

SEYCHELLES / JUDGMENT

R vs Pillay (Criminal Side No: 16 of 2006) [2013] SCSC 45 (6 May 2013)

[2013] SCSC 45

COURT

Supreme Court

CASE / FILE NUMBER

Criminal Side No: 16 of 2006

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IN THE SUPREME COURT OF SEYCHELLES THE REPUBLIC Vs NELSON PILLAY - accused
Criminal Side No: 16 of 2006 Mr. Esparon for the Republic Mr. Georges for the accused Renaud, J

Judgment

The Accused Nelson Pillay stands charged with three counts of offences of – issuing cheque without provision contrary to and punishable under Section 299(A)

- (1) of the Penal Code, and in the alternative, three counts of offences of – making a document without authority contrary to and punishable under Section 343 of the Penal Code. Offences under Section 299(A)(1) are of strict liability and as such the Prosecution is only required to prove all the elements of the offence to the required standard of proof in order to obtain a conviction. The elements of the offences that the Prosecution needs to prove beyond reasonable doubt, are, in the 1st , 3rd and 5th counts –
 - (a) that the Accused issued a cheque on a bank, within or outside Seychelles, for the payment of which cheque
 - (b) there was no, or no sufficient, pre-existing, adequate or free provision; or,
 - (c) after the issue of a cheque, withdrew, whether within or outside Seychelles, all or part of any provision for the payment of such cheque or
 - (d) stopped payment thereof; or,
 - (e) in any way prevented the payee of any cheque from effecting payment thereof. Offences under Section 299(A)(1) are not of strict liability and as such the Prosecution is required to prove all the elements of the offence to the required standard of proof as well as intention in order to obtain a conviction. On the alternative instances on 2nd, 4th and 6th counts, the elements are –
 - (a) with intent to defraud or to deceive –

- (b) without lawful authority or excuse,
- (c) the Accused made, signed, or executed, for or in the name or on account of another person,
- (d) whether by procuration or otherwise,
- (e) any document or writing; or
- (f) knowingly uttered any document or writing so made, signed, or executed by another person. This case is concerned with an incident where three cheques for SR550,000.00 each were issued and not honoured. The charges, as stated above, are connected with each cheque where the Accused is charged with issuing a cheque without provision and alternatively with signing the cheque without the necessary authority. I carefully considered the contents of the written submission of Learned Defence Counsel. Some points submitted are more in mitigation than actual defence to the charge. The mitigating factors will be considered at a later stage if that is required but for the purpose of this judgment I take into consideration the relevant aspect of the submission. In a nutshell the defence of the Accused, as submitted, is that the Accused signed and issued those cheques while he was a Director of the Company, Krishnamart & Co. (Pty) Ltd., (hereinafter 'the Company') to pay for the debt of the Company, and, when the cheques were made and issued he had authority to do so. That he handed over those cheques as a guarantee and these were supposed to be redeemed against other payments that he would be making in due course towards the debt. That following his resignation, and, dismissal as a Director of the Company as cheque signatory, those cheques were presented for payment without the Company having been warned and without it having the necessary time to make arrangements for honouring the payments. That the Accused is charged with committing the offences in January 2005 whereas the cheques in issue were made in May 2004 when the Accused had signatory power and was acting with good intention. Moreover those cheques were not dated by the Accused. I find as facts that the three cheques in issue as stated in the particulars of offence, (Exhibits P6, P7 & P8), were indeed issued for later payment. The cheques issued by the Accused were not personal cheques but issued by the Accused in his capacity as a Director of the Company on whose behalf these cheques were issued. The witness from the Bank of Baroda, Mrs. Monthy, testified that on 7th May, 2004 the Bank issued a cheque-book inter alia containing cheque numbers 0688034; 0688035 and 0688036 on account of Krishnamart & Co and the Accused collected it. The Accused was the sole signatory on the Company's cheques. The Accused neither entered the name of the payee nor did he write the due date thereon at the time of making those cheques. Evidence reveals that those cheques were issued in or around May 2004. These cheques were intended to cover an existing debt of the Company with the Creditor. The holder of those cheques being the Creditor presented all the three cheques for payment on 10th and 14th January 2005 and these were dishonoured by the Bank because the signature of the Accused had by then been cancelled by the Company. At the time those cheques were presented to the Bank for payment in January 2005 the Accused was no longer a Director of the Company nor was he an authorized signatory for the Company's cheques. The mandate of the Accused to sign the Company's cheques was

cancelled on 10th May, 2004 and he was informed of that by a letter to the Accused dated 6th August, 2004 (Exhibit D5). When the Accused issued those cheques it was agreed between himself and the Creditor that these were meant to be used as guarantee whilst the Company would be progressively making payments to cover those amounts, and, that in any event the cheques were not to be presented in one batch but staggered over the period August to November, 2004. The underlying reasons for this transaction was that the Creditor was owed certain amount of money and the Accused in his capacity as Director of the Company, in May 2004 issued four cheques to his Creditor in order to pay the amount due. The Accused did this transaction on behalf of the Company. It is, however, established that at all material times the Accused was the only Director of the Company who was actively managing all the affairs of the Company including its finances. The debts amounting to SR1.950 million were incurred when the Creditor, Elite Distributors, a Company owned by Mr. Balachandra in Singapore represented in Seychelles by PW1 Mr. Rajasundaram, supplied goods to the Company at the request of the Accused. Payments were due for such goods received by the Accused on behalf of the Company and these were to be paid by the Company. The Accused in settlement of those debts agreed to pay the Creditor by four undated cheques. He also entered into an Acknowledgement of Debt and a personal Deed of Guarantee on 4th June, 2004 (Exhibit P1 & P11). The cheques were to be returned to him when he paid the Creditor in cash and when he had done so one by one of the cheques will be redeemed. That was to be done during the period August to October 2004. The Accused did not totally honour this arrangement and failed to pay the Creditor any sum or sums in cash in order to redeem those cheques. The Accused managed to redeem only one of those four cheques by paying cash for it. It was as a result of the failure of the Accused in making such cash payments as agreed that the Creditor dated the undated cheques and presented all the cheques to the Bank for payment on 10th and 14th January, 2005. The argument of the Accused in his defence that the Creditor ought to have informed him prior to presenting those cheques, in my judgment cannot stand as it was within the knowledge of the Accused that he had failed to pay the sum due to the Creditor by the end of October, 2004 and he was aware that those cheques were undated and that the Creditor would be presenting those cheques anytime after his failure to honour the payment arrangements. The Accused did not cease managing the affairs of the Company until October, 2004 at which time there were no provision to meet the cheques that were due. I therefore reject this line of defence taken by the Accused as being simply frivolous excuses for his failure to honour his undertaking. All along the Accused knew that he had encumbered the Company with such debts and had subjected the Company to such arrangement yet he failed to either make payments to redeem those cheques or to deposit sufficient funds generated by the Company to honour those cheques when presented by the Creditor. It could be that the cheques were not honoured because of signatory mandate of the Accused but essentially there were not sufficient funds in the bank account of the Company being managed by the Accused to cater for the payments of those cheques. Where did the Accused deposit the funds generated by the Company under his management during that time? If the Bank dishonoured those cheques on the basis that the Accused was not a signatory, at least, the Company's Bank account would have sufficient

funds accumulated to cover those cheques. From the day of issuing those cheques to the Creditor the Accused did not have and/or did not maintain sufficient funds in the bank account to honour those cheques. On the basis of my findings above, it is my judgment that the Prosecution has proved beyond reasonable doubt that the Accused issued the three cheques on Bank of Baroda in Victoria, Mahe, Seychelles, being for the payment of which cheques there were no, or no sufficient, pre-existing, adequate or free provision, contrary to and punishable under Section 299(A)(1) of the Penal Code. I accordingly convict the Accused Nelson Pillay of count 1, count 3 and count 5 of the offences as charged. It is my further judgment that the Prosecution has not proven beyond reasonable doubt that the Accused intended to defraud or to deceive the Creditor when he made out the three cheques. I acquit the Accused under the alternative 2nd, 4th and 6th count of offences as charged. B. RENAUD JUDGE Dated this 6 May, 2013

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