

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2023] SCSC 507  
CO04/2022

In the matter between

**THE REPUBLIC**  
*(rep. by Mr Powles)*

and

**MUKESH VALABHJI**  
*(unrepresented)*

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

**LAURA VALABHJI**  
*(unrepresented)*

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

**LESLIE BENOITON**  
*(rep. by Mr Hoareau)*

**3<sup>rd</sup> Accused**

**LEOPOLD PAYET**  
*(rep. by Mr. Hoareau)*

**4<sup>th</sup> Accused**

**FRANK MARIE**  
*(rep. Mr. Camille)*

**5<sup>th</sup> Accused**

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**Neutral Citation:** *Republic v Valabhji & Ors* (CO04/22) [2023] SCSC 507 (07 July 2023)

**Before:** Govinden CJ

**Heard:** 07 July 2023

**Delivered:** 07 July 2023

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**RULING**

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**GOVINDEN CJ**

[1] The Prosecution has again made an application to amend the Information before the Court through filing an Intended amended charge dated the 6<sup>th</sup> of July 2023. The last

amendment to the charges goes back to the 3<sup>rd</sup> of July 2023. This would be the second amendment if granted, in a row.

- [2] In their new proposed amendments, Count 1 is put alternative to Count 2, Count 3 is put alternative to Count 5 and Count 6 is put alternative to Count 4. Count 7 to 21 has their Statements of Offences amended to reflect Section 22 (a) of the Penal Code.
- [3] All the Accused persons does not object to the proposed amendments, except the 1<sup>st</sup> Accused who submitted that he needed to have access to his documents stored on his laptop where he has personal information stored for him before he pleads. This being a Lenovo laptop, seized when he was arrested. He also argued that he has not received the result of the digital forensic material analysis.
- [4] On the other hand, Mr. Powles for the Republic replied that the bulk of the evidence that the Republic needed to disclose in this case upon which they are relying in the trial and those relevant for the defence has been disclosed, except the digital forensic materials which has been rendered difficult due to lack of cooperation from the defence, something which is contested by the 1<sup>st</sup> Accused.
- [5] Having considered the 1<sup>st</sup> defendant's objection and the reply thereto, the Court has come to the following conclusion. The Court note that this is the first time that the 1<sup>st</sup> defendant attaches such a condition for his plea to the matter of disclosure and disclosed materials. He has pleaded twice before, one with a no plea, however, no such issue was brought forward. The Court accepts that the bulk of the Prosecution evidence has so far been disclosed to the defence, except a few. A plea is not disclosure dependable, unless the Accused wants to plead guilty. The material that he wants it seems would only go to his defence to the charges, which can only take place when a no plea is entered.
- [6] If during the Court of the proceedings it becomes evident that there are materials on a laptop that has not been revealed to the Accused, that would be subject to the necessary objection and possible to non-admission of the relevant material evidence.
- [7] In this case the proposed alternative charges do not add much to the case and does not change any circumstances. It is cosmetic and I do not accept learned Counsels for the

Republic's contention, that it gives an alternative to the Court to make a finding in the case, because a findings of the Court would be made irrespective of whether they are the alternatives or not. A Count will stand or fall depending on the evidence, however it is averred in the Information.

[8] As regard to the amendments to Count 7 to 21, the amendments are only to the Statements of Offences of the charges. In the proposed amendments the Republic is proposing to include Section 22 (a) of the Penal Code in the statement of offences. The statement of offence contains the legal provision under which a person is charged. In this case the new Legal Provision would reads as follows:

*“When an offence is committed, each of the following person is deemed to have taken part in committing the offence and be guilty of the offence and may be charged with actually committing it, that is to say*

*(a) Every person who actually does the act or makes the omission which constitutes the offence.”*

Now therefore, in this case the Republic is averring that both the 1<sup>st</sup> and 2<sup>nd</sup> Accused are charged together because they are persons who actually did those acts together as principals. Being those acts that constitutes the alleged offences.

[9] To my mind it bring greater clarity to the Legal Provisions with which they stand charged. These are non-prejudicial and helpful to both the Court and all the parties in this case.

[10] Accordingly, leave is granted for the proposed amendments to be done in respect of those Statement of Offences of those Counts, and the Prosecution would file the new set of charges and they will be put to the Accused for the plea.

Signed, dated and delivered at Ile du Port on 07<sup>th</sup> of July 2023.

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Govinden CJ