

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2022] SCSC ... 71
MC1/2022

In the matter between

THE REPUBLIC
(Represented by Mrs. Thompson)

REPUBLIC

and

GREG PILLAY
(Represented by Mr. Cesar)

1ST RESPONDENT

VESNA JACQUELINE
(Represented by Mr. Cesar)

2ND RESPONDENT

Neutral Citation: *THE REP v PILLAY & JACQUELINE* (MC01//2022) [2022] SCSC 71

Before: 31 January 2022
 ESPARON J
Heard: 31 January 2022
Delivered: 31 January 2022

RULING

ESPARON J

[1] This is an application by the Republic under the Anti-Money Laundering and Countering of the Financing Terrorism Act, 2020 as amended. The Republic is seeking for an order pursuant to Section 74 (3) of the Anti-Money Laundering and Countering the Financing Terrorism Act, 2020 seeking for an Order from this Court authorising the continued detention of cash of which details of which is set out in a table attached to the Notice of Motion representing the cash seized from the Respondents on the 17th January 2022 pursuant to Section 74 (2) of the same act. The order they are seeking is for the continued

detention of cash for a period not exceeding 60 days and such further order as the Court shall deem just and proper.

- [2] During the hearing of the Application Counsel for the Applicant Mrs Nissa Thompson has made submissions to this Court and has relied on the affidavit of SI Jude Bistoquet who is a Financial Crime Investigator at the FCIU and he is of the rank of Sub-Inspector in the Seychelles Police Force. The said affidavit of SI Bistoquet contains the averments of what happened on the 17th January 2022 of which he is relying on a statement made by Sub-Inspector Johnny Malvina a Police Officer attached to the ANB of the Seychelles Police Force.
- [3] Mr. Bistoquet avers in his affidavit that during the search the ANB had seized a total of Rs298, 975/- from the 1st Respondent namely Greg, Jose Pillay which was found in the room occupied by the first Respondent at his residence and also the ANB found in the purse of the 2nd Respondent Vesna, Collette Jacqueline certain amount of cash, some of which were in Seychelles rupees and some of which were in foreign currencies.
- [4] For this purpose I will re-produce the table attached to the Notice of Motion referred to as table showing the Cash seized from the 1st Respondent and the 2nd Respondent of which the deponent averred in his affidavit that the cash was found in the 1st Respondent's room and in the curtains at his residence in other parts of the house and in the purse of the 2nd Respondent.
- [5] According to the table attached to the Notice of Motion, there is an amount of cash in the sum of Rs55 000/- in three different denominations namely in 50 rupee, 100 rupee and 500 rupee notes and the sum of Rs34, 650/- in different denominations. Another amount of cash in the sum of Rs74, 125/- again in different denominations in Seychelles Rupees. All in total the said cash seized from the 1st Respondent amounting to a total of Rs298, 975/-. In the purse of the 2nd Respondents after the ANB had searched her purse namely that of Vesna Jacqueline's purse, from the table attached to the Notice of Motion it appears that they seized therein a total amount of 1,320 Euros in different denominations amounting to

Rs22, 849.20/- at Euro rate of 17.31 to the rupee and in USD they found 8 x 100 US Dollars, 4 x 50 US Dollars and 1 x 20 US Dollars amounting to a total of 1022 USD equivalent to SCR 15, 493.52. In Seychelles Rupees in different denominations they also found in the said purse of the 2nd Respondent a total sum of Rs 3,777.60/- and also a total amount of 10,000 Lira Decimilia, They also found in the said purse another amount of cash which was Dirhams in the sum of 12.50 Dirhams amounting to Rs46.86/-, and also an amount of Mozambique Metical namely a 500 note amounting to Rs107.83/-. Furthermore in Indian Rupee they also found therein a 10 rupee note in Indian rupees amounting to Rs1.85/- in Seychelles Rupees. The total amount of cash seized from the 1st Respondent and the 2nd Respondent when converted from foreign currency into Seychelles Rupees is Rs298, 975/- from the 1st Respondent and Rs42, 276.86/- which is in different denominations namely in Seychelles Rupees and foreign currency.

- [6] The total amount of cash seized from both Respondents is Rs341, 251.86/- and in addition according to deponent of the affidavit relying on the statement of SI Johnny Malvina, the deponent avers that 179.87 grams of suspected Heroin at that point in time was found at the residence of the Respondent at Ma Constance as a result of two searches that had been conducted at the residence of the 1st Respondent of which the suspected drugs were found in the wardrobe and as a result of the second search some suspected controlled drugs were found in the toilette bowl and in the shower drainage.
- [7] Counsel for the Applicant has informed the Court that only the 1st Respondent has been charged with the offence of trafficking in a controlled drug. This has been confirmed by Counsel for the 1st and 2nd Respondent. There is no copy of the charge sheet before the Court attached to the Notice of Motion and no such averments in the Affidavit sworn by the deponent. It is not part of any exhibit.
- [8] Counsel for the Republic moved this Court for an order that in terms of articles 74 (3) of the Anti-Money Laundering and Countering of the Financing Terrorism Act for an order authorising the continued detention of the said cash seized from the Respondents on the

17th of January 2022 pursuant to Section 74 (2) of the said Act and to make any further orders as the Court shall deem just and proper in all circumstances of this case.

- [9] Thereafter Counsel for the Respondents made the following submissions that the affidavit in support of the Notice of Motion is defective, that it is full of lies, and the 2nd Respondent has not been charged with any offence.
- [10] Mr. Cesar Counsel for the Respondents has opted and moved this Court for leave to cross-examine SI Bistoquet and particularly he cross-examined SI Bistoquet on an affidavit sworn by another person during a 101 Application before another Court. He referred to paragraph 8 of the said affidavit which speaks about the amount of controlled drugs which he pointed out was not the same amount as was averred by SI Bistoquet in his affidavit as a deponent in the present matter and also he pointed out that the amount of cash seized namely the Rs298, 975/- which was averred in Mr.Bistoquet's affidavit that had been seized from the 1st Respondent is obviously Rs100/- more than what is averred in the 101 Application before another Court. It is to be noted that this Court does not have any copies of the affidavit for the remand proceedings before any other Court attached to the Notice of Motion nor to any Reply to the Notice of Motion by the Respondents which there was none filed in the Registry of the Supreme Court. Nevertheless this court in fairness allowed counsel for the Respondents to cross-examine on the said document which were not part of any exhibit in Court that had been filed in the Registry.
- [11] As regards to the discrepancy in the cash seized from the Respondents, SI Bistoquet gave an explanation to the Court that this amount was Rs100/- more than what was averred in the 101 application since it was only after that all the exhibits namely the cash and the curtains were handed over to the FCIU that upon search they noticed an additional Rs100/- concealed in the curtains which when the ANB had searched previously, they had not noticed such additional cash. Upon the cross-examination of SI Bistoquet on the discrepancy as to the amount of controlled drugs siezed by counsel for Respondents, Mr. Bistoquet gave the explanation that the amount of controlled drugs seized was as result of

two separate searches and that it is only the AG that can decide as to what charges to bring and as to who to charge in any matter in accordance to the law.

[12] The Court has considered the submissions of both counsels, namely the submissions of Counsel for the Applicant and Counsel for the Respondents as well as the affidavit of SI Bistoquet along with his evidence given under cross-examination and the explanation given thereto. After considering both submissions and the answers given by SI Bistoquet during cross-examination, this Court finds that SI Bistoquet was a credible witness in the witness box and that he gave a reasonable explanation why the amount that he alleged in the affidavit is Rs100/- more than what was averred in the affidavit for the 101 application. As for these inconsistencies in the weight of the controlled drugs, since they were as a result of two separate searches and obviously the Attorney General would decide on which controlled drugs either the one seized during the first search or the second search in order to base his charge on and as such I hereby accept the explanation given by SI Bistoquet on the issue.

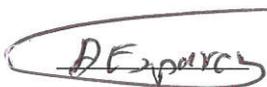
[13] I also considered the averments in the Affidavit of SI Bistoquet, the deponent in the matter where he avers that the first Respondent gave contradictory explanation as a result to the provenance of the cash seized. The first contradiction was that according to the averments of SI Bistoquet's in his affidavit, the 1st Respondent stated that he got the money from being Fisherman. According to SI Bistoquet his second explanation after he was questioned about it later he changed his version saying that part of it was for his mother and came from the proceeds of selling a vehicle and then he changed his version again and said only the Rs30 000/- in the amount was for his mother. So this Court has considered all these facts as averred in SI Bistoquet's affidavit and also in addition the fact that the cash seized were concealed in the curtains and in the room would lead the Court to the reasonable inference of the illicit provenance of the Cash seized and to add to this the fact that drugs were found in the said room as well as other parts of the house.

[14] As a result of the above, this Court makes the following findings;

- (i) this Court finds that there are reasonable grounds for the suspicion of Inspector Bistoquet that the total amount of cash seized from both the 1st Respondent and 2nd Respondent during a search at the residence of the 1st Respondent on the 17th of January 2022 representing the proceeds of crime or intended to be used by the Respondent in connection with any criminal conduct namely drug trafficking or money laundering. This Court is equally satisfied that the detention of the said cash seized beyond 14 days is justified, while its origin or deviation is further investigated, or consideration is given to the institution of criminal proceedings in Seychelles against the Respondents for an offence which the cash is involved.

[15] For the reason stated above and in accordance with the Provisions of Section 74 (4) of the AML/CFT Act, I hereby authorise the continued detention of the cash in the total sum of Rs298,975/- seized from the residence of the 1st Respondent Greg, Jose Pillay and the total sum of Rs42,276.86 seized in different denominations, namely in Seychelles Rupees and in various foreign exchange in the amount of Rs42,276.86 amounting to a total sum of Rs341, 251.86/- seized on the 17th of January 2022 at the residence of the 1st Respondent and in the purse of the 2nd Respondent at the same residence for a period of 45 days as from the date of this order.

Signed, dated and delivered at Ile du Port on 31 January 2022.



Esparon, J

