

**ICAC v Joelle Adam & Anor**

**2023 INT 215**

**CN: 19/2022**

**IN THE INTERMEDIATE COURT OF MAURITIUS  
(FINANCIAL CRIMES DIVISION)**

**In the matter of:**

**Independent Commission Against Corruption**

**v/s**

- 1. Joelle Nadine Adam**
- 2. Dharamjay Luchmun**

**RULING**

Accused no.1 is prosecuted for the offence of Treating of Public Official in breach of section 14 of the Prevention of Corruption Act 2002 (POCA), coupled with section 44(1)(b) of the Interpretation and General Clauses Act (IGCA) under count 1 of the Information. Accused no.2 is prosecuted for the offence of Receiving Gift for a Corrupt Purpose under count 2 in breach of section 15(a) and 83 of POCA. They both pleaded not guilty to the Information and were represented by counsel throughout the proceedings.

During the course of trial, a defence statement of accused no.1 was produced as **Doc A**. The prosecution proposed to produce three further defence statements of the accused through witness no.1. Defence counsel for accused no.1 objected to the said production on the ground that accused no.1 put up those statements as representative of the Chemical and Technical Suppliers Ltd (Chemtech). The Information is now laid against her in her personal capacity, as a person concerned in the management of the company.

The prosecution called witness no.1, Investigator Bhatoo for the purposes of the argument. For convenience, his evidence adduced under examination-in-chief and cross-examination will be summarised. The witness stated that he had prepared a list of questions which represented the allegations against the accused in her personal capacity. The said list of questions was written by the witness himself on paper and was shown to the accused during the recording of her defence statement, Doc A. It is noted that the list was not part the said defence statement, but rather a written account of the allegations against the accused in the words of the Enquiring Officer. The accused declined to take note of the content of the said document. Following a ruling delivered on 18.05.23 and for the reasons given, the list of questions was held as inadmissible.

It was confirmed during cross-examination that the accused gave the first three defence statements as representative of 'Chemtech'. She was not the sole director of the said company.

The witness was keen to stress upon the fact that the accused was the manager of the company. That information was allegedly gathered from the other directors of the company during enquiry. In an attempt to streamline the points of contention, I shall deal with such issues first. The prosecution is not barred from adducing evidence, during the course of trial, to show that the accused was concerned in the management of the company. To buttress the statement of the enquiring officer, the other directors of 'Chemtech' can be called as witnesses to elicit such evidence. However, the issue of this argument is whether the accused was made aware of the fact that she may be prosecuted for an offence as a person concerned in the management of the company when she put up the first three impugned statements. Whether there are witnesses for the prosecution to prove that she was, is irrelevant at this stage.

The witness further stated that the accused was informed of the allegations against her in the defence statement produced as Doc A, and such is manifest through the phrase *'I informed her the facts and circumstances of the present case that ICAC is conducting a corruption investigation against her as she is the director and shareholder of the company'*. When Doc A is read in its entirety, no further light has been shed on the phrase 'facts and circumstances of the present case' in writing. Indeed a detailed account of the facts and circumstances has not been presented to the accused in writing. The contention from the prosecution is that such has been done verbally to the accused. There is no specific rule or law which regulates the method in which the facts and circumstances of a case should be confronted to a suspect during enquiry. It is nevertheless an established practice that any question put to a suspect, or fact presented, should be recorded in writing in the defence

statement. The written statement under caution represents the entirety of the events unfolding at the time of recording of the defence statement. There is no extrinsic written document or verbal account which can supplement a defence statement. Any relevant fact has to be recorded in writing. It gives the suspect the opportunity to respond to each and every fact confronted to him or her.

The Information has been laid against the accused under s.44(1)(b) of the IGCA.

## **Interpretation and General Clauses Act**

### **44. Offence by agent or body corporate**

*(1) Where an offence is committed by—*

*(a) an agent, the person for whom the agent is acting;*

*(b) a body corporate, every person who, at the time of the commission of the offence, was concerned in the management of the body corporate or was purporting to act in that capacity,*

*shall also commit the like offence, unless he proves that the offence was committed without his knowledge or consent and that he took all reasonable steps to prevent the commission of the offence.*

*(2) (a) Where a company, société or other corporate body is charged with an offence, a representative may appear before the appropriate Court and enter a plea of guilty or not guilty on behalf of the company, société or other corporate body.*

Where a body corporate is concerned with the commission of an offence, either the body corporate itself is charged with the said offence (s.44(2)), or the person concerned in the management of the body corporate may also be charged with the offence (s.44(1)(b)); vide **Coindreau v State 2013 SCJ 417, Change Express v ICAC 2022 SCJ 301**.

The accused, if charged as a person concerned in the management of the body corporate under section 44(1)(b), is granted a defence if he proves lack of knowledge or consent and that he took all reasonable steps to prevent the commission of the offence. There is no evidence adduced by the prosecution as to whether the accused was informed, in the first three statements, that ICAC had grounds to believe that she might have committed an offence in her capacity as a person concerned in the management of 'Chemtech'. Failure to do so would deprive the accused the opportunity to raise the said defence in law or to provide her version to counter the allegations.

In fact the witness for the prosecution stated that the accused put up the first three statements in her capacity as representative of 'Chemtech'. There is a slimmer of evidence to the effect that she has explained that she was part of the management of the company. However, as assessed above, the issue is not one where she was concerned in management, but one where she must be informed that because she was so, she might have committed an offence. This would be in line with a long series of caselaw, vide **Jhootoo v The State 2013 SCJ 373**, **Seetahul v State 2015 SCJ 328**, **The State v Peter Wayne Roberts CS 16/15**, **Grandcourt v The State 2018 SCJ 56**, **DPP v Lagesse & Ors 2018 SCJ 257**, **DPP v Ducasse 2023 SCJ 20** which underlines the common thread that the suspect at enquiry stage must be made aware of the nature of case that he has to meet at trial.

Furthermore, at Doc A, the defence statement where she was indeed informed of the alleged commission of an offence in her capacity as a person concerned in the management of the company, she put up the following statement:

*Before any questions be put to me, I wish to state that I have already in my capacity as a representative of 'Chemtech' and manager of the company disclosed all facts within my personal knowledge regarding the present enquiry. I have nothing to add in this regard.*

It shows that the accused understood that she gave the previous statements as representative of the said company and explained the facts known to her as manager of the company. At no point was it made it clear that she was informed that, because of her position as manager, she was likely to be prosecuted for the commission of an offence.

## **CONCLUSION**

It is not disputed that the first three statements were put up by Chemical and Technical Suppliers Ltd (Chemtech), with Mrs Adam then acting as the representative of the said company. The Information is laid against a different accused party, being Mrs Adam in her capacity as person concerned in the management of a company.

Producing those statements as evidence would carry no substantial weight for the prosecution since the accused was never cautioned in the said capacity when putting up those statements. They cannot therefore be considered as defence statements for the accused. On the other hand, the likely prejudicial effect to the accused is real as

explained above. She was deprived of the opportunity to respond to each and every fact and circumstance of the case as a person concerned in the management of the company. I therefore find that the prejudicial effect of the evidence in the form of the three previous out of court statements would outweigh its probative value, and is thus inadmissible.

**P K Rangasamy**  
**Magistrate of the Intermediate Court**  
**14.07.23**