LEGALLANT M. C. v THE STATE OF MAURITIUS & ANOR

2024 SCJ 42

Record No. 119477

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Marie Cindy Legallant

Applicant

v.

1. **The State of Mauritius**
2. **The Director of Public Prosecutions**

Respondents

JUDGMENT

This is an application for leave to appeal to the Judicial Committee of the Privy Council against a judgment of the Supreme Court delivered on 22 November 2019:(i) as of right, under section 81(1)(a) of the Constitution, in that the proposed appeal involves questions as to the interpretation of sections 3, 6, 7 and 10 of the Constitution; and (ii) with leave, under section 81(2) of the Constitution and section 70A of the Courts Act, in that the proposed appeal involves questions of great general public importance.

The applicant was convicted on 14 counts of an information lodged before the Intermediate Court for offences of money laundering in breach of sections 3(1)(a), 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act. She was sentenced to undergo 12 months' imprisonment under each count. She appealed to the Supreme Court against sentence only on the ground that the sentence was wrong in principle and manifestly harsh and excessive. Her appeal was dismissed with costs, hence the present application for leave to appeal to the Judicial Committee against the judgment of the Supreme Court.

The applicant intends to appeal to the Judicial Committee against the sentence passed on her by the Intermediate Court and maintained on appeal by the Supreme Court.

As stated above, the applicant firstly seeks to appeal as of right under section 81(1)(a) of the Constitution. Our role here is to determine whether an appeal indeed lies as of right. As was held in **Awotar v Stella Insurance Co Ltd [1992 MR 97]**, the Supreme Court is entrusted with the duty of screening all applications for leave to appeal to ensure whether an appeal lies or does not lie under the provisions of section 81 and it must form an opinion as to whether leave to appeal as of right applies.

The applicant's contention is that she is entitled to appeal as of right to the Judicial Committee under section 81(1)(a) of the Constitution as the proposed grounds of appeal involve questions as to the interpretation of the Constitution. In this respect, her complaints are to the effect that: (i) she has been deprived of her constitutional right to be tried within a reasonable time and that due consideration should have been given to the inordinate and unjustifiable delay in sentencing her, which is a question involving the interpretation of section 10(1) of the Constitution; and (ii) inflicting a custodial sentence upon her amounts to subjecting her to inhuman and degrading treatment due to the conditions of detention in Mauritius, which is a question involving the interpretation of sections 3, 6 and 7 of the Constitution.

In **Malloo v The State [2011 SCJ 342]**, it was held as follows:-

> "*It is apposite to recall, firstly, that an appeal would lie as of right under section 81(1)(a) of the Constitution, if only there has been a final decision by the Supreme Court on a question as to the interpretation of the Constitution (**Luk Tung v The State** [1996 SCJ 150]; **Sans Souci v R** [1991 MR 204] and **Nundah v The State** [2003 SCJ 189]). As a result, where the question which has been decided does not involve the interpretation of the Constitution, no appeal would lie.*"

It is therefore incumbent on the Supreme Court to carry out a screening exercise to determine whether a proposed appeal genuinely involves a question as to the interpretation of the Constitution, and not merely as to its application to the facts of a case. As regards any pronouncement of the Judicial Committee on this principle, the Supreme Court often relies on the following one made in **Frater v the Queen [1981 1 WLR 1468]**:-

> *"In their Lordships' view similar vigilance should be observed to see that claims made by appellants to be entitled to appeal as of right … are not granted unless they do involve a genuinely disputable question of* ***interpretation*** *of the Constitution and not one which has merely been contrived for the purpose of obtaining leave to appeal to Her Majesty in Council as of right."*

In the present case, as rightly pointed out by learned Counsel for the respondents, the above grounds of appeal were never canvassed before the Supreme Court. There is, therefore, no final decision by the Supreme Court on a question as to the interpretation of the Constitution, as required under section 81(1)(a). The Supreme Court was never requested to deal with an issue as to the interpretation of the Constitution but simply with an appeal against sentence on the ground that the sentence was wrong in principle and manifestly harsh and excessive. As a rule, grounds of appeal cannot be raised for the first time in an application for leave to the Judicial Committee and there is no need to consider them.

In any case, the constitutional right to be tried within a reasonable time guaranteed under section 10(1) of the Constitution and the effect of an inordinate delay on sentencing have already been the subject of pronouncements by the Judicial Committee in several cases, including **Darmalingum v The State [2000] UKPC 30**, **Boolell v The State [2006] UKPC 46**, **Elaheebocus v The State of Mauritius [2009] UKPC 7**, **Celine v The State of Mauritius [2012] UKPC 32** and **Aubeeluck v The State of Mauritius [2010] UKPC 13**. At best, the proposed grounds of appeal involve a question as to the application, not interpretation, of section 10(1) of the Constitution.

It cannot, however, be denied that there has been an inordinate delay in the present case but the point was not raised before the Supreme Court. We are not sitting on appeal on the judgment of the Supreme Court as this is not our role here, which is simply to carry out a screening exercise. We have nevertheless asked ourselves whether we should not exceptionally intervene with regard to the sentence passed on the applicant. After anxious consideration, we decline to do so for the following reasons.

The Supreme Court held that the learned Magistrate of the Intermediate Court had erred very much on the lenient side when sentencing the applicant. It noted that the applicant had been convicted on no less than 14 counts of money laundering linked to illicit drug business in which she was personally involved. It held that the applicant could

not expect to be treated leniently in view of the seriousness of the offences committed by her.

The heavy penalty provided under the Financial Intelligence and Anti-Money Laundering Act ("the FIAMLA") was at the material time a fine not exceeding Rs2 million and penal servitude for a term not exceeding 10 years (the law has been amended to provide for an even stiffer penalty). Section 11 of the Criminal Code provides that the punishment of penal servitude is imposed for a minimum term of 3 years. And section 8(3) of the FIAMLA provides that section 151 of the Criminal Procedure Act, which allows a Court to inflict imprisonment in lieu of penal servitude, shall not apply to a conviction for a money laundering offence. The Supreme Court pointed out that the sentence passed in similar cases ranged from 3 to 8 years. Yet the learned Magistrate of the Intermediate Court sentenced the applicant to 12 months' imprisonment under each count, hence the comment of the Supreme Court that the learned Magistrate had erred on the lenient side. In these circumstances, we do not propose to intervene, which would have been in any case an exceptional and unprecedented measure.

With regard to the applicant's contention that the proposed grounds of appeal would involve the interpretation of sections 3, 6 and 7 of the Constitution, we reiterate that these grounds were never raised before the Supreme Court so that there is no final decision by the Supreme Court on a question as to the interpretation of the Constitution, as required under section 81(1)(a).

In any case, the applicant's complaint about the conditions of detention in Mauritius is not based on any evidence but she has been "*advised*" accordingly. We do not believe this is the proper forum to deal with the applicant's complaint. The reliance of learned Counsel for the applicant on several cases of the European Court of Human Rights is of no avail to the applicant. Whether conditions of detention in Mauritius would amount to inhuman and degrading treatment is a question of fact which can only be determined after hearing evidence. The applicant is, however, ill-advisedly seeking to raise the matter for first time before the Judicial Committee.

The applicant is secondly seeking leave to appeal to the Judicial Committee, under section 81(2) of Constitution and section 70A of the Courts Act, in that the proposed grounds of appeal involve questions of great general public importance.

In this respect, the applicant's complaints are that both the Intermediate Court and the Supreme Court have failed to give due consideration to the principles of proportionality and parity of sentencing and have failed to consider a non-custodial sentence.

We find absolutely no merit in the applicant's contention that the above proposed grounds of appeal involve questions of great general public importance. They do not disclose anything which tends to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in the future.

The Supreme Court did in fact bear in mind that the learned Magistrate considered the need for a proportional and personalised sentence. The applicant is merely seeking to have a second bite at the cherry. The proposed grounds of appeal show that the applicant is in fact asking the Judicial Committee to sit on appeal on the sentence passed on her by the Intermediate Court and reviewed by the Supreme Court. It is, however, well settled that the Judicial Committee does not act as a court of criminal appeal. In **Badry v The Director of Public Prosecutions** [1982 MR 378], the Judicial Committee felt it necessary to repeat the following practice direction issued by Lord Dunedin in 1932 (48 T.L.R. 300):-

> "*Their Lordships have repeated ad nauseam the statement that they do not sit as a Court of Criminal Appeal. For them to interfere with a criminal sentence there must be something so irregular or so outrageous as to shake the very basis of justice.*"

In the present case, there is no suggestion that the sentence passed on the applicant is irregular or outrageous. If anything, she must consider herself lucky to have been given a very lenient sentence as pointed out by the Supreme Court.

For the reasons given above, we find no merit in this application. Leave to appeal to the Judicial Committee, be it as of right or with leave, is accordingly refused.

D. Chan Kan Cheong
Judge

J. Moutou-Leckning
Judge

30 January 2024

Judgment delivered by Hon. D. Chan Kan Cheong, Judge

For Applicant	**:**	**Mr R. Appa Jala, Attorney-at-Law** **Mr S. Teeluckdharry, of Counsel**
For Respondents	**:**	**Senior State Attorney** **Mr J. Muneesamy, Acting Assistant Director of Public Prosecutions**