

FINANCIAL INTELLIGENCE UNIT v PERRINE J. J. S.

2023 SCJ 397

Record No. 113766

THE SUPREME COURT OF MAURITIUS

In the matter of:-

The Financial Intelligence Unit

Applicant

v.

Joseph James Stevenson Perrine

Respondent

JUDGMENT

This is an application for the grant of a Recovery Order in respect of a plot of land of the extent of 385 m², on which stands an existing building, situate at No.1033/3663, La Cocoterie, Baie du Tombeau, as per deed transcribed in Vol.7669 No.44 (“the property in *lite*”).

The respondent is the owner of the property in *lite*. He purchased it in 2010 by virtue of a notarial deed drawn up by late Mr Notary Joson for the sum of Rs1 million (Annexure C to the applicant’s affidavit dated 17 August 2016).

The applicant, acting as the Enforcement Authority, has lodged the present motion under sections 4, 34 and 35 of the Asset Recovery Act (“the Act”). Sections 34 and 35 are to be found at Part IV of the Act which deals with civil asset recovery.

For the purposes of the present application, section 34, in so far as is relevant, provides that where the Enforcement Authority reasonably believes that a property is proceeds or a benefit derived from an offence or any unlawful activity, it may apply to the Supreme Court for the grant of a Recovery Order in respect of that property.

Section 35, for its part, provides that the Supreme Court shall make a Recovery Order where it finds that the property concerned is proceeds and it is satisfied that it is in the interests of justice to do so.

The property in *lite* is already the subject of a Restriction Order issued by the Judge in Chambers pursuant to section 27(1), (2)(a) and (3A) of the Act. The applicant is now praying for a Recovery Order under sections 34 and 35 on the ground that it reasonably believes that the property in *lite* has been acquired from “*proceeds*” as defined in the Act.

At section 2 of the Act, “*proceeds*” is defined as meaning “*any property or economic advantage, wherever situated, derived from or obtained, directly or indirectly, through or in connection with an offence or unlawful activity*”.

In so far as is relevant to this application, “*property*” is defined as meaning an asset of any kind, including an immovable asset.

Both parties have adduced evidence in the form of affidavits and documents. We have duly considered the whole evidence on record and the submissions of learned Counsel.

It is incumbent on the Enforcement Authority, i.e., the applicant, to establish, on a balance of probabilities, that the property in *lite* is “*proceeds*” within the meaning of the Act. In this respect, section 34 of the Act provides that the Enforcement Authority must **reasonably believe** that the property in *lite* is “*proceeds*”.

What would constitute a “*reasonable belief*” was considered by the Judicial Committee of the Privy Council in the case of **Assets Recovery Agency (Ex-parte) (Jamaica) [2015] UKPC 1**. The Jamaican Proceeds of Crime Act 2007 contains provisions similar to those of our own Asset Recovery Act. The Jamaican Assets Recovery Agency had applied for a “customer information order”. One of the statutory conditions for the making of such an order is that there exist reasonable grounds for believing, for example, that the person concerned has benefited from his criminal conduct. In this respect, the Judicial Committee held as follows:-

- “19. *Reasonable grounds for believing a primary fact, such as that the person under investigation has benefited from his criminal conduct, or has committed a money laundering offence, do not involve proving that he has done such a thing, whether to the criminal or civil standard of proof. The test is concerned not with proof but the existence of grounds (reasons) for believing (thinking) something, and with the reasonableness of those grounds. Debate about the standard of proof required, such as was to some extent conducted in the courts below, is inappropriate because the test does not ask for the primary fact to be proved. It only asks for the applicant to show that it is believed to exist, and that there are objectively reasonable grounds for that belief. Nor is it helpful to attempt to expand on what is meant by reasonable grounds for belief, by substituting for ‘reasonable grounds’ some different expression such as ‘strong grounds’ or ‘good arguable case’. There is no need to improve upon the clear words of the statute, which employs a concept which is very frequently encountered in the law and imposes a well-understood objective standard, of which the judge is the arbiter. Reasonable belief in the presence of stolen goods in premises was the historic test for the grant of a search warrant at common law: see Chic Fashions (West Wales) Ltd v Jones [1968] 2 QB 299, per Lord Denning at 308....”*

In the present case, in its affidavits dated 17 August 2016 and 17 January 2017, to which documents were annexed, the applicant has set out the reasons as to why it reasonably believes the land in *lite* to be “*proceeds*” as defined in the Act. On the other hand, in his affidavit dated 17 November 2016 and supporting documents, the respondent has contended that the property in *lite* was acquired by lawful means and has explained the source of the money.

We shall, therefore, proceed to examine in detail the reasons and explanations put forward by both parties. It is not disputed that in 2012 the respondent was found in possession of 33.3 grams of heroin, an electronic scale and 2 stun guns. He was duly charged before the Intermediate Court and convicted for the offence of drug dealing, namely possession of heroin for the purpose of distribution. The learned Magistrate found that the quantity, quality and value of the heroin was “*highly substantial*”. He sentenced the respondent to undergo 7 years’ penal servitude and to pay a fine of Rs100,000.

The applicant reasonably believes that the property in *lite* has been acquired from “*proceeds*” on the following grounds:-

- (a) the acquisition of the property in *lite* and renovation thereof was made during the period the respondent was fully involved in drug dealing, which is a lucrative business;
- (b) as per his own statement, the respondent performed various jobs, namely a slab layer from 1992 to 1996 allegedly earning Rs23,000 per month, a painter from 1996 to 2000 allegedly earning Rs30,000 per month, a taxi driver (without a permit) from 2001 to 2008 allegedly earning Rs27,000 per month but (i) he failed to give the name of any person for whom he had allegedly worked and there is no record of his work from 1992 to 2000; and (ii) the taxi car belonged to one Lynley Serieux who has remained untraceable and the respondent did not remember the registration number of the taxi car;
- (c) he obtained Rs500,000 from his father Louis Comet Perrine, who had taken a loan from the Mauritius Commercial Bank, for the purchase of the property in *lite* but the enquiry carried out by the Investigative Agency did not disclose any such loan;
- (d) the respondent also stated that he obtained Rs350,000 through winnings from horse betting and Rs150,000 from the savings of his concubine who works as a seamstress but he did not produce any receipt and could not state the dates on which he won from horse betting.

In the light of the above, we are satisfied that the applicant has reasonable grounds for believing that the property in *lite* has been acquired from “*proceeds*” as defined in the Act. However, before making any definitive pronouncement, we must consider the explanations put forward by the respondent.

Firstly, in his affidavit dated 17 November 2016, the respondent has pointed out that he purchased the property in *lite* in 2010 when he had a clean record while it is only in 2012 that he was arrested for drug dealing. We, however, note that he gave a most unsatisfactory account to the applicant of his alleged various jobs prior to 2010 (which account in fact stopped at 2008) as he was unable to give the name of any person for whom he had allegedly worked and there is no record of his work. Moreover, he could not even remember the registration number of the taxi car in which he had allegedly worked for 7 years from 2001 to 2008 and its owner has remained untraceable. All this

raises a serious doubt as to what was his real source of income until 2010 when he purchased the property in *lite*. We also bear in mind that the Intermediate Court found that the quantity, quality and value of the heroin found in the respondent's possession was "*highly substantial*" and that he was convicted for drug dealing and sentenced to a heavy penalty. Having regard to all these circumstances, it is reasonable to infer that he was not at his first attempt to deal in drugs and the fact that he was caught in possession of drugs in 2012 does not mean that he was not engaged in drug dealing before that. In this context, we find it apposite to refer to the following dictum by the High Court of Justice, Queen's Bench Division, in England in **The National Crime Agency V. Anthony Wong [2016] EWHC 142** where the National Crime Agency had applied for a civil recovery order in respect of two properties:

"15. A Claimant does not have to prove that particular unlawful conduct on the part of the Defendant, at a particular time, enabled the particular transaction; the Court is permitted to take a "global approach" to the evidence relied upon in order to find that the property was obtained through unlawful conduct and to take a common sense view of how an individual handles cash (i.e. by not using conventional banking facilities), the absence of a documented income or an absence of business records to support the inference that income has been obtained through unlawful conduct. (See King J in Assets Recovery Agency v Jackson & Ors [2007] EWHC 2553 at paras 18 to 119)."

Secondly, in the same affidavit, the respondent explained that, for the purpose of purchasing the property in *lite*, he had obtained Rs500,000 from his father Louis Comet Perrine, who took a loan of Rs250,000 in April 2009 from the Mutual Aid Association Ltd and provided the remaining Rs250,000 from the sale of cattle in Rodrigues. This version is markedly different from the one he originally gave to the applicant, which was that the Rs500,000 came from a loan taken by his father from the Mauritius Commercial Bank. However, the enquiry carried out by the Investigative Agency did not disclose any such loan from the Mauritius Commercial Bank, which perhaps explains the material change in the respondent's version.

Be that as it may, in support of his later version, the respondent has put in an affidavit sworn by his father and the latter's bank statement. A perusal of that bank statement shows that it was a lesser sum of Rs210,731.81, not Rs250,000, which was credited into the father's account in April 2009. It is the father's version that the Rs250,000 was given to the respondent in the form of cash withdrawals from his bank account. Given that the father had taken the loan of Rs250,000 allegedly to help the respondent to purchase the property in *lite*, one would have expected him to remit the

whole sum at one go to the respondent, or at least in a few instalments of large sums. But the father's bank statement shows a different story, with frequent regular withdrawals of varying amounts, which seemed more destined for personal use. In addition to the fact that a lesser sum than Rs250,000 was credited in the father's bank account, it also seems surprising that he would have taken a loan in April 2009 for the specific purpose of purchasing the property in *lite*, which was almost one year prior to the finalisation of the deed of sale.

With regard to the alleged remittances in cash to the respondent of Rs250,000 by the father obtained through the sale of cattle and of Rs150,000 by the respondent's concubine out of her savings, we have their mere word to that effect.

The respondent also avers that he obtained money from betting in January 2009 and April 2009 in the sum of Rs265,627 and Rs393,627 amounting to a total of Rs659,254, out of which Rs350,000 was used for the purchase of the property in *lite*. He produced "receipts" in support of his averment (Annex 4 to his affidavit). A perusal of the "receipts" reveals a material departure from his original version to the applicant. They are in relation to betting on football matches, not on horse racing as he originally stated. The "winnings" amount to Rs659,254 whereas they amounted to Rs350,000 as per the respondent's original version. He is now able to give dates of his winnings whereas he was originally unable to do so. Moreover, the "receipts" are in fact copies of betting slips, not of winning tickets. It is to be noted that the amounts allegedly bet (Rs50,000 and Rs38,000) were substantial taking into account that the respondent's average monthly salary was, as per his version to the applicant, about Rs27,000. In these circumstances, we are of the view that there is a serious doubt about the veracity of his winning large sums through bets.

With regard to the title deed of the property in *lite*, we note that the price of Rs1 million was allegedly paid "*à l'instant même et à la vue du notaire*" but the deed is completely silent about the mode of payment. In this context, we take into account that the property in *lite* was assessed, albeit 3 years later, at Rs2,665,000, i.e., 2½ times more, by the Government valuer (Annexure D to the applicant's affidavit dated 17 August 2016). Moreover, as per the title deed, the payment was made at one go in presence of late Mr Notary Joson, whereas, as per the respondent's affidavit, the payment was made in 2 instalments of Rs700,000 and Rs300,000 on 21 January and

9 March 2010 respectively. All this raises doubt about the true amount of the sale transaction.

For the above reasons, we find that it has been established, on a balance of probabilities, that the property in *lite* is “*proceeds*” within the meaning of the Act. We are satisfied that there are reasonable grounds for believing that the respondent has acquired the property in *lite* through money obtained from his drug dealing activities. The quantity, quality and value of the heroin found in his possession shows that he was not a mere pedlar but, as found by the Intermediate Court, was engaged in the distribution of hard drugs. We find the respondent’s explanations as to the source of his money to be unconvincing and unreliable. As already stated above, his account of his alleged jobs is most unsatisfactory. A serious doubt has been raised as regards his other alleged sources for the purchase of the property in *lite*, in particular his father’s alleged loan and his alleged winnings through betting. We also find that it will be in the interests of justice to grant the present application as the drug scourge is prevalent in this country and the Courts should send a strong signal that they will not allow offenders to benefit from ill-gotten gains obtained from illicit drug activities.

We, therefore, make a Recovery Order in respect of the property in *lite*, namely a plot of land of the extent of 385 m², on which stands an existing building, situate at No.1033/3663, La Cocoterie, Baie du Tombeau, as per deed transcribed in Vol.7669 No.44, pursuant to section 35 of the Act.

We also order the applicant to cause to be published in 2 daily newspapers, namely *l’express* and *le mauricien*, a notice of the Recovery Order within 2 weeks of the date of this judgment.

The present application is accordingly granted with costs.

D. Chan Kan Cheong
Judge

R. Teelock
Judge

3 October 2023

Judgment delivered by Hon. D. Chan Kan Cheong, Judge

**For Applicant : Mr J. C. Ohsan-Bellepeau, Attorney-at-Law
Mr G. Bhanji-Soni, of Counsel**

**For Respondent : Mr K. Bhokoree, Attorney-at-Law
Ms T. Shamloll, of Counsel**