

PURSUN V K v THE FINANCIAL CRIMES COMMISSION & ORS
2025 SCJ 85

IN THE SUPREME COURT OF MAURITIUS

SCR No 124957 (5A/247/23)

In the matter of :

Vivay Kanum PURSUN

APPLICANT

v/s

- 1. The Financial Crimes Commission**
- 2. The Commissioner of Police**

RESPONDENTS

In the presence of:

- 1. Honourable Maneesh Gobin**
- 2. Honourable Rajanah Dhaliah**
- 3. Mr Harryduth Ramnarain**
- 4. Hon. Pravind Kumar Jugnauth**
- 5. The Director of Public Prosecutions**

CO-RESPONDENTS

And in the matter of: -

Ex Parte:

Vivay Kanum PURSUN

APPLICANT

JUDGMENT

This is an application for judicial review in respect of the perceived inaction of the respondents in conducting an enquiry for corruption against co-respondent no.1. The applicant is seeking an order:

- (i) to bring up the files and documents of certain witnesses in order for the Court *“to make an assessment of whether there is reasonable suspicion against the Co-Respondent No.1 that he has committed acts of corruption...”* and
- (ii) to compel the respondents to convene co-respondent no.1 for enquiry and to interview him under caution.

The proceedings are at leave stage. The respondents and co-respondents no.1 and no.2 are objecting to the application and have raised points of law which concern whether the applicant has locus standi, whether there is an arguable case, and whether the application infringes the principle of separation of powers and interferes with the integrity of the on-going investigations. For the reasons given further below, the application may be disposed of on the issue of arguable case.

The case for the applicant is that in the year 2023 during an enquiry by the Independent Commission Against Corruption (which is now the Financial Crimes Commission) into a case of money laundering by a notorious drug dealer, it was revealed that co-respondents no.1, no.2 and no.3 may have committed a corruption offence. Whereas co-respondent no.3 was arrested and interviewed on 3rd May 2023 and co-respondent no.2 was provisionally charged on 31st August 2023, no action has been taken against co-respondent no.1. The applicant has averred in his affidavit that a decision was taken in September 2023 by the respondents not to convene co-respondent no.1 notwithstanding that there was reasonable suspicion based on witness statements as to the involvement of co-respondent no.1 in the offences of corruption, *traffic d'influence* and using office to obtain gratification. This averment however is far from the truth. There is no iota of evidence whatsoever that any such decision was taken, neither in writing or orally, neither in express terms nor by implication. The legal representatives for the respondents and co-respondents have stated categorically that no decision, which may be subject matter for review, has been taken and that enquiry is still on-going. As matters stand, the possibility of interviewing co-defendant no.1 under caution is still a live issue.

It is well established that the purpose of leave stage is to turn away hopeless or meddlesome applications. In **Rv. Inland Revenue Commissioners, exp. National Federation of Self Employed and Small Business [1982] AC 617**, the House of Lords held that an arguable case which would justify granting leave is one that has a realistic prospect of success.

We consider that, on the basis of the affidavit evidence, the applicant has failed to substantiate that he has an arguable case for the simple reason that the respondents have not taken a decision in the matter and enquiry is still on-going.

Limb (i) of the prayer is not justified because the calling up of the records is not done lightly. It is not the function of the Court to decide whether or not there is reasonable suspicion to arrest any individual. On the contrary, the function of the Court would be to decide, after arrest has been affected, whether the arrest is arbitrary or not. Moreover, limb (ii) of the prayer has not been substantiated for the reasons given above.

Learned Counsel for the applicant submitted at length on the rule of law and quoted from the former Chief Justice Sir Maurice Rault QC who wrote the following passage in the foreword to the New Mauritius Digest:

“Impatient of any limit on their prerogatives Ministers and other officials sometimes induce Parliament to pass a law conferring “an absolute discretion” in the exercise of their powers. Moorba firmly states that absolute discretion is incompatible with the Constitution which intends that we should be governed not by men, but by law. No official will be allowed to escape censure by saying: “Car tel est notre bon plaisir.” We did not abolish the divine right of kings to transfer divine rights to Ministers.”

The above passage concerns the rule of law which is one of the fundamental principles of our Constitution. The separation of powers is another one. In **Lincoln & Ors v. Governor-General of Mauritius & Ors** [\[1973 SCJ 140\]](#), Rault J. (as he then was) declined to grant an interim injunction to restrain the enactment of a bill on the ground that the Court had no jurisdiction. Rault J held,

“In my view the petitioners are trying to drag the Court into what is not a judicial, but a political arena: I have no intention of following them there. Our Constitution clearly distinguishes between the functions of the Judiciary and those of the Legislature.”

For the reasons given above the present application is dismissed with costs.

K. Gunesh-Balaghee
Judge

D. C. N. D. Mootoo
Judge

04 March 2025

Judgment delivered by Honourable D. C. N. D. Mootoo, Judge

For Appellant:

Mr P. Rangasamy, Attorney at Law
Mr S. Teeluckdharry, of Counsel
Mr A. Goodary, of Counsel

For Respondent No.1

Mrs B.M Chatoo, Attorney at Law
Mr M. Roopchand, Acting Chief Legal Adviser
Mrs S. Ramsoorooop, Legal Adviser

For Respondent No. 2

Chief State Attorney
Mr D. Reetoo, Assistant Parliamentary Counsel
Mr S. Bhoyroo, Principal State Counsel
Ms Y. Peerthum, State Counsel
Ms A. Aubeeluck, State Counsel

For Co-Respondent No.1	Mrs S. Sonah-Ori, Attorney at Law Mr R.Chetty, SC Mr L Veerapen, of Counsel
For Co-Respondent No.2	Mr J.D.K Pursun, Attorney at Law Mr I. Mamoojee, of Counsel Mr R. Rutnah, of Counsel Ms A.N Luttoo, of Counsel
For Co-Respondent No.3	Mrs A. Jeewa, Attorney at Law Mr G. Glover, SC
For Co-Respondent No. 4	Mrs S. Sonah-Ori, Attorney at Law Mr D. Basset, SC Ms A. Sonah-Ori, of Counsel
For Co-Respondent No.5	Deputy Chief State Attorney Mrs N. Senevrayar-Cunden, Assistant DPP