BOULET P.K. v THE INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC) & ANOR

2021 SCJ 141

Record No. 120146

THE SUPREME COURT OF MAURITIUS

In the matter of:

Pravesh Kumar Boulet

Applicant

V

1. **The Independent Commission Against Corruption (ICAC)**
2. **The Director of Public Prosecutions**

Respondents

JUDGMENT

This is an application for leave to appeal to the Judicial Committee of the Privy Council. Leave is sought to appeal against the judgment of the Supreme Court delivered on 3rd June 2020 dismissing the appeal save for a reduction of the sentence of 6 months of imprisonment to one of 3 months.

The reasons invoked in support of the application for leave under section 81(2)(b) of the Constitution together with section 70A of the Courts Act as set down in the application are reproduced hereunder–

1. *The Supreme Court failed to address its mind to the delay of about **13 years** which has elapsed since I was provisionally charged and the 3rd June 2020, when judgment was delivered on appeal. Such a delay is unjustifiable and amounts to a breach of my fundamental right to be afforded a fair hearing within a reasonable time as provided for under section 10(1) of the Constitution of Mauritius. This delay is outrageous and inexcusable having regard to the nature of the offence with which I was charged and the amount of evidence involved.*

2. *Because the Supreme Court made the wrong inferences when it assumed that I had initially, **on purpose**, overvalued the property of the complainant whereas there is nothing on record to prove, let alone establish, that this was ever the case. Such inferences, which go to the root of the case for the Prosecution, amount to a serious misdirection in law inasmuch as these inferences flow from the following assumptions:*

   i. *That the demeanour of the complainant was enough to believe her.*
   ii. *That I was indifferent to the fact that even if the complainant had not paid a bribe to me, I would nonetheless artificially inflate the assessment done on 14.11.05 (a Monday) whereas the complainant came to see me on the previous Friday (11.11.05)*
   iii. *That on the very first day I met the complainant, I solicited a bribe from her.*
   iv. *That the complainant came in my office **alone** despite the fact that she came to the office of the Valuation Department accompanied by another adult (which turned out to be her mother).*
   v. *That the complainant would be receptive to a solicitation for a bribe in return for a reduction in the additional duty payable which in any event would be determined in the future.*
   vi. *That I had overvalued the property so precisely as to anticipate that my supervising officer would not notice it.*

3. *I aver that the delay of three years when the commission of the alleged offence was brought to the knowledge of the investigating body (ICAC) and the date the latter lodged the information (i.e. 21st February 2008) was already prejudicial to me inasmuch as material evidence which was available in 2005-2006 and which could disculpate me was no longer available.*

The third ground was finally not pressed upon.

The applicant was prosecuted before the Intermediate Court for the offence of bribery by public official in breach of section 4(1)(b) and (2) of the Prevention of Corruption Act. The particulars of the charge were that the applicant, whilst being a Senior Government Valuer, solicited from the complainant whose file he was handling, a gratification of Rs. 50,000, in order to assess the value of a property purchased by the complainant in such a way so as to reduce the registration duty payable.

The applicant pleaded not guilty and was represented by counsel. He was found guilty as charged and was sentenced by the learned Magistrate to undergo 6 months' imprisonment following which the applicant challenged both his conviction and sentence before the Supreme Court on 3 grounds, namely–

1. *The learned Magistrate erred when she found that the second element listed in her judgment was proved beyond reasonable doubt given that-*

(a) *it was obvious that the figure of Rs 25 000 was a totally unrealistic one;*

(b) *the evidence of the complainant was unreliable; and*

(c) *the complainant failed and refused to make a formal complaint to witness Salarbux.*

2. *The learned Magistrate erred when she found the third element listed in her judgment the more so as there is evidence that the assessment of the Appellant (then accused) was never changed, revised or otherwise reduced.*
3. *The sentence imposed by the Intermediate Court of Mauritius is wrong in principle and is manifestly harsh and excessive in the circumstances of the case.*

Execution of the sentence was stayed pending determination of the present application.

Learned Counsel for applicant addressed us on two points, namely-

1. delay; and
2. wrong inferences made by the Appellate Court.

It was submitted by learned Counsel for the applicant that around 13 years had elapsed since the latter was provisionally charged and it was only on 3rd June 2020 that judgment was delivered on appeal resulting in unjustifiable delay. While acknowledging that the Appellate Court did proceed to a reduction of sentence, it was submitted that same was not in consonance with decided cases. The cases of **Darmalingum v The State [2000] UKPC 30**, **Céline v The State of Mauritius [2012] UKPC 32** and **Hassen Eid-En Rummun v The State of Mauritius [2013] UKPC 6** were relied upon.

Counsel for applicant also referred us to paragraph 10 of applicant's affidavit in order to sustain the question of delay in as much as he contended that such delay had prejudiced the applicant as he had been interdicted without pay for more than four years. Learned Counsel for applicant conceded, however, that this matter had never been canvassed before the trial court or the appellate division of the Supreme Court but that it was a matter which the

Judicial Committee of the Privy Council would be prepared to look into in the event Applicant obtained leave and this on the strength of the case of **Boolell v The State [2006] UKPC 40**. Learned Counsel went on to say that a fine would have been more appropriate in the circumstances although he readily accepted that no such submissions were canvassed before the Appellate Court.

We have duly considered the submissions made on the first issue by learned Counsel for applicant as well as those made on behalf of both respondents. A reading of the judgment of the Appellate Court shows that the question of delay was duly taken into consideration following which the learned Judges came to a finding that there had been inordinate delay of more than 14 years since the commission of the offence and there had been a breach of the reasonable time guarantee under section 10(1) of the Constitution so that the appellant was afforded a reduction of the sentence of imprisonment by half after having had regard to the circumstances of the case, the length of delay and the compelling public interest in inflicting the appropriate penalty commensurate with the seriousness of the offence. Consequently, we hold that no case of general public importance has been made out as rightly submitted by learned Counsel for respondent No.1 that ought to be submitted to the Judicial Committee of the Privy Council under section 81(2) (b) coupled with section 70A of the Courts Act with regard to the issue of delay.

Now, in respect of the second point, learned Counsel submitted that the Appellate Court made wrong inferences as described at paragraph at paragraph 702 of applicant's affidavit, which inferences go to the root of the case for the prosecution and amount to a serious misdirection in law. As stated in the case of **Badry v DPP** [1982 MR 378], *"misdirection as such, even irregularity as such, will not suffice……There must be something which, in the particular case, deprives the accused of the substance of fair trial and the protection of the law, or which, in general, tends to direct the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future".*

The Appellate Court will not interfere with findings of facts unless it is satisfied that such finding has been made in utter disregard of the forms of legal process or there has been some violation of the principles of natural justice or a substantial and grave injustice has cropped up as to render the conviction of the accused unsafe and untenable. Consequently, there must be something so irregular so as to shake the very basis of justice for an Appellate Court to reverse a finding of facts.

A reading of the judgment of the Appellate Court shows that a careful analysis of the findings of fact made by the learned Magistrate was carried out by the learned Judges before they reached their conclusion. In fact, the Appellate Court did not disturb the findings of facts of the trial Court and it is in this context that inferences complained of by the applicant were made by the Appellate Court. We have not found anything in the judgment of the Appellate Court that would suggest that the applicant has been deprived of a fair trial and which would warrant the intervention of the Judicial Committee of the Privy Council. There is, therefore, no question which ought to be submitted by reason of its great general public importance to the Judicial Committee of the Privy Council under section 81(2)(b) of the Constitution and section 70A of the Courts Act.

As repeated *ad nauseum*, the Judicial Committee of the Privy Council will not sit as a second Court of Appeal and for it to interfere with a criminal sentence, there must be something so irregular or so outrageous as to shake the very basis of justice (see **Buxoo v The Queen** [1988 MR 259], **Gayle v The Queen**, **The Times 2 July 1996**, **Koleejan v The State** [2003 SCJ 292], **Boojhawon v The State** [2020 SCJ 241]).

We have considered the submissions made on behalf of all parties to this application which is grounded under section 81(2)(b) of the Constitution together with section 70A of the Courts Act praying for conditional leave and we find that the application is devoid of any merit whatsoever. Leave is accordingly refused and the application is set aside. With costs.

R. Teelock
Judge

P. D. R. Goordyal-Chittoo
Judge

12 May 2021

Judgement delivered by Hon. P. D. R. Goordyal-Chittoo, Judge

For Applicant	**:**	**Mr. J. C. Ohsan Bellepeau, Attorney-at-Law** **Mr. G. Bhanj-Soni, of Counsel**
For Respondent No. 1	**:**	**Ms. B. M. Chatoo, Attorney-at-Law** **Ms. P. Bissoonauthsing together with I. I. Deeljore, both of Counsel**

For Respondent No. 2	**:**	**State Attorney** **Mrs. R. Jannoo-Jaunbocus, Acting Senior Assistant DPP**