

IN THE INTERMEDIATE COURT OF MAURITIUS

(FINANCIAL CRIMES DIVISION)

CN: 40/2021

In the matter of:

The Independent Commission Against Corruption

v/s

Vijaya Kumaree SUMPUTH

RULING

The accused is charged with the offence of conflict of interests under two counts of the information in breach of section 13 (2) (3) of the Prevention of Corruption Act 2002. The accused has pleaded not guilty to both counts and is represented by Senior Counsel.

Learned defence Counsel moved for particulars of the charge more specifically as to what is the element of "taking part".

The stand for the prosecution was that no particulars will be provided and arguments were heard.

Submissions by the prosecution

Learned Counsel submitted that the defence is asking about what "taking part" means and what decision is being relied upon by the ICAC and whether this decision involves other parties or was it an individual decision.

Counsel relied on Section 125 of the **District and Intermediate (Criminal Jurisdiction) Act**. It was submitted that the information as it stands is sufficiently clear as to what is being reproached to the accused. He also referred to the judgment of *Baba v. The Queen* [1888] MR 46 where the Court held that "an information which is framed so as to embody

the words of a statute and nothing more, is good in law.” As for the particulars sought by the defence as to how the accused has taken part in order to create the offence, it was submitted that this is a matter of evidence that will be adduced during the course of criminal proceedings. Counsel further highlighted that the information has been sufficiently particularized and that as the information stands, nothing further should be added for the accused to understand the case she has to meet.

Submissions by the defence

Learned Senior Counsel submitted that the prosecution made reference to the judgment of *Baba v. The Queen* (supra). However, there was no Constitution for Mauritius at the time. Counsel referred to Section 10 of the Constitution and highlighted the fact that it is mentioned “taking part” and same is also averred in the particulars. In the present case, it is the contention of the defence that they have to be provided with the particulars of taking part as well as the decision to be taken. Particulars as to whether it was an individual or a collective decision have to be provided. According to Learned Senior defence Counsel what is “taking part” is not specific. It was also submitted that the words in the body of the information are ambiguous. Counsel also highlighted the fact that there can be no prejudice to the prosecution if the particulars are provided. He laid emphasis on the fact that the nature of the offence cannot be simply what the law says and where the law provides that particulars should be given, it should not be an issue. Counsel further submitted that the underlying principle or purpose of particulars is not to cure defects in the information but rather to furnish the accused with further information as to the charge in the information that is necessary for the preparation of the defence. This is also done to avoid prejudicial surprise at the trial. Counsel made reference to the judgments of *DPP v. Jugnauth and Anor* [2019] UKPC 8, *Attorney General v. Saurty* [1963] MR 1, *DPP v. Ramgoolam* [2022] SCJ 296 and *Ramburn v. The State* [1996] SCJ 64.

Analysis

The information

The relevant part of the information reads as follows:



Count 1

“...one **VIJAYA KUMAREE SUMPUTH**,..... the then Executive Director of the TFSCMC and residing at..... did whilst being a public official, having a personal interest in a decision which a public body had to take, wilfully, unlawfully and criminally, take part in the proceedings of that public body relating to such decision.

PARTICULARS

On..... the said **Vijaya Kumaree SUMPUTH**, whilst then being the Executive Director of the TFSCMC, took part in the Board Meeting of the said TFSCMC, wherein the payment of a monthly allowance of Rs 45,000/- to her was approved.

COUNT 2

That on or about the 18th January 2017, at the Trust Fund for Specialized Medical Care (TFSCMC) at Pamplemousses,.... the said **VIJAYA KUMAREE SUMPUTH** did whilst being a public official, having a personal interest in a decision which a public body had to take, wilfully, unlawfully and criminally, take part in the proceedings of that public body relating to such decision.

PARTICULARS

On the date....., the said **VIJAYA KUMAREE SUMPUTH**, whilst then being the Executive Director of the TFSCMC, took part in the Board Meeting of the said TFSCMC, wherein the payment of a monthly allowance of Rs 100,000/- to her was approved.

Having reproduced the above, I will now proceed to consider what an information should aver.

What does an information need to aver?

Section 125 of the **District and Intermediate (Criminal Jurisdiction) Act 1888** reads as follows:

“The description in the information of any offence in the words of the law creating such offence, with the material circumstances of the offence charged, shall be sufficient.”

In *State v. Avinash Treebhoo won and Moonea Sandip [2012] SCJ 214*, the Court made the following observations:

“Upon a proper application of these sections of the law, it comes out clearly that the defence is not precluded from asking for particulars. However, it cannot be said for that much that the prosecution is bound to furnish particulars for the mere asking. Some kind of balance has to be struck. If, on the one hand, the accused is entitled to know specifically enough what charge he has to answer, the prosecution, on the other hand, ought not to be unduly burdened with demands for particulars on every averment in the Information.
“

The Court laid emphasis on the following:

“The prosecution is not bound to furnish particulars over and above the details which have already been set out in the information, so far as the information:

- [1] is direct and certain;
- [2] sets out the sections of the statute, and the words of the law creating the offence;
- [3] identifies the party or parties charged unequivocally;
- [4] gives a proper description of the offence with which the accused is charged;
- [5] discloses all the elements of the offence; and
- [6] sets out the material circumstances of the offence with which the accused stands charged.

Rule 4(1) of the Indictment Rules 1971 {the equivalent of S 125 of our District and Intermediate Courts (Criminal Jurisdiction) Act} was examined in Blackstone's Criminal Practice (1993) at pages 1116 – 1117. It is stated that “... each count should be divided into a statement of offence and particulars of offence ...The statement of offence describes the offence shortly’. The author then goes on to describe the nature of particulars and the test that has to be satisfied: “The particulars of the offence should give ‘such particulars as may be necessary for giving reasonable information as to the nature of the charge’... It appears that the test is: do the particulars provided make clear to the defence the nature of the case they must meet.”

I also refer to Blackstone's Criminal Practice (2007) at D10.13 where the author compares the judgments of *R v Teong Sun Chuah (1991) Crim L Rev 463* and *Warburton-Pitt (1991) 92 Cr App R 13* and concludes that “the test is: do the particulars

provided, whether in the indictment or elsewhere, make clear to the defence the nature of the case which it must meet?". The former was a case of false accounting and obtaining by deception and the Court of Appeal held that it was plain what the particulars were. In the latter case, the Court of Appeal held that "the particulars of the allegations of recklessness should have included in the particulars of offence in the indictment, or provided in writing by way of voluntary particulars." The author highlighted the fact that this was so as the case was a complicated one¹.

Therefore, the test which has to be satisfied is whether the particulars as provided make it clear to the defence, the nature of the case it has to meet. A reading of the particulars under both counts 1 and 2 shows exactly the accused is being reproached of and the nature of the case that she has to meet.

The Law

The relevant section of the **Prevention of Corruption Act 2002** reads as follows:

13. Conflict of interests

.....

(2) Where a public official or a relative or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.

.....

27A. Disclosure of interest by Board member

Any member of the Board, including a person appointed to act as Director-General, who has a direct or indirect interest in a matter being considered or about to be considered by the Board shall forthwith, or as soon as is practicable after the relevant facts have come to his knowledge, disclose in writing the nature of his interest to the Board and shall not –(a) be present during any deliberation of the Board with respect to that matter; and (b) take part in any decision of the Board with respect to that matter.

Added by [Act No. 24 of 2005]

¹ Blackstone's Criminal Practice (2007), D10.13

In the present case, the information is drafted in the wording of the law.

Additionally, the factors enumerated in the case ***State v. Treebhoowon Avinash*** (supra) have been followed. The information as particularized clearly describe what is being reproached to the accused. The particulars as stated in the information clearly describe the involvement of the accused in the board meeting when a monthly allowance was allocated to her under count 1 and when a monthly allowance of Rs 100,000/- to her was approved under count 2.

The Court in ***State v. Treebhoowon Avinash*** (supra) enumerated some of the cases where the prosecution was bound to provide particulars and these included "where the case is a complicated one and the furnishing of particulars would help to clarify matters by identifying the issue or the issues which have to be determined" and "where the legislation creates a new concept without specifying or giving details of what the impugned act would involve." The latter referred to a case where particulars of drug trafficking were required.

In the present case, either scenario does not apply as the prosecution has given sufficient particulars in relation to the exact offence against the accused. What is being reproached of the accused is that she took part in the Board Meeting where her salary was approved under count 1 and under count 2 she took part in the Board Meeting where a monthly allowance of Rs 100,000/- to her was approved. (The relevant part of the information as reproduced above refers)

I find it pertinent to emphasize the fact that in ***State v. Treebhoowon Avinash*** (supra), the Court also distinguished the case where the prosecution was required to furnish particulars "which would draw the prosecutor into stating matters of evidence". The Court referred to the case of ***Attorney General v Saurty*** [1963] MR 1 as follows:

"The Supreme Court giving its finding upon a case stated said the following:

"There may be cases where the statement of material circumstances over and above the constituent elements of the offence would entail the supply of a considerable part of the evidence to be adduced in support of the charge. The supply of such evidence was in our view not intended by the law."

And concluded the following:

"The Court went on to hold that the Information in the instant case was sufficiently particularised inasmuch as it satisfied the test of certainty and precision; the Magistrate was therefore wrong to have ordered that particulars be provided."

The Court further referred to the case of *The Honourable Attorney General v Nabee Meea Calcatee* [1958] MR 234 and reached the following conclusion:

"The prosecution is bound to aver in the Information what it intends to prove and to prove what it has averred. Since particulars are closely connected with the Information, it would be improper to require the prosecution to aver matters of evidence in the guise of particulars and later contend that the prosecution is bound to restrict itself to such evidence." (The underlining is mine)

Therefore, applying the above to the present case, the request for particulars as to how the accused has taken part in order to create the offence is a matter of evidence that will be adduced during the course of trial.

At this stage, I find it apposite to refer to the judgment of *Mudhoo v. the State* [2017] SCJ 77, where the Court made reference to the following:

"In the case of *Police v. Kuderbux and Others* [1994 SCJ 424] the Supreme Court laid emphasis on this aspect amongst others, in the following extract:

"The accused will consequently be aware of those circumstances which are, in any case, included in the relevant prosecution material made available to their counsel well before the trial and will have ample opportunity of contradicting them by cross-examination or otherwise ... Given that the accused (a) knew what was the specific offence alleged against them when they pleaded not guilty to the information ... (d) are in possession and are consequently aware of all the relevant prosecution material and will have ample opportunity in the course of the trial of rebutting by means of cross-examination or otherwise any evidence led by the prosecution based on that material ... we find it hard to understand how it can be said that the accused have been or will be handicapped in the preparation of their defence under section 10(2)(c) of the **Constitution**".

Applying the above principles to the present case, I find that it cannot be said that the accused is being precluded from preparing her defence in as much as she knows the

specific offence against her when she pleaded not guilty to the information (page 8 of the Court record refers)

In the present case, as submitted by the prosecution, the defence has been provided with a complete brief and it can be concluded that no prejudice would be caused by failing to provide the particulars requested for (Re: **Police v. Kuderbux and Others** [1994] SCJ 424). As stated in **Attorney General v Saurty** (supra), the information has to be sufficiently particularized, certain and precise. Having perused the information, I find that the information has couched accordingly.

Learned Senior Counsel also referred to Section 10 (2) (b) 1 of the **Constitution** whereby "an accused party shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence."

In that respect, I refer to the judgment of **Jean Louis C.S. v The State** [2000] SCJ 153 where the Court held that:

"Section 10(2)(b) of the **Constitution** provides that every person who is charged with a criminal offence "shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence." The accused is normally so informed when he is arraigned for plea and the information is read or, more commonly, translated to him, the translation being most of the time into the creole language. The constitutional provision that the information should state in detail the nature of the charge means, in our view, that the charge should be sufficiently particularised, a requirement already existing in our statute book for quite some time and found, notably, in section 125 of the **District and Intermediate Courts (Criminal Jurisdiction) Act** which provides that an information containing a description of the offence in the words of the law creating such offence "with the material circumstances of the offence charged" shall be sufficient. ..."

Here again, it follows from the above that the charge should be sufficiently particularized.

All in all, I find that the information describes the offence in the words of the law and the material circumstances of the offence have been averred. The information as it stands is clear, precise and sufficiently particularized.

Consequently, in the light of the above, the motion of the defence is set aside.



N. Seebaluck

Acting Magistrate Intermediate Court

28.05.2025

Consequently in the light of the above, the motion of the defense is set aside.

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Respectfully,
Acting Municipal Information Court
28.02.2022