DIRECTOR OF PUBLIC PROSECUTIONS v TOYLOCCO BISSOONDATH & ANOR

2022 SCJ 16

Record No. 9449

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Director of Public Prosecutions

Appellant

v

Bissoondath Toylocco

Respondent

In the presence of

Independent Commission Against Corruption

Co-Respondent

JUDGMENT

Following the learned Magistrate of the Intermediate Court, giving the benefit of doubt to the respondent and dismissing all the four counts against him regarding charges of money laundering in breach of sections 3(1)(A), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) in the total amount of Rs.151,940, the appellant has appealed against the judgment and raised four grounds of appeal which read as follows –

> "1. *The Learned Magistrate wrongly applied the legal principles in Abongo L c v The State (2009) SCJ 81, which concerns an offence of "limitation of payment in cash under section 5 of Financial Intelligence and Anti-Money Laundering Act to the present case which involved an offence of "money laundering" under section 3 of the said Act.*
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> 2. *The Learned Magistrate made a wrong appreciation of facts as to whether the property in lite was proceeds of crime under all four counts.*

3. *The Learned Magistrate made a wrong appreciation of facts when she found that the accused did not have any reasonable suspicion that the property was proceeds of crime.*

4. *The Learned Magistrate erred when she gave the benefit of the doubt to the accused in the face of unshaken prima facie case of money laundering established against the accused under all four counts."*

The first ground of appeal was conceded by the respondent and rightly so on a matter of law so that this Court is now left with grounds of appeal 2, 3 and 4 to consider. At the outset, learned counsel for the appellant drew the attention of the Court that the respondent did not submit any skeleton arguments and which is contrary to section 9 of the Criminal Appeal Act. Considering that it is the appellant who has the carriage of the appellate proceedings, exceptionally in the present appeal, we shall not sanction the respondent for having failed to do so notwithstanding that written submission was filed on behalf of the respondent.

Grounds of appeal 2 and 3 deal with facts and it is trite law that the Appellate Court shall not interfere with the appreciation of facts of the learned Magistrate unless they are perverse and wrong. **Motaloo v The Queen [1958 MR 333], Lalldeosing v The State [2008 SCJ 151]** and **Edoo v The State [2015 SCJ 9]**. In order to have a better understanding of the case and determine the grounds of appeal, it is important to note that –

(a) the respondent and witness Reetoo were both directors of Just Caps Ltd;
(b) witness Seetaram was a client of Just Caps Ltd;
(c) 1 MCB cheque had been credited into the account of the respondent; and
(d) 2 MCB cheques and 1 SBM cheque had been cashed by the respondent.

It was hotly disputed before the trial Court that Just Caps Ltd operated in the manner as stated by the respondent in his unsworn statement explaining the crediting of cheques into his bank account and him cashing the cheques.

Learned counsel for the appellant submitted that the learned Magistrate mixed evidential issues in counts 1 to 3 to that of count 4. For count 1, the respondent was prosecuted for having deposited MCB cheque in the amount of Rs.7,190 into his bank account. For counts 2 and 3, the respondent was prosecuted for having cashed the MCB cheques in the amount of Rs.23.750 and Rs.21,000 respectively and in count 4, he was charged for having deposited a

SBM cheque in the amount of Rs.100,000 into his bank account. The case of the prosecution is that the respondent had reasonable grounds for suspecting that the sums were derived, in whole or in part, directly or indirectly by proceeds of crime. In short, it was the money of Just Caps Ltd and not that of the respondent.

The appellant identified material flaws in the appreciation of facts of the learned Magistrate and which have resulted in the criminal proceedings being vitiated. We fully agree with the submission of learned counsel for the appellant that as regards count 1, the learned Magistrate erred when she referred to Mr Balaram when the evidence on record is that it was one Balraj Seetaram. However, in this case, this in itself does not vitiate the proceedings as there is no Balaram as witness but one Balraj Seetaram so that it can be construed that the learned Magistrate was referring to Balraj Seetaram. However, for counts 1 to 3, the learned Magistrate erred when she held that the cheques were issued in the name of the respondent when the evidence on record reveals that they were only handed over to the respondent without the name of the respondent filled in at the request of the respondent himself. This wrongful finding is significant so as to quash her finding. All the cheques which were produced in counts 1 to 3 before the trial court were in the name of the respondent but evidence shows that at the time that they were handed to the respondent, they were blank cheques. The learned Magistrate also erred in holding that the cheque in count 1 bore two signatures whereas it was only signed by witness Seetaram. In reaching such a conclusion this shows that the learned Magistrate was confused about counts 1 and 4 as it is the cheque in count 4 which bore the signature of the two directors.

In relation to count 4, learned counsel for the appellant submitted that the learned Magistrate erred when she held that–

(i) in the unsworn statement of the respondent, he deposited the cheques in his bank account as it was account payee and he gave money to Mr Reetoo to purchase materials;

(ii) witness Reetoo could not be believed and gave credence to the unsworn statement of accused;

(iii) it could not be inferred that the respondent had knowledge of the tainted origin of the property as it was the practice of the company to do business with cheques

used in such a manner, that is, leaving them blank so that they are used to purchase materials; and

(iv) the unsworn statement of the respondent could be relied upon and is preferred.

The cheque of Rs.100,000 in count 4 was issued in favour of Emidor Trading Ltd and according to the respondent as per his unsworn statement, it was for investment purposes. However, the accountant Thakoor gave the lie to the respondent as he was advised by the respondent to record this as costs sale and not as an investment. Mr Reetoo stated during his cross examination that he never received any money from the respondent for the purchase of materials. He left the cheque in count 4 blank as he understood that the respondent could use the money to purchase materials. The learned Magistrate found that witness Reetoo could not be believed on account that he bought materials on and off. However, there is the sworn testimony of witness no.3, Mr Reetoo, that he never received money from the respondent to purchase materials. He also added that he never authorized the respondent to credit money in his bank account or cash the cheques. Further, Emidor Trading Ltd was neither a customer or supplier of Just Caps Ltd. The learned Magistrate therefore erred in concluding that the respondent did not have the mens rea to commit the offence. Besides, the documents referred to by the respondent to prove that he had refunded the money do not tally with the amount of Rs.100,000 and the moreso, they had only been produced some 3 years after the commission of the offence. The learned Magistrate was therefore wrong to hold that the money refunded by the respondent was the amount as per count 4. It is also borne out on record that the chief investigator of the ICAC revealed that the respondent never credited the money into the account of the company which he obtained by cashing the cheques.

As for count 1, the cheque only bore the signature of Mr Seetaram, it was only in relation to count 4 that the cheque bore the signature of Mr Reetoo and the respondent as this was from the company Just Caps Ltd.

Witness Reetoo was unaware as to how Mr Seetaram was effecting payments. This would be immaterial as Mr Seetaram, a client of Just Caps Ltd confirmed dealing personally with the respondent. Witness Reetoo confirmed that he never gave authorization to the respondent to have the customers of Just Caps Ltd to issue cheques in favour of the respondent or for respondent to cash cheques paid to the company. The contradiction in the testimony of Mr Reetoo regarding whether or not he purchased materials was not such that the

learned Magistrate could conclude that he was not a witness of truth. Witness Reetoo explained in Court that for VAT purposes, it was not to the advantage of the company to issue cheques either in the name of the respondent or to cash cheques of the company. The fact remains that blank cheques were remitted to the respondent for the purpose of business transactions but not for the respondent to credit them into his bank account or cash them. Although it is admitted by witness Reetoo that a blank cheque in relation to count 4 was handed over to the respondent but he maintained that it was not to be used to pay Emidore Trading ltd which was neither a customer nor a supplier of Just Caps Ltd. The learned Magistrate was therefore wrong to conclude that the respondent did not know that he was laundering money as two cheques had been deposited in his bank account and two others had been cashed by him. They have never been accounted for the benefit of the company.

We have considered the submission of learned counsel for the appellant, the respondent as well as that of learned counsel for co-respondent who in fact supported the grounds of appeal raised by the appellant. Regarding the unsworn statement of the respondent, it is only evidence what he told the police and the learned Magistrate erred when she referred to that unsworn version as the evidence on record. **Andoo v R [1989 SCJ 257].** On the authority of **Boyjoonauth v The State & Anor [2017 SCJ 378]** it was clearly set out that sworn evidence carries more weight than unsworn evidence. The learned Magistrate was thus wrong to have relied on the version given by the respondent in his unsworn statement.

In the light of the above, grounds of appeal 2 and 3 are allowed.

In relation to ground of appeal 4, we are satisfied that the learned Magistrate erred when she concluded that "*it cannot be inferred that accused has knowledge of the tainted origin of the property as it was the practice to run the company that way*". There is evidence on record that in relation to count 4, the cheque was issued to Emidore Trading Ltd and recorded as purchase/cost sales following the advice of the respondent as testified by witness Thakoor and not for investment purposes as alleged by the respondent in his unsworn statement. The purpose of recording this money as cost sales is indicative of the guilty mind of the respondent and there was no reason for the learned Magistrate not to believe witness Thakoor. The fact that there is an admission by the respondent that instead of refunding the money to the company, he used it for his medical treatment also shows his guilty mind. Further, the timing of the refund of money by the respondent, that is, 3 years after the occurrence of the event as

evidenced by the documents and coupled with the fact that the amount do not tally with the sum of Rs.100,000 refunded by Emidore Trading Ltd at the material time, speak against the respondent. We are therefore of the considered view that had the respondent been minded to refund the company, he would have done so much earlier. He had in fact misused his position as a director of the company to launder money belonging to the company.

Learned counsel for the respondent submitted that the Supreme Court in its appellate jurisdiction should rehear the matter as it will not be proper to refer the matter back to be heard anew before a different bench. This question does not arise and is untenable since we are satisfied that it was the learned Magistrate who made a wrong appreciation of the facts of the case. It is incorrect on the part of learned counsel for the respondent to submit that the prosecution witnesses and especially witness Reetoo had confirmed the unsworn statement of the respondent. On the contrary, the prosecution witnesses and witness Reetoo, inter alia, adduced facts which have proved the acts and doings of the respondent and his guilty mind in relation to the charges levelled against him. The facts adduced before the Court below are what they are and we are satisfied that the facts of the case are such that the learned Magistrate should have found that the prosecution has successfully proved out the charges against the respondent beyond reasonable doubt. One salient feature of this case is that the learned Magistrate was wrong to have relied on the version given by the respondent in his unsworn statement and considering it as being evidence. On the contrary, we find that the evidence adduced by the witnesses for the prosecution and the documents were such that the learned Magistrate should have found the respondent guilty as charged.

We accordingly quash the judgment of the learned Magistrate and find the respondent guilty under counts 1 to 4. We remit the case back to the learned Magistrate to proceed with the sentencing of the respondent.

M J Lau Yuk Poon
Judge

M Naidoo
Judge

14 January 2022

Judgment delivered by Hon. M J Lau Yuk Poon, Judge

For Appellant:	**Mr. M.I.A Neerooa, Senior DPP**
	Mr. A.S. Aubeeluck, State Counsel
Respondent:	**Mr. P. Kistnen, of Counsel**
	Mr. P. Nathoo, Attorney at Law
Co-Respondent:	**Mr. N. Nulliah, of Counsel**
	Mrs. M. B. Chatoo, Attorney at Law