IN THE INTERMEDIATE COURT OF MAURITIUS

Cause No. 1295/2010

In the matter of:-

Independent Commission Against Corruption

v

Nazima RUHOMALLY

RULING

The accused is charged with the offence of 'Money laundering' (27 Counts) in breach of sections 3(1)(b), 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act (the Act).

It is averred that in the years 2005 to 2008 she wilfully, unlawfully and criminally possessed/disposed of, property which, in part directly represented the proceeds of a crime, where she suspected that the property was derived in part, directly from a crime, to wit: she was in possession in her bank account or that of her minor children/withdrew from her bank account or that of her minor children, sums she suspected to have been derived, in part, directly from a crime, to wit: embezzlement by a person in service receiving wages.

She pleaded not guilty to all the counts and is assisted by Mr Y. A. R. Mohamed, S.C.

Ms P. Beesoonauthsing, counsel, appeared for the prosecution.

The defence has raised what it termed a procedural point of law, namely the accused is being prosecuted before a different bench of this Court (Cause No.223/2011) for the offence of embezzlement and the present information speaks of embezzlement, so the case should have been taken before the same Magistrate to avoid conflicting verdicts.

The prosecution is resisting the motion.

The Court heard arguments on the point.

For the defence it was submitted in a gist that (i) an information should not be overloaded, as this could lead to an abuse of process. The DPP authorised prosecution before the criminal Court for embezzlement on the same facts and issues as the present case. It is conceded though that the Court can find the accused guilty of money laundering irrespective of the predicate offence being proved; (ii) however, if there are conflicting verdicts, this would be an embarrassment to the Court and an abuse of the process of the Court.

Counsel for the prosecution argued in essence that (i) the counts particularises the dates of the offences and the amounts; and (ii) the ICAC can only prosecute corruption and money laundering offences and the cursus is to prosecute for the predicate offence separately. There would no embarrassment as this is specially provided in the law, section 6(1) and (3) of the Act.

Mr Mohamed replied that he was not questioning the right of the DPP to enter the cases, but submitted that they were invalidly entered. It is for the Court to decide if embarrassment would be caused or not and if an abuse of the process of the Court would be caused or not.

I have duly considered the submissions of counsel. I note that the submissions of the defence do not reflect strictly the procedural point in law raised, inasmuch as during the arguments the issue of 'overloading' of the information was argued as the first limb. Be that as it may, I shall consider the two limbs in the order raised.

It is the contention of the defence that there is an abuse of the process of the Court because of the 'overloaded' information and the fact that the accused is being prosecuted for money-laundering and for embezzlement before two different benches.

On abuse of process, in ***Reg. v Derby Crown Court, Ex parte Brooks* (1984) 80 Cr. App. R 164** it was said:

> "The power to stop a prosecution arises only when it is an abuse of a process of the court. It may be an abuse of process if either (a) the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by the law or to take unfair advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution which is unjustifiable... The ultimate objective of this discretionary power is to ensure that there should be a fair trial according to law, which involves fairness to both the defendant and the prosecution."

I find of particular pertinence what Lord Lowry said in ***R v Horseferry Road Magistrate's Court Ex parte Bennett* [1994] 1 A.C 42**, as follows:

> "I consider that a court has a discretion to stay any criminal proceedings on the grounds that to try those proceedings will amount to an abuse of its own process either,
>
> (1) because it will be impossible (usually by reason of delay) to give the accused a fair trial or
> (2) because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of a particular case."

However, it is important to bear in mind that such power is to be sparingly used - **Archbold Digital Edition 2012, para 4-58**:

> "The jurisdiction to stay proceedings (or for that matter to dismiss an information) on the basis of abuse of process is to be exercised with the greatest caution; the fact that a prosecution is ill-advised or unwise is no basis for its exercise; the question whether to prosecute or not is for the prosecutor; if a conviction is obtained in circumstances where the court, on reasonable grounds, feels that the prosecution should not have been brought, this can be reflected in the penalty: Environment Agency v. Stanford [1998] C.O.D. 373, DC. See also DPP v. Humphrys (Bruce Edward) ([1977] A.C. 1), ante,

§4-49, and cf. Postermobile Plc v. Brent LBC, The Times, December 8, 1997, DC , post, §4-62."

On the issue of the information being 'overloaded' I find that the offences are separately identifiable offences, allegedly occurring on different dates and concerning different amounts, so that it cannot be said to be any 'overloading'. Therefore, the question of abuse of process certainly does not arise on that score.

On the conflicting verdicts and ensuing embarrassment to the Court, I wish to point out first, as conceded by the defence, that the DPP can prosecute an accused party for money-laundering and for the 'predicate' offence simultaneously, on different informations, and the Court can find the offence of money-laundering proved irrespective of a conviction as far as the 'predicate' offence is concerned, as provided under section 6(1) and (2) of the Act, as follows:

> (1) A person may be convicted of a money laundering offence notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered.
> (2) Any person may, upon single information or upon a separate information, be charged with and convicted of both the money laundering offence and of the offence which generated the proceeds alleged to have been laundered.

The issue is whether the same bench should hear the two cases for which the accused is being prosecuted, that is the money laundering case and the embezzlement case for fear of conflicting verdicts. Since the Court can find the offence of money laundering proved even if there is no conviction for the offence of embezzlement, there is no necessity for a same bench to hear both cases, and I am of the view that there would not ensue any embarrassment whatsoever.

For the reasons given, I set aside the 'procedural point of law' raised by the defence.

W. V. Rangan
Magistrate
Intermediate Court (Criminal Division)

This 26 February 2015