premises taken money into custody and not returned same. On all occasions nothing illegal had been found on him or in the premises.
- [7] The Respondent denies being involved in any criminal activity and states all his money has been from legal sources. The Respondent tendered photographs of his vegetable garden and banana plantation and copies of receipts issued to him by Mr. Leroy Ernesta for the money paid to the Respondent for the purchase of the Pet bottles. The Respondent in his evidence accepts that he had been arrested on numerous occasion between the period 2013 and 2019 for drug related offences but states that he was never convicted nor were any controlled drugs found at the time of the raid other than the cash in a sum of SCR 83, 817.00. It is also in evidence that large amounts of money had been recovered from his premises even on earlier raids.

- [8] I have considered the facts arising from the affidavits filed by both the Applicant and the Respondent, the documents attached to the said affidavits, the facts arising from the evidence led and the submissions of both parties.
- [9] It is apparent that during cross examination of the Respondent, it emerged that the receipt 773151 was dated 28th January 2020 whilst the next receipt 773152 was dated 1st December 2019. It is the contention of the Applicant that the subsequent receipt should either bear the same date as receipt 773151 or a subsequent date. It is clear that the receipts are not in chronological order and at least the issuer of the receipt should have been called to explain this discrepancy. However, the Respondent has failed to do so and the Respondent himself gave evidence but was unable to explain the discrepancy as the receipts were issued by one Leroy Ernesta. Further, during the raid conducted by Sergeant Dave Jean on the premises as borne out by the affidavit of Mr. Prinsloo there was no evidence of a collection centre for Pet bottles. His belief evidence is supported by photographs of the premises taken clearly indicate that no Pet bottles were found on the premises. The Applicant has also produced photographs HP2 showing the premises of a genuine Pet bottle redeem business. It is apparent on the comparison of photographs taken of the Respondent's Pet bottle redeem business premises when compared with photographs HP2, no evidence exists to indicate that there was a Pet bottle business being conducted on the premises on which the raid was conducted and the specified property recovered.
- [10] It is clear to this Court that there exists no evidence to support the contention of the Respondent that he was conducting a Pet bottle redeem business at this premises at the time of the raid on the 21st of July 2020. Further he has not produced any Pet bottle receipts that indicate that just prior to the 21st of July 2020 or close to that date he had sold any Pet bottles on his premises to explain the absence of such bottles at the time of the raid. Even if his 28 of January 2020 receipt is to be accepted as the last date of a sale, there should have been several Pet bottles from that date till the date of the raid on 21st July 2020 collected during this six month period in his premises but the photographs taken at the time of the raid indicate otherwise.

[11] Further, I am inclined to agree with the Applicant that the wording of all the attached receipts which are signed by one Ernesta indicate that all money was received from Mathiot which does not establish the contention of the Respondent that he received money for the sale of Pet bottles to Mr. Ernesta. The unexplained discrepancies in the receipts produced make the receipts unacceptable as evidence and have to be rejected. In regard to his contention that he received the money by sale of his vegetables, the photographs of the raid, photos 3 to 5 do not indicate any large plantation or farm being run by the Respondent. I proceed to reject the Respondent's contention that the money was from the sale of Pet bottle redeem business which he was carrying out and from the sale of vegetable and fruits from his garden.

[12] Learned Counsel for the Applicant referred to the case of **Financial Intelligence Unit v Contact Lenses Ltd & Ors [2018] SCSC 564 at [15]** where it was held that "*once the applicant establishes his belief that the property is the proceeds of crime, the burden of proof shifts to the Respondent to show that it is not*"

[13] For the aforementioned reasons. I am satisfied that the belief evidence by way of affidavit of Mr. Hein Prinsloo can be accepted as it is supported by the evidence by affidavit of Sergeant Malvina and Sergeant Jean and attached photographs on which grounds his belief evidence is based. In this instant case there exists more than prima facie evidence and I am satisfied that the Applicant has established on a balance of probability that the property constitutes benefit from criminal conduct and its value is over SCR 50,000.00. The Respondent has failed to give any credible explanation as to the origin of such an amount of cash and the explanation given by him for reasons contained herein are rejected. He has failed on a balance of probability to establish that the specified property is not from proceeds of crime.

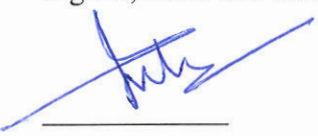
[14] I therefore proceed to grant the reliefs as prayed for and issue:

- (1) An Interlocutory Order pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the Respondent or such other person having notice of the making of this Order, from dispensing of or otherwise dealing with or

diminishing the value of whole or any part of the property set out in Annexure A of the notice of motion.

- (2) An Order pursuant to section 8 of the POCA, appointing Superintendent Hein Prinsloo to be a Receiver of all or part of the property to manage, to keep possession or dispose of or otherwise deal with any other property in respect of which he is appointed in accordance with the Court's directions.
- (3) A copy of this Order to be served on the Respondent.

Signed, dated and delivered at Ile du Port on 28th June 2021.



M Burhan J