

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC **735**
CO 55/2020

In the matter between:

THE REPUBLIC
(rep. by Shireen Denys)

Republic

and

NATASIA CHANG-TAVE
PERCY CHANG-TAVE
(rep. by Clifford Andre)

1st Accused (Sentenced)
2nd Accused (Sentenced)

NICHOL GABRIEL
(rep. by Bernard Georges)

3rd Accused (Sentenced)

MICHAEL BASTIENNE
(rep. by Audric Govinden)

4th Accused (convicted)

GARRY ALBERT
(rep. by Evelyn Almeida)

5th Accused (convicted)

Neutral Citation: *Rep v Chang-Tave & Ors* (CO 55/2020) [2023] SCSC **735** (29 September 2023)

Before: Burhan J

Heard: 24 July 2023

Delivered: 29 September 2023

ORDER

I proceed to sentence the convict Michael Bastienne as follows:

A term of three months imprisonment which I proceed to suspend for a period of two years. I also impose a fine of SCR 50,000. 00 (fifty thousand) Rupees. In default of payment of fine a term of 6 months imprisonment.

SENTENCE

BURHAN J

- [1] The convict Michael Bastienne the 4th accused in the case was convicted on his own plea of guilt in respect of the offence set out in Count 2 of the amended charge sheet dated 09 June 2023 which reads as follows:

Count 2

Money laundering contrary to section 3(1)(b) of the Anti-Money Laundering Act and punishable under section 3(4)(a) of the Anti-Money Laundering Act.

Particulars of offence are that, Michael Bastienne of Cascade, Mahe between the period of 1st January 2018 and 28th February 2020, at a place unknown to the Republic on Mahe, Seychelles, being reckless as to whether the property, namely; land and partly built dwelling house comprised in Title No. J2850, situated in Port Glaud, Mahe was or represented the benefit of criminal conduct namely; drug trafficking, concealed or disguised the true ownership of the said property or any rights with respect to it without lawful authority or excuse.

- [2] At the request of his learned Counsel Mr Audric Govinden, prior to sentencing the convict, a probation report was called. According to the report the convict is 42 years of age and the father of three children aged 4, 18 and 21 years. After completing his Primary and Secondary education, the convict joined the National Youth Service (NYS) for a period of one year. Thereafter, he attended Hotel School for a year and studied Culinary Arts. He also attended Ecole L'Hotelier de Nice in France. He has worked as a cook, chef and executive chef in many hotels and is presently the sole proprietor of Bastienne and Co-Construction-Company. The convict has informed probation that as the seller was experiencing financial difficulties he had assisted the seller to sell his property. He had known the 3rd accused a lawyer and notary public and the parties had done the sale through

him. His involvement was minimal and he had not gained any monetary benefit from the transaction. He has informed the probation he had placed his trust in the lawyer and he did not expect to end up in this situation.

- [3] The concubine of the convict has informed probation that the convict is completely dedicated to his family and that the convict would not do anything wrong as it would jeopardise his family. The convict moves for leniency and the probation report has recommended a suspended sentence.
- [4] I will next proceed to consider the plea in mitigation of learned Counsel Audric Govinden on behalf of the convict. He stated that the convict pleaded guilty to the charge the moment it was amended and now admits, he committed the act due to his recklessness and that the offence was not committed deliberately with guilty knowledge. He submitted that he will be adopting the recommendations set out in the probation report and moved that as the convict is the sole breadwinner in the family he be treated leniently. He too relied on the case of **R v Monfries [2003] EWCA Crim 3348 and [2004] 2 Cr.App.R (S) 3**, where it was held that prior to sentencing in offences of money laundering, the following factors should be considered:
- a) The circumstances of assisting another to retain the benefit of drug trafficking/criminal conduct.
 - b) There need not be a direct relationship between the sentence for the laundering offence and the original antecedent (predicate) offence. If the antecedent offence can be identified, some regard may be given to the appropriate sentence for that offence when considering the appropriate sentence for money laundering.
 - c) The criminality in laundering is the assistance, support and encouragement it provides to criminal conduct.
 - d) Regard should be had to the extent of the launderer's knowledge.

- [5] Mr. Govinden stated that when one considers the circumstances of this case, his client had only assisted in the selling of the property and not had any monetary gain from it. He had only known the seller and the purchaser and the lawyer concerned and as he had trust in the lawyer, he had assisted in the land transaction, without any knowledge that it was connected to the offence of money laundering. His client's biggest mistake was to join the seller and buyer together. Learned Counsel submitted the convict had no knowledge the purchaser was laundering his illegal money in purchasing the property. It was his client's view that once a matter goes before an attorney, there is a certain level of professionalism and respect that you give to that office. One of the allegations Counsel submitted was that the suspicious transaction report was not done by the attorney and he too has suffered the consequences as a result. He further submitted that even though the convict has pleaded guilty to recklessly committing the said offence, the degree of recklessness on the part of his client was very much less than that of the attorney and moved for a lesser sentence to be imposed than the suspended term of imprisonment and fine imposed on the attorney the 3rd convict in this case.
- [6] Learned Counsel further submitted the convict was a first time offender with an unblemished record. He admits his mistake he acted recklessly. He moved that a lenient punishment like a fine be imposed on the basis his degree of recklessness was minimal when compared to the others already convicted of the crime.
- [7] I have considered the plea in mitigation and the facts set out in the probation. It is clear to this Court that by pleading guilty to the said offence the convict has expressed remorse and regret. The same is borne out in the probation report. I note the prosecution too, having considered the circumstances of the case has decided to amend the charge to the effect that the convict did not act deliberately or with knowledge but that he acted recklessly in committing the said offence with which he is charged under the Anti-Money Laundering Act. In similar circumstances in this case in sentencing the 3rd accused Mr Nichol Gabriel a suspended term of imprisonment was imposed. I am of the view that in sentencing accused in the same case there must be parity in sentencing where the charges and circumstances are of a similar nature.

[8] Giving due consideration to all the aforementioned facts, I proceed to sentence the convict Michael Bastienne as follows:

Count 2

A term of three months imprisonment which I proceed to suspend for a period of two years. I also impose a fine of SCR 50,000. 00 (fifty thousand) Rupees. In default of payment of fine a term of 6 months imprisonment.

[9] The nature of suspended term of imprisonment and right of appeal explained.

Signed, dated and delivered at Ile du Port on 29 September 2023.



M Burnap J