Mungree M. v The State & Ors 2013 SCJ 468- Judgment delivered on 09.12.13

The present matter is an appeal against the decision of the Learned Magistrate of the Intermediate Court who found the Appellant (then 'accused') guilty of the offence of 'Trafic D'influence' in breach of section 10(5) of the PoCA and sentenced him to undergo three months imprisonment.

The particulars in the information before the Intermediate Court was that the Appellant, whilst being a public official, namely a Senior Inspector of Works at the Moka/Flacq District Council, solicited a gratification of Rs 5,000 from the complainant, to be remitted to the officers of the District Council, to obtain a benefit from that public body. The Appellant pleaded not guilty.

The evidence before the Intermediate Court was that, following an application made by the complainant to the Moka/Flacq District Council for a residential permit, the Appellant called at the place of the complainant and told the latter that 75% of his file was in order but he was not sure about the 25%. The Appellant further told the complainant that should the latter give him Rs 5,000, he would handle everything. The complainant stated that he thought the Appellant would keep the money for himself and approved his residential permit. During the deposition of the complainant in Court, it was put to him, that he stated in his statement to the police, that he had to give Rs 5,000 to the officers of the Moka/Flacq District Council, to have the residential permit approved and he agreed to same.

The Learned Magistrate took into account the principles laid down in the case of DPP v Coureur [1982] MR 72, which is to the effect that it was immaterial to aver and to prove that the gratification was for the benefit of the accused or any other person. Hence, the Court concluded that, despite the fact that as per the particulars of the offence, the gratification was meant to be remitted to the officers of the District Council and in evidence, complainant stated that the gratification was for the accused, same was immaterial. The Learned Magistrate therefore found the accused guilty as charged.

The Appellate Court, after disposing of the grounds of appeal that were devoid of any merits, held that there were two issues which called for scrutiny in the case of Coureur

above. Firstly, that it was immaterial to aver in the information, and to prove in evidence, whether the alleged solicitation was for the benefit of the accused. Secondly, that the accused in the case of Coureur above could be found guilty of the offence charged without the prosecution having to establish that they had received the rewards for themselves rather than for any other person as per the information.

The Appellate Court held that the first issue was correct. In relation to the second issue, the Appellate Court noted that the Court in the case of Coureur above, did not take into account section 10 of the Constitution in its decision, which relates to the rights of the accused to be informed in detail of the charge lying against him and be given full opportunity to prepare his defence.

The Appellate Court held, in the present matter that the offence for which the Appellant was convicted was that he had solicited a gratification for the officers of the District Council and the evidence fell short of proving same.

The Appellate Court therefore allowed the appeal and quashed the conviction and sentence against the accused.

Laval M.C & Anor v ICAC & Anor 2013 SCJ 431 Judgment delivered on 13.11.13

The three appellants (then 'accused') were charged with offences of money laundering in breach of sections 3(1) (b), 6(3) and 8 of the FIAMLA. They all pleaded guilty. The first appellant was sentenced to pay a fine of Rs30, 000/- in respect of the 13 counts for which she was convicted. The second appellant was sentenced to pay a fine of Rs 30, 000/- in respect of each of the 8 counts for which she was convicted and the third appellant was sentenced to undergo three years imprisonment in respect of a single count for which he was convicted. They appealed against the sentence imposed by the Learned Magistrate on the ground that the sentence passed to each of the appellant was manifestly harsh and excessive.

Regarding the first and second appellants, the Appellate Court noted that the total amount of money which each of the appellants had received as proceeds of drug crimes exceeded by far the total amount of the fine imposed by the Learned Magistrate in respect of all the offences for which they were convicted. The Appellate Court found no merit on the said ground of appeal.

Further, there was unrebutted evidence before the Learned Magistrate to the effect that the first appellant had received Rs 300,000/- which represented the proceeds of crime, from the account of the second appellant but which emanated from the third appellant, in order for first appellant to purchase an immovable property, namely a house situated at Black River Road, cite Riche Lieu, Petite Riviere. The said property was ordered to be forfeited by the Learned Magistrate. The Appellate Court was of the view that a forfeiture order was fully warranted in these circumstances, in light of the fact that it had been incontestably established that a substantial part of the money which was used for the purchase of said property by the first appellant had been derived from a crime. The Appellate Court held that there was an imperative need to deprive the first appellant from enjoying the criminal proceeds of ill-gotten gains which fully justified the imposition of a forfeiture order.

As regards the third appellant, the Appellate Court noted that he was the active and driving force who chanelled the proceeds of ill-gotten gains obtained from illicit drug business to the second appellant in order to enable the first appellant to purchase the said immovable property. The Appellate Court held, in light of the above and taking into account the antecedents of the third appellant, that the sentence of three years imprisonment was proportionate to, and commensurate with, the gravity of the offence committed by the third appellant.

The appeals were therefore dismissed with costs.

BEEZADHUR T v/s ICAC & ANOR C/N: 2013 SCJ 292 – Judgment on 28.06.13

Appellant (then accused) was charged in breach of sections 5(1) and 8 of FIAMLA under 5 counts before the Intermediate Court. He pleaded not guilty and was assisted by counsel. The Learned Magistrate in a judgment found appellant (then accused) guilty on all five counts and sentenced him to pay a fine of Rs 10,000 under each count and Rs 500 costs. The accused appeal to the Supreme Court.

There were initially 8 grounds of appeal challenging the appellant's convictions both in law and on facts as well as his sentence. It was common ground that the only remaining live issue in this appeal was whether the cash transactions, subject matter of the five counts of the information, were 'exempt transactions' within the meaning of the Act.

The learned Judges heard the submissions from both sides and came to the conclusion that the offence created by section 5 was more in the nature of strict liability offence. They confirmed what was submitted by the Respondents that the whole purpose and main objectives of FIAMLA were to offer a legislative framework to combat money laundering and the financing of terrorism in Mauritius which were of great public concern and might pose a real threat with serious consequences to the economy of the country, its political stability and be a social danger.

The learned Judges therefore favoured a literal construction and combined "business activities" to activities which were money making and profit making, in short to commercial activities purposes.

The Learned Judges believed that the defence of "exempt transaction" could not have been intended to be of broad application. They took the view that the defence was limited to a certain category of persons who, if qualified, might claim the protection afforded by section 5(2) of the Act. They did not believe that section 5(2) was intended to apply to persons such as the appellant whose source of income or revenue was derived from an activity which was anything but of a commercial nature and who effected cash transactions beyond the prohibited threshold. The court concluded that

the appellant was not engaged in lawful business activities for the appellant to avail himself of the defence of “exempt transaction”.

The appeal was dismissed with costs and appellant sought leave to apply to the Judicial Court of the Privy Council.

M. Dowarkasing v/s ICAC 2013 SCJ 138A – Judgment delivered on 21.03.13

This was an application for leave to appeal to the Judicial Committee of the Privy Council against the judgment of the Supreme Court delivered on 4 July 2012 setting aside an application for leave for a Judicial Review.

The present application was made both as of right pursuant to section 81(1)(a) of the Constitution as well as with the leave of the Court under section 81(2)(a) on the ground that there were questions which, by reason of their great general or public importance or otherwise, ought to be submitted to the Judicial Committee.

With regard to the application under section 81(1)(a), the applicant in the present case admitted that he did not respond positively to the request of the respondent and not one single question had, as yet, been put to him by any officer posted at the ICAC. His application therefore, was one which rested on an apprehension of what a police officer posted at the ICAC could have done if the applicant had submitted himself to an interview.

Regarding the second issue raised under section 81(2)(a) of the Constitution, learned Counsel for the applicant did not tell the court what would, according to him, amount to a matter of great general or public importance which ought to be submitted to the Judicial Committee.

The applicant questioned the fact that there was no order pursuant to section 50 of the POCA but it was admitted that applicant's case was wrongly based on section 50 as section 50 was not yet operative since no order was issued pursuant that section.

Court came to the conclusion that the case for the applicant fell purely within Section 47(3) and not under section 50.

Court therefore concluded that the present application did not satisfy either section 81(1)(a) or section 81(2)(a) of the Constitution, was devoid of merit and was accordingly set aside with costs.

ICAC v/s Kissoondoyal Ramdoyal (In the presence of Krishna Kumar Guckhool) 2013 SCJ 91 - Findings delivered on 25.02.13

On 29 July 2009, the ICAC made an application by way of motion to the Supreme Court against Kissoondoyal Ramdoyal and Krishna Kumar Guckhool praying for an order to set aside two summons to witness issued at the request of the respondent and the co-respondent which called upon the ICAC to give evidence on their behalf. On 19 May 2010, the Supreme Court delivered judgment and set aside ICAC's application, with costs.

On 7 June 2010, ICAC appealed against the said judgment to the Court of Civil Appeal and on 21 February 2011, the Court delivered judgment setting aside the appeal, with no order as to costs.

On 6 April 2011, the attorney for the respondent caused a notice of "Taxation of costs" dated 1 April 2011 to be served on ICAC together with a bill of costs dated 1 April 2011, in respect of the judgment delivered by court on 19 May 2010 which set aside ICAC's application, with costs.

The ICAC objected to the taxation of costs and after hearing arguments, the Master and Registrar, has on 22 October 2012, delivered a ruling setting aside the objections raised

by the ICAC. The applicant being dissatisfied with the decision of the Master and Registrar, applied for a review under Rule 52 of the Supreme Court Rules originally on four grounds.

After considering the arguments on both sides, the court was of the view that the decision of the Master and Registrar, could not be impeached. The evidence on record revealed that the trial court had dismissed ICAC's application to set aside the summons to witness, with costs. On appeal, the court maintained the decision of the lower court with regard to the central issue which was the subject matter of the application before the lower court namely the application of ICAC to set aside the summons to witness. As such, given that an order was made as to costs, costs had to be paid.

Tirat MOOSSUN v/s ICAC (In presence of The DPP) 2013SCJ 70 – Judgment delivered on 14.02.13

The appellant was prosecuted before the Intermediate Court on a charge of Conflict of interest in breach of section 13(2) & (3) of the PoCA. He was convicted and sentenced to undergo six months imprisonment and Rs 500 costs. He appealed both against the conviction and sentence on several grounds of appeal. However, none of the grounds of appeal were argued before the court.

The appellant was originally charged for having taken part in the proceedings, whilst being a public official having himself a personal interest in the decision. He had pleaded not guilty to the charge. Subsequently when the information was amended, he was charged with an information which averred that he had taken part in the proceedings in question whilst being a public official whose "relation" had a personal interest in the decision.

The Court noted that the relevant section of the law mentioned "relative" and not "relation", and the term "relative" is given a specific definition, in section 2 of the Act, which could not be automatically attributed to the word "relation". Therefore, the conviction could not stand. The trial proceeded on the basis of an offence which did

not exist in law, because according to the learned judges, there was no offence under sections 13(2) and (3) of PoCA for a public official taking part in proceedings of a public body when his “relation” has an interest in the decision of that body.

The court went further and stated that even if they were to assume that the word “relative” used in the section has exactly the same meaning as the word “relation” used in the information and as such the information, as worded, did disclose an offence, there remained a fundamental procedural defect in that no plea was recorded from the appellant in respect of this new offence with which he was charged and on the basis of which he was convicted and sentenced.

There is no doubt that failure to record the accused’s plea to the charge that he faces, goes to the very root of the case and is fatal to the conviction.

The court came to the conclusion that the present case was not an appropriate one where court could apply section 96(5) and ordered new trial. Court also considered that it would not be appropriate to order a fresh hearing under section 96(5) in a case where, as in the present one, the information had been found to disclose no offence.

Hayman Dass GHOORAH v/s 1. ICAC 2. The State of Mauritius - Interlocutory Judgment: 17.01.13

In his Plaint with Summons, the plaintiff averred that on 20th June 2003, he joined ICAC as Chief Investigator. By letter dated 6th January 2004, defendant no.1 informed the plaintiff that it had decided to terminate the plaintiff’s employment with immediate effect while he was still on probation.

On 19th January 2004 the plaintiff applied to the Supreme Court for leave for Judicial review. On 13th May 2005 the Court gave judgment in favour of the plaintiff. On the same day i.e. 13th May 2005, the plaintiff reported for duty at the precincts of the Commission but was denied access. Plaintiff averred that the unlawful acts and doings of the defendant constituted ‘faute’ and had caused and were still causing extensive

damage and prejudice to him. Plaintiff also averred that his fundamental rights, as protected under the constitution, have been flouted so that he was entitled to redress and exemplary damages which he estimates at Rs50 million.

Defendant no.2 moved that the Plaint with Summons be set aside with costs as it disclosed no cause of action quoad it. At the sitting of 23rd September 2010, the Attorney for the plaintiff moved that defendant no.2 be put out of cause. Thus, the Plaint with Summons quoad defendant no.2 was accordingly set aside.

The Court then proceeded to hear argument on the plea in limine litis put in by defendant no.1. Counsel for the defendant submitted that the facts of the present action had already been the subject matter of a case entered by the plaintiff against the defendant i.e. the case of Ghoora v. ICAC, following which, the plaintiff was reinstated and the plaintiff was paid all his gratuities and pecuniary dues. With regard to the second limb of the plea in limine litis, counsel for the defendant submitted that the present action was one for breach of a constitutional right and that the plaintiff had failed to enter the action within the delay prescribed by law.

The court observed that the plaintiff had entered an action in damages for prejudice suffered as a result of an alleged breach of his constitutional rights, clearly under Art 1382 of the Code Civil. The Learned Judge also observed that it was the outcome of the application for Judicial Review which had led the plaintiff to enter the present action in damages. Therefore, the court concluded that the outcome of the application for Judicial Review could not be a bar to the plaintiff entering this action inasmuch as it had not the status of 'autorité de la chose jugé' in relation to the present claim. Besides, the plaintiff had based his cause of action under Art 1382 as can be clearly gathered from the plaint and not under section 17 of the Constitution claiming constitutional redress. Thus the first two limbs could not stand.

As far as the third limb was concerned, this was an action in damages against the defendant and hence the plaintiff ought to have satisfied the condition precedent

provided under S 4(2)(a) of the Public Officers' Protection Act namely service of notice which was not disputed he had failed to do. When counsel for plaintiff submitted that the application for Judicial Review was sufficient notice, the court disagreed and concluded that the third limb was well taken. Thus, the plaint could not be proceeded with and was accordingly set aside with costs.