

IN THE INTERMEDIATE COURT OF MAURITIUS [FINANCIAL CRIMES
DIVISION]


CN: 13/2020

Independent Commission Against Corruption

v/s

1. Bibi Nooreza Edoosurengon
2. Jacquelin Surengon

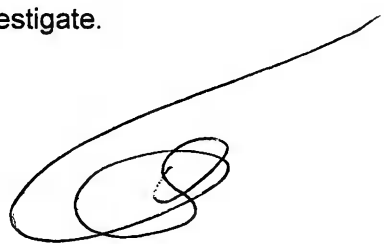
Ruling

Accused 1 and 2 stand  charged with the offence of money laundering in breach of section 3 (1) (b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering 2002.

The case was fixed for arguments following a motion of stay of proceedings from Mr S Mohamed to the effect that SI Bholah who is not a police officer had no power to record the statements of both Accused parties.

Evidence was adduced for the purposes of the arguments. SI Bholah gave evidence that he is the main enquiring officer and that he recorded a statement from both Accused under caution and that he is a senior investigator at the ICAC and joined ICAC in August 2006. He has received instructions from the Director of Investigations. In cross-examination, he stated that in 2006 he was working as investigator and that instructions are given by writing. When he was asked whether he has any document which shows that the power of director of investigations has been delegated to him, Mr Ponen objected to the production of such document.

Mr Mohamed referred to the fact that section 29 of the Prevention of Corruption Act [POCA] provides that only the Director of corruption investigation shall be responsible for any investigation and that the Court needs to be satisfied that the main enquiring officer was empowered to investigate and that a written document is crucial to establish that the officer is empowered to investigate.



Mr Ponen submitted that nowhere in POCA, has it been mentioned that a written delegation of power is required. He added that there is no specific provision making it necessary for the Director to delegate his power in writing to another officer. He further referred to section 30 (1) of the Interpretation and General Clauses Act which provides that where a person is required by any enactment to perform a duty in a prescribed manner, he may where the nature of the duty so requires, perform the duty either by himself or by another person on his direction or authority. He further submitted that there is no duty to disclose any written document in relation to delegation of power to the extent that there is viva voce evidence of SI Bholah. He also alluded to the presumption of regularity.

The main question is whether SI Bholah has the power to record a statement from the 2 Accused parties and whether the court needs to be in the presence of a written delegation of power to SI Bholah.


It is apposite to refer to section 24 (1) of the POCA which provides that the Commission shall employ such officers it considers necessary to discharge its functions on such terms and conditions it thinks fit.

Section 47 (1) further provides that where the commission proceeds with any further investigation under section 46 (3) the investigation shall be carried out under the responsibility of the director general. Subsection 2 provides that for the purposes of such investigation, the director general may delegate such of its powers as he thinks fit to the Director of Corruption Investigations Division or to any other officer.

SI Bholah has explained that he has joined ICAC since 2006. His uncontradicted evidence is that he has received written instructions to investigate the present matter and has to report through hierarchy depicts that he has acted under the authority and direction of the Director of Investigations. Section 47 of the POCA does not specifically provide that the delegation of power has to be in writing. Furthermore, section 27 of the Interpretation of General Clauses Act provides that where *an enactment confers a power which is to be exercised subject to a specified condition, the exercise of the power shall imply that the prescribed condition was fulfilled*. In view of the presumption of regularity provided for in

section 27 of the Interpretation of General Clauses Act, it is not incumbent on SI Bholah to produce the written instructions which have been given to him internally and do not pertain to evidence relevant to the charges.

For the above reasons, I conclude that that SI Bholah does not need to produce any document pertaining to the instructions he has received and that the court is satisfied that he has acted on the instructions of the Director General and that he had the power to conduct the investigation and record the statements of both Accused parties. The motion of Mr Mohamed is therefore set aside.



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

[Delivered this 28th of February 2023]