

# **IN THE SUPREME COURT OF SEYCHELLES**

HELEN MONTHY

Of Mont Buxton, Mahé

**PLAINTIFF**

Vs

GOVERNMENT OF SEYCHELLES

(Social Security Fund, Ministry of Finance,

Herein represented by the Attorney General

Of National House, Victoria, and Mahé)

**DEFENDANT**

Civil Side No: 106 of 2004

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Mr. A. Juliette for the Plaintiff

Mr. D. Esparon for the Defendant

**D. Karunakaran, J.**

## **JUDGMENT**

[1] The Plaintiff in this action claims the sum of SR200, 000.00 with interest and costs from the Defendant, the Government of Seychelles for loss and damage the plaintiff suffered as a result of a fault allegedly committed by the Defendant, the Government of Seychelles, through one of its Department (the Social Security Fund), falling under the Ministry of Finance. The defendant denied liability stating that it never committed any fault to the detriment of the plaintiff.

[2] It is not in dispute that at all material times, the plaintiff was employed as a Recovery Officer at the Social Security Fund, run by the Defendant. On the 19th October 2007 at 11 30 am an incident of an alleged theft occurred at the Social Security Fund Offices, Victoria. Cash in the sum of Rs1, 750/- was stolen from the Accounts Supervisor's section. The defendant reported the said incident to the police. Following the report the police conducted an investigation into the said incident.

[3] On the 24 October 2007, during the course of their investigation, the police summoned a group of workers, who were handling the funds involved in the alleged incident, to the Police Station for the purpose of interrogation. After a preliminary interrogation at the CID, all those workers except the plaintiff were released from the police Station. According to the defence-witness Sgt. France Octobre of CID, the plaintiff was the prime suspect. Hence, the police had to detain the plaintiff at the Police Station for further investigation into the alleged crime.

[4] The detention continued for about 24 hours. She was then released after having been bound over to secure her presence as and when required for the purpose of further investigation by the police. Soon after that incident, the defendant (the Employer) suspended the Plaintiff (the Worker) from duty without pay for a period of 30 days pending inquiry so that the police would be able to conclude their investigation and bring the offender to book. In fact, suspension was done in line with Public Service Order 116, which provides for suspension pending a police investigation. However, as the evidence gathered from the investigation was not sufficient and strong enough, the police could not and did not charge the plaintiff for the offence. After completion of the suspension period, the plaintiff resumed duty with the defendant.

[5] Aggrieved by the decision of the defendant that suspended her without pay, the plaintiff lodged a complaint to the Public Service Appeal Board

(PSAB). After conducting a due enquiry into the complaint, the PSAB in its order dated 20<sup>th</sup> March 2008, dismissed the complaint holding inter alia thus:

*“We find that the Social Security was right in reporting the incident to the Police but the Police acted too hastily in arresting the complainant at the early stage of the investigation. The Complainant has returned to work, with no loss of earnings or privileges. There is now no need to proceed further with the complaint. However, we are of the opinion that the Complainant is aggrieved as alleged in the Complainant.*

*We make the following order:*

- 1. That the Ministry’s letter dated 24th October 2001 addressed to the Complainant and signed by Mrs. Marie-France FRANCHETTE be withdrawn, as if it was never issued.*
- 2. That the complainant Personal File (records) be cleared out of all the allegations and documents pertaining to the case in question be accordingly marked and cancelled”*

[6] In the circumstances, the Plaintiff now contents that the Defendant’s actions, through the Director of Social Security Fund amounts to a fault in law. According to the plaintiff, the Director of Social Security Fund of the Ministry of Finance, falsely, wrongly, recklessly, negligently, maliciously and unjustifiably accused the Plaintiff of wrongdoing by stealing at her place of work. The Director maliciously reported the Plaintiff to the police for wrongdoing of stealing at her place of work, which led to the Plaintiff being arrested and detained in a police cell for 24 hours. The Director of Social Security Fund of the Ministry of Finance was reckless and negligent in the handling of an investigation of theft at its premises against the Plaintiff. By reason of the

matters aforesaid, the Plaintiff claimed that she suffered loss and damage as particularized below:

- (i) Moral damage for loss of liberty, distress, anxiety, inconvenience and hypertension..... SR 100,000.00
- (ii) Moral damage for damage to the Plaintiff's reputation, character and credit..... SR100, 000.00

**Total SR200, 000. 00**

[7] According to the plaintiff, the Defendant has failed despite being requested by the Plaintiff to make good of the said loss and damages. Hence, the Plaintiff urged the Court to give judgment in her favour and against the Defendant in the sum of SR200, 000.00 with interest and costs.

[8] On the other hand it is the case of the defendant that it is true the defendant reported the incident of the alleged theft to the police but they did so in good faith and was done out of any malice against he plaintiff . The defendant further contended that it was in the public interest, duty bound and necessary to report the incident of the alleged theft to the police, as it occurred in their office.

[9] I carefully perused the pleadings, evidence on record including the documents adduced by the parties.

Only two questions arise for determination in this matter. They are:

- (1) *Did the Social Security Fund commit any "fault" in law in reporting to the police the alleged incident of theft occurred at the office of its Account Supervisor? and*

(2) *Was there any malice on the part of the SSF against the plaintiff in the entire episode of detention by the police and suspension by the Ministry?*

[10] Obviously, the plaintiff's action is based on "*faute*". Hence, the principles of law applicable to this case are that which found under Article 1382 (2) & (3) of the Civil Code of Seychelles. This Article reads thus:

(2) *"Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be a positive act or omission.*

(3) *"Fault may also consists of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest"*

[11] I carefully perused the entire evidence including the documents adduced by the parties in this matter. I gave diligent thought to the submission made by counsel on both sides. I also had the opportunity to observe the demeanour and deportment of the witnesses, while deposed in court. First, on the question of credibility, I believe the defendant's witness Sgt. France Octobre in every aspects of his testimony. He appeared to be a truthful witness. I believe his testimony particularly, as to why and under what circumstances the plaintiff was interrogated and detained upon reasonable suspicion. I believe him, in that the plaintiff was a prime suspect and was detained for the genuine purpose of interrogation.

[12] Having regard to the entire circumstances surrounding the case including the special circumstances of the plaintiff being involved in the transaction that preceded the disappearance of cash, in my view, defendant (SSF) did not commit **any error of conduct** which would not

have been committed by a prudent person in the special circumstances in which the incident of the alleged theft was reported to the police. It is obvious even the PSAB held the same view that SSF *was right in reporting the incident to the Police*. In the circumstances, I find that the defendant's report to the police does not constitute a **fault** in the eye of law under article 1382 (2) & (3) of the Civil Code of Seychelles.

[13] For the same token, neither the police nor the Ministry of Finance nor the Government of Seychelles for that matter also in my judgment, did not commit any **error of conduct** which would not have been committed by a prudent person in the special circumstances in which the incident of the alleged theft and the consequent report and investigation by police occurred, which all culminated in the detention and suspension of the plaintiff from duty. The dominant purpose of the report by SSF, the consequent detention and investigation by police were also not intended to cause any harm to the plaintiff nor done out of malice and so I find.

[14] Having thus considered the entire evidence on record, I find on a preponderance of probabilities that the defendant did not commit any unlawful act or fault in reporting the incident of theft and the names of its workers, who were present that day in question. In my judgment, there was **no error of conduct** on the part of the defendant, which would not have been committed by a prudent person in the special circumstances in which the prejudice was allegedly caused to the plaintiff. Obviously, the plaintiff is exaggerating the episode and the entire situation and did not suffer any prejudice or moral damage on account of the said interrogation and detention by the police and suspension by the defendant and so I find. Evidently, the Social Security Fund did not commit any "fault" in law in reporting to the police the alleged incident of theft occurred at the office of its Account Supervisor.

There was no malice on the part of the SSF against the plaintiff in the entire episode of detention by the police and suspension by the Ministry pending police investigation in line with Public Service Order (PSO) 116.

For these reasons, I dismiss the suit and make no order as to costs.

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**D. Karunakaran**

**Judge**

**Dated this 10<sup>th</sup> day of July 2013**