

SUPREME COURT OF SEYCHELLES

Reportable
CO 05/2023

In the matter between:

THE REPUBLIC
(rep. by Lansinglu Rongmei)

Republic

and

JEAN PIERRE POOL
(rep. by Anthony Juliette)

1st Accused

ROBIN SAMSON
(rep. by Joel Camille)

2nd Accused

CHRISTOPHE KILINDO
(rep. by Daniel Cesar)

3rd Accused

AYSHA ANTAT
(rep. by Clifford Andre)

4th Accused (convicted)

FRANCHESCA MALVINA
(rep. by Basil Hoareau)

5th Accused (convicted)

DARREL POTHIN
(rep. by S. Rajasundaram)

6th Accused

Neutral Citation: *Republic v Jean-Pierre Pool & Ors* (CO 05/2023) (23 November 2023)

Before: Burhan J

Heard: 09 November 2023

Delivered: 23 November 2023

ORDER

I proceed to sentence both convicts on Count 4 as follows:

4th Convict – 12 months’ imprisonment and a fine of SCR 15,000 (fifteen thousand).

5th Convict – 12 months’ imprisonment and a fine of SCR 15,000 (fifteen thousand).

SENTENCE

BURHAN J

- [1] The 4th accused Aysha Antat and the 5th accused Franchesca Malvina were convicted on their own plea of guilty in respect of the offence set out in Count 4 of the amended charge sheet dated 08th November 2023 which reads as follows:

Count 4

Any person employed in the public service who, in the discharge of the duties of his office, commit breach of trust affecting the public contrary to Section 120 of the Penal Code as read with Section 22 (a) of the Penal Code and punishable under Section 120 of the Penal Code.

Aysha Antat of Mont Buxton, Mahe and Franchesca Malvina of Forêt Noire, Mahe, while both being police officers, accepted certain sum of money as payment, to carry money and a satellite phone meant for illegal activity, from Seychelles to Madagascar and on the 24th August 2022, they carried the said money and the satellite phone from Seychelles to Madagascar for persons known to the Republic, thus committed breach of trust affecting the public

- [2] After recording of the guilty plea and entering conviction both learned Counsel proceeded to make their plea in mitigation on behalf of the convicts.
- [3] Learned Counsel Mr Clifford Andre submitted that the 4th convict, Aysha Antat had pleaded guilty to the amended charge at the very first opportunity, provided after the amendment thereof. Counsel stated that she had not wasted the time of the Court and she is a first offender. Mr Andre moved the Court to consider the sentence imposed in the

case of “*Republic v Pervin Payet and all the other cases that were mentioned there in.*”. He submitted that his client has no children and was living with her grandmother who had passed away. He further submitted that the 4th convict has accepted the conditional offer of the Attorney General and given an undertaking that she will be testifying against the other accused in the case. He moved that considering these circumstances that Court be lenient when imposing the sentence. Learned Counsel further submitted that his client was not in any way involved in the transport of controlled drugs and moved for a suspended sentence to be imposed.

[4] Mr Basil Hoareau in mitigation submitted that his client the 5th convict, Franchesca Malvina had by pleading guilty to the charge, shown remorse and saved the precious time of the Court. He further stated that his client is 28 years of age and has agreed to be a witness for the prosecution. He further submitted that she is a single mother with a child aged 8 years and since being remanded, her grandmother has taken over the care of the child. Learned Counsel further submitted that his client too has been in remand since 14th February 2023, a period of just under 9 months. He brought to the notice of Court that the offence is a misdemeanour and in terms of Section 35 of the Penal Code, the maximum sentence that could be imposed is two years. He further submitted that in terms of the Interpretation and General Provisions Act, where the quantum of fine is not set down, then it must be a reasonable fine. The involvement of his client was peripheral in nature and she was not involved in the conspiracy to import the controlled drug. Learned Counsel submits that his client has neither abused nor used her office to facilitate the commission of the offence. He moved that Court impose a suspended term of imprisonment and if a custodial term be imposed, it may be less than one year,

[5] I observe that section 120 of the Penal Code states that any person found guilty of an offence under this section is guilty of a misdemeanour. It would be pertinent to set down Section 35 of the Penal Code as amended by Act 42 of 2021 which reads as follows:

When in this Code no punishment is especially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine of level 3 on the standard scale.

- [6] According to the Criminal Offences (Standard Scale of Fines) Act 2021 (Act 26 of 2021) the standard scale set out in Schedule 1 indicates that a level 3 fine should not exceed SCR 50,000/.
- [7] Giving due consideration to the facts in mitigation, I am of the view that considering the admitted active participation of the convicts who are police women in the offence set out in the charge, I am the view that a custodial term of imprisonment must be imposed. However, I take into consideration the strong mitigating factors that exist i.e. they have co-operated with the prosecution and agreed to give evidence. I further observe that their co-operation has resulted in a further individual being arrested and charged.
- [8] Giving due consideration to the facts pleaded in mitigation, the aggravating factors and the law pertaining to the sentence to be imposed, I proceed to sentence the two convicts as follows.

Count 4

4th Convict- 12 months' imprisonment and a fine of SCR 15,000 (fifteen thousand).

5th Convict- 12 months' imprisonment and a fine of SCR 15,000 (fifteen thousand).

In default of payment of fine, a default sentence of six months imprisonment to be imposed on each convict. The convicts may pay the fine in monthly instalments of SCR 2500.

- [9] Time spent in remand to count towards sentence. The convicts are entitled to remission at the discretion of the Superintendent of Prisons.

Signed, dated and delivered at Ile du Port on 23 November 2023.

M Burhan J