

Police v A. Poonen and Anor

2020 INT 13

Cause Number: 281/2017

IN THE INTERMEDIATE COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

ICAC

v/s

1. **Anuradha POONEN**, born Sookoo
2. **Priya GOHIN**, born Ramburun

Judgment

1] The Accused parties stand charged with charges of money laundering in breach of sections 3(1) (a), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA). Accused no.1 pleaded **guilty** to counts 1, 2, 3, 6, 7, 8, 9, 10 and 11 of the Information and was represented by counsel, Ms Roochand. Accused no.2 pleaded **not guilty** to counts 4 and 5 of the Information and was represented by Ms Ramdin of counsel.

2] At the outset, given that Accused no.1 has pleaded guilty in respect of counts 1, 2, 3, 6, 7, 8, 9, 10 and 11 of the Information, this Court after considering the evidence produced by the prosecution, can proceed to convict the accused on the aforesaid counts by virtue of section **72(2) of the District and Intermediate Courts (Criminal Jurisdiction) Act. [Re: The Director of Public Prosecution v Gaya Chukouree (1996 SCJ 360)]**.

3] In view of the not guilty plea of Accused no.2 under counts 4 and 5, Court will proceed to assess the evidence on record in line with the elements of the offence of money laundering under section 3(1)(a) of FIAMLA. Section 3(1)(a) FIAMLA reads as follows:

‘Any person who - (a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime;’

(b) (...)

‘...where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence.’

4] The elements that the prosecution has to prove are therefore (a) engages in a transaction that involves property; (b) which is, or in whole or in part directly or indirectly represents, the proceeds of crime; (c) where he suspects or has reasonable grounds for suspecting that the property is derived, realised, in whole or in part, directly or indirectly from any crime.

5] In criminal cases, the prosecution bears the burden of proof, since the accused as of right under section 10(2) of the Constitution and Article 6(2) of the European Convention of Human Rights, is presumed innocent until proven guilty. As per Viscount Sankey in **Woolmington v DPP [1935 AC 462] (at pp481-482)**:

‘Throughout the web of English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt...No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.’

6] Statutes, however, have departed from that rule in certain instances where certain facts are essentially or peculiarly within the knowledge of the defendant. In those instances, the burden would then shift on the defence to prove on a balance of probabilities either the legal or the evidential burden.

7] In this regard, I refer to the case of **P v Moorbannoo [1972 MR 22]**, approved in **Fakira AG v The State [2012 SCJ 466]**, where, it was held that:

“The principle which section 10(11)(a) of the Constitution aims at expressing in a compendious and general form may be expounded thus: To say that an accused party is to be presumed innocent is really to say that the burden is on the prosecution to prove every ingredient of the charge against him. It has long ago been realised, however, that if that rule were strictly adhered to, many acts and omissions which the

Legislature deems of the utmost importance to prohibit for the public good would have to be left unpunished, because the prohibition would be incapable of enforcement, and there has from early times been elaborated a qualification to the rule which is, that facts which bring a defendant within the ambit of a particular exception, if they are peculiarly or exclusively within his knowledge, should be regarded as matters which it is for him to establish.”

8] As in **R v Johnstone [2003] 1 WLR 1736**, Lord Nicholls held *‘the extent to which the burden on the accused relates to facts which, if they exist, are readily provable by him as matters within his own knowledge or to which he has ready access.’*

9] In view of the above, once the prosecution has discharged the necessary burden of proof as per sections 3(1) (a) and 6 of FIAMLA, the reversal of the burden on the accused to prove certain facts, as per section 10(11)(a) of the Constitution, would not be inconsistent with section 10(2)(a) and section 10(7) of the Constitution. **[Re: Abongo L.A. v The State [2009 SCJ 81], quoting Lobogun v State [2006 MR 63]]**. Henceforth, in such an instance, the burden would shift on the defence once the prosecution has been able to establish the three elements of the offence under section 3 of FIAMLA.

10] The prosecution produced the out of court statements of Accused no.1, documents A and A1 and various bank documents marked as documents B, C, D, E, F, G, H, J in support of its case for Accused no.1.

11] As regards Accused no.2, the prosecution produced two out of court statements, document L and L1 as well as two bank documents containing the signature of Accused no.2, marked as documents M and N.

12] During the deposition of witness no.8, the main enquiring officer, it transpired that both Accused no.1 and Accused no.2 engaged in black magic rituals together with one Mr G. Poonen and in so doing swindled witness no.3 of sums of money in the amounts of Rs 102,000(count 1); Rs 56,800 (count 2); Rs 480,000 (count 3); **Rs 480,000 (count 4); Rs 10,000 (count 5)**; Rs 50,000 (count 6); Rs 17,000 (count 7); Rs 10,000 (count 8); Rs 50,000 (count 9); Rs 90,000 (count 10); and Rs 20,000 (count 11). [Counts 4 and 5 are in relation to Accused no.2].

13] Witness no.8 when cross examined stated that Accused no.1 confessed to the charges levelled against her. In respect of Accused no.2, cross examination revealed that the money was deposited in the bank account of Accused no.2 by witness no. 3 and that Accused no.2 did state in her out of court statement that the said Mr G. Poonen was of violent disposition, but he stated that as per his enquiry Accused no.2 has never reported any domestic violence case against Mr G.Poonen.

14] Witness no.7, bank officer, produced various bank documents, marked as documents P and Q and confirmed all the transactions. Under cross examination, he stated that the was not aware if witness no.3 was present to take the money on 24th May 2010 at the bank.

15] The main prosecution witness, witness no.3, deposed and related the events leading to him remitting the sums of money as per the counts of the Information to Accused no.1 and Accused no.2. He identified both Accused parties in Court and maintained that they were present together with the said Mr G.Poonen during the black magic rituals. He explained in details how he transferred money to the accounts of Accused no.1 and Accused no.2, and that he was not returned any money. He maintained that he was swindled of the sums complained of amounting to approximately Rs 1, 5 million. He denied that the money was remitted to him at the Bank under cross examination and maintained that the money which he gave to the Accused parties for Mr G.Poonen was not used for his travels to Chennai.

16] Accused no.2, deposed under solemn affirmation, and accepted that the money was transferred to her account at the request of Mr G.Poonen whom she feared as he was violent. She maintained that everything she stated in her out of court statements, document L and L1 was true. She admitted that she was aware that Mr G.Poonen had a criminal record and that people used to come to complain. Under cross examination, she accepted that she accompanied Mr G.Poonen for the black magic rituals to allegedly cure witness no.3, and admitted that the rituals were merely make beliefs in an aim to extract money from witness no.3. She accepted that the money was remitted to her but stated that she did not have a right to the money.

17] Applying the evidence on record against Accused no.2 to the elements of the offence, Court finds that the prosecution has been able to prove all the elements of the offence against accused no.2.

(a) engages in a transaction that involves property

- Accused no.2 admitted that she was involved in the rituals which resulted in witness no.3 remitting sums of money to her and eventually to Mr G.Poonen. Her explanation that she acted under constraint in the circumstances cannot absolve the fact that she herself admitted her involvement in the transaction in question.

(b) which is, or in whole or in part directly or indirectly represents, the proceeds of crime

- Accused no.2, further admitted that the rituals were make beliefs and that they have swindled witness no.3 of his money, thus falling within the ambit of the case of **The Director of Public Prosecutions v A.A. Bholah [2011] UKPC 44**. The documentary evidence confirms that the money was transferred to the bank account of Accused no.2 by witness no.3 and that she made cash withdrawals. Additionally, the evidence of witness no.3 is most credible and his version has remained unshaken under cross examination.

(c) where she suspects or has reasonable grounds for suspecting that the property is derived, realised, in whole or in part, directly or indirectly from any crime

- The third and most important element is the mental element 'reasonable ground to suspect', which has been elaborated and explained in the Chambers case of **Manraj and Others v ICAC 2003 SCJ 75**. I find it apt to quote an extract of the

Learned Judge's judgment, which I find appropriate and relevant. It reads as follows:-

- *".....First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr. App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view..... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."*
- Of equal relevance is the following extract from **Antoine v The State** [\[2009 SCJ 328\]](#): *"Since suspicion has to be based on facts, it is the duty of the Court to analyse the whole of the evidence on record in order to determine whether or not it can be inferred, from the facts and circumstances of the case, that the accused reasonably suspected that the proceeds were proceeds of crime."*

- In the case at hand, the evidence on record clearly proves that Accused no.2 had knowledge and participated in the transactions involving the proceeds of the crime.

18] Henceforth, in light of the aforesaid, Court finds that the prosecution has been able to prove its case beyond reasonable doubt against Accused no.2 under both counts 4 and 5 of the Information.

19] Court, accordingly, finds:

- (a) Accused no.1, in view of her guilty plea guilty as charged under counts 1, 2, 3, 6,7,8,9,10 and 11 of the Information; and
- (b) Accused no.2 guilty as charged under counts 4 and 5 of the Information.

**Judgment delivered by
Ms Navina Parsuramen
Magistrate Intermediate Court
Dated 27th January 2020**