

**Police v Jonathandrarao Ramasamy**

**2023 LPW 113**

**PCN: 352/21**

**IN THE DISTRICT COURT OF LOWER PLAINES WILHEMS**

In the matter of –

**Police**

**v/s**

**Jonathandrarao Ramasamy**

**RULING**

The charge

The Accused stands provisionally charged with having, between the 3<sup>rd</sup> of April 2020 and 25<sup>th</sup> of June 2020, at the Office of the State Trading Corporation at Ebene, wilfully, unlawfully and criminally, whilst being a public official, made use of his office for a gratification for another person, in breach of sections 7(1) and 83 of the Prevention of Corruption Act.

The background facts

The provisional charge was lodged on 19 February 2021. The Accused was released on bail on the same day, there being no objection to that effect from the prosecution side. A Prohibition Order was raised against the Accused on that day precluding him from leaving the Mauritian territory.

The matter was then called on 9 September 2021. The Enquiring Officer, Senior Investigator Naidoo-Sooben, was present to enlighten the Court as to the progress in the enquiry. She stated that some documents were still being awaited from financial institutions and explained that the ICAC were encountering certain difficulties inasmuch as they were working with reduced personnel due to the Covid-19 pandemic. She stated that at least four months were needed to complete the enquiry.

In the light of the statement made by the Enquiring Officer, the matter was fixed for 13 January 2022.

On 13 January 2022, the Enquiring Officer was again present and stated that the investigation was still ongoing. She explained that the present case was a complex one whereby several persons have been provisionally charged. Bank documents and other documents from financial institutions were still being awaited. The Enquiring Officer claimed to now being in possession of a forensic report and that the Accused would be called in due course to give his defence statement.

Learned Counsel appearing for the Accused moved that the provisional charge be struck out on the ground of delay. The matter was fixed for Arguments on 15 March 2022.

On 15 March 2022, Learned Counsel appearing for the Accused withdrew the motion to allow some more time for the enquiry to be completed. The matter was then fixed for 13 July 2022 for the Enquiring Officer to report progress thereon.

On 13 July 2022, the Enquiring Officer explained that the present matter was a complex one and that the investigation was still ongoing. She informed the Court that several suspects have been provisionally charged in connection therewith and that the ICAC was still in the process of applying for further disclosure orders and receiving documents from several institutions.

In the light of the statement made by the Enquiring Officer, Learned Counsel for the Accused reiterated his motion for the striking out of the provisional charge on the ground of delay. The matter was fixed for Arguments on 13 October 2022.

On 13 October 2022, the motion was argued and the matter fixed for Submissions on 4 November 2022.

Submissions were offered subsequently and following those submissions, by ruling dated 23 March 2023, the motion was set aside. The matter was fixed PF on 17 April 2023.

On 17 April 2023, Chief Investigator Mungur was present on behalf of the ICAC and stated that the investigation was still in progress. A defence statement was being recorded from another suspect and from other witnesses. A money trail was also being carried out. According to him, some six months were needed to complete the enquiry being given it was a complex investigation. Under cross-examination, he confirmed that an internal forensic report was being awaited since November 2022.

The matter was then called on 31 August 2023. The Enquiring Officer, Senior Investigator Naidoo-Sooben, stated that the enquiry was still in progress and that it would be difficult to say when it will be completed inasmuch as one of the suspects is unwell and on long sick leave. She also confirmed that defence statements of other

suspects are yet to be recorded and maybe a couple more statements would need to be recorded from the Accused.

In light of the deposition of the Enquiring Officer, Learned Counsel for the Accused again moved that the provisional charge be struck out for abuse of process on the grounds of delay inasmuch as the health problems of other suspects ought not to prejudice the Accused.

The matter was fixed for Arguments on 18 September when the motion was heard.

### The case for the Prosecution

On that day, the Enquiring Officer, deposed on behalf of the prosecution to sustain the objection in relation to the motion made on 31 August 2023.

The Enquiring Officer informed the Court that the Accused was arrested in February 2021 and the present provisional charge lodged against him on 19 February 2021 but that the enquiry had already started back in July 2020. She explained that the present matter pertained to the procurement of Covid-19 items which was carried out by the State Trading Corporation mainly but that the Ministry of Health and the Ministry of Commerce were also involved.

The Enquiring Officer produced an affidavit sworn by her on 15 September 2023 explaining the progress of the enquiry.

She further explained that the investigation was still ongoing with several statements recently recorded from witnesses. Some ten defence statements are yet to be recorded from two suspects, one of whom has been reporting sick each and every time an appointment has been scheduled with Medical Certificates being forwarded to the ICAC. His last visit there has been in June 2023.

That suspect is directly linked to the Accused inasmuch as he was the main supplier to the State Trading Corporation and benefitted from tenders for a huge amount. The investigation is being delayed mainly because of that suspect. The matter has been referred to the ICAC's Director of Investigation who is looking into the prospect of initiating procedures to ascertain whether the suspect is medically fit to attend the ICAC for the purposes of the enquiry.

The Enquiring Officer was unable to state how long those procedures may take but confirmed that in August 2023, the Counsel of that suspect stated that his client would be unfit for at least three months.

She further deposed to the effect that several electronic devices secured during the course of the investigation have been handed over to the digital forensic laboratory of the ICAC for examination. She has recently received some of the reports including a report in relation to the devices secured from the Accused and the latter will have to be confronted to the said reports. The Accused will also have to be confronted with what has been said by other suspects and, in order not to call him several times, all the evidence will be wrapped up and presented to him in one or two sessions.

The Enquiring Officer went on to explain that the matter was a complex one in relation to the procurement of Covid-19 items and medical equipment. Given their technical nature, a lot of effort had to be put into understanding the tender documents and pamphlets. More than hundred pack files worth of documents have been gathered as a result of the enquiry and the Government funds involved amount to some Rs 1 billion. Six suspects have been arrested and offences under both the Prevention of Corruption Act and the Financial Intelligence and Anti-Money Laundering Act are being investigated.

According to the Enquiring Officer several factors have contributed to the delay, namely –

- (a) the Covid-19 pandemic and the lockdown imposed as a result in 2021;
- (b) a Judicial Enquiry in which three suspects were involved; and
- (c) she has, in the meantime, been entrusted with other complex cases.

The Enquiring Officer was unable to say when the investigation would be over but assured that she will try to complete it as soon as possible. She confirmed that, as things presently stand, the case file cannot be sent to the Office of the Director of Public Prosecutions for the lodging of the main case. She denied, however, that there has been an abuse of process.

The explanations provided by the Enquiring Officer in her affidavit mirror those provided in Court albeit in greater detail.

Under cross-examination, the Enquiring Officer conceded that –

- (a) the Accused has nothing to do with the cause of the delay inasmuch as he has cooperated in the enquiry;
- (b) for one and a half years, the ICAC has not been in touch with the Accused and have not called him for the purposes of enquiry;

- (c) about five other statements would need to be recorded from the suspect who is unwell; and
- (d) her previous estimate (put forward on 9 September 2021) to the effect that four months were needed to complete the enquiry was wrong.

### The case for the Accused

The Accused deposed under oath and explained that prior to joining the State Trading Corporation, he was working on his own account in Dubai for about 13 years. He is a mathematician by formation but has been working in the oil industry for the past 23 years.

Since the investigation started, he has lost his job and has been unemployed as he has not been able to obtain any other job in Mauritius. After 25 March 2022, he has not been called by officers of the ICAC in relation to the ongoing enquiry.

He is married with children. His wife does not work. They have been living off their savings since his arrest. When these were over, he has been begging friends and family members to help him out.

Under cross-examination, the Accused confirmed that he had no documentary evidence with him in Court to the effect that he had sought employment elsewhere since his arrest and to the effect that he had borrowed money from friends and relatives.

### Analysis

I have considered all the evidence on record and the submissions made by both sides.

As stated earlier, the provisional charge was lodged on 19 February 2021. That was the date that set the hourglass trickling – **Bissoon Mungroo vs Queen (1990 PRV 22)**. At the time of reading of the present ruling, more than two and a half years have since elapsed.

That there has been a delay in the present enquiry has not been denied by the Enquiring Officer even though she has attempted to justify the said delay.

In order for me to assess whether or not the provisional charge should be struck out on the ground of delay, it is incumbent on me to carry out a balancing exercise between the *raison d'être* of the provisional charge and the prejudice being caused to the Accused by maintaining him under it.

Indeed, the elements to be considered while assessing the delay factor have been laid down in **State vs Bissessur & Ors (2001 SCJ 50)**, namely –

1. the length of the delay;
2. the reasons given by the prosecution to justify the delay;
3. the responsibility of the accused for asserting his right; and
4. the prejudice caused to the accused.

Insofar as the length of the delay is concerned, as already pointed out previously, this adds up to some 32 months since the provisional charge was lodged.

I shall now address my mind to the reasons put forward by the prosecution to explain this delay.

It has been said that several factors have contributed to the enquiry not having been wrapped up by now, one of which is the Covid-19 pandemic and the impact that that had on the staffing of several institutions, including the ICAC, during the curfew order that was imposed as a result.

I can take judicial notice of the fact that, towards the end of the first quarter of 2021, a Temporary Restrictions of Movement Order was made by the Prime Minister, under section 3 of the Quarantine Act, restricting the movement of persons outdoors – **General Notice No. 467 of 2021**. It was made shortly after the arrest of the Accused.

However, the Order remained valid only for a few months following which the restrictions were lifted. As mentioned earlier, the Accused has been under the present provisional charge for about 32 months. For the greater chunk of that time, there was no restriction on the movement of persons and business had resumed as before.

It has also been stated that three of the suspects in the present matter were also witnesses before a Judicial Enquiry and, from the testimony of the Enquiring Officer, it would appear that they were allowed to give priority to the Judicial Enquiry. No explanation was provided as to why the present enquiry in relation to those suspects could not proceed simultaneous to the Judicial Enquiry.

The Enquiring Officer has deposed several times before the Court as to the progress of the enquiry. On numerous occasions, great emphasis was laid as to the complexity of the present matter whereby technical tender documents have had to be deciphered, more than hundred pack files worth of documents perused, about Rs 1 billion of Government funds involved, several witnesses interviewed and offences

under both the Prevention of Corruption Act and the Financial Intelligence and Anti-Money Laundering Act being investigated.

This Court perfectly understands that some leeway has to be given to the investigating authorities to allow them to perform their duties, especially in complicated white-collar matters. Nonetheless, that a case is an intricate one should not become a mere rhetoric designed simply to seek extensions from the Court. This is because, at the end of the day, the Court has a duty to carry out a rather delicate balance between the rights of the prosecution to investigate offences fully and the constitutional rights of accused parties.

Besides, it is implicitly recognised that all enquiries into financial crimes, given their nature, would entail some degree of complexity.

I have also factored in that the Enquiring Officer is being assisted in this enquiry by two other officers posted at the ICAC, with the Director of Investigation presumably overseeing the overall investigation.

The Enquiring Officer, who is the only one recording defence statements, honestly admitted that she has, in the meantime, been entrusted with other equally complicated cases. Despite the assurance provided by her in Court to the effect that she will try her best to complete the enquiry as soon as possible, she was unable to state quite exactly when that will happen.

The main cause of the delay appears to stem from the health problems of another suspect in the present matter who has been absent on several occasions when he has been called upon for the purposes of enquiry. From her deposition in Court and from averments made in her sworn affidavit, I am led to the ineluctable conclusion that the Enquiring Officer, however well-intentioned she may be, is unfortunately no more in control of this enquiry inasmuch as –

- (a) the main protagonist (as he has been referred to in the affidavit) has been reporting sick each and every time an appointment has been scheduled with him;
- (b) it would appear that the main protagonist has been allowed to dictate the pace of the enquiry, with the Enquiring Officer apparently relying on the word of his Counsel as to how long the latter would be unfit for the purposes of the enquiry;
- (c) it is only now that the Director of Investigation is considering the possibility of initiating procedures to ascertain whether the suspect is medically fit to attend the ICAC for the purposes of the enquiry; and

- (d) the Enquiring Officer was unable to enlighten the Court as to how long it will take to initiate those procedures and, once initiated, how long to conclude them.

More importantly, even though that is a bridge that is yet to be crossed, the Court was not apprised as to how the investigation will eventually pan out should the conclusions (in the procedures to be initiated) be in favour of that main protagonist.

To all intents and purposes, from what I make of the testimony of the Enquiring Officer and her sworn affidavit, is that the present enquiry has now reached an impasse and that she is having a hard time trying to break the deadlock.

More than eighteen months have elapsed since the Enquiring Officer last contacted the Accused for the purposes of the enquiry. More than two and a half years have passed without the Accused knowing whether a formal charge will be proffered against him or not. Even after factoring in the seriousness of the charge, the complexity of the case and the limits of our institutional resources, the time lapsed appears to be on the high side and does give rise to some real concern.

As to the assertion of his right, I have noted from the file that –

- (a) as far back as on 13 January 2022, a motion was made by Learned Counsel for the Accused for the striking out of the provisional charge which was then not insisted upon;
- (b) on 13 July 2022, another similar motion was made and subsequently heard and determined; and
- (c) on 31 August 2023, the present motion was made.

It is quite clear, from the proceedings alluded to, that the Accused has, at all times, been asserting his right as regards the prejudice being suffered by him through the different motions made in Court that were designed to ensure either celerity in the enquiry or the least possible prejudice to him.

I shall now consider the prejudice being caused to the Accused.

The purpose of a provisional charge has been extensively documented in a series of authorities – **DPP vs Indian Ocean International Bank & Ajay Shanto (1989) MR 110**); **Shaik vs State (1994 MR 149)** and **Gordon Gentil & Ors vs State & Ors (1995 MR 38)** – it seeks to bring the detention of a suspect under judicial supervision.

That supervision, however, is not confined to whether or not the suspect ought to be released on bail. This is because the right to personal liberty of an individual



pursuant to section 5 of the Constitution is not the only fundamental right or freedom of the individual that the provisional charge curtails. The freedom of movement of the Accused pursuant to section 15 of the Constitution is also being affected by virtue of the Prohibition Order raised against him following a motion by the prosecution which was acceded to by the Court.

The Accused has explained that, ever since his arrest, he has been unable to find employment in Mauritius (not for lack of trying) being given that he has worked previously for a long period of time in the oil industry.

The striking out of the provisional charge would entail the lapsing of all orders made pursuant thereto, including the Prohibition Order. For the Accused, this would mean that he will then be free to seek employment in his field of expertise overseas.

True it is, as highlighted by Learned Counsel for the prosecution, that the Accused did not provide documentary evidence before the Court as to his job-seeking attempts. However, it was also not challenged by the prosecution that the Accused lost his employment at the State Trading Corporation following his arrest. No contrary evidence was placed before the Court by the prosecution to suggest that the Accused is currently in gainful employment.

By necessary implication, I can only conclude that, as things presently stand, the Accused has no means of livelihood. The Accused also explained (and he sounded honest and sincere) that his family has been living off their savings ever since his arrest and, when those were depleted, he had to borrow money from family and friends even though he, once again, did not provide documentary evidence to that effect.

Overall, I have before me a person –

- (a) who is a professional who has been without any source of income for more than two and a half years;
- (b) whose movements have, ever since his arrest, been monitored by the police;
- (c) who has undertaken all possible steps so far to ensure a prompt disposal of the provisional charge and a speedy lodging of the formal charge so that he may dispute same;
- (d) who has, at all times, been cooperating in the enquiry which has stalled through no fault of his; and

- (e) whose family, from his deposition (which I believe), appears to be facing some considerable amount of prejudice.

The issue of absconding not having been raised by the prosecution – the risk that the Accused flees the jurisdiction should the provisional be struck out and the Prohibition Order lapse – I shall not address same as I believe the prosecution harbours no such fears.

Altogether, when everything is weighed in the balance, the genuine prejudice being faced by the Accused and his family far exceeds the need for the continuance of the provisional charge, especially in the light of the testimony of the Enquiring Officer as to how the enquiry has now reached a dead-end.

### Conclusion

For all the reasons mentioned above, I strike out the provisional charge against the Accused. All orders made pursuant to that provisional charge are to lapse.

It stands to reason that this shall, in no way, preclude the prosecution from lodging a main case against the Accused whenever the enquiry is completed.

**H. H. A. Rohamally**  
**Ag Senior District Magistrate**

**9 October 2023**