CELERINE J. H. v HER HONOUR THE SENIOR DISTRICT MAGISTRATE, DISTRICT COURT OF BLACK RIVER

2023 SCJ 394

Record No. 124625

THE SUPREME COURT OF MAURITIUS

In the matter of: -

Jean Hubert Celerine

Applicant

v

Her Honour The Senior District Magistrate, District Court of Black River

Respondent

In the presence of:

1. **The Commissioner of Police**
2. **The Independent Commission Against Corruption**
3. **The Director of Public Prosecutions**

Co-Respondents

RULING

This is an application for:-

"(a) *a review of the Ruling of the District Court of Black River delivered by Her Honour, Vidya Mungroo Jugurnath, Senior District Magistrate, on 09 May 2023 (Provisional Cause No: 178/2023) whereby the Applicant's application for bail was set aside;*

(b) an Order admitting the Applicant to bail on such terms and conditions that the Supreme Court of Mauritius may deem fit and reasonable to make in the present circumstances; and

(c) any other Order that the Supreme Court may deem fit and necessary in the interest of justice."

The stand of the respondent is that she will abide by the decision of this court. The co-respondents are resisting this application. The co-respondents Nos. 1 and 3 will not file any affidavit but will offer submissions in law.

The co-respondent No. 2, for its part, has reserved its right to file an affidavit in rebuttal and filed preliminary objections in law to the effect that:

> "*…the Co-Respondent No. 2 objects to the application in the present matter, in as much as the Applicant has not followed the proper procedure for a bail review of the Ruling of the Senior District Magistrate of the District Court of Black River, setting aside the bail application.*"

Learned Counsel for the co-respondent No. 2's main contention is that the review application has been wrongly entered by way of motion paper. Relying on **Rangasamy M.N. v The D.P.P & Anor [2005 SCJ 249]** and **D. R. Muntroneea vs Director of Public Prosecutions [1983 MR 292]**, he argued that the procedure for a review of the learned Magistrate's decision is made up of two stages. An applicant needs to first make an *ex parte* application to the Judge in Chambers, who will screen the application and refer it to the Supreme Court should he consider the application as unfrivolous. On the contrary, should the Judge in Chambers find that the application is devoid of merit, he can set it aside.

Learned Counsel for the co-respondent No. 2 submitted that the exception of applying for a bail review directly to the Supreme Court should not become the norm and that the two-stage process set out in **Rangasamy (supra)** must be reaffirmed. This sifting process by a Judge in Chambers prevents the Supreme Court from being flooded with hopeless bail review applications and valid applications can then be dealt with celerity as held in **Curpen S v The Temporary District Magistrate of The District Court of Riviere Du Rempart & 2 Ors [2022 SCJ 175]**. He moved that the present application be set aside for failure of adopting the proper procedure.

Learned Counsel for the co-respondents Nos. 1 and 3 submitted that the mere fact that the application has not first been considered by the Judge in Chambers, as laid down in **Rangasamy (supra)** is not fatal to the present bail review application. She relied on **Margaret Toumany and John Mullegadoo v Mardaynaiken Veerasamy [2012] UKPC 13** to argue that the courts should be less technical and more flexible in relation to jurisdictional issues and objections. She also referred to **Curpen S (supra)** where the learned Judges highlighted that since they were dealing with the constitutional rights of the applicant, they could not protract matters further and decided to proceed to consider the application.

Learned Counsel for the applicant has also filed written submissions which are to the effect that it was open to the applicant to proceed by way of motion and affidavit without first applying to the Judge in Chambers. He relied heavily on the case of **Mudun P. v The Hon. District Magistrate of the Bail and Remand Court [2020 SCJ 77a]** to argue that procedural impropriety should not be a hurdle when the fundamental rights of the individual are at stake.

We have considered the submissions filed before us. At the very outset, it is pertinent to note that the Bail Act does not set out the manner in which an application for a bail review shall be made to the Supreme Court. However, it is equally worth highlighting that the case of **Rangasamy (supra)** elaborately and comprehensively expounds the procedural principles in respect of review of a bail application for an applicant who has been refused bail before the lower court. The learned Judges held that the procedure is firstly to apply to the Judge in Chambers who will then make it returnable or not before the competent court. However, the court did not stop there, but further stated in **Rangasamy (supra)** that:

> "*…, any application for bail which is not screened,……..will have to be made by motion and will take its turn on the cause list – vide **Hossen v District Magistrate of Port Louis [1993 MR 9]**…*" (Underlining is ours)

Therefore, we are satisfied that the present application, which has not been screened by the Judge in Chambers, can nonetheless be entertained as it has been made by way of motion and affidavit as explained in **Rangasamy (supra)** with the sole exception that it will have to undisputedly wait for its turn on the cause list. **Rangasamy (supra)** cannot be said to have ousted the possibility of applying for a bail review by way of motion and affidavit, although the court stresses that it is not the most desirable procedure to adopt being given the urgency of the matter.

We find it apt to reproduce the following from **Hossen v District Magistrate of Port Louis [1993 SCJ 138]**:-

> "*…In view of the fact that the liberty of the person charged was involved, a certain measure of tolerance has so far been exercised by entertaining motions made directly to the Court and giving them priority at, sometimes, considerable inconvenience to the Court and to other practitioners and litigants. It is now necessary to lay down that applications for the release of detainees that are not screened by the Judge in Chambers, who can be seized at very short notice and upon whose fiat this Court will proceed to deal with the case as a matter of urgency, will have to take their turn on the cause list.*" (Underlining is ours)

Similarly, in **D. R. Muntroneea (supra)**, the court did not totally rule out the possibility of making a bail application by way of motion and affidavit, but rather made the following distinction:-

> "*…..This procedure has the advantage of giving to the Judge in Chambers to whom the application is first presented an opportunity to look at the averments contained in the affidavit in support of the proecipe and decide whether prima facie it is a case warranting the issue of an order on the Master and Registrar to set down the matter on the cause list for* ***hearing immediately*** *or whether the applicant should be left to apply to Court, in the normal way, by motion* ***which would then be fixed to be heard on the merits****….*" (Emphasis is ours)

The above passages only reinforce our conclusion that the applicant cannot be taxed for having adopted the "*wrong procedure*" as contended by learned Counsel for the co-respondent No. 2. The procedure adopted in the present case, which is the least desirable one, inasmuch as the application has had to wait for its turn on the cause list, is not a bar to the hearing of the application. In the present case, the applicant's Attorney wrote to the Honourable Chief Justice on 3rd July 2023 to request for an early hearing date in July or August 2023. His request was not acceded to and the application has had to await its turn on the cause list. In effect, the present application could not be treated with the required urgency through the sole fault of the applicant's legal advisers.

Last but not least, we reiterate that the Supreme Court remains "…*the watchdog of the Constitution and the individual liberties…"* and *"…it safeguards … a person… be unjustly deprived of his liberty*." (*vide* **D. R. Muntroneea (supra)**)

In light of all the above, the court holds that the preliminary objection of the co-respondent No. 2 cannot be upheld and is therefore set aside.

The matter is to be mentioned before us on Monday 9th October 2023 at 13.00 hrs for the co-respondent No. 2 to file its affidavit so that the matter can be set down for hearing on an early date.

M.I. Maghooa
Judge

S.B.A. Hamuth-Laulloo
Judge

3rd October 2023

Judgment delivered by Hon. S.B.A. Hamuth-Laulloo, Judge.

For Applicant:	**Mr M. Soobhug, Attorney-at-Law**
	Mr Y. Varma, of Counsel together with Mr A. Leblanc, of Counsel
For Co-Respondent Nos 1 & 3:	**Mrs D. Dabeesing-Ramlugan, Principal State Attorney**
	Mrs N. Senevrayar-Cunden, Acting Assistant Director of Public Proscutions
For Co-Respondent No. 2:	**Miss D. Nawjee, Attorney-at-Law**
	Mr D. Gunesh, of Counsel together with Mr T. Naga, of Counsel