Cause No: 1294/2010

IN THE INTERMEDIATE COURT OF MAURITIUS
[CRIMINAL DIVISION]

In the matter of:

INDEPENDENT COMMISSION AGAINST CORRUPTION
(ICAC)

V.

MAHAMAD TAYAB RUHOMALLY

RULING

The accused stands charged under 29 counts for 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.

He pleaded not guilty to all those 29 Counts and he was assisted by Senior Counsel Y.A.R. Mohamed at his trial.

The case was started before an originally constituted bench and much had been covered. Eventually, it had to be started again for known reasons.

At the sitting of 5 July, 2018 Learned Senior Counsel for the defence moved that proceedings be stayed for abuse of process in the present matter as, firstly, since the court has found no 'Embezzlement' in case CN: 1295/2010, the present proceedings cannot be allowed to stand as there may be a conflict of verdicts and would mean that the present bench would be sitting on appeal against the first verdict.

Secondly, the accused and his wife ought to have been prosecuted together on a single information.

The motion was resisted by ICAC and the case was argued.

Mr. Y.A.R. Mohamed SC submitted that it is settled that the predicate offence does not have to be proved in a money laundering case and then comes the evidence whether the money was in fact the proceeds of a crime or not.

He stated that in the information in hand specifically in the List of Witnesses there is mentioned of the names and particulars of witnesses 1, 3, 4, 5 & 6 who were the same witnesses in the case CN:1295/2010 against the wife of the present accused in which judgment has been delivered by the Intermediate Court whereby the case was dismissed on all counts and the accused acquitted. That decision was not subjected to any appeal. By listening the present case the court is being asked to listen to the same witnesses and consider the same evidence as the first case but this time against the present accused. By doing so, this court might come to a different conclusion leading to a conflict of appreciation of evidence.

Ms. Bissoonauthsing, Counsel for ICAC, submitted that the present case contains other witnesses apart from the witnesses who were present in CN:1295/2010. She stated that cases CN:1294/2010 & CN:1295/2010 have been lodged separately and the two cases concern specific accused parties. Since, the two cases were lodged at the same time would not really defeat the principle of a fair prosecution. She agreed that the common link between the two cases is the predicate offence, that is, embezzlement and there is no duty for the prosecution to prove that offence although there must be some evidence to enable the court to infer the said predicate offence. She added that the present court would not be sitting on appeal against the judgment in CN:1295/2010. She also stated that at the time of the lodging of the two information it was the practice at ICAC to limit the number of counts for convenience reasons although the law allows an unlimited number of counts before this court.

Mr. Mohamed SC replied that the judgment in CN:1295/2010 the evidence of the witnesses is analyzed and they have been found not to be believed on the issue of embezzlement, the same predicate offence in the present case.

I have carefully considered the whole of the submissions on record as well as the different authorities produced.

The 29 charges leveled against the accused as per the present information are with regards to the offence of money laundering.

Section 3(1)(b) of The Financial Intelligence and Money Laundering Act (FIAMLA) reads as follows:

"*any person who receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime, where he suspects or has reasonable grounds for suspecting that the property is derived or realised, in whole or in part, directly or indirectly from any crime, shall commit an offence.*"

Section 6 of the same Act provides the following:

"*(3) In any proceedings against a person for an offence under this Part, it shall be sufficient to aver in the information that the property is, in whole or in part, directly or indirectly the proceeds of a crime, without specifying any particular crime, and the Court, having regards to all the evidence, may reasonably infer that the proceeds were, in whole or in part, directly or indirectly, the proceeds of a crime.*" (emphasis supplied).

In the case of **The Director of Public Prosecutions v A.A. Bholah [2011] UKPC 44**, the **Privy Council** held the following:

"33. *The Board has therefore concluded that proof of a specific offence was not required in order to establish guilt under Section 17(1) of ECAMLA. It is sufficient for the purpose of that subsection that it is shown that the property possessed, concealed, disguised, or transferred etc represented the proceeds of any crime – in other words any criminal activity – and that it is not required of the prosecution to establish that it was the result of a particular crime or crimes. In the light of this conclusion it follows that a failure to identify and prove a specific offence as the means by which the unlawful proceeds were produced is not a breach of section 10(2)(b) of the Constitution. In the Board's view, that section requires that the nature of the offence of which the accused person must be informed is that with which he is charged, in this case the offence of money laundering. Proof of a particular predicate crime is not an essential "element" of the offence of money laundering.*

34. The decisions in the English cases are informative beyond their firm conclusion that proof of a specific predicate offence is not required, however. They are unanimous, in the Board's view, in suggesting that where it is possible to give particulars of the nature of the criminal activity that has generated the illicit proceeds, this should be done. Some of the cases appear to suggest that this is an indispensable requirement; others that it is merely required where it is feasible. All are agreed, however, that where it is possible to give the accused notice of the type of criminal activity that produced the illegal proceeds, fairness demands that this information should be supplied."

From a perusal of the judgment in CN:1295/2010 it is trite to note that witnesses 2, 3, 4, 5, 6, 7 & 20 were also witnesses in CN:1295/2010 which was dismissed based on their very unreliable evidence against the wife of the present accused. It is also noted that a very flimsy reason was given by the prosecution to justify of the fact that two information were lodged against the accused and his wife instead of having a single information against both accused parties.

In **Hunter v Chief Constable of the West Midlands [1982] AC 529** Lord Diplock articulated a rule which has subsequently become to be known as "*The rule in Hunter*":

"The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack on a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made."

The rule in *Hunter* was exclusively applied in a criminal context in **R v Belmarsh Magisrates' Court, ex p watts [1994] AC 42** where one of the matters to be decided was whether the rule in *Hunter* extended to criminal rather than simply civil proceedings. Buxton LJ held that the rule in *Hunter* did apply to criminal proceedings. He added that if the second proceedings were successful this would contradict the judgment in the earlier proceedings.

Bingham MR in **Smith v Linskills [1994] AC 42 at 74** stated:

"*The main considerations of public policy which underlie the existing rule are, as we understand, threefold; (i) the affront to any coherent system of justice which must necessarily arise if there subsist two final but inconsistent decisions of courts of competent jurisdiction.....(ii) the virtual impossibility of fairly retrying at a later date the issue which was before the court on the earlier occasion.....(iii) the importance of finality in litigation.*"

I also refer to the case of **R. v Intervision Ltd and Norris [1984] Crim. L.R. 350** which concerns proceedings against the defendant in respect of an alleged obscene film where trial on the same issue against a different defendant has resulted to an acquittal. It was held:

"*Just as the prosecutor cannot re-open what is essentially the same matter against the same defendant (who may rely on the doctrine of double jeopardy in addition to the broader protection of abuse of process) so re-opening the same matter against a different defendant may result in inconsistent verdicts which ultimately brings the trial process into disrepute. As Lord Devlin said in Connelly v D.P.P. [1964] 2 All E.R 401 and 442, it is not simply a question of preventing harassment:*

"There is another factor to be considered, and that is the courts' duty to conduct their proceedings so as to command the respect and confidence of the public. For this purpose, it is absolutely necessary that issues of fact that are substantially the same should, wherever practicable, be tried by the same tribunal and at the same time. Human judgment is not infallible. Two judges or two juries may reach different conclusions on the same evidence, and it would not be possible to say that one is nearer than the other to the correct. Apart from human fallibility the differences may be accounted for by differences in the evidence. No system of justice can guarantee that every judgment is right, but it can and should do its best to secure that they are not conflicting judgments in the same matter."

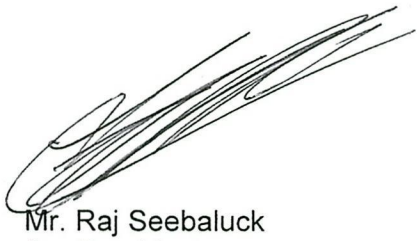
Lord Devlin was speaking of successive proceedings against the same defendant, but the reasoning is applicable to the separate trials of defendants on the same issue."

Therefore, in light of the above observations, it stands out that proceedings in the present matter will be an abuse of process.

The Court concludes that the point is well taken by the defence.

The case is, therefore, dismissed against the accused.

Prohibition Order to lapse after the delay of appeal. Accused is informed accordingly and he has no objection.



Mr. Raj Seebaluck
Ag. President
Intermediate Court – Criminal Division
This 21 August, 2020.