

**IN THE COURT OF APPEAL OF SEYCHELLES**

Jean Ragain                      Appellant

VS

The Republic                      Respondent

CR SCA No: 7/2012

BEFORE: Anthony F.T. Fernando. JA

Counsel: Mr. B. Hoareau for the Appellant  
            Mr. C. Jeayaraj, Principal State Counsel for the Respondent

Date of Hearing: 10<sup>th</sup> May 2012

Date of Ruling: 15<sup>th</sup> May 2012

**RULING**

Anthony F. T. Fernando JA.

1. This was an application by the Appellant:
  - (i) that the appeal filed by the Appellant against the Republic, in respect of his conviction and sentence in Criminal Side 32 of 2009, before the Supreme court, be heard during the August 2012 session, and to order the Registrar of the Supreme court to have the records in respect of the said case prepared and ready so that the said appeal may be proceeded with in the August 2012 session; or alternatively

- (ii) that the order of the Supreme court suspending the driving license of the Appellant for 5 years, be stayed, until the determination of the appeal filed by the Appellant.
2. The only reason attributed in the Affidavit in Support of the Application for seeking the relief is that the Appellant's inability to drive is causing severe hardship to him and his family in that he has to get a third party to drive his wife and him for work. It is also the Appellant's position that on the 27<sup>th</sup> of July 2009 as part of his bail conditions pending the determination of his trial he was not allowed to drive and hence he has not been driving since then.
  3. The Appellant has been convicted of the offence of driving a motor vehicle with alcohol concentration above the prescribed limit contrary to the Road Transport (Sober Driving) Regulations, 1995 by the Supreme Court on the 22<sup>nd</sup> of March 2012 and as part of the sentence imposed on the same day the Supreme Court has ordered "that his licence be suspended for a period in total 5 years."
  4. The licence has been suspended under the provisions of section 27(1)(a) of the Road Transport Act (Cap 206) which reads as follows:

"Any court before whom a person is convicted of any offence under this Act or of any offence in connection with the driving of a vehicle may, if the person holds a driving licence, suspend his licence for any specified period, and where the court thinks fit, declare such person to be disqualified from obtaining a licence for any further period after the expiry of the licence: Provided, however, where a person is convicted of an offence under subsection (1)(c) of section 24 the court shall unless for special reasons it thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, suspend the licence and declare such person to be disqualified from obtaining a licence for a period of not less than twelve months from the date of conviction."

5. The Appellant in this case has been convicted of an offence under subsection (1) (c) of section 24. It is clear from the above provisions that once convicted of an offence under section 24 (1) (c) the discretion of the court to not suspend the licence or refrain from making a declaration that the convict be disqualified from obtaining a licence for a period of not less than twelve months from the date of conviction is restricted, unless there are special reasons for doing so. In this case there has only been a suspension. There is no further declaration that the convict be disqualified from obtaining a licence for a period of not less than twelve months from the date of conviction.
  
6. The Respondent informed this court that he was not objecting to the relief sought by the Appellant under (i) as referred to at paragraph 1 above. Hearing of this appeal in the August 2012 session is not a guarantee that this Court can give at this stage as that would be dependant on the issue of the preparation of the appeal brief and cases where the appeal briefs are already prepared and ready for hearing. One cannot ignore the fact that there are criminal appeals due for hearing where the date of offence and conviction dates further back to the instant case and the convicts are in prison pending the determination of their appeals. This is without mentioning the many a civil appeal where the litigants are awaiting to see a conclusion of their cases. Listing an appeal by displacing others will be dependant on the date of offence, the delay in concluding the hearing before the Supreme Court, the reasons for such delays and whether there are special circumstances that warrant an early hearing of the appeal. Certainly the circumstances set out in paragraph 2 above do not qualify as special circumstances that warrant an early hearing of this appeal. This is more so because of the provisions in section 27 (5) of the Road Transport Act.
  
7. “(5)(a) A person whose licence is suspended or who is declared to be disqualified from obtaining a licence may apply to the court by which the order of suspension or disqualification was made to remove such suspension or disqualification and on any such application the court may, as it thinks proper, having regard to the character of the person disqualified and his conduct subsequent to the order, the nature of the offence and any other circumstances of the case, either by order remove the suspension or

the disqualification as from such date as may be specified in the order or refuse the application.

(b) No application shall be made under paragraph (a) before the expiration of whichever is relevant of the following periods from the date of the order by which the suspension or disqualification was imposed, that is to say – (i) one half of the period of disqualification if it is for less than 6 years but not less than 2 years; (ii) 3 years in any other case.

(c) Where an application under paragraph (a) is refused, a further application thereunder shall not be entertained if made within 3 months after the date of the refusal.

(d).....”

8. The Appellant in this case has come before this Court and is seeking a relief which he could not have even obtained from the Supreme Court under section 27 (5) of the Road Transport Act since he is not within the time period such an application could be made. It is clear from sections 27(1)(a) and 27(5) that the Legislature takes a serious view of driving a motor vehicle with alcohol concentration above the prescribed limit and the non imposition of a suspension or disqualification is provided for only for special reasons. This Court at this stage is not privy to any of the circumstances of the case that may warrant the removal of or suspension of the licence, nor can it, in view of this, order that the appeal in this case be heard during the August 2012 session.
9. The application is therefore refused.

Anthony F.T. Fernando  
Justice of Appeal

Dated this 15<sup>th</sup> day of May 2012, Victoria, Seychelles