

ICAC v Derek Jean Jacques & ors Ruling

2022 INT 79

ICAC v Rudolph Dereck JEAN JACQUES and Ors

FCD CN: 89/2020

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIME DIVISION)

In the matter of:

ICAC

V

- 1. Rudolph Dereck JEAN JACQUES**
- 2. Louis Roger JEAN JACQUES**
- 3. Dharamdeo BALKISSUR**
- 4. Bruno Wesley CASIMIR**
- 5. Roukesh HEMRAJ**
- 6. Jean Fabrice Danilo FRANCOIS**

RULING

All six accused are being prosecuted, on separate Counts, for Money Laundering offences in breach of Sections 3(1)(a), 6 and 8 (Counts 1-13 and 25-28] of the Financial Intelligence and Anti-Money Laundering Act 2002 and Sections 3(1)(b), 6 and 8 (Counts 14-24 and 29-32) of the Financial Intelligence and Anti-Money Laundering Act 2002. They have all pleaded not guilty and are represented by Counsel.

During the course of the trial, the prosecution called SI Papain (Witness No.1) who identified, read and produced two statements which she had recorded from accused no.2 on 12 July 2013 and 28 October 2013 respectively, after having cautioned and explained latter his constitutional rights. Those two statements were marked as Docs B and B1 respectively.

SI Papain (Witness No.1) also explained that during the recording of the statement dated 28 October 2013 (Doc B1), she referred and read to accused no.2 a statement which latter had given to the ICAC on 22 October 2012. That statement was recorded from accused no.2 following an

order of the Court to the effect that he should give an explanation as to the properties he possessed. She further stated that this statement was not taken under warning.

The prosecution then sought to produce the statement dated 22 October 2012 as being part and parcel of Doc B1. Counsel for accused no.2 objected to the production of that statement as being hearsay evidence and in breach of the Judges' Rules and accused no.2 constitutional rights.

Counsels for the other accused informed Court that they are not concerned with the present Arguments and therefore, will not offer any submissions.

The status of the Judges' Rules has, over the years, been subject of numerous pronouncements from the Courts and it is now well settled that though not being rules of law, they are a guide which police officers should follow when they are conducting investigations and the consequences of their non-compliance will depend on the circumstances of each case. In that respect, the following principles have been established by the Courts:

- a. *"The construction of the Judges' Rules and the administrative appendix thereto must be considered against the background of the constitution."* – see **The State v Coowar [1997] SCJ 196;**
- b. *"The Judges' Rules are administrative directions, not rules of law, but possess considerable importance as embodying the standard of fairness which ought to be observed."* – see **Peart v The Queen [2006] UKPC 5 and Williams v The Queen [2006] UKPC 21;**
- c. *"The judicial power is not limited or circumscribed by the Judges' Rules. A court may allow a prisoner's statement to be admitted notwithstanding a breach of the Judges' Rules; conversely, the court may refuse to admit it even if the terms of the Judges' Rules have been followed."* – see **Peart v The Queen [2006] UKPC 5 and Williams v The Queen [2006] UKPC 21;**
- d. *"The criterion for admission of a statement is fairness. The voluntary nature of the statement is the major factor in determining fairness. If it is not voluntary, it will not be admitted. If it is voluntary, that constitutes a strong reason in favour of admitting it, notwithstanding a breach of the Judges' Rules; but the court may rule that it would be unfair to do so even if the statement was voluntary."* – See **Peart v The Queen [2006] UKPC 5 and Williams v The Queen [2006] UKPC 21;**
- e. *"A voluntary confession obtained in breach of the Rules or a suspect's constitutional rights are not per se inadmissible – see Allie Mohammed v. State [1999] 2 WLR 552... "it does not mean, of course, that in every case of a significant or substantial breach...the evidence concerned will automatically be excluded...The task of the Court is not merely to consider whether there would be an adverse effect on the fairness of the proceedings, but such an adverse effect that justice requires the evidence to be excluded.""* – see **The State v Rome and ors [2011] SCJ 319.**

From the above, it is clear that the most important factor which needs to be addressed is the issue of fairness. The test is whether it would be fair to admit a statement which is, albeit, voluntary or which has been obtained in breach of the Judges' Rules or the constitutional rights of an accused party having regards to the circumstances in which that statement was recorded; it is only when the Court is satisfied that the adverse effect on the fairness of trial is such that justice requires the statement to be excluded, that the court would exclude that statement.

In the present case, when Doc B1 was recorded by SI Papain (Witness No.1) from accused no.2, latter had been duly cautioned and explained his constitutional rights prior to the statement being recorded. This is in line with what is provided in the Judges' Rules, namely Rule II which provides that:

“As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting him any questions or further questions, relating to that offence.”

The effect of the above is that accused no.2 was well aware that he had been duly cautioned and his constitutional rights had been explained to him. He knew that he could either remain silent or choose to answer questions which were going to be put to him by SI Papain (Witness No.1) and that he could be legally represented for that purpose.

On the other hand, the statement which had been recorded from accused no.2 at the ICAC on 22 October 2012 was not recorded under caution nor was accused no.2 constitutional rights explained to him prior to recording that statement. That statement was recorded following an order of the Court for accused no.2 to explain his properties and accused no.2 gave that statement as a result of that order.

For the purposes of determining whether the statement dated 22 October 2012 is admissible, a distinction must be made between the prosecution seeking to adduce directly a statement recorded, not under warning, from an accused as opposed to the prosecution seeking to adduce such a statement which had, during the course of an enquiry, been referred and read to an accused whilst he was being questioned under warning and accused admitted to its contents thereof.

The first situation is one whereby the statement would have been obtained in breach of the Judges' Rules and in breach of the constitutional rights of an accused but still would not be automatically inadmissible if that statement was voluntarily given. The Court would have to carry out the test as stated in **Peart, Williams and Rome** above to decide whether to admit or reject that statement.

The second situation is quite different. In the present case, it is undisputed that before Doc B1 was recorded, accused no.2 had been cautioned, explained his constitutional rights and was assisted by counsel all throughout the recording of the statement. It is also undisputed that the statement dated 22 October 2012 was referred and read over to accused no.2 as part of the questioning which took place by SI Papain (Witness No.1) for the purposes of recording Doc B1. In that respect, I find it apt to reproduce part of Doc B1 which reflects the following:

“Q(1): Le 22 Octobre 2012 de 13.15 à 14.55 hrs suite a un l’ordre de la cour 107284 ou fine donne ene l’enquete a l’ICAC. Esce qui ou ti cause tout la verité ladans.

Ans (1): Oui mo ti cause tout la verité.

Q (2): Asterla ICAC a pe relire sa l’enquete qui ou ti donne le 22 Octobre 2012 la et pe demande ou si ou d’accord.

Ans (2): Oui mo d’accord pou ou lire li.

At this stage the statement is read over to Mr Louis Roger Jean Jeaques [Doc LRJJ/1]

Q (3): Es-ce qui ou d’accord avec sa l’enquete la.

Ans (3): Oui”

A reading of the above shows that when the contents of the statement dated 22 October 2012 were read to accused no.2, he readily admitted same as being a truthful account of what he had stated to the ICAC. The effect of this procedure adopted by SI Papain (Witness No.1) was that it made the statement dated 22 October 2012 and its contents thereof an intrinsic part of Doc B1. As such, it cannot be said that, in the circumstances of the present case, that the statement dated 22 October 2012 is inadmissible because it was recorded in breach of the Judges’ Rules and in breach of accused no.2 constitutional rights

It is also noteworthy that the voluntariness of the statement dated 22 October 2012 has never been challenged by counsel for accused no.2 and that there is no evidence to the effect that admitting that statement will cast an adverse effect on the fairness of the trial. On the contrary, since accused no.2 has admitted, in Doc B1, all the explanations he gave to ICAC as to his properties in the statement dated 22 October 2012, it would be most fair to accused no.2 that this statement be before this Court as part of his version that he gave to the ICAC during the course of the enquiry. This admission from accused no.2 in Doc B1 and the fact that the voluntariness of the statement dated 22 October 2012 has not been challenged, the probative value in admitting that statement outweighs any prejudicial effect that may have accrued to the accused no.2.

Furthermore, since the contents of the statement dated 22 October 2012 had been admitted by accused no.2 during the recording of Doc B1, the issue of hearsay does not arise and Counsel for accused no.2 rightly did not press on this point during his submissions.

For all the reasons given above, I accordingly set aside the objection of Counsel for accused no.2.

A.R.TAJOODEEN
Ag Magistrate of the Intermediate Court (Financial Crime Division)
30.03.2022