

THE DIRECTOR OF PUBLIC PROSECUTIONS v HATON M. & ANOR

2021 SCJ 260

Record No. 9408

THE SUPREME COURT OF MAURITIUS

In the matter of:-

The Director of Public Prosecutions

Appellant

v

Mandatta Haton

Respondent

In the presence of:-

The Independent Commission Against Corruption

Co-Respondent

JUDGMENT

The respondent (then accused no. 2) was charged before the Intermediate Court with the offence of money laundering on 15 counts (counts 16 to 30) in breach of sections 3(1)(b), 6(3) and 8 of the Financial Intelligence and Anti Money Laundering Act. His wife, Mrs Haton (accused no. 1), was also charged in the same information for the same offence (counts 1 to 15). After hearing evidence, the learned Magistrate found that “...*despite the overwhelming nature of the evidence that stands against accused no. 2, the reference to the record of previous convictions of accused no. 2 in the Information has tainted the present proceedings with unfairness and has vitiated the whole process before this court.*” The learned Magistrate found that she had no other alternative than to stay proceedings *quoad* the respondent.

The Director of Public Prosecutions is now appealing against the decision of the learned Magistrate on no less than 7 grounds.

One of the grounds of appeal reads-

“The learned Magistrate was wrong to conclude that the evidence of the previous convictions of the Respondent elicited by the prosecution “has tainted the present proceedings with unfairness and has vitiated the whole process before this court.”

In the course of the hearing of the appeal, we drew the attention of Mr Ahmine, Deputy Director of Public Prosecutions, that the copy of the court record found in the brief provided to us by his instructing attorney does not reflect that the PF 15 (record of convictions) of the respondent was produced before the learned Magistrate. We also drew his attention that in the brief is a copy of a document purported to be the respondent’s PF 15 and which bears the marking “Doc X” twice whereas a perusal of the original documents produced before the Magistrate shows a document which purports to be the respondent’s PF 15 but which bears no marking. Mr Ahmine explained to us that the words “DOC X” in bold on top of the page of the document found in our brief have been inserted by his instructing attorney in the course of the preparation of the brief but that he cannot explain the second marking.

Having regard to the above, we called for the original court record of the Intermediate Court and after having gone through it and in particular the sitting of 11 September 2017, date on which the PF 15 was allegedly produced, we found that no document pertaining to the respondent’s previous convictions was produced before the learned Magistrate. Mr Ahmine and Mr Valayden, who is appearing for the respondent, have also perused the original court record and have confirmed that this is so.

In view of the state of the court record and the fact that the learned Magistrate has relied on the respondent’s previous convictions to stay proceedings, Mr Ahmine has invited us to quash the decision of the learned Magistrate *quoad* the respondent and to remit the matter back for a fresh trial before a different bench of the Intermediate Court. Mr Valayden has no objection to this course of action. It is however his views that the whole judgment ought to be quashed so that Mrs Haton who has been convicted for the offence of money laundering under counts 1 to 15 and is appealing against her conviction (see Record No. 9434) also benefits from a new trial.

Mr Ahmine and learned Counsel for the co-respondent are of different views. We agree with their submissions that it is apparent from her judgment that in deciding the case

against the respondent and the co-accused, the learned Magistrate has analysed the facts and evidence against each of them separately. The learned Magistrate proceeded to analyse the evidence against the co-accused in the light of the requisite element of the offence and thereafter made a finding with respect to each and every element of the offence and in so doing did not rely on or refer to the respondent's previous convictions. Her findings that "*...reference to the record of previous convictions of accused no. 2 in the Information has tainted the present proceedings with unfairness and has vitiated the whole process before this court*" are accordingly solely in respect of the respondent and cannot be extended to the co-accused as submitted by Mr Valayden. As rightly pointed out by Mr Ahmine and learned Counsel for the co-respondent, the issue of the respondent's previous convictions is of no relevance with regard to the case against the co-accused. The submission of Mr Valayden that the whole judgment ought to be quashed is therefore untenable.

In the circumstances, in virtue of the powers conferred to this Court by section 82 of the Constitution, we quash the decision of the learned Magistrate to stay proceedings *quoad* the respondent and remit the case back to the Intermediate Court for the respondent to be tried anew by another Magistrate.

In the light of our observations regarding the sitting of 11 September 2017 and 'Doc X', the Master and Registrar may wish to look into the matter.

**N. Devat
Judge**

**M.J. Lau Yuk Poon
Judge**

05 August 2021

Judgment delivered by Hon. N. Devat, Judge

**For Appellant : Mr M. Lallah, Chief State Attorney
Mr R.A. Ahmine, Deputy Director of Public Prosecutions**

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

**For Co-Respondent : Mrs D. Nawjee, Attorney at Law
Mr T. Naga, of Counsel
Mr L. Nulliah, of Counsel**