

Cause No: 1389/2012

IN THE INTERMEDIATE COURT OF MAURITIUS
[CRIMINAL DIVISION]

INDEPENDENT COMMISSION AGAINST CORRUPTION
(ICAC)

V

1.- AHMUD SHAKEEL KHAN JAHANGEER
2.- ZAKI CO. LTD as represented by MRS MUBAREKA BEGUM JAHANGEER

RULING

Accused 1 stands charged under Counts 1 to 27 with the offence of "**Money Laundering**" in breach of Sections 3(1)(a)(b), 6(3) & 8 of The Financial Intelligence and Anti Money Laundering Act 2002.

Accused 2 stands charged under Counts 28 to 32 with the offence of "**Money Laundering**" in breach of Sections 3(1)(b), 6(3) & 8 of the Financial Intelligence and Anti Money Laundering Act 2002 coupled with Section 44(2) of Interpretation and General Clauses Act.

They have pleaded not guilty to all the 32 charges and were assisted by Senior Counsel A.Domingue and Counsel K.Trilichun respectively.

Before the re-start of the Trial proper Learned Senior Counsel appearing for Accused 1 moved for a stay of proceedings on the following grounds:

- 1.- Inordinate delay
- 2.- The re-starting the case against both accused parties would be unfair against them.

In answer to the said motion, Prosecution called retired Corporal Rene, posted at ICAC, who deposed and produced an affidavit which he had sworn – **Doc AJ**. The said affidavit narrates the sequence of the present case.

The particulars of the circumstances of the present case as per Doc AJ are as follows:

ICAC started its enquiry following the complaint made by Ali Reza Mohammad alleging that Accused 1 was indulged in money laundering by opening bank accounts in the name of 3rd parties. A Preliminary Investigation was carried out on 14 February, 2008 and it was decided that further investigation be carried out. Many statements were



recorded from numerous persons and several documents were received from different institutions. Statements were recorded from both accused parties on 17 May, 2011 and 19 May, 2011. Accused 1 was arrested on 16 May, 2011 and Accused 2 on 19 May, 2011. Investigations also involved the Registrar of Companies, DBM Ltd and other companies and different Court Orders, Disclosure Orders and Attachment Orders were sought and obtained. Hence, the investigation was time consuming. The case file was referred to the ODPP on 25 January, 2012 with recommendations and prosecution was advised by the ODPP on 14 September, 2012 against the accused parties. The present information containing the charges was lodged before this Court on 4 October, 2012.

I have duly considered all the submissions offered.

The **Constitution of Mauritius** has prescribed guarantees and safeguards under Sections 3 and 10 to ensure that any person who is charged with a criminal offence shall be afforded a fair hearing. The Court has a duty to protect the integrity of the criminal process and to secure fair treatment to any person charged with a criminal offence in conformity with the norms prescribed under the Constitution.

In **CONNELLY V DPP [1964 A.C. 1254]** it was held:

"The Courts have an inescapable duty to secure fair treatment for those who come or are brought before them."

In **DPP V HUMPHRYS [1977 A.C. 1]** Lord Salmon stated the following:

".....a judge has not and should not appear to have any responsibility for the institution of prosecutions; nor has he any power to refuse to allow a prosecution to proceed merely because he considers that, as a matter of policy, it ought not to have been brought. It is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has power to intervene."

This power to stay proceedings for abuse of process is considered to include a power to safeguard an accused from oppression or prejudice and has been described as a formidable safeguard to protect persons from being prosecuted in circumstances where it would be unjust to do so.

In **R V SWINDON MAGISTRATES' COURT EX-P NANGLE [(1998) 4 AER 210]** CJ Bingham considered the test to be followed by the court as follows:

"The question in each of these cases is whether it appears that the police or the prosecuting authorities have acted illegally or procured or connived at unlawful procedures or violated international law or the domestic law of foreign states or abused their powers in a way that should lead this court to stay the proceedings against the applicant."

②

In **R. V HORSEFERRY ROAD MAGISTRATES' COURT EX-P BENNETT [1994 A.C 42]** Lord Lowry observed:

"I consider that a court has a discretion to stay any criminal proceedings on the grounds that to try those proceedings will amount to an abuse of its own process either

- (1) because it will be impossible (usually by reason of delay) to give the accused a fair trial or*
- (2) because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of a particular case."*

Every Court has therefore a right in its discretion to decline to hear proceedings on the ground that they are oppressive and constitute an abuse of the process of the Court.

In **HUI CHIN MING V R [1992 1 A.C. 340]**, an abuse of process was defined as *"something so unfair and wrong that the Court should not allow a prosecutor to proceed with what is in all other respects a regular proceeding."*

In **PRAKASH BOOLELL V. THE STATE (JCPC Appeal No. 39 of 2005)** it was stated:

"(i) If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of section 10(1) of the Constitution, whether or not the defendant has been prejudiced by the delay.

(ii) An appropriate remedy should be afforded for such breach, but the hearing should not be stayed or a conviction quashed on account of delay alone, unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all."

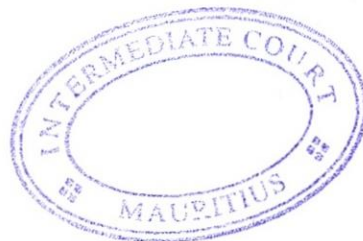
"The court has identified three areas as calling for particular inquiry. The first of these is the complexity of the case. It is recognised, realistically enough, that the more complex a case, the greater the number of witnesses, the heavier the burden of documentation, the longer the time which must necessarily be taken to prepare it adequately for trial and for any appellate hearing. But with any case, however complex, there comes a time when the passage of time becomes excessive and unacceptable."

In determining the abuse of process, the Court in **R. V. DERBY CROWN COURT EX-P BROOKS [1985 80 CR. APP. R.P. 164]**, after quoting with approval the statement of Lord Diplock in **SANG [1979 2 AER 1222]** pointed that *"the ultimate objective of this discretionary power is to ensure that there should be a fair trial according to law, which involved fairness both to the defendant and the prosecution."*

With regards to the above cases, proceedings can only be stayed in exceptional circumstances. The exceptional nature of the power was recognised by Lord Chief Justice Lane in **ATTORNEY GENERAL'S REFERENCE NO. 1 OF 1990, 95 CR. APP** where he stated that:

"Stays granted on ground of delay or for any other reasons should only be employed in exceptional circumstances."

②



In **R V HEWITT [1985 2 SCR 128]** CJ Dickson stated that a stay should be granted where *"compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency"*.

However, the power to stay proceedings is to be exercised only in the *"clearest of cases"*.

Hence, the test to be applied is that of fairness. What is unfair and wrong will be for the court to determine on the individual facts of each case.

Taking all the above observations into consideration in line with the circumstances in which the prosecution has been brought against the accused parties, as well the affidavit on record and the submissions of both Learned Counsel, I find that there is nothing of an unfair, oppressive or abusive in the conduct of the prosecution so as to warrant a stay of proceedings on the ground of abuse of process on the grounds raised by the defence.

The factual circumstances of the case are contained in Doc AJ and the enquiry by ICAC contains no irregularity or unlawful act. All the rights of the accused parties have been guaranteed and no prejudice has been caused to them which would lead to a breach of the provisions of the Constitution.

A perusal of Doc AJ will give a clear indication that the time and manner which the investigation unfolded. Statements were recorded from a number of persons, documentations had to be retrieved from various institutions and companies, different orders were applied for and received from Courts and the case management cannot amount to an abusive procedure.

It is true and accepted that the present case has to be re-started due to the fact that the Learned then Magistrate is no longer on the bench. On 27 November, 2017 the Prosecution and the accused parties were informed, in presence of their respective Counsels, that the case will be heard by another bench. Hence, it has to be started anew. It is trite to note that there was no objection whatsoever to that course of action. Subsequently, a new trial date was set with the consent of all parties.

Therefore, there is no unfairness or injustice or infringement of the right of the accused parties. Nor is there any form of oppression or prejudice which is in the nature to prevent the accused parties from benefitting from a fair trial by this Court.

In these circumstances, I find that there is nothing in the way the prosecution has been so far been conducted which amounts to an abuse of process because it offends the Court's sense of justice and propriety.

I accordingly set aside the motion.



Mr. R. Seebaluck
Vice-President
Intermediate Court [Criminal Division]
This 10 June, 2020.