

DIRECTOR OF PUBLIC PROSECUTIONS v RUJBALLEE F.K. & ANOR

2023 SCJ 25

Record No. 123162

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Director of Public Prosecutions

Applicant

v

Feroz Khan Rujballee

Respondent

In the presence of:

Independent Commission Against Corruption

Co-respondent

JUDGMENT

The applicant has moved this court for an order allowing him to appeal outside delay against the decision of the learned Magistrate of the Intermediate Court (Financial Crimes Division) dismissing the case against the respondent. In a nutshell, the respondent is resisting the motion on the ground that procedural requirements in appeals should not be disregarded. The stand of the co-respondent is that it will abide by the decision of the court.

The relevant circumstances of the present case are:

- (a) the information against the respondent was lodged in August 2015 and it contained 23 counts;
- (b) a judgment of 26 pages was delivered on 21st April 2022;

- (c) The co-respondent sent the file to the Office of the Director of Public Prosecutions (ODPP) on 10th May 2022 at 1 p.m.;
- (d) An officer was designated by the Deputy Director of Public Prosecutions (DDPP) to handle the file and write an opinion;
- (e) The file reached the legal officer at 2.30 pm;
- (f) A meeting was held on 11th May 2022 with the DDPP and it was agreed that the applicant would appeal against the said judgment;
- (g) There were missing information and documents in the file forwarded by the co-respondent;
- (h) Those information and documents were retrieved by the co-respondent and were sent to the ODPP on 12th May 2022;
- (i) It is in the light of those missing information and documents that the grounds of appeal could be formulated;
- (j) The grounds on which the applicant intends to argue the appeal if he succeeds in the present application are as follows:
 - “1. *Because the learned Magistrate failed to duly consider the documentary evidence on record, in particular the bank transaction records relating to the Accused.*
 - 2. *Because the learned Magistrate failed to properly assess and analyse all the evidence adduced during the trial, inter alia the testimony of witnesses Nos. 1 and 3.*
 - 3. *Because the learned Magistrate failed in not considering that the Prosecution has established a strong and unshaken prima facie case in light of the strong documentary evidence and the testimonies of witnesses nos. 1 and 3.*
 - 4. *Because the learned Magistrate failed to sufficiently motivate her judgment in contravention of section 197(2) of the Courts Act.*
 - 5. *Because the learned Magistrate erred in not finding that there was sufficient evidence on record for her to conclude that the property was obtained through an unlawful activity.” (sic)*

It is apparent that the delay to lodge the appeal had expired on 11th May. The co-respondent took 18 days to come to the decision to refer the matter to the Director of Public

Prosecutions (DPP). We can only say that the Independent Commission Against Corruption (ICAC) should have shown more diligence in dealing with this case.

It is the contention of the applicant that, once he received the file, he has shown utmost diligence in dealing with the bulky case file but, unfortunately, could not lodge the appeal within the mandatory delay. It is also the contention of the applicant that if the complete case file had been sent to him promptly by the co-respondent, he would have been in a position to respect the mandatory delay. Learned Counsel for the applicant argued that, in these circumstances, there exists sufficient justification for the exercise of our discretion to allow the applicant to appeal outside delay.

Counsel for the applicant has referred to the case of **S Ramtohul v The State** [\[1996 SCJ 356\]](#) to buttress her arguments that the circumstances that have given rise to the grounds of appeal and their arguability justify the granting of the extension of time. She submitted that the learned Magistrate made a correct enunciation of the principles of law but she failed to judiciously appreciate the weight of evidence and also erred in applying the law to the facts in the light of the bulk of the evidence on record. She submitted that the grounds of appeal are far from being frivolous and although the applicant's appeal has been lodged outside delay, the decision of the Intermediate Court must not be allowed to stand.

In addition, she argued that the present application should be granted inasmuch as the delay was not due to the laches of the applicant or his legal officers.

Counsel for the respondent submitted that, in principle, procedures governing appeals should not be disregarded although the court retains a discretion in exceptional circumstances (*vide* **Lagesse and Consolidated Investment of Enterprises Ltd v Commissioner of Income Tax** [\[1991 MR 46\]](#)). He relied on the case of **Hanumunthadu R v The State and Anor** [\[2010 SCJ 70\]](#) to state that there is a need to give appropriate reasons for the delay for the court to exercise its discretion. He added that the court will, however, not condone the mistakes and negligence on the part of litigants or their legal advisers (*vide* **Mareemootoo V v The State** [\[2001 SCJ 313\]](#)).

Learned Counsel stressed that, in the light of the judgment of **Sicharam K v Independent Commission Against Corruption** [\[2011 SCJ 375\]](#), there was no need for the DPP to be put into cause in the present appeal. There was only a need to notify him of the said appeal. As such, the explanation of the ICAC that it decided to send the file to the DPP for him to consider whether an appeal should be lodged, is untenable.

In addition, learned Counsel submitted that the explanations of the DPP are in contradiction with that of the ICAC in that while the former has averred that the case file sent to him by ICAC was not complete, the latter has maintained that the complete case file was forwarded to the DPP.

Learned Counsel further stated that the judgment made up of 26 pages, is a well-reasoned and motivated one. He added that the learned Magistrate has made a correct appreciation of the evidence and has rightly applied the law. The DPP, for his part, has drafted the grounds of appeal which are generally vague and unclear.

Finally, learned Counsel for the respondent took the view that there were no sufficient justifications to enable the court to exercise its discretion and if the court were to condone the overall behavior of the applicant, it would undermine the good administration of justice.

In her reply, learned Counsel for the DPP stated that the missing documents was not the only reason for the time taken to appeal; the file was a bulky and complex one. Time was needed to read through it and to come to a decision after all internal procedures had been followed. She added that the fact that ICAC could have decided on the appeal did not prevent it from sending the file to the DPP for an appeal.

At the very outset, we need to place on record that although at first sight there seems to be a contradiction in the respective versions of the DPP and the ICAC regarding the issue of missing documents, we do not agree that this is the case. In fact, we do not think that any one version is untrue. The case is admittedly a bulky one and it is very possible that certain documents have been accidentally misplaced either during the compiling process at the ICAC or the examining process at the ODPP. This argument is devoid of merit.

Similarly, learned Counsel for the respondent has referred us to the various 'mistakes' of the applicant in the present matter. Although we agree that such 'mistakes' are not expected from the ODPP, we will outright say that we do not subscribe to the reasoning of learned Counsel that they justify the setting aside of the application.

In addition, although it is well settled that when there is an acquittal in a case prosecuted by another body, the DPP need not be joined as a party, there is nothing preventing the prosecuting body to refer the matter to the DPP for consideration regarding whether to appeal. The DPP has constitutional powers in the prosecution of criminal matters and therefore, there is nothing sinister in the decision of ICAC to refer the case file to him.

Moreover, there is no duty in law on ICAC to explain its decision to adopt this course of action instead of lodging the appeal straight away. What we find reprehensible is for the case file to have been forwarded to the DPP at the 11th hour while expecting the DPP to come to a decision and lodge the appeal, if any, within two days.

As far as the principles regarding the discretion of the court is concerned, we fully endorse the reasoning of the court in **S Ramtohul (supra)** that “...*the approach of the Courts is that delays are to be strictly observed, such that the Courts would exercise their discretion only in exceptional cases, the categories of which are not however really closed.*” (sic)

The court in **S Ramtohul (supra)** also set out principles governing delay and extension of time and held the following:

“We accordingly view that under our law, as under English law –

- (1) this Court has a discretion to allow an appeal to proceed or not outside delay;*
- (2) the guiding principle, in procedures governing appeals is, as wisely summed up in Lagesse v C.I.T. [1991 MR 46], that “at some stage the finality of judicial decisions should be certain and procedural requirements governing appeals from those decisions should not be disregarded so as to prolong uncertainty and the holding up of the execution of a judgment unless non-compliance is shown not to be due to acts or more frequently, the omissions of the appellant or his legal advisers.*
- (3) there are, however, no closed categories of cases for the exercise of the Court’s discretion, and the Court may exceptionally allow an applicant who has appealed outside delay due to his own laches or that of his attorney where there is, in the Court’s view, sufficient justification for such exercise of discretion. We totally endorse, in this connection, the wise words of the learned Judges (Glover ACJ and Espitalier Noel J.) in Carpenen v Lakhabhay [1986 MR 176] that “Time limits prescribed in procedural matters are not always mandatory to the point of thwarting the course of justice”*
- (4) the Court, in its discretion, may consider where appropriate the circumstances giving rise to the proposed grounds of appeal and consider whether, having regard to their arguability, it should allow the appeal to be entertained out of time, whilst guarding itself, of course, from making any pronouncements, in advance, on any ground of appeals.” (sic)*

We have perused the judgment of the learned Magistrate and it is apparent that the Magistrate made a recitation of the evidence of each witness before her and the relevant law and case law. However, we do not see which part of that evidence she relied upon to come to her decision under each charge.

The present applicant is the DPP. In deciding whether to grant the extension of time, we should consider whether any blame can be laid at the door of the applicant or his legal officers. We could not find any mistake or negligence on the part of the applicant. *Ex facie* the affidavit of the applicant, the file reached the ODPP on 10th May and it was only around 2.30 p.m. that the file reached the legal officer; the latter had to go through the admittedly bulky and complex file and put up an opinion for the DDPP; discussions were held with the DDPP on 11th May; the decision to appeal was taken but certain documents were missing in the file and had to be retrieved first; and the documents were retrieved and sent to the applicant on 12th May, one day after the expiry of the statutory delay.

In this respect, the case of **R v Rhodes (1910) 5 Cr. App. R. 35** is most relevant. The Lord Chief Justice, when considering the fact that applications made out of time were becoming more and more frequent, took the view that the court could disregard a short delay but that satisfactory reasons would have to be put forward where a considerable interval of time, a month or more, would have elapsed.

Therefore, with those principles in mind, we hold that having regard to the fact that:

- (1) the delay is not attributable in any manner whatsoever to the applicant or his legal officers;
- (2) the grounds of appeal do not appear to be frivolous and therefore, it would be in the interests of justice to have the case decided on the merits by the Court of Appeal; and finally
- (3) the very short time which has elapsed between the date on which the delay for appeal lapsed and the date the grounds were ready to be lodged;

there are enough reasons for us to exercise our discretion in favour of the applicant.

We, therefore, grant:

- (a) leave to lodge and prosecute the appeal outside the prescribed statutory delay;
and
- (b) an extension of time to effect proper service upon the respondent.

**S.B.A. Hamuth-Laulloo
Judge**

**K.D. Gunesh-Balaghee
Judge**

24 January 2023

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

**For Applicant: Ms K. Parson, Senior State Attorney
Mrs Y. Nathire-Beebeejaun, Senior State Counsel**

**For Respondent: Mr P. Rangasamy, Attorney-at-Law
Mr R. Bhadain, of Counsel**

**For Co-respondent: Mrs B. M. Chatoo, Attorney-at-Law
Mr H. Ponen, of Counsel**