

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 975
CO115/2021

In the matter between :

THE REPUBLIC
(rep. by Mr Thachet

MR PHIR BALOCHI & ORS
(rep. by Mr Clifford Andre)

1st Accused

Neutral Citation: The Republic v *Balochi & Or* (CO115/2021) [2022] SCSC 975 (9 November 2022).

Before: Govinden CJ
Heard: 9 November 2022
Delivered: 9 November 2022

ORDER

GOVINDEN CJ

- [1] This is an Application for seizure of the Iranian Dhow appearing in photograph No.1 of Exhibit P3 Photo Album, which is being kept at the Seychelles Coast Guard. The Application is supported by the Affidavit of Officer Johnny Malvina Sub Inspector of Police. The Application being made is that the dhow was used for committing the offences in this case, in CR113 and CR115 of 2022.
- [2] The Application is based on Section 153 of the Criminal Procedure Code which provides that instruments and things used for the commission of an offence, including the corpus delicti can be forfeited to the Republic upon conviction of the offender.

[3] The Application is made upon the conviction of the 1st three Respondents in this case. The 1st three Respondents which has been served with the Application has failed to come to Court and the matter is proceeding exparte against them.

[4] The only person contesting the Application is the 4th Respondent who is the Captain of the dhow whose defence is that no offences were committed, by in or through the use of this dhow. Upon hearing the submissions of all Counsels in this case the Counsel for the Republic and the Counsel for the 4th Respondent and after reading the Motion and Affidavit and the Reply and the Affidavit of the 4th Respondent the Court has come to the following determination:-

[5] The 1st three Respondents pleaded guilty to the offence of importation of a controlled drug. The facts reads by the Prosecution upon their guilty pleas shows that the dhow in issue was used to import the drugs into Seychelles, these are the facts that they themselves admitted to.

[6] Moreover the facts of the case so far has shown that the vessel was a vital instrument to the importation of a controlled drug in Seychelles. It is therefore both a corpus delicti of the crime and an instrument used in the commission of the offence without which the offences who has been the subject matter of convictions will not have been committed.

However in this case the dhow is not the corpus delicti of the offence per se. As it was used to commit the offences of which the 1st three Respondents has been convicted. Section 153 therefore find it full application as I find that there is a disjuncture. Corpus delicti applies when it is the property of the offender. However, all things produced by the offence or which may have been used or were intended to use for the commission of the offence need not be the property of the offender, which is the case here. Therefore I find that Section 153 has its, full application.

[7] I, accordingly, forfeit the dhow used to commit several offences in this case as appearing in Photo No.1 of Exhibit P3 to the Republic of Seychelles together with its gears and equipments

Signed, dated and delivered at Ile du Port on 9 November 2022



Govinden CJ