

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO29/2009

[2016] SCSC 1065

THE REPUBLIC

versus

KRISHNAMART & COMPANY (PROPRIETARY) LIMITED
Accused

**NELSON PILLAY AND SAROJA PILLAY REPRESENTING AS DIRECTORS OF
KRISHNAMART & COMPANY (PROPRIETARY) LIMITED**
Accused

Heard:

Counsel: Mr Benjamin, Assistant Principal State Counsel for the Republic
Mr. Georges for the accused

Delivered: 16 December 2016

SENTENCE

Robinson J

[1] The trial proceeded on an Amended Formal Charge dated 30 May, 2013.

[2] Count 1 and count 2 are as follows —

*"Count 1
Statement of offence*

Issuing cheque without provision contrary to and punishable under section 299 A (1) of the Penal Code CAP 158.

Particulars of offence

Krishnamart and Company (Proprietary) Limited of 5th June Avenue, Victoria on the 30th April 2004 at Victoria, Mahe issued a Bank of Baroda cheque No. 051544 for the sum of SR2, 609,462.17 for the payment of which cheque there was no sufficient provisions."

"Count 2

Statement of offence

Issuing cheque without provision contrary to and punishable under section 299 A (1) of the Penal Code CAP 158 and read with section 54 (1) of the Interpretations and General Provisions Act CAP 103.

Particulars of offence

Nelson Pillay and Saroja Pillay representing as directors of Krishnamart & Company (Proprietary) Limited of 5th June Avenue, Victoria on the 30th April 2004 at Victoria, Mahe consented to or connived with the said Krishnamart & Company (Proprietary) Limited or was negligent in the issuing of a Bank of Baroda Cheque No. 051544 for the sum of SR SR2, 609,462.17 for the payment of which cheque there was no sufficient provisions."

- [3] The court found Krishnamart and Company (Proprietary) Limited guilty of issuing a cheque without provision contrary to and punishable under section 299 A (1) of the Penal Code and proceeded to convict Krishnamart and Company (Proprietary) Limited.
- [4] The court was satisfied that the prosecution had proven beyond reasonable doubt that Krishnamart and Company (Proprietary) Limited committed the offence with the consent or connivance of, or because of neglect by, Nelson Pillay a director of or similar officer of Krishnamart and Company (Proprietary) Limited, whereby Nelson Pillay as a director


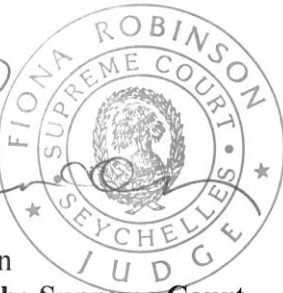
or similar officer was found guilty of the same offence, and proceeded to convict Nelson Pillay.

- [5] Saroja Pillay, a director of Krishnamart and Company (Proprietary) Limited, was acquitted by the court.
- [6] Learned counsel for the accused has put forward a plea in mitigation stating that the accused is quite a known businessman. He employs 20 people. He has four children one of whom is a minor.
- [7] He also implored the Court to consider the delay which took place between the dates of the commission of the offences, in April, 2004, and the eventual disposition of this case, in August 2016. Learned counsel then moved the Court to impose the minimum possible sentence.
- [8] The court has taken into consideration the mitigating factors as outlined by learned counsel. The court is persuaded that the consideration that weighs heavily in favour of the accused person is the delay in the disposition of this case. The court finds that the accused person deserves a relief for the delay.
- [9] The court sentence Krishnamart and Company (Proprietary) Limited to a fine of Seychelles rupees 5000.00/- under section 299 A (1) of the Penal Code read with section 54 (2) (c) of the Interpretation and General Provisions Act.
- [10] The court sentence Mr. Nelson Pillay, a director of or similar officer of Krishnamart and Company (Proprietary) Limited, to a period of 6 months in prison and to a fine of Seychelles rupees 25, 000/-. The said term of imprisonment shall be suspended for a period of 6 months.
- [11] Krishnamart and Company (Proprietary) Limited and Mr. Nelson Pillay shall pay the said fine of Seychelles rupees 5, 000.00/- and Seychelles rupees 25, 000/-, respectively, to the Republic, not later than 31 March, 2017.

[12] In default of Mr. Nelson Pillay paying the said fine to the Republic, Mr. Nelson Pillay shall serve a period of 6 months in prison, which period of imprisonment shall commence on 1 April, 2017.

[13] The accused persons may appeal against sentence.

Signed, dated and delivered at Ile du Port on 16 December 2016

F Robinson
Judge of the Supreme Court