LEGALLANT M. C. v. THE STATE & ANOR

2019 SCJ 319

Record No. 9257

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Marie Cindy Legallant

Appellant

v/s

1. **The State**
2. **The Independent Commission Against Corruption**

Respondents

JUDGMENT

[1] The appellant was prosecuted before the Intermediate Court, under 14 counts for the offences of money laundering, in breach of **sections 3 (1) (a), 6 (3) and 8 of the Financial Intelligence and Anti Money Laundering Act 2002 (FIAMLA).** She pleaded not guilty to the charges and was assisted by Counsel. The trial Court found her guilty as charged and sentenced her to undergo twelve months' imprisonment in respect of each count and to pay 500 rupees as costs.

[2] This appeal is against sentence only. The sole ground of appeal reads as follows –

> "*That in all the circumstances of the case the sentence is wrong in principle and manifestly harsh and excessive*".

[3] At the hearing, Counsel for the appellant conceded that the sentence was not wrong in principle. He, however, submitted that a lesser sentence, namely a non-custodial sentence, was warranted in the circumstances of the case. He argued that the learned Magistrate wrongly took into consideration the previous convictions of the appellant as they were not cognate offences. As a matter of fact the appellant was firstly

convicted for unlawful possession of subutex in 2009, which was met with a sentence of imprisonment and, secondly, for issuing cheque without provision in 2010, which was met with a fine.

[4] **Section 8(1)** of **FIAMLA** provides that on conviction for such an offence**,** the appellant "*is liable to a fine not exceeding 2 million rupees and to penal servitude for a term not exceeding 10 years"*.
Sections 8 (2) and 8 (3) go on to provide that –

> " *(2) Any property belonging to or in the possession or under the control of any person who is convicted of an offence under this Part shall be deemed, unless the contrary is proved, to be derived from a crime and the Court may, in addition to any penalty imposed order that the property be forfeited.*
>
> *(3) Sections 150, 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction under this Part*".

[5] We consider that the learned Magistrate, in determining the appropriate sentence, gave due consideration to all mitigating factors, namely the appellant's plea of guilty, her apologies from the dock and her personal circumstances.

[6] She, also, considered the seriousness of the offences committed. We note that the transaction involved the amount of **1,671,425 rupees.** We also consider that the learned Magistrate was fully entitled to consider the previous convictions of the appellant.

[7] In the case of **Ramdass v The State** [2009 SCJ 324], the Court stated –

> "*… However, our case law on that issue is well settled*: *vide* ***Nabaub v The State*** [2008 SCJ 66]; ***Joomun v The State*** [2007 SCJ 41]; ***Veeren v R*** [1987 SCJ 400] and ***Khoyratty v R*** [1987 MR 169]. As stated in **Joomun**, "*it is well settled that the conduct of an offender up to the time of his sentence is always a relevant factor in determining an appropriate sentence and in that context, previous and subsequent convictions should be placed before the Court and may be taken into consideration*".

[8] Further, in the case of **Bibi Hapsa Khoyratty v The State** [2018 SCJ 382], the Court reiterated the principle that –

> "*a heavier or lighter sentence does not depend on whether the convicted person has a bad or clean record but on the merits of the case*".

In **Joghee M.K v The State** [1997 SCJ 57], the Court held that a clean record and a plea of guilty will not necessarily entitle an accused to be treated with leniency. Furthermore, in **The State v Bruls B.T and Anor** [2008 SCJ 78], the Court made it clear that the sentence passed must reflect the seriousness of the offence. Also, in **Marie Chantal Anne and Anor v The State** [2008 SCJ 45], the Court held that a non-custodial sentence is not necessarily the appropriate measure for all first time offenders.

[9] We also do not agree with the point of view of learned Counsel for the appellant that a custodial sentence ought not to have been imposed by the learned Magistrate. We note that the offences have been committed over a short period of time from 11 February 2008 to 14 May 2008. There is unrebutted evidence to show that the appellant travelled to France on numerous occasions and effected various deposits (on 14 occasions) each time she returned back to Mauritius, until she was arrested by the ADSU officers at the Airport with *subutex* in her luggage. The explanation given by the appellant as to the source of the money deposited in her bank account which stemmed allegedly from the profits of the company, and the various loans that she took from money lenders, was rightly rejected by the learned Magistrate. She instead found that the appellant was involved in a business of bringing *subutex* from France to Mauritius and laundering money.

[10] We bear in mind that the learned Magistrate did consider the need for a proportional and personalized sentencing. In the case of **Sabapathee v The Director of Public Prosecutions [2014 UKPC 19] at page 177,** the Court expressed the view that –

> "…. *sentencing is not a science of mathematical application of any set formula. It is a normative science rather than a physical science which takes into account the circumstances of the offender as well as the offence and the impact of the offence on the community. A sentence may look to be lenient because it is tailored to fit the offender, the offence and the offended but, in our system of justice, the trial court is the only constitutional institution which is empowered and sovereign in determining which sentence to impose on an offender on the facts of the particular case. An appellate court would scarcely intervene unless the sentence is wrong in principle or manifestly harsh and excessive or unduly lenient. However, even if there is nothing wrong with the principle, the sentence may be increased by the appellate court if it is unduly lenient. The principle of proportionality pervades through the whole system of justice*".

[11] We have in addition taken note of the Intermediate Court pattern of sentencing, in cases referred to us by Counsel for respondent No 2, namely **ICAC v Rajen Velvindron and Anor CN: 626/07, ICAC v Harish Ramphul CN: 812/13 and ICAC v Sajid Rymambee CN: 617 /2011**, which shows that the range of sentence imposed is similar cases ranges between 3 to 8 years. We can only come to the conclusion that the learned Magistrate erred on the lenient side when sentencing the appellant. It would have been appropriate for her to have stated in her analysis why she opted for such a low sentence, the more so that same was well below the minimum sentence provided for under **section 8(1)** of **FIAMLA**.

[12] The importance and rationale of the sentencing measures adopted under **FIAMLA** was explained in the case of **Abongo v The State** [2009 SCJ 81] where the Court stated –

> "*The Financial Intelligence and Anti-Money Laundering Act was enacted essentially for the purpose of combating money laundering offences which had the potential of adversely affecting the social and economic set up, both at national and international level to such an extent that they may constitute serious threats not only to the financial system but also to national security, the rule of law and the democratic roots of society. By enacting sections 5, 6 and 8 of the Act, the policy of the legislator was clearly designed to achieve the compelling objective of safeguarding the national and international financial systems against any disruptive intrusion which may be caused by the perpetrators of certain criminal activities. … The conventional methods of sentencing being inadequate to deal effectively with offenders of that sort, the legislator considered that there was an imperative need to resort to sentencing measures which would deprive such offenders of the illicit gains and proceeds of their crimes"*.

[13] We are alive to the fact that money laundering is one important component in the set-up of the illegal business leading to persons benefitting from the rewards of their criminal activities. The unscrupulous persons who embark on such activities cannot expect to be leniently dealt with, as they play a crucial role in the laundering of money obtained by unlawful means.

[14] Although the minimum sentence provided by law for the offence charged is penal servitude (i.e. 3 years' imprisonment), the learned Magistrate did inflict a lesser sentence of 12 months' imprisonment, which, as we have stated above, is very much on the lenient side.

[15] We consider therefore that the sentence imposed by the learned Magistrate *quoad* the appellant cannot be considered to be manifestly harsh and excessive.

[16] We accordingly dismiss the appeal with costs.

O.B. Madhub
Judge

J. Moutou-Leckning
Judge

22 November 2019

Judgment delivered by Hon. Moutou-Leckning, Judge

For the Appellant : **Mr K Bokhoree, Attorney-at-Law**

: **Mr N Dulloo, of Counsel**

For the Respondent No. 1 : **Mrs D Dabeesing Ramlugan, Principal State Attorney**

: **Mrs A. J. Ramano-Egan, Senior Assistant Director of Public Prosecutions**

For the Respondent No. 2 : **Mr S Sohawon, Attorney-at-Law**

: **Mr M Roopchand, of Counsel appearing together with Mrs A. Rangasamy-Parsooramen, of Counsel**