

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 392
MC 33/2021

In the matter of:

The Government of Seychelles
*(rep by Ms Rose of the Attorney
General's Chambers of National House, Mahe
Seychelles)*

Applicant

And

Ali Padayachy

Respondent

Neutral Citation: *Government of Seychelles and Ali Padayachy* (MC 33/2021 [2022] SCSC 392
Before: Andre J.
Summary: Interlocutory Order – appointment of a receiver – sections 4 and 8 of the
Proceeds of (Crime Civil Confiscation) Act 2008 (as amended) (POCCCA)
no opposition to the application
Heard: 17 March 2022
Delivered: 17 May 2022

ORDER

The following Orders are made:

- (i) Pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act (POCCCA), an Interlocutory Order is granted on HONDA FIT with registration number: S 36544. The owner is the Respondent namely, Ali Abdur Rahman Padayachy, and the said vehicle is of the value of Seychelles Rupees Four Hundred Thousand (SCR 400,000). The Respondent is prohibited from disposing or otherwise dealing with whole or any part of the property or diminishing the value the property as specified.
- (ii) Inspector Terence Roseline is hereby appointed as receiver over all the property to manage and keep possession or otherwise deal with the property in respect of which he is appointed pursuant to section 8 of the POCCCA.

- (iii) This Order is subject to sections 5 (1) and (2) of the POCCCA regarding disposal Orders application, namely, to be made not less than 12 months as of the date of the Interlocutory Order.

RULING

ANDRE J

Introduction

[1] This is an application by the Government of Seychelles herein represented by the Attorney General of National House, Mahe (*applicant*), for an Interlocutory Order pursuant to section 4 of the Proceeds of Crime (Civil confiscation) Act, 2008 (POCCCA) as amended. The application seeks to:

- (i) prohibit the Respondent, any other person having notice of the making of this Order or such other person as this honourable Court shall order, from disposing of or otherwise dealing with whole or any part of the property set out in the table appended to this application.
- (ii) to prohibit the Respondent, any other person having notice of the making of this Order or such other person as this honourable Court shall order, from diminishing the value of the said property;
- (iii) an Order pursuant to section 8 of the POCCCA, appointing inspector Terrence Roseline, 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;
- (iv) an Order providing for notice of any such Orders to be given to the Respondent or any person directed by the Court; and
- (v) any further Order as the Court deems just and proper.

[2] The Respondent who appeared before the Court on 17 March 2022 informs the Court that he is not objecting to the application hence the matter proceeding ex-parte.

Grounds for the application

- [3] The grounds on which the application is based are as follows.
- [4] The Court relies on paragraph 5 of the application of the 1st April 2021, read with the affidavit of inspector Terence Roseline in support of the application of the 15 April 2021 and the supplementary affidavit of the 26 May 2021. It is the beliefs of inspector Terence Roseline, guided by section 9 (1) of POCCCA, that the Respondent is in possession or control of specified property that is to say the property set out in his affidavit and in the annexure appended to the application (supra). Moreover, it is the belief of inspector Terence Roseline that the specified property constitutes directly or indirectly the benefits from criminal conduct, or that the Respondent is in possession or control of the said specified property mentioned in his affidavits and in the table appended to the application. Moreover, it is believed that the specified property was acquired in whole or in part with to in connection with the property or indirectly constitutes benefits from criminal conduct.
- [5] That the total value of the specified property (supra) is not less than Seychelles Rupees fifty thousand (SCR 50,000.00)

Evidence

- [6] Inspector Terence Roseline testified to support the application of the 17 March 2022 as follows:
- (i) That he is the deponent to the said affidavits in support of the application (supra) and the other investigating officer who was involved in the investigation of this matter.
 - (ii) That on the 16 March 2021, a section 3 application to POCCCA, in MC18 of 2021, was filed and an Order was granted (*Exhibit P1*).
 - (iii) That he has made reasonable investigations in the matter for the application of an Interlocutory Order under section 4 of the POCCCA (*Exhibit P2*)

- [7] On 19 February 2021, at around 1630 hours, in the vicinity of Plaisance, the Anti-Narcotics Bureau of the Seychelles police (ANB) stopped a vehicle bearing registration number S36544, a white Honda Fit registered in the name of one Ali Padayachy. (*Exhibits P2 and 3*).
- [8] It is averred that the Financial Crime Investigation Unit of the Seychelles Police Force (FCIU) was informed and Sergeant Dave Jeanne of the FCIU was instructed to attend to the case and to later report on the findings. Further, it was not the first time that the FCIU had an encounter with the Respondent who is known to the FCIU.
- [9] It was testified further, that sometime back, as part of another case, the FCIU seized a vehicle bearing registration S32187 registered in the name of Northern Star Car Hire. This was in the case of *The Republic v Steve Chang-tave, Natasia Chang-tave and Northern Star* bearing Court reference MC 68/2019. At the time of the seizure, the Respondent was the driver of the said vehicle (*Exhibit P4*).
- [10] Upon verification, it was found that the Respondent did not have any contact whatsoever with the Northern Star but used the vehicle to run errands for Steve and Natasia Chang-tave. During the interview with the Respondent in 2019, he did not rent the vehicle but he was part of the drug trafficking network of the Chang-taves.
- [11] It was also averred that the Respondent is currently 23 years of age and as part of the investigation, it was found that he had served some prison time and was released in 2017 after serving two years and eight months for attempted murder and grievous harm. Based on the investigation, it was found that the Respondent has not been employed since his release from prison in 2017.
- [12] Inspector Roseline continued testifying that based on financial analysis conducted, it was found that the Respondent is the holder of an MCB bank account bearing account number 686848 and that the said account was only opened on the 3 April 2020. Based on his analysis, it was found that for the whole of the year 2020, he only made three cash deposits for a total sum of SCR 9,000.00. That those deposits were made in April, May, and October 2021. (*Exhibit P5*).

[13] Additionally, a search was conducted at the Seychelles licensing authority revealed that the Respondent purchased vehicle S8416, Suzuki swift, on the 16 January 2020 from one Stephen Ambrose Gobine for an amount of SCR 100,000 cash. The said Stephen Gobine is the person who the car was registered on at Seychelles licensing authority but however it was his son namely, one Steve Gobine who was using the said car. Stephen Gobine was interviewed and he explained that he was the owner of the car but it was his son who was driving the car and eventually sold it to the Respondent. (*Exhibit P6*)

[14] According to exhibit P6, payments would be made in instalments, and it was found that the Respondent was not employed at that stage nor did he have a bank account. Hence it was testified that the only reasonable explanation is that the cash used to purchase vehicle S8416 did not derive from any legitimate means and was the proceeds of crime derived from drug trafficking as explained earlier. (*Exhibit P6*).

[15] Further, according to a letter filed at the Seychelles licensing authority dated 23 June 2020, the Respondent exchanged vehicle S5114 for a Toyota CHR. The letter further stated that the Respondent paid an additional SCR 40,000 to the owner of vehicle S5114 and it was testified that on the said date, the Respondent had only SCR 151.86 on his MCB account number 68648. Hence it is obvious that the Respondent did not have any legitimate income at that stage and did not have SCR 40,000 in his bank account therefore the only reasonable explanation is that the SCR 40,000 is proceeds of crime derived from drug trafficking. (*Exhibit 7*).

[16] Furthermore, that on the 14 January 2021 the Respondent sold the Toyota CHR with registration number S8416, for an amount of SCR 515,000/-, and this amount was transferred into MCB account number 686848 held in the Respondent's name. On 8 February 2021, the Respondent purchased vehicle S 36544 for an amount of SCR 400,000 and the amount of SCR 400,000 was transferred from the MCB account of the Respondent on 29 January 2021. (*Exhibit P8*).

[17] Inspector Roseline testified that the use of legitimate funds to purchase property and the integration of funds derived from the sale of the property is part of a money-laundering phase known as the 'placement' phase where after the funds appear to be legitimate. That

the final stage of purchasing property what 'legitimate funds' is known as the 'integration'; phase of money laundering. It is thus clear that proceeds of crime derived from drug trafficking were integrated into the financial system by the Respondent to make it legitimate.

[18] It is averred that during the year 2020, the Respondent had been staying at several villas in Beau-Vallon where he paid in cash. That the owner of the villa was met and gave the details of his stays and visits. Once the Respondent stayed at the villa which had a pool namely the Beau-Vallon self-catering villa for two weeks and he paid SCR 18,000. On another occasion, he stayed at the Shanaila villa for three weeks and paid SCR 24,000. He again stayed at the same villa but this time for three weeks where he paid SCR 42,000.

[19] That it was confirmed that the Respondent was a regular client at the Beau-Vallon villa chalets for day use and from information gathered, the Respondent lived at the said villa about 10 times during 2020 and that all these payments are nowhere reflected on his bank account. Thus the reasonable explanation arising is that the cash used to rent the villas did not derive from any legitimate means and was the proceeds of crime derived from drug trafficking as explained.

[20] Inspector Roseline further testified in support of the application, that on Tuesday 13 April 2021, the FCIU was served with a copy of an affidavit in objection to the granting of a disposal Order as filed by the Respondent and that the affidavit as enclosed annexes which the Respondent submitted to rebut the averments which the FCIU made as part of section 3 application which resulted in *Exhibit P1* (supra). It was testified in addition, that the said affidavit is incomplete in that it accrues no notice of motion and that even the heading of the said affidavit is misguided as there was never an application for disposal nor an Order made for disposal. (*Exhibit P9*).

[21] It was further testified that as per exhibit P8, the Respondent avers that he made eight consecutive instalments of SCR 25,000 as payments for the Suzuki swift and that in all, had he made these payments, would have amounted to the sum of SCR 200,000. But upon verifying and calculating the payments as per DOC 2 referred and attached to the

affidavit of the Respondent, there was a total of six instalments of SCR 25,000 amounting to a total sum of SCR 150,000. Also, in DOC2, there is a receipt amounting to a sum of SCR 200,000. This as a whole creates confusion with regards to the averments of the Respondent in his affidavit. It contradicts the declaration as made to the Seychelles licensing authority at the time of the transfer whereby the sale was declared to be at SCR 10,000. This casts doubts on the whole transaction. (*Exhibit P9*).

[22] Moreover, upon further analysing the receipts in Doc 2 attached to (*Exhibit P9*), it was found that the receipts numbers are not consistent in that they do not follow a numerical sequence with the dates as issued. For instance, receipt number 3874 was issued on 31 May 2019, then on the 29 June 2019 receipt number 3866, and again on the 30 August 2019 receipt number 3892 was issued. This again casts doubt on the payments made if ever made and the correct amount. It was testified that receipts are normally issued in an Orderly in that the days, months, and receipt numbers follow and this is not the case with Doc2 attached to *Exhibit P9*.

[23] Inspector Terence Roseline proceeded further testifying that in *Exhibit 8* at paragraph 4, the Respondent makes reference and produces 22 consecutive payslips from a company namely, AMM cleaning agency covering the periods April 2018 to January 2020. *Exhibit P10* clearly illustrates in excel format an outline of the said payments. As can be verified from *Exhibit P10*, the total amounts to a sum of SCR 188,550, and the owner of the said cleaning agency when interviewed by FCIU to verify the details provided by the Respondent, was not forthcoming as the lady namely, one Anne-Marie Meriton informed that she was presently in quarantine and an interview was never made possible before the filing of this application.

[24] Inspector Terence Roseline further confirmed the averments in paragraphs 23 to 33 of his affidavit of the 15 April 2021, that from analysing the said payments, it has to be stated that assuming that the Respondent did collect the money, he would not have saved the whole sum every month. This is because one ought to have daily and monthly expenses and thus the Respondent would not have been in a position to save to acquire the sum of SCR25,000 per month to pay for the said car.

[25] Furthermore, analysis of the said payslips reveals that the issuance of one dated 31 June 2018, it is evident that June does not have 31 days but 30. Based on all those errors as to dates and other anomalies in the documents attached to *Exhibit P10* as indicated, it leads to his belief that the funds used were illegitimate.

[26] That from the *Exhibit P10* being the affidavit of the Respondent, it is averred in paragraph 5 thereof, that he was assisted financially by his mother and grandfather, one Nicole Banane and Jean Robert Banane during the periods running from March to December 2019. Inspector Terence Roseline testified that this averment does not make any commercial sense in respect of the purchase of the vehicle in issue as the withdrawals were not even close to the amount he had to pay for instalments. For instance, from an attachment provided entitled Doc 4 to *Exhibit P10*, it is observed that the mother of the Respondent withdrew to form the grandfather's account, the amount of SCR 5,000 on 18 March 2019 and SCR 1500 on the 23 March 2019. Thus assuming that this was really to assist the Respondent, which in any event is doubtful, the total is not even close to the instalment that the Respondent had to pay for the car. The Respondent would still have had to top up the funds to go towards the monthly instalment. And assuming the Respondent used the sum of SCR 4250 which he is claiming he received from the cleaning agency, the total would still not meet the total of SCR 25,000. Hence noting a comparative analysis between the withdrawals and the alleged salaries which the Respondent is claiming to have received, the total to meet the monthly instalments still does not add up.

[27] Albeit all attempts by FCIU to contact the Respondent's mother she could not be reached.

[28] Further, it is testified that the Respondent also refers to a document entitled Doc 5 in *Exhibit P10*, whereby he avers is proof of a loan he took dated early January 2020 whereby he borrowed money to go towards the purchase of the vehicle. From the said loan agreement, there are no other details of the lender apart from her name and this information is still unknown to FCIU.

[29] That the said vehicle was recently valued at SCR 415,000 in total and this as per **Exhibit P12** and that based on the whole of the analysis of the investigation thus far conducted

for this application, the reasonable belief is that the vehicle in question namely S36544 was purchased using the proceeds of crime, drug trafficking, and money laundering.

- (i) In conclusion, inspector Terence Roseline testified that it is his reasonable belief that based on the whole investigation conducted thus far, that the Respondent is in possession or control of specified property set out in Annexure A; that the said property constitutes direct or indirect benefit from criminal conduct; that the property was acquired in whole or in part with or in connection with property that directly or indirectly constitutes the benefits from criminal conduct; and the total value of the property is not less than SCR 50,000.

[30] Inspector Roseline also testified and confirms averments of a supplementary filed by himself upon leave of the Court of the 26 May 2021 and of contents elaborates on the interviews of the Anne Marie Meriton and the grandmother and grandfather of the Respondent and again further anomalies as illustrated in the supplementary arise leading to the above-mentioned beliefs set out in paragraph 30 above.

[31] It was further testified that the main grounds for his beliefs are that firstly, in 2019 the Respondent was found to be part of a drug trafficking network of the Chang-taves; secondly, the fact that the Respondent is not employed; thirdly, the anomalies found as illustrated in his evidence; and fourthly the insufficient funds on his account to transact in a manner which he did by buying and selling of vehicles

[32] As a result of the analysis conducted on the bank account of the Respondent, the records at the Seychelles licensing authority, the 'placement' and the 'integration' of proceeds of crime in the financial system and the concealment of their origin as well as the averments made in his affidavit of the 15 April 2021, Inspector Roseline believes that the said properties have been acquired from criminal conduct relating in whole or in part from drug trafficking and money laundering.

[33] Inspector Roseline thus moved for an Interlocutory Order under section 4 of the POCCCA as per averments as paragraphs 33 (i) (ii) (iii) (iv) of his said affidavit paragraph [1] above refers.

The law

[34] The relevant provisions of the law to be considered for this application are namely sections 4, 5, and 8, 9 of the POCCCA.

Section 4 (1) provides that:

‘where, on an inter-partes application to Court, in that behalf by the applicant, it appears to the Court, on evidence, including evidence admissible by virtue of section 9, tendered by the applicant, 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 property that, directly or indirectly, constitutes benefit from criminal conduct; and

(iii) The value for the property or the total value of the property referred to in subparagraphs (i) and (ii) of paragraph (a) is not less than R 50,000,

The Court shall make an Interlocutory Order prohibiting the person specified in the Order or any other person having notice of the making of the Order from disposing of or otherwise dealing with the whole or, any part of the property, or diminishing its value, unless, it is shown to the satisfaction of the Court, on evidence tendered by the Respondent or any other person, that-

- (i) *The particular property does not constitute, directly or indirectly, benefit from criminal conduct and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; or*
- (ii) *The total value of all the property to which the Order would relate s less than R 50,000:*

Provided that the Court shall not make the Order if it is satisfied that there would be a risk of injustice to any person (the onus of establishing which shall be on that person), and the Court shall not decline to make the Order in whole or in part to the extent that there appears to be knowledge or negligence of the person seeking to establish injustice, as to whether the property was as described in subsection (1) (a) when becoming involved with the property.'

[35] Section 5 of POCCCA provides conditions for disposal Orders as follows:

Section 5 (1) provides that: -

*'Subject to subsection (2), where an Interlocutory Order has been in force for not less than 12 months in relation to the specified property and there is no appeal pending before the Court regarding the Interlocutory Order, the Court, **on application to it in that behalf by the applicant**, may make a disposal Order directing that the whole or a specified part of the property be transferred, subject to such terms and conditions as the Court may specify, to the Republic or to such person as the Court may determine and such transfer shall confer absolute title free from any claim of any interest or encumbrances to the Republic or such person.'*

[36] Section 8 sub-section (1) of POCCCA provides for the appointment of the receiver as follows: -

'Where an interim Order or an Interlocutory Order is in force, the Court may at any time appoint a receiver-

(a) To take possession of any property to which the Order relates;

(b) In accordance with the Court's directions, to manage, keep possession or dispose of, or otherwise deal with any property in respect of which he is appointed,

Subject to such exceptions and conditions (if any) as may be specified by the Court, and may require any person having possession or control of the property in respect of which the receiver is appointed to give possession of it to the receiver.'

[37] Section 9 of POCCCA specifically provides for evidence and proceedings under the Act which includes affidavit evidence or, if the Court so permits or directs, oral evidence for sections 3 or 4 (supra); and section 9 (1) (c) provides that the value of the property or as the case may be the total value of the property is not to be less than R50,000, and that then if Court is satisfied that there are reasonable grounds for the beliefs as set out in section 9 (1) (a) (b), the statement shall be evidence of the matters referred to in the above-stated paragraphs, as may be appropriate, and of the value for the property.

[38] Section 9 (2) further provides that the evidence of belief is only admissible in instances where there were reasonable inquiries and investigations undertaken. Further to this, the evidence of belief is admissible where it is based on credible and reliable information to set reasonable grounds for suspecting that the property is a benefit from criminal conduct.

Findings

[39] Having set out the relevant provisions of the law to be considered for this application in line with the evidence of inspector Terrence Roseline as illustrated above, this Court is satisfied based on the grounds for the application as duly supported by the affidavit evidence of inspector Terrence Roseline of the 15 April 2021 and the supplementary affidavit of the 26 May 2021, that there is an interim and receivership Order of this Court of the 15 March 2021 (*Exhibit P1*), under section 3 of POCCCA, prohibiting the Respondent from disposing or otherwise dealing with whole or any part of the property or diminishing the value the property as specified in the Table attached to this application, namely, HONDA FIT with registration number: S 36544, the owner being the Respondent namely, Ali Abdur Rahman Padayachy and the said vehicle in the value of Seychelles Rupees Four Hundred Thousand (SCR 400,000) and this for 30 days from the date of the aid Order. Further, that Superintendent Hein Prinsloo had been appointed as

receiver over all the property to manage and keep possession or otherwise deal with the property in respect of which he was appointed pursuant to section 8 of the POCCCA. (*Exhibit P3*).

[40] That since this application under section 4 of POCCCA is not being objected to and thus Court is further satisfied based on the affidavit and oral evidence of Inspector Roseline that conditions as set put on section 4 as reading with section 9 (1) (a), (b),(c) and (2) (a) and (b) of POCCCA, have been proved to the required standard as provided for at section 9 (3) thereof, I thus grant an Interlocutory Order on the said property, namely, HONDA FIT with registration number: S 36544, the owner being the Respondent namely, Ali Abdur Rahman Padayachy and the said vehicle in the value of Seychelles Rupees Four Hundred Thousand (SCR 400,000) and that the Respondent is prohibited from disposing or otherwise dealing with whole or any part of the property or diminishing the value the property as specified.

[41] Further, inspector Terence Roseline is hereby appointed as receiver over all the property to manage and keep possession or otherwise deal with the property in respect of which he is appointed pursuant to section 8 of the POCCCA.

[42] This Order is subject to the provisions of section 5 (1) and (2) of the POCCA concerning disposal Orders application, namely not less than 12 months of the Interlocutory Order and conditions attached and sub-sections (a), (b) and (c) Thereof.

Conclusion

[43] It follows that this Court Orders as follows:

- (i) An Interlocutory Order on the said property, namely, HONDA FIT with registration number: S 36544, the owner being the Respondent namely, Ali Abdur Rahman Padayachy and the said vehicle in the value of Seychelles Rupees Four Hundred Thousand (SCR 400,000) and that the Respondent is prohibited from disposing or otherwise dealing with whole or any part of the property or diminishing the value the property as specified.

- (ii) Inspector Terence Roseline is hereby appointed as receiver over all the property to manage and keep possession or otherwise deal with the property in respect of which he is appointed pursuant to section 8 of the POCCCA.

- (iii) This Order is subject to the provisions of section 5 (1) and (2) of the POCCA concerning disposal Orders application, namely not less than 12 months of the Interlocutory Order and conditions attached and subsections (a), (b) and (c) thereof.

Signed, dated, and delivered at Ile du Port on 17 May 2022.

ANDRE J