

Police v Pravind Kumar Jugnauth CN: - 9063/11

Ruling delivered on 19 December 2011

The Accused stands provisionally charged with the offence of Conflict of Interests in breach of section 13 (2) & (3) of the Prevention of Corruption Act 2002.

The Accused, through his Counsel, moved that the present Information be dismissed on the following grounds: -

1.The ICAC officers who interrogated and interviewed the Accused as from 11.36 hours to 14.15 hours without interruption acted in breach of the Constitutional Rights of the Accused and in breach of the Judges Rules;

2.The ICAC officers and or Police Officers who charged the Accused at about 14 20 hours: -

(a) did not participate at all in the interrogation and interview of the Accused;

(b) never read or took cognizance of the Accused statement at as 14 20 hours on the 22nd of September 2011 before charging him; and

(c) never took down the defence of the Accused as regards the particulars of the alleged offence constituting the alleged offence, subject matter of the charge against the Accused.

In so doing the charging officers acted:

(a) without lawful authority

(b) ultra vires; and

(c) in breach of the constitutional rights of the Accused

3.The act of charging the Accused by separate ICAC Officers and or Police Officers unconnected with the interrogation of the Accused in the circumstances is unlawful and invalid.

4. Prior to the act of charging the Accused by different ICAC Officers and or Police Officers estranged from the interrogation of the Accused, the ICAC officers interrogating and interviewing the Accused never intimated to the Accused that he had allegedly acted in conflict of interest under the Prevention of Corruption Act. Those same officers never put to the Accused that documents shown to the Accused, his version in his statement so far on the 22nd of September 2011 and/or the version of any other person revealed at that stage that he had allegedly committed an offence of acting in conflict of interest. Therefore the act of putting a charge against the Accused in the circumstances is invalid.

5. The bicephalous procedure whereby on the 22nd of September 2011 officers estranged from the interrogation of the Accused put a charge to the Accused which entails arrest and answering a provisional charge before a Criminal Court is unconstitutional and unlawful.

The motion was objected to by the Prosecution and the matter was argued and submissions offered.

For the purpose of the Argument, the Prosecution called CI Aleaer, the main enquiring officer of the ICAC and also the Police Officer who arrested the Accused, ASP Coret.

CI Aleaer deposed to the effect that after having gathered evidence against the Accused from various departments and ministries, the ICAC convened the Accused to give a statement and same was to be produced in court. Prior to the recording of the statement, the Accused was informed of his constitutional rights and the facts and circumstances of the case. The Accused who was a barrister by profession wrote his own statement and signed on all pages of his statement. During the recording exercise, the whole legal team who accompanied the Accused was present. CI Aleaer explained that questions were put to the Accused during the recording of the statement and latter was confronted with several documents. The Accused was interviewed under Rule II of the Judges Rule. When the recording of the statement was stopped, CI Aleaer, together with the Director of Investigation, who was present during the recording of the statement, left the interview room and informed ASP Coret that the evidence available against the Accused has remained unshaken. CI Aleaer further explained that there was a closing certificate at the end of each page of the statement.

ASP Coret was called by the Prosecution and he gave evidence to the effect that on the day before the arrest of the Accused in the present matter, the Director of Investigations of the ICAC handed a report to him addressed to the Commissioner of Police requesting police assistance for the arrest of the Accused and the lodging of a provisional information. He took cognisance of the report and a draft of the provisional information. He perused the report and discussed with the Director of Investigation and was satisfied that there was a prima facie case against the Accused. He there met with the Commissioner and briefed him accordingly. The report was then referred to an ACP and latter gave his consent for the arrest of the Accused on the following day at about 9.00 hours. During a break in the recording of the statement of the Accused, CI Aleear together with the Director of Investigation came out of the interview room and informed ASP Coret that the evidence against the Accused has remained unshaken. ASP Coret then proceeded to the arrest of the Accused after informing latter that there were grounds to believe that he committed the offence of conflict of interest and that he will be arrested and a provisional information be lodged against him. ASP Coret informed him of the particulars of the charge and cautioned the Accused. A reply was made by the Accused and same was inserted in the diary book. ASP Coret confirmed that there was already a request from the Commissioner of Police for the arrest of the Accused prior to the recording of his defence statement.

The Accused gave evidence to the effect that he was never explained the facts and circumstances of the case. He was administered caution under Rule II of the Judges Rule. He averred that he did not voluntarily stop his statement. He stated that the recording of his statement was continuous and that he never asked for a break. According to the Accused, ASP Coret was not aware of the content of his statement.

The Court considered that the grounds for setting aside the provisional information as furnished by the defence could be considered under two distinct headings: -

1. The procedure adopted by the ICAC to lodge the provisional information against the Accused (Grounds 2,3,4 and 5): - (a)The nature of the arrest of the Accused (Grounds 2, 3 and 5); and (b)The charge against the Accused (Ground 4);
2. The rights of the Accused under the Judges Rules (Ground 1).

In relation to grounds 2,3 and 5, the Court referred to the decision of the Supreme Court in the case of Ha Yeung v ICAC and held that ASP Coret, even when posted at

the ICAC, retained the rights conferred upon him by the Police Act as a Police Officer and he was fully entitled to arrest the Accused. The Court went on to hold: -

"I therefore find that there has been no pre-judgment against the Applicant and the ICAC officers acted diligently. The ICAC officers convened the Applicant for an interview based on a reasonable suspicion and they caused him to be arrested upon reasonable ground of him having committed an offence. Although there was a draft provisional charge on the eve of the Applicant's arrest and the ICAC considered that there was a prima facie case against the Applicant, it is to be noted that the ICAC officers did not act on same blindly but duly convened the Applicant for an interview before establishing whether there was a reasonable ground upon which to arrest the Applicant. The purpose of recording a statement from the Applicant finds its raison d'être since it is this statement which confirmed the evidence of the ICAC and led them to having a reasonable ground for believing that the Applicant committed an offence.

I find that the ICAC cannot be blamed for having deemed it fit to confirm their reasonable suspicion by convening the Applicant to give a statement, the more so that the ICAC duly complied with our adversarial system of justice. In fact, the Applicant was given an opportunity to shake or confirm the evidence gathered by the ICAC which raised a reasonable suspicion against the Applicant. It was only after this reasonable suspicion was confirmed that the ICAC officers caused ASP Coret to arrest the Applicant since the latter was duly informed that there was reasonable ground to arrest the Applicant.

Consequently, the act of charging the Applicant by separate ICAC officers and or police officers unconnected with the interrogation of the Applicant in the circumstances is not unlawful and invalid since ASP Coret acted within his powers as a police officer whereas other officers posted at ICAC were involved in the interview of the Applicant. In light of the evidence ushered, I find that ASP Coret was fully aware of the facts and circumstances of the case against the Applicant and he was duly mandated to arrest the Applicant. I find that the intervention of ASP Coret leading to the arrest of the Applicant to be valid and lawful and does not warrant that the provisional charge against the Applicant be struck out."

In relation to Ground 4, the Court held that even if no charge had been put to the Accused at enquiry stage, or at the time of arrest, this is no reason for the provisional information to be set aside since the evidence ushered revealed that the applicant was, at all material time aware of the nature of the charge against him. The Court therefore held, under Ground 4: -

“I therefore find that the Judges Rules were fully adhered to in relation to the enquiry against the Applicant, warranting no reason for the provisional charge against the Applicant to be struck out.”

In relation to Ground 1, the Court held: -

“I do not propose to dwell on these points raised by Learned Defence Counsel since any breach of the Applicant's rights with regards to the interview or whilst the Applicant was giving his statement would affect the admissibility of his statement.”

The Court went on to hold that this cannot affect the purpose behind a provisional information.

The motion of the defence was therefore set aside.

Police v Mohammed Bashir Nazeer CN: - 6448/09
Ruling delivered on 26 July 2011

The Accused was provisionally charged under two counts of the Information with the offence of Money Laundering in breach of section 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002.

Counsel for the Accused moved that the present provisional charges against the Accused be struck out on the ground that the Accused is being denied a fair hearing within a reasonable time, thus causing the Accused prejudice in his capacity of member of the Municipality of Port Louis and as a politician.

The motion was resisted by the Prosecution.

During the course of the Argument, the Prosecution called the main investigating officer who gave evidence to the effect that, in the present matter, the alleged offence took place in October 2006, that the present provisional information was lodged in June 2009 and that the present investigation involves securing evidence from foreign jurisdiction. He stated that he was still waiting for documents from foreign countries and that he cannot inform the court when same would be obtain nor when the formal Information will be lodged against the Accused.

Learned Counsel for the Prosecution submitted that the present matter was of a complex nature and involved international ramification. He further submitted that the Accused had adduced no evidence of any prejudice caused to him.

Learned Counsel for the Accused submitted that the prosecution cannot give an indication as to when the substantive charge will be lodged and thus, the delay amounted to an abuse of process which warrants the striking out of the provisional information.

Taking into account the fact that the offence had been allegedly committed in 2006 and that the provisional information lodged in 2009 and that up to now, there is no indication as to when the formal information would be lodged, and taking into account the prejudice caused to the Accused as a politician, which evidence was already on record when previous motion was heard, the Court held that it was of the view that the delay was not a reasonable one and therefore struck out the provisional information against the Accused.

The Court went on to hold that the striking out of the provisional information should not prevent the ICAC to lodge the formal information against the Accused after having completed the investigation.

Police v Y. Bissessur Prov CN: - 769/11
Ruling delivered on 21 July 2011

The Accused stands provisionally charged with the offence of Public Official using office for gratification in breach of section 7(1) of the Prevention of Corruption Act 2002. Counsel for the Accused moved that the provisional charge be struck out on the following grounds: -

1. The provisional charge is not based on an offence known to the law;
2. The lodging of the provisional Information is an abuse of the process of the Court; and
3. The police has no locus or legal authority to lodge the present matter.

The Prosecution objected to the motion and Arguments were heard.

At the outset of the Arguments, the Prosecution adduced evidence to show that the arrest of the Accused in the present matter was effected by two police officers seconded for duties at the ICAC.

1. The provisional charge is not based on an offence known to the law

Under the first ground of the motion, the Court held that the provisional charge was based on section 7(1) of the Prevention of Corruption Act 2002 which reads as follows:

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“Subject to subsection (3), any public official who makes use of his office or position for a gratification for himself or another person shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.”

The Court held that after perusing the Information, the offence which has been described in the provisional information is in the wording of the enactment and therefore the offence is known to the law.

1. The lodging of the provisional Information is an abuse of the process of the Court

It is the contention of the Accused that the lodging of the present provisional Information is an abuse of the process of the Court inasmuch as it was premature at an early stage of the investigation.

The Court referred to various Supreme Court cases wherein it was held that whenever somebody is to have committed a serious offence, he shall be arrested and brought before a Magistrate soon after his arrest, to do so by exhibiting an Information which is marked as "Provisional" and to ask that he be remanded in custody, or admitted on bail, pending the completion of the enquiry. In another judgment, the Supreme Court held that a provisional charge is normally lodged at a very early stage of the enquiry, when investigation may have started and is certainly not over.

The Court held that, in the present matter, the Accused has been arrested as there is reasonable suspicion against the Accused and a provisional charge has been lodged at an early stage of the enquiry. As such, it is clear that the provisional information is not premature.

1. The police has no locus or legal authority to lodge the present matter

The contention of the Accused is that the ICAC has investigated into the matter whereas the arrest and lodging of the Information was made by police officers thus it was an abuse of the process of the Court.

The submissions of the Prosecution is to the effect that the police officers who effected the arrest of the Accused on the present matter are police officers who are posted at the ICAC and falls under section 25(5)(b) of the Prevention of Corruption Act 2002.

The Court referred to various decisions of the Supreme Court which held that a police officer posted at the ICAC retains all his powers as a police officer conferred upon him by the Police Act and any other enactment, including his powers to arrest, detain and lodge a provisional information.

The Court therefore held that it is clear that the police had the locus to arrest and lodge the present provisional information.

The Motion of the Accused for striking out the provisional information was therefore struck out.

Police v Hannah Bibi CHADY Prov. CN 6447/2009 Ruling delivered on 30 June 2011

The Accused was provisionally charged on 04 June 2009 with the offence of "Money Laundering" in breach of sections 3, 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 and section 44 of the Interpretation and General Clauses Act.

On 23 February 2011, Accused moved that the provisional charge be struck out on the ground that the Accused was being denied a fair hearing within a reasonable time and on the ground of delay which constitutes an abuse of process of the Court.

The ICAC explained that investigation into the present matter is a very complex one, the more so, because of its international aspect. Evidence has to be gathered from numerous countries through Mutual Legal Assistance.

The Court considered that a provisional charge cannot last for an indefinite period.

Taking into consideration the fundamental rights of the Accused under the Constitution and the delay lapsed, the Court was of the view that the time lapsed is no longer reasonable and thus prejudicial to the Accused.

Consequently, the Court struck out the provisional charge against the Accused.

Police v M.S.Chady CN: - 9611/08 Ruling Delivered on 15 February 2011

The Accused was provisionally charged with the offence of Receiving a Gift for Corrupt Purpose in breach of section 15 (a) and 82A of the Prevention of Corruption Act 2002. Learned Counsel for the Defence moved that the provisional charge against the Accused be struck out on the ground that the Accused was being denied a fair hearing

within a reasonable time.

The background of the Investigation in relation to the present provisional information was adduced in form of the affidavits sworn by CI Seeruthun and is as follows: -

Investigation was initiated after the publication of a press article on 19 July 2008.

Disclosure Order was sought and obtained for all transactions and accounts held by the Accused. 28 persons were interviewed and the Prohibition Order against the Accused was varied on 5 occasions. According to the averments made by CI Seeruthun in his affidavit, the investigation is a complex one and required tracing of transactions and payments in other countries. Mutual Legal Assistance documents were prepared and sent to these countries.

Following the request for Mutual Legal Assistance (MLA), a search was carried out in presence of CI Seeruthun at the premises of Boskalis in Netherlands and where several documents have been seized. The request for transmission of the documents has to be assessed by the Dutch Court and some documents have been received from the authorities in England. Fresh MLA had been sent to Singapore and the Central Authority in England has been requested to deal with the matter with urgency following a previous ruling delivered by the Court. As at the day of the hearing in the present matter, the Dutch Court had not yet heard the application. CI Seeruthun averred that further statements were recorded from material witness in Mauritius and other parties were arrested. One of these parties wished to give a further statement and appointment was fixed on 16 February 2011. CI Seeruthun could not tell the Court when the main case would be lodged since he was still awaiting documents.

The Accused made a statement to the effect that he felt that his freedom had been smeared. He averred that the fact that the case had been dragging for two years, he has been seriously prejudiced. He is now divorced and he could not participate in the 2010 general election.

The Court considered all principles regarding fair hearing within a reasonable time and the circumstances a stay of proceedings may be ordered. The Court held that the provisional charge against the Accused was being unduly prolonged without any valid and substantiated developments occurring in the course of the investigation by the ICAC. The Court found that prejudice resulting on the Accused outweighs the "raison d'être" of the provisional charge against him.

The Court further held: -

"I deem it fit to remind the Prosecution Authority that all investigations against the Accused may still continue to result in a new provisional charge or a main case against the Accused, if need be, ... "

The Court therefore ordered that the Provisional Charge against the Accused be struck out on ground of delay constituting an abuse of the Court process.