

**Republic v Soomery  
(1997) SLR 47**

Karen DOMINGUE for the Republic  
Nichole TIRANT for the Respondent

**Judgment delivered on 19 June 1997 by:**

**PERERA J:** This is an application filed by the Attorney General in terms of section 328 of the Criminal Procedure Code (Cap 54) seeking revision of an order made by the Senior Magistrate imposing a partly suspended sentence. The circumstances under which this sentence came to be imposed are as follows.

**Particulars of offence are as follows:**

The respondent in the instant matter was charged before the Magistrates' Court in cases . 649/96 and 650/96 with the offence of stealing. According to the particulars of the charges, in case 649/96 it was alleged that he stole a black mini-moke canopy, one front bumper, one fuel cap and one number plate from a mini-moke bearing the number plate S. 4927 belonging to Victoria Car Hire on 26 June 1996. In case 650/96 it was alleged that on the same date and place he stole one white mini-moke canopy and four hub cups from a mini-moke belonging to Silversand Car Hire. The respondent pleaded guilty in both cases.

In case 650/96, the Senior Magistrate sentenced the respondent (accused) to a term of 18 months imprisonment suspended for a period of 2 years, and in addition imposed a fine of R2,500.

In case 649/96, which forms the subject-matter of the instant revision, the Senior Magistrate stated –

As I have noted, offences of this nature should be nipped in the bud. In this case, since you have committed both offences in those IWD cases on the same day and time and place, I treat you as a first offender for the purpose of sentencing hereof.

In this case I believe and emphasise that the sentence hereof should be a deterrent and serve as an example to other potential offenders of this nature. I sentence you to undergo 18 months imprisonment. But you will serve only 2 weeks in prison so that it can cause you a short, sharp, shock which will prevent you from repeating this offence. Though I note our laws do not provide ..... for partly suspended sentences. I believe no law prevents the court from passing such partly suspended sentences as done in other jurisdictions. Therefore I hereby suspend the part of the unserved sentence for two years.

The issue before this Court is whether a partly suspended sentence could be imposed under section 282 of the Criminal Procedure Code. This Court has in the cases of *Dugasse v R* (1978) SLR 28, *R v Roy Doudee* (1980) SLR 50, *R v William Rose* (unreported) Revision 7/1995 and *R v Cliff Finesse* (unreported) Revision 6/1995 held that such a sentence was ultra vires the provisions of the Criminal Procedure Code. It appears that the Senior Magistrate was not oblivious to the state of the law on this matter. But he ventured to state that he believed that there was no law to prevent the sentencing official from passing such partially suspended sentence "as done in other jurisdictions". With respect, section 25(a) to (h) of the Penal Code prescribed the different kinds of punishment that the courts in Seychelles may impose on a convict. Section 282 of the Criminal Procedure Code empowers the Court to suspend certain sentences of not more than two years, to a period of not less than one year and not more than three years. This section refers to the sentence in its entirety, and hence if a sentence of imprisonment is suspended, the whole of it stands suspended, otherwise the whole sentence has to be served subject to any remission under the Prison Act.

Section 282 was modeled on section 23 of the Criminal Courts Act 1973 of the United Kingdom. In interpreting that section, the courts in the case of *R v Fitzgerald* (1971) 55 Cr App R 515 held that although there is no statutory bar to passing two sentences of imprisonment either concurrently or consecutively, one of which is to take effect immediately, and the other of which is to be suspended, such a course was wrong in principle and the courts should avoid mixing up sentences which fall into different categories.

However the 1973 Act was amended by the Criminal Law Act of 1977. Section 47 of that Act provided statutorily the imposition of a partially suspended sentence. But the Criminal Justice Act 1991 which came into operation on 30<sup>th</sup> September 1992 repealed that provision and hence the English Courts have reverted back to the pre-1977 position.

Prior to the enactment of section 47 of the 1977 Act, the Advisory Council on the Penal System supporting the argument for partial suspension stated at paragraph 282 of their report –

We view the partly suspended sentence as a legitimate means of exploiting one of the few reliable pieces of criminological knowledge - that many offenders sent to prison for the first time do not subsequently re-offend. We set it not as a means of administering a "short, sharp, shock," nor as a substitute for a wholly suspended sentence, but as especially applicable to serious offenders or first time prisoners who are bound to have to serve some time in prison, but who may well be effectively deterred by eventually serving only a small part of even the minimum sentence appropriate to the offence. This, in our view, must be its principal role.

Hence the aim of a partial suspension of sentence was to strike a balance between any

harm to the public and benefit to the convict. In Seychelles, with the recent trend toward leniency to first offenders, the amendment of the Criminal Procedure Code to permit partial suspension of sentences may achieve the purpose of benefitting the convict without harming the public. But until such an amendment is made, the imposition of a partial suspension of sentence is invalid. Hence the sentence imposed by the Senior Magistrate is quashed.

This Court in exercising revisionary jurisdiction is empowered to alter, maintain, reduce or reverse a sentence of the Magistrates' Court. In the present case, the Senior Magistrate considered the respondent as a first offender although he had committed two separate offences, as they were committed on the same day and time and in the same place but in respect of two different vehicles belonging to different owners. He therefore decided to give him a "short, sharp, shock" limited to 2 weeks imprisonment. The respondent has served that term and hence it could be unjust to impose a higher custodial sentence at this stage. Therefore acting in terms of section 329(1) (b) read with section 316 (a) (ii) I would alter the nature of the sentence to a term of 2 weeks imprisonment effective from the original date of conviction and sentence.

Sentence revised accordingly.

**Revision No. 4 of 1996**