FINANCIAL CRIMES COMMISSION v CHANGE EXPRESS LTD & ORS

2025 SCJ 540

Record No. SCR/125822

THE SUPREME COURT OF MAURITIUS

In the matter of:-

FINANCIAL CRIMES COMMISSION

APPLICANT

V

1.CHANGE EXPRESS LTD
2.THE STATE
3.THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

JUDGMENT

By way of motion paper and affidavit, both dated 30 May 2024, the applicant has moved for an order granting it leave to appeal to the Judicial Committee of the Privy Council (JCPC) under section 81(2)(b) of the Constitution and section 70A of the Courts Act against the judgment, dated 10 May 2024, in which the Supreme Court allowed an appeal. The application was resisted by the respondent no.1 whereas respondent nos. 2 and 3 decided to abide by the decision of the Court.

The respondent no.1, duly represented by Mr Sawmynaden as Chairman of the board of directors was prosecuted before the Intermediate Court, for having on or about 26 April 2006 at Quatre Bornes wilfully, unlawfully and criminally accepted payment in cash in foreign currency, whose equivalent was in excess of Rs.350,000. The respondent no.1 was found guilty of the offence for being in breach of section 5(1) of the Financial Intelligence and Anti Money Laundering Act coupled with section 44(2) of the Interpretation and General Clauses Act and was sentenced accordingly. The respondent No.1 then appealed against its conviction and sentence and the Supreme Court heard the matter and allowed the appeal by quashing the conviction.

At the outset, learned Counsel for the applicant submitted that the basis for the application for leave to the JCPC is in relation to what the Supreme Court held in dealing with ground of appeal 9 which reads as follows-

> *"9. The Appellant Company did not benefit from a fair trial inasmuch as the officers of the ICAC failed to inform Mr Sawmynaden in the course of the enquiry that the physical acts of Mr Vinod Padayachy were deemed to be those of the Appellant Company for which it was accordingly liable."*

Learned Counsel for the applicant submitted that the present application is grounded on paragraphs 10 and 11 of its affidavit and they read as follows:

> *"10. The Applicant is aggrieved and dissatisfied with the finding of the Supreme Court, in its judgment of 10 May 2024, to the effect that "it was of utmost importance for the charge to be properly put to the company" and "it is clear that in the present matter the appellant was not informed with precision at the outset of the exact nature of the charge being brought against it." Accordingly, the Applicant intends to appeal to the Judicial Committee of the Privy Council, under Section 81(2)(b) of the Constitution together with section 70A of the Courts Act, so that the said finding be quashed, reversed, amended or otherwise dealt with as the Judicial Committee of the Privy Council may deem fit and proper, on the following ground:*
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> *"The Supreme Court went astray in its finding that it was of utmost importance for the charge to be precisely put to the representative of Change Express Ltd at the outset whereas the duty of the investigative authority is in fact to inform the suspect of the facts and circumstances against the suspect. In so doing, the Supreme Court misconstrued section 10 of the Constitution and went against existing jurisprudence."*

11. *The Applicant apprehends that the finding in the judgment delivered on 10 May 2024 tends to divert the due and orderly administration of law into a new course which may be drawn into an evil precedent in the future inasmuch as this finding will necessarily impose an obligation on law enforcement agencies to actually put the precise charge to the suspect at the outset of the investigation, in order for the accused to benefit from a fair trial."*

Learned Counsel for the applicant submitted that the case of **Automatic Systems Ltd v The State of Mauritius** [2023 SCJ 107] is distinguishable to the present case. In that case, the representative of the company "*was never clearly informed that he was being interviewed in his capacity as representative of the appellant company and that the latter was a suspected party at that time."* whereas in the present matter, Mr Sawmynaden knew that he was being interviewed and asked to give a statement as representative of the respondent no.1. For counsel of the applicant, that case could not have been referred to and relied upon by the Supreme Court in upholding ground of appeal no.9 as the facts and circumstances of the offence have been made known to the respondent no.1.

Counsel for the applicant further submitted that at the level of investigation and enquiry, the enquiring authority is not bound to put the exact nature of the charge so long that the facts and circumstances of the offence are put to the accused party. Counsel for the applicant submitted that the respondent no.1 was informed of all the facts and circumstances of the offence although it is not disputed that the respondent no.1 as represented by Mr Sawmynaden had not been informed that the physical acts of Mr Payadachy were those which triggered the liability of the respondent no.1. According to counsel for the applicant, the impugned transaction carried out by Mr Payadachy was made known to the respondent no.1 and this would be adequate and sufficient.

According to learned Counsel for the respondent no.1, the threshold to be met in order to obtain leave to go to the JCPC on the basis of section 81(1)(b) of the Constitution is high and the applicant has failed to satisfy and reached the required threshold. Learned counsel for the respondent stressed on the fact that the applicant agreed to what was held, inter alia, before the Appellate Court, that is,

"*In the present matter, the accused party is a company and it was of utmost importance for the charge to be properly put to*

the company for the latter to take cognizance in what manner and in which circumstances its criminal liability was being incurred in order for it to know what case it had to meet and prepare its defence accordingly. Every person in a criminal trial has an inbuilt right as per section 10 of the Constitution to a fair trial which includes the right to know with precision what is the charge he has to answer."

Learned Counsel for the respondent no.1 submitted that what the applicant is dissatisfied with is the finding of the Appellate Court holding that "*it is clear that in the present matter the appellant was not informed with precision at the outset of the exact nature of the charge being brought against it. On the basis of* ***Automatic Systems Ltd v The State of Mauritius*** *[2023 SCJ 107], it is plainly clear that the appellant was prejudiced in the conduct of its defence…..*"

Counsel for the respondent no.1 submitted that the case of **Automatic Systems Ltd [supra]** precisely held that the representative of the company was not informed that (i) he was being interviewed in his capacity as representative of the appellant company and (ii) that the offence under enquiry was one which was attributable to the appellant company because of the acts committed by an employee and (iii) that whatever Mr Hardy would say could engage the company's criminal responsibility. Likewise, in this case, in relation to item (ii) in **Automatic Systems Ltd [supra]** at no time was the respondent no.1 informed that the acts and doings of Mr Payadachy, an employee of the respondent no.1 was such that it triggered the corporate liability of the respondent no.1 in committing the offence. Therefore, it is not a question of the Supreme Court setting an evil precedent as in addition to the case of **Automatic Systems [supra]**, there are several authorities which have laid down the principle that an accused party is legally entitled to know what is the charge which is being levelled against him. Similarly, in **Director of Public Prosecutions v Christian René Guy Marce Ducasse** [2023 SCJ 20], it was, inter alia, held-

"…. We do not wish to derogate from the principle that an accused party is entitled to be informed of the charges pending against him so that he may prepare and present his defence properly (vide Easton v State & anor [2012 SCJ 55] and Jhotoo v State [2013 SCJ 373] ***This is particularly important where allegations have been made against an accused party or where a version of the facts has been given by witnesses***

which is contrary to what the accused has said. The accused has no means of knowing those allegations or that contrary version unless the charges flowing from them are put to him. *" (Emphasis is ours)*

Moreover, in the case of Lagesse (supra), the court made it clear that the 'baseline is therefore that the accused must be made aware of the case against him. What effectively does that imply? Quite clearly this will depend on the particular circumstances of each case……"

It is, therefore, clear that all imperfections during the enquiry by the police will not necessarily be fatal to the prosecution's case unless it is of such a nature as to result in irreparable prejudice being caused to an accused."

According to learned Counsel for the respondent no.1, the fact that the latter had not been told that the acts and doings of Mr Payadachy would trigger the criminal liability of the respondent no.1 caused prejudice to the respondent no.1. The Supreme Court was therefore right in upholding ground of appeal no.9. She then referred to a string of authorities where the Court considered the factors relevant in an application for leave to JCPC.

We have considered the submissions of all learned counsel and the authorities referred thereto. What needs to be determined by this Court is whether leave to the JCPC under section 81(1)(b) of the Constitution should be granted on the ground of general public importance as the finding of the Supreme Court had set an evil precedent for the reasons set forth by the applicant.

In the recent decisions of **Casmir B W v The State of Mauritius and Jean Jacques R D v The State of Mauritius** [2025 SCJ 363], we find it relevant to cite the extract referred to:

"We also find it apt to refer to ***Stevenhills Ltd v Sport Data Feed Ltd & anor.*** *[2016 SCJ 312] in which case the Court relying on* ***Badry v DPP [1983 2 A.C 297]*** *summarised the principles to be applied in deciding whether the questions raised in the appeal are of "great general or public importance" as follows:"(1)Leave to appeal is not granted*

unless some clear departure from the requirements of justice seems to exist or, by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise, substantial and grave injustice appears to have been done.(2) For leave to appeal to be granted, there must be something which in the particular case has deprived the applicant of the substance of a fair trial and the protection of the law, or which, in general, tends to divert the due and orderly administration of law into a new course, which may be drawn into an evil precedent in future."

Further, as rightly referred to by learned counsel for the respondent no.1, in **Chandra Prakashsing Dip v The State [2022 SCJ 386] –**

"At this juncture it is apt to remind legal advisers that an application contrived to fall within the purview of Sections 81(2)(b) of the Constitution and 70A of the Courts Act, by merely having recourse to the wording of the above sections, is not a magic formula that would, per se, entitle an applicant to leave to appeal to the Judicial Committee.

An application for leave must first and foremost contain material which satisfies the Court that it raises issues of great general public importance, as defined in the above cited authorities, that ought to be submitted to the Judicial Committee and which warrant that leave be granted under Section 81(2)(b) of the Constitution and Section 70A of the Courts Act."

After having considered the submissions of both learned Counsel and the authorities referred thereto, we are of the considered view that this is not a fit case to grant leave to the JCPC on the grounds put forward by the applicant. There is no evil precedent from the Supreme Court in holding that in the present case, the respondent no.1 ought to have been made aware that the acts and doings of Mr. Payadachy have triggered the corporate liability of the respondent no.1. In this case, such information was material and important for the respondent no.1 to be made aware so that it could have prepared its defence and know what was being reproached to it in terms of its corporate liability.

It is trite law that the failure to inform the respondent no.1 that the acts and doings of Mr. Payadachy triggered its corporate liability had in fact deprived the respondent no.1 from a fair trial and the protection of the law. As such, the finding of the Supreme Court which the applicant has submitted to be setting an evil precedent is a far cry to be the case and the finding of the Supreme Court is, additionally, not a clear departure from the requirements of justice.

Having regards to the above, we do not find that the ground relied by the applicant raises a question of great general public importance which ought to be submitted to the JCPC. In this respect, we find it apt to refer to what was held in **Ibrahim v R [1914] AC 589**, at page 614 and referred in cases **Roopnarain Hauradhun v The State of Mauritius** [2011 SCJ 94] and **Bhuttoo & Anor v The State** [2019 SCJ 281] which both dealt with an application for leave to the JCPC as to what needs to be satisfied for leave to be granted to proceed to the JCPC, the relevant part of **Ibrahim [supra]** referred - –

> "*Misdirection, as such, even irregularity as such, will not suffice: ex parte Macrea [1893 A.C 346] There must be something …… which, in general, tends to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future."*

We shall also add that the finding of the Supreme Court is not contrary to established case laws on this issue. Here the accused party was a corporate body and as any accused it had to be informed that the acts and doings of its employee had triggered its corporate liability. We are, therefore, satisfied that this finding cannot be said to divert the due and orderly administration of law into a new course which result into an evil precedent.

The application is, therefore, devoid of merits and is set aside, with costs.

S HAMUTH- LAULLOO
Judge

M J LAU YUK POON
Judge

20 November 2025

FOR APPLICANT	:	Mr B.M. Chatoo, Attorney-at-Law Mr P. Bissoonauthsing, of Counsel Mrs A. Rangasamy-Parsooramen, of Counsel
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