

2014 Intermediate Court (Criminal Division)

Cause No 626/07

POLICE

V/S

1. RAJEN VELVINDRON
2. MOOKIESWAREE VELVINDRON
3. MANDEE VELVINDRON

Charges –

Counts 1 to 7:- Money Laundering. In breach of section 17(1)(a) and 19 of the Economic Crime and Anti Money Laundering Act.

Counts 8 to 23:- Money Laundering. In breach of section 17(1)(a) and 19 of the Economic Crime and Anti Money Laundering Act.

RULING

Accused No 1 is charged for the above mentioned offences under counts 1 to 20; he has pleaded not guilty and is represented by counsel. On the 25th of July 2013, during the course of proceedings, accused No 1 changed his plea and pleaded guilty to all charges against him.

Accused No 2 is charged for the above mentioned offences under counts 8 to 19 and 21; she has pleaded not guilty and is represented by counsel.

Accused No 3 is charged for the above mentioned offence under counts 20, 22 and 23; she has pleaded not guilty and is represented by counsel.

During the course of proceedings, the Conservator of Mortgages, witness No 15, was called by the prosecution; the defence gave notice that there is objection to any evidence from the witness regarding properties held by the three accused. Both parties offered arguments. It is the contention of the defence that the properties of the three accused were not the subject matter of any count against them; the evidence would therefore be irrelevant and the prejudicial value would exceed its probative value.

It should be pointed out that when the case was lodged, there were 7 witnesses initially; on 02.10.08 an additional list was filed and Mr Glover who appeared for all accused did not have any objection and witness no 15 appeared on the additional list with specific remarks which reads as follows-“ Conservator of Mortgages or other officer as deputed to produce certified copy of extract from reg of repertory Vol Rep 575 no 904 (ii) Vol Rep 625 no 190 (iii) Vol Rep 901 no 493 (iv) Rep 977 no 247”. There was no objection to add the Conservator of Mortgage since the outset and I find it most unfair now to prevent the prosecution to call the witness to adduce evidence in support of its case.

Defence has submitted that the information and its various counts deal with specific banking transactions and not relating to properties held by the three accused and the prosecution



not shown the link between the properties and the money as per the counts and that the prosecution wants to poison the mind of the court. I find it appropriate to quote section 17 as it appears in the Act (the underlining is mine) -

17. Money laundering offence

(1) Any person who-

(a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or

(b) receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is or in whole or in part directly or indirectly represents, the proceeds of any crime,

where he suspects or has reasonable grounds for suspecting that the property is derived or realised in whole or in part, directly or indirectly from any crime, shall commit an offence.

I find it also relevant to refer to the information as drafted which avers as follows "....that the accused suspected that the property derived, in whole, directly from a crime." (the underlining is mine)

The prosecution has a duty to lay the substratum before this court to allow for the inference that the accused should have suspected that the various sums of money were proceeds of crimes. In order to do that the prosecution is calling witness No 15 to adduce evidence which would show the financial profile of the three accused. I fully agree that the prosecution should be allowed to call evidence to support its case and indeed it is their duty to do so. Counsel for the prosecution has cited two authorities from the High Court of Hong Kong and I find that the case of **Hksar v Lee Wai-yiu and anor. Criminal Appeal No 100 of 2006**, which is a money laundering case, to be relevant. In this case the trial judge was found to be perfectly correct and was entitled to consider a number of transactions to enable the inference of knowledge of the accused; it was even said that the onus of proving the case was on the prosecution and they were entitled to rely on the volume and value of transactions.

On the other hand, counsel for the defence is suggesting that the prosecution wants to poison the mind of this court with irrelevant matters; in a word of reassurance to all parties I would just say that this court is bound by the laws of evidence and the rules relating to admissibility of evidence.

Counsel for the defence has also stated that prejudice will be caused to the three accused, particularly accused No 1 who has already pleaded guilty. I do not see how producing information which is available to the public at large will cause prejudice to the accused parties; more precisely on how the prejudicial effect will exceed the probative value. However, I find it relevant to caution the prosecution of the evidence which should be adduced as a matter of practice when a person has pleaded guilty, like in the case of accused No 1.

For these reasons and after having considered the submissions of both counsels, this court holds that the motion of defence counsel is devoid of any merit and is set aside.


Mr Vijay Appadoo

Magistrate

Intermediate Court (Criminal Division).

Delivered on 08. 08.2014