

**INDEPENDENT COMMISSION AGAINST CORRUPTION v BIBI SHAMEEM  
KHODABOCUS**

**IN THE INTERMEDIATE COURT OF MAURITIUS [FINANCIAL CRIMES  
DIVISION]**

**CN: 105/2020**

**Independent Commission Against Corruption**

**v/s**

**Bibi Shameem Khodabocus**

**Ruling**

Accused stands charged under 87 counts with the offence of conflict of interest in breach of sections 13 (1) (a) (b) (3) of the Prevention of Corruption Act 2002. Accused was assisted by counsel and pleaded not guilty to the charges.

Defence Counsel made a motion that the proceedings be stayed for abuse of process on the ground of delay and the fact that certain counts have been repeated. The case was fixed for arguments.

Chief Inspector Jokhoo gave evidence and produced an affidavit in court. He stated that he is one of the officers who supervised the investigation as from December 2011. In cross-examination, he stated that the issues averred in the affidavit have come to his knowledge. The source is the file and once he gathered the information, it came to his personal knowledge. He maintained that it is evident that the information emanates from the file. He explained that although the counts have been repeated, they are in respect of different invoices.

The affidavit reveals that he was one of the officers who supervised the enquiry. A complaint was received in 2011 and that between November 2009 until 2010, several

documents had to be analysed. Disclosure orders had to be applied for and there was a change in investigator since the main enquiring officer left. Statements had to be recorded and further investigation was carried out.

### Submissions

The main thrust of the submissions of Mr S Oozeer is that there are several counts which have been repeated and that the Accused was not aware what exact charges she has pleaded to and that to continue with the present case would be tantamount to an abuse of process of the court in breach of her constitutional right to a fair hearing. He also submitted that there is no explanation for the delay and that no weight ought to be given to the affidavit in as much as the matters contained therein are not to the personal knowledge of the officer who produced the affidavit in court.

Mr Naga on the other hand submitted that the chief investigating officer has put up an affidavit to explain investigative steps that have been taken during the course of the enquiry. He submitted that delay alone does not justify a stay of proceedings. He further submitted that there is also no evidence of any prejudice likely to be caused to Accused and that the counts which contain the same wording pertain to different offences.

### Discussions

I will first address the submissions of defence Counsel regarding the weight to be given to the affidavit. The purpose of filing an affidavit in cases where a motion of abuse of process is made was explained in the case of **Mungroo v/s R** [1992] LRC 591 where their Lordships laid down that "*in any case where excessive delay is alleged, the prosecution should place before the court an affidavit which sets out the history of the case and the reasons for the relevant period of delay*". The affidavit contains the various steps of the enquiry. As a matter of fact, every single detail of the enquiry will not necessarily be to the personal knowledge of the investigative officer since he was one of the officers who supervised the enquiry. It stands to reason that he had to base himself on the file to elaborate the various steps. I therefore find that there is no reason why the averments of the affidavit ought to be disregarded when thrashing the motion of abuse of process.

It is well settled that the Court has a discretion to stay proceedings on the ground of abuse of process where and when the prosecution of an accused party is oppressive and vexatious resulting in the trial being unfair or where it offends the court's sense of justice and propriety to be asked to try the Accused in the circumstances. **Connelly v/s DPP [1964] AC 1254 & R v/s Horseferry Road Magistrates' Court.**

On the issue of delay, I have noted that the delay between the commission of the alleged offence and lodging of the information is rather long. It must be stressed however that delay per se is insufficient to justify a stay and that proceedings should not be stayed on the ground of delay alone unless their continuance would be an abuse of process namely where the defendant would not receive a fair trial or (b) where it would be unfair for the defendant to be tried. **R v/s Beckford [1996] 1 ICR App R 94** **State v/s Velvindron R [2003] SCJ 319**

The nature of the case is a factor which must necessarily be considered in assessing the reasonableness of the delay. It is borne in mind that the information involves several counts and that the offence is of a serious nature. In the circumstances, the balance to which Lord Steyn referred in **Latif [1996] 1 WLR 104** weighs heavily in favour of bringing the Accused before a court of justice. Furthermore, a perusal of the court record reveals that a motion for a stay of proceedings was made by previous Counsel who was appearing for the Accused and dropped and that the case has been postponed on several occasions at the request of the Counsel who initially appeared for the Accused. Hence, any delay after the information was lodged on the 4<sup>th</sup> of March 2015 until the case was started on the 3/10/2018 is largely attributed to the defence. In the case of **Attorney General's Reference (No 1 of 1990) [1992] QB 630**, Lord Justice Lane observed "*delay contributed to by the actions of the defendant should not found the basis of a stay*". The delay from 3/10/2018 until 24/09/2020 is attributed to the fact that the magistrate who started the case was transferred to the Attorney General's office and such delay cannot be imputed to the prosecution. The case was eventually transferred to the Financial Crimes Division.

The next question to be addressed is whether the information contravenes section 10 (2) (b) of the Constitution in view of the fact that there are several counts which overlap.



Pursuant to his right to a fair trial, an accused party is indeed entitled to know what is the precise charge he has to meet and to prepare his defence accordingly. I find it apt to reproduce an excerpt from the case of Lobogun v/s State [2006] which was quoted with approval in the case of Li Mow Fan JFF v/s State SCJ [2010] "*all elements of the offence should be set out with clarity , precision and certainty in the information and should be such as will enable Accused to be informed in detail and exactly which charge he has to meet.*" This is an essential condition to enable him to prepare an adequate defence in conformity with requirements of section 10 (2) (b) which provides that Accused has the right to be informed in a language he understands and in detail of the nature of the offence

In the case of Police v/s I Kuderbux & Ors [1994] SCJ 424, Learned Counsel for the defence raised a preliminary objection that that the information contravenes section 10 (2) (b) of the Constitution in that the Accused were not explained in detail how they became traffickers in drugs. The Learned Judges held "*the information is neither repugnant to section 10(2) (b) of the Constitution nor is it invalid for being bad for duplicity*". They observed that the information avers all the essential ingredients of a single offence and further highlighted that "*it is open for a defendant to ask for particulars of the trafficking with which he is charged at any stage during the course of his trial and that any alleged defect in the information relating to particulars will not necessarily constitute a breach of section 10 (2) (b) of the Constitution*".

It is expedient to point out that the Accused party has pleaded not guilty to all charges and that there has been no application for particulars to be furnished. The information under the counts referred to by Mr Oozeer in fact avers all the constituent elements of the offence. The investigating officer has explained in court that the counts which contain similar wording relate to different invoices. The moreso the trial has not yet started and it is still open for the defence to move for further particulars of the offence under the counts which overlap. Since any alleged uncertainty or ambiguity can be removed by the communication of particulars, the defence cannot contend at this stage that it has been hampered in the preparation of its defence or that the Accused will not benefit from a fair trial.

It must be recalled that a permanent stay may only be granted in an extreme case. The exceptional nature of the order for stay of proceedings on the ground of abuse of process

was highlighted in the case of DPP v/s Hussain The Times June\_1994 where the Court stated that such an order should never be made where there are other ways of achieving a fair hearing of the case. It cannot be overlooked that it is within the powers of this court to ensure that the Accused party benefits from a fair trial in accordance to the rules of evidence.

### CONCLUSION

I conclude that it is still possible for the court to hold a fair trial and that there are no compelling reasons to warrant the exercise of my discretion to stay proceedings against the Accused party. For the above reasons, I set aside the motion of Learned Counsel for the defence.

A handwritten signature in black ink, appearing to read 'N. Senevrayar-Cunden', is enclosed within a hand-drawn oval. The signature is written in a cursive style.

[Delivered by N. Senevrayar-Cunden, Magistrate of Intermediate Court]

[Delivered on the 27th of July 2021]