

ICAC v JUGANADEN Ruling

2024 INT 4

FCD CN: FR/L68/2020

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

ICAC

V

Denis Patrick JUGANADEN

RULING

A. BACKGROUND

1. Accused is being prosecuted for Money Laundering offences (10 Counts) in breach of Sections 3(1)(a), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002. He has pleaded not guilty and is represented by Counsels, Miss Y. Moonshiram and Miss P. Seetaram.
2. The case for the Prosecution is being conducted by Mr. Bundhoo for the ICAC.
3. During the examination in chief of Senior Investigator Naidoo Sooben (witness no.1), Miss Y. Moonshiram raised an objection to the following effect:

“I object your Honour that the enquiring officer at this stage proceeds with an analysis of the case or gives an opinion in this case inasmuch as she has not put a statement to that effect and it would be highly prejudicial to the accused. And these are matters which ought to be determined by the Court at the end of the day and at least if there was such an analysis Your Honour it ought to have been put to the Accused for him to give his version on that or his defence on that which has not been done in this case.”

4. Mr. Bundhoo insisted that Senior Investigator Naidoo Sooben (witness no.1) be allowed to depose in relation to how the investigation was conducted. The matter was fixed for arguments in relation to the objection raised.
5. For the purposes of the arguments, Senior Investigator Naidoo Sooben (witness no.1) deposed on behalf of the prosecution. She is the main enquiring officer in the present case and has over 20 years' experience in investigation, mostly at the ICAC. She has recorded several statements from witnesses and accused in the present case. She explained that all documents secured were confronted to accused during the course of the enquiry. She also explained that, during the course of the enquiry, she analyzed those documents in order to confirm the allegations against accused. She, however, did not put any statement detailing the analysis she made.
6. The defence chose not to call any witness for the purposes of the arguments.

B. SUBMISSIONS

7. Mr. Bundhoo submitted that there was no duty on Senior Investigator Naidoo Sooben (witness no.1) to put a statement as to any analysis she made the more so when accused had been confronted with all documents that had been secured. He also submitted that accused was all throughout aware of the charge against him. As such, according to his submissions, accused cannot be said to be prejudiced by Senior Investigator Naidoo Sooben (witness no.1) explaining the analysis she made in respect of the documents secured by the ICAC during the course of the enquiry.
8. Miss Y. Moonshiram, on the other hand, submitted that it was imperative that Senior Investigator Naidoo Sooben (witness no.1) put a statement in relation to any analysis she made during the course of the enquiry. According to her submissions, such analysis should have been confronted to accused for him to know what case he has to meet.

C. ANALYSIS

9. It is apposite to refer to the context in which the objection was raised by Counsel for accused. Senior Investigator Naidoo Sooben (witness no.1) was deposing in chief for the purposes of the trial. She was explaining that officers of the Agricultural Marketing Board (the 'AMB') had been interviewed. The AMB also produced documents revealing an award and transfer of funds to Sevensept Company. Following a disclosure order, bank documents and statement of accounts were obtained. An analysis of those documents that she made revealed that funds had been credited to Sevensept Company. Those funds had been moved to another Mauritian

account held by the same company. It is at this stage that Miss Y. Moonshiram objected that Senior Investigator Naidoo Sooben (witness no.1) proceeds with her deposition since all that analysis were not put in a statement and confronted to accused.

10. The authorities are beyond dispute that failure to confront an accused, during the enquiry, with incriminating evidence may potentially amount to a breach of accused constitutional rights leading to the possible exclusion of such incriminating evidence, given that the ultimate test for the admission or exclusion of an otherwise admissible piece of evidence remains that of its probative value and prejudicial effect – see (1) **The State v Marie Francois Bernard Maigrot [2020] CS 6/12**, (2) **The DPP v Lagesse & Ors [2018] SCJ 257**, and (3) **Veerapen v The State (2015) SCJ 439**.
11. It is undisputed, from the testimony of Senior Investigator Naidoo Sooben (witness no.1), that all documents secured by the ICAC had been confronted to accused. **Docs A, A1 and A2** unequivocally makes reference to all the documents that been confronted to accused during the course of the enquiry. **Docs A, A1 and A2** further shows that accused was allowed to provide his explanations in relation to the documents confronted to him. Accused was also aware of the nature of the charge against him as may be seen from **Docs A, A1 and A2**.
12. Now, Senior Investigator Naidoo Sooben (witness no.1) was explaining the methodology she used and analysis she made, as the main enquiring officer, of the documents secured by the ICAC. Her testimony to that effect is no more but showing how the enquiry was conducted. There is no duty on an investigative authority to confront an accused with each step taken during an enquiry. The investigative authority is however expected to confront an accused with incriminating evidence and make him aware of the nature of the charge against him. As explained above, incriminating evidence was confronted to accused and accused was fully aware of the nature of the charge against him. As such, there was no obligation to confront accused with any methodology used and analysis made by Senior Investigator Naidoo Sooben (witness no.1) of the documents secured by the ICAC. It will be eventually up to the Court to make its own assessment of the all documents produced, irrespective of the explanations of Senior Investigator Naidoo Sooben (witness no.1) with respect to such documents.
13. There is also no rule of law which suggest that a witness who has not, a priori, given a statement, will be automatically precluded from giving testimony in Court. A statement, if any, of an enquiring officer, is not limitative of the actions he or she may have taken during the course of an enquiry. Senior Investigator Naidoo Sooben (witness no.1), as the main enquiring officer, would be expected to depose on all aspects of the enquiry, irrespective of whether she has put up a statement to that effect or not. Accused, through his counsel, will have full opportunity to cross examine Senior Investigator Naidoo Sooben (witness no.1), thus safeguarding the sanctity of a fair trial and rendering nugatory any risk of prejudice to accused.

As such, there is nothing sinister in Senior Investigator Naidoo Sooben (witness no.1) not having put a statement explaining the methodology used and analysis she made of the documents secured by the ICAC during the course of the enquiry.

D. CONCLUSION

14. For the reasons explained above, the objection of Counsel for accused is set aside.

A.R.TAJOODEEN
Ag Magistrate of the Intermediate Court (Financial Crimes Division)
18.01.2024