

Police v Mohammed Bashir NAZEER Prov CN: 6448/09
Ruling Delivered on 04 November 2010

The Accused stands provisionally charged with the offence of "Money Laundering" in breach of section 3 of the Financial Intelligence and Anti-Money Laundering Act 2002.

Learned Counsel for the Defence moved that the provisional charge be struck out on the ground that there is no prima facie evidence warranting the charge against the Accused.

Learned Counsel appearing for the ICAC resisted the said motion and stated that the reason provided by Learned Counsel for the Defence was not a valid one in law and that the Court has no jurisdiction to hear and assess evidence to determine whether the provisional charge is to be struck out.

Prosecution called the Enquiring Officer who explained the history of the case and the progress of the enquiry. He explained how the ICAC is in communication with foreign authorities and is awaiting documents from these foreign authorities.

Learned Counsel for the Defence submitted that there is no evidence either to sustain a provisional charge or to justify the arrest of the Accused.

Learned Counsel for the ICAC submitted that the provisional charge, by its nature, is lodged at the early stage of the enquiry and that the Court, at this stage, should not probe into the evidence as in so doing, it will be encroaching the powers of the DPP. He finally submitted that, in light of the evidence on record, there is prima facie evidence against the Accused to sustain the provisional charge.

The Court considered the submissions and held that, given it is a provisional charge, the prosecution is under no duty to reveal the evidence at this stage. The Court also held that it is of the considered view that there is prima facie evidence to warrant a provisional charge against the Accused.

The motion made by Learned Counsel for the Defence was therefore set aside.

**POLICE v M.S.CHADY PROV CN: 9611/08
RULING DELIVERED ON 08 SEPTEMBER 2010**

The Accused is provisionally charged with the offence of Receiving Gift for a Corrupt Purpose in breach of Section 15(a) and 82A of the Prevention of Corruption Act 2002. Learned Counsel moved that the provisional charge be struck out on the ground that: -

1. The Accused would be denied a fair hearing within a reasonable time; and
2. The ICAC has so far failed to adduce any evidence as to whether there was reasonable suspicion to arrest the Accused.

The motion was resisted by Learned Counsel appearing for ICAC.

During the course of the hearing, the second limb of the motion was dropped by Defence Counsel.

The Prosecution called one witness who produced an affidavit in Court establishing the sequence of the Investigation carried out by the ICAC. He explained that the Investigation was initiated after the publication of an article in a newspaper dated 19 July 2008. The evidence on record showed that the Accused had been arrested and brought before the Court on 05 September 2008. He had been released on bail on the same day. It was further averred in the affidavit produced, that Disclosure Order was sought against 10 individuals, including the Accused, from the Supreme Court. 28 people were interviewed and the Prohibition Order was varied on 5 occasions. Furthermore, ICAC had to enquire about payments and account deposits in foreign countries. Information had to be sought from the Netherlands, Singapore and the United Kingdom. In certain cases, Information sought from overseas were being channelled through domestic courts of foreign jurisdiction. This was the case in relation to information sought from the Netherlands where the matter was referred before the Dutch Court and is still pending thereat.

The Learned Magistrate, who was left to decide whether the Provisional Information is

to be struck out on account of delay, considered the elements which could amount to an oppressive delay, namely: -

1. Length of delay;
2. The reasons given by the prosecution;
3. The responsibility of the Accused for asserting his rights; and
4. Prejudice to the Accused.

The Learned Magistrate held: -

“I do not consider the time lapse of 2 years to be so oppressive as to warrant that the provisional information against the Accused be struck out given the complexity of the case and the international ramification attached thereto...”

The Learned Magistrate also held that it was for the Accused to adduce any evidence regarding how he was prejudiced and in what manner the two years delay has affected him. However, the Accused had not deposed as to any prejudice allegedly suffered by him in Court.

The Learned Magistrate further held: -

“I have borne in mind that the Information against the Accused relates to a provisional charge whereby the Prosecution can still lodge a main case when and if necessary should the provisional Information be struck out. However, being given the nature and purpose of the provisional charge which has brought the Accused under judicial supervision, the way the enquiry is being conducted as expounded in the Affidavit, the complexity of this case, and the lack of any evidence of prejudice encountered by the Accused, I find that there is no need to strike out the provisional charge at this stage.”

The motion made by Learned Defence Counsel was therefore set aside.

Police v Deoraj BHIRJOO Prov CN: - 549/10

Ruling delivered on 01.07.10

The Accused is provisionally charged with the offence of Public Official Using Office for Gratification in breach of section 7(1) and 83 of the Prevention of Corruption Act 2002 (PoCA). He was granted bail however subject to a Prohibition Order prohibiting him to leave Mauritius.

He has applied to the District Magistrate of Savanne for a variation allowing him to proceed to the United Kingdom for the graduation ceremony of his daughter. The ICAC has objected to the motion for the Applicant on the ground that the latter may abscond if allowed to leave the country and that he may interfere with the material witnesses who are UK residents.

Evidence from the prosecution witness was to the effect that the Complainants in this case are UK residents and at the time the offence was committed, they were in Mauritius for a limited number of days. The Applicant was aware of this fact and he deliberately left his house so not to attend an identification exercise. The officers went looking for him but in vain. The prosecution witness further stated to the court that the complainants are UK residents and that there is the strong likelihood that the Applicant may look for them once in the UK and therefore interfere with the witnesses as the Applicant will no more be under the control of the Mauritian Courts.

Evidence from the Applicant is to the effect that his eldest daughter was graduating from a university in the UK and that he wished to travel with his whole family to the UK. He already had two daughters in the UK and one in Mauritius. He stated that his wife and his daughter who is in Mauritius will travel with him to the UK. They are to return after more than one month. He also stated that he is already indebted to banks in Mauritius for a total sum of Rs 6.8 M.

The Court considered all the evidence on record and held that, given that the Applicant will be travelling with one daughter and his wife to the UK and that his other two daughters are already there, "the apprehension of absconding is real as the Applicant will have no ties in Mauritius". The Court further held that there is no evidence on record which may tip the balance in favour of the Applicant.

The Court held: -

"Given the seriousness of the charges laid against the Applicant and the heavy penalty he may be visited with, in case he is found guilty by a court of law, I find that the apprehensions of the prosecutions that the Applicant may find means never to return to

Mauritius to face those charges, are real. I find that the apprehensions of the police are fully justifiable.”

The Court held that it is not convinced that the imposition of conditions can effectively eliminate the apprehensions of the prosecution. The Application was therefore refused.