

IN THE DISTRICT COURT OF GRAND PORT

PROV CN 340/19

In the matter of:

POLICE

V

MOHMED IMRAN IBRAHIM PATEL

RULING

Background

1. The applicant is provisionally charged under sections 3 (1) (b), (6) and 8 the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) for the offence of money laundering. On the 4th of June 2019 learned counsel for the applicant made a motion for the provisional to charge to be struck out. In a nutshell, the gist of the motion of counsel is that the money secured at the airport from the applicant who was in transit in Mauritius was neither illegal nor amounted to an offence under Mauritian law. In other words, counsel's contention was that the Mauritian law enforcement agencies neither had a valid reason to arrest the applicant nor any "reasonable suspicion" to place the latter under a provisional charge before this court.
2. The motion of the applicant's counsel was objected to by the Independent Commission Against Corruption (ICAC).

The ICAC officer

3. On the 6th of May 2019 arguments were heard whereby counsel for the ICAC called the main enquiring officer in the present case Chief Inspector Seeruthun. The enquiring officer's testimony can be summed up as follows. He gave evidence to the effect that applicant was arrested at the airport. The applicant was in transit in Mauritius on his



journey to Dubai. The law enforcement authorities at the airport after questioning the applicant secured from him foreign currencies totaling the sum of about Rs 18 million Mauritian Rupees. This sum of money had not been declared by the applicant. Chief Inspector Seeruttun was cross-examined by the applicant's counsel.

4. Subsequently, the applicant testified under oath.

The Applicant's version

5. Mr Mohamed Imran Ibrahim Patel initially explained that on the 30th January 2019 when he was arrested at the airport, he was in transit in Mauritius. He explained that he had started off his journey from South Africa at Johannesburg Airport. His final destination was Dubai. Mr Patel then told the court that he had already "checked in through" his luggage at his starting off point. That is, his luggage was not destined to Mauritius and that the said luggage and its contents were only in transit in Mauritius.

6. Thereafter Mr Patel testified that he frequently travels to Dubai on the same route. He works for one Mr Suleman.

7. To sum up, Mr Patel in his testimony said that he is seriously being prejudiced as result of the actual charge which has been lodged against him before this court because firstly he is unable to leave the country to meet with his family and that he is being made to stay in Mauritius as a "permanent resident."

The issue

8. This court has carefully considered the submission of both counsel and taken into account the testimony on record.

9. In *Mootoosamy v The Queen* 1981 MR 476 the history underpinning the practice of lodging provisional charges by the police has been outlined:

The well-established practice of lodging a provisional information apparently evolved from an application of s. 5 of Ordinance 23 of 1888 (although the same practice probably already existed

under Ordinance 35 of 1852), and was continued under s. 4 of the Intermediate and District Courts (Criminal Jurisdiction) Ordinance (Cap. 174). Its distinctive features are that it is fundamentally a process to bring a suspect before the Court, and at the same time to inform him of the nature of the charge against him. If the enquiry results in a prosecution, the suspect is never tried under the provisional information, which is struck out and replaced by a regular information. Sometimes, the provisional information is struck out without being replaced, and the case is filed, in a number of cases because the answer of the suspect to the provisional information shows a good defence. By reason of its nature, the provisional information is normally lodged in the early stages of the enquiry, before the evidence of all the material witness has been collected, and frequently (as in this case) before the suspect has given any statement.

10. In *Alain Gordon Gentil v The State of Mauritius* 1995 SCJ 118 the following principles were also enumerated regarding provisional charges:

In the case of *Director of Public Prosecutions v. Indian Ocean International Bank* [1989 MR 110] the court made the following observations on the nature of a provisional information at p. 112:

"As everybody knows, a provisional information is entered when a suspect is arrested or is brought into custody. Its purpose is to bring the detention of the individual under judicial supervision and control so as to prevent an administrative detention and to enable a judicial authority to decide whether the detainee should be released on bail or not and, if not, for how long he should be detained. No detainee pleads to a provisional information and no trial takes place." Similarly in *Shaik v. The State* (*supra*) the court stated the following: "Now we have judicial notice of the fact that, having regard to certain constitutional and legal provisions, it has been, and is, the constant practice, when bringing a person suspected of a serious offence before a magistrate soon after his arrest, to do so by exhibiting an information which is marked "Provisional", and to ask that he be remanded in custody, or admitted to bail, pending the completion of the enquiry. The person charged will then periodically come up before the magistrate, to be further remanded or to have the bail enlarged."

A provisional information is a mechanism whereby a court is informed of the reason for the arrest of an individual. The police may well inform the Magistrate verbally but the use of a provisional information is now a well-established practice. Only any offence known to the law and not any act not sanctioned as an offence should give birth to the provisional information.

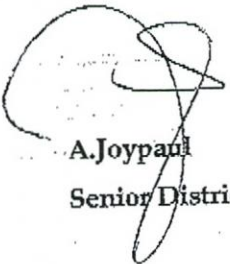
The test: Does the ICAC have reasonable suspicion to justify benefitting from a judicial control of the applicant under the current provisional charge?

11. In *Manraj v ICAC* 2003 SCJ 75, the Supreme Court has defined "reasonable suspicion." It has to be objective. In the present matter, the ICAC has pointed out firstly that there is an ongoing enquiry regarding the substantial sum of money which was secured from the applicant under the FIAMLA. In other words, this case is currently being investigated.

The transit area; does the FIAMLA apply?

12. Learned Counsel for the applicant submitted before this court that the ICAC and the Mauritian law enforcement agencies were not sufficiently empowered to investigate and arrest the accused given that the luggage containing the money was only in transit on the territory as a result of the "checked in through" procedure set into action from the South African Airport. At this stage, to address the contention of learned counsel, this court has to reemphasize what has been said in *Alain Gordon Gentil v The State of Mauritius* 1995 SCJ 118. Namely that the court when dealing with a provisional charge is only empowered to the judicial control and supervision of a person who has been arrested by the police during an ongoing investigation. As a corollary, it is not within the ambit of that court to delve into the merits of the case and the territorial powers of the Mauritian state which forms part of the principle of state sovereignty, at provisional charge level. Hence, in the present situation whether the transit area and the luggage of the applicant falls within the ambit of the FIAMLA is purely and simply a matter to be decided by the authorities who will after the investigation has been completed be in better position to decide in light of the all facts and circumstances.

13. In these circumstances, given that the enquiry is ongoing and it is based on tangible evidence which have been secured pursuant to the FIAMLA, this court finds that the test of objectivity has been satisfied. Hence the 'raison-d'être' of the current provisional charge cannot be challenged at this stage. For these reasons, the motion of the applicant is set aside and the matter stands fixed to its next formal date.



A. Joy Paul

Senior District Magistrate

16.5.19

