

**IN THE INTERMEDIATE COURT OF MAURITIUS**

**(FINANCIAL CRIMES DIVISION)**

FCD CN 27/2020

CN: 1390/12

In the matter of:

The Independent Commission Against Corruption

v/s

1. Bipin GUNGARAM
2. Ahmud Shakeel Khan JAHANGEER
3. Mrs Mubareka Begum JAHANGEER born Khoyratty

**RULING**

Accused No. 1 is charged with the offence of money laundering under counts 1 to 15 of the information in breach of Sections 3(1), (a), 6 (3) and 8 of The Financial Intelligence and Anti Money Laundering Act 2002 coupled with Section 44 (1) (b) of the Interpretation and General Clauses Act . Accused No. 2 is charged with the offence of money laundering under counts 16, 18,19 and 20 of the information and Accused No. 3 is charged with the offence of money laundering under count 17 of the information in breach of Sections 3(1), (a), 6 (3) and 8 of The Financial Intelligence and Anti Money Laundering Act 2002 coupled with Section 44 (1) (b) of the Interpretation and General Clauses Act respectively. The accused parties have pleaded not guilty to the charges and were legally represented.

Mr Naga appeared for the prosecution.

Accused No. 1 was represented by Mr M.Dulloo.

Accused No. 2 was represented by Mr Hajee Abdoula who appears together with Mr Domingue SC.

Accused No. 3 was represented by Mr N.Pillay.

Learned Counsel for Accused No.2 moved for the present proceedings be permanently stayed, in as much as starting the trial anew, once again, in all the circumstances as it constitutes an "abus de droit"; it infringes the accused's constitutional rights for a fair hearing within a reasonable time, such that rehearing the case would be unfair and it would be unfair to try the accused at all. This motion was joined by Learned Counsel for Accused No. 1 and No. 3.

The motion was objected to by the prosecution.

Arguments were heard.

### **The case for the prosecution**

At the outset, Learned Counsel for the prosecution called witness No. 1, Mr Seeruthun, Acting Head of the Financing of Drug Dealing Investigation unit at the FCC. He swore an affidavit dated 11<sup>th</sup> July 2025, which was identified and marked as **Doc AAA**. There was no objection to the production of same by the Learned Counsel for the defence.

The contents of the affidavit were not disputed by the defence.

The salient points of the said affidavit are reproduced (some of these points were canvassed during examination in chief) as follows:

- (i) A complaint was received on 27<sup>th</sup> September 2007 from one Mr Ali Reza Mohammad alleging that one Mr Ahmud Shakeel Khan Jahangeer is allegedly involving in fraud and money laundering by opening bank accounts in the name of third parties namely one Mr Bipin Gungaram.
- (ii) An investigation was then initiated and statements were recorded from around 38 persons.
- (iii) A large number of documents were also produced by the witnesses.
- (iv) The investigation included three other suspects namely Mrs Mubareka Begum Jahangeer, Benyram Chooramun and Mr Nagen Veeren.

- (v) Several documents from the Registrar of companies had to be analysed.
- (vi) Two disclosure orders were granted on 30<sup>th</sup> June 2009 and on 12<sup>th</sup> October 2009 directing financial institutions to communicate documents including books, accounts, bank statements etc for the suspects and companies.
- (vii) The FCC started receiving these documents between 7<sup>th</sup> August 2009 to 3<sup>rd</sup> February 2010.
- (viii) Statements were recorded from Mr Bipin Gungaram in May 2011 as well as from Mr Jahangeer, Mrs Jahangeer and late Mr Benyram Chooramun.
- (ix) During the investigation, it became apparent that there were other suspects involved in the 'fictitious loan application' scheme to defraud DBM Ltd and on 25<sup>th</sup> May 2010, the investigation was divided into two parts.
- (x) Mr Gungaram, Mr and Mrs Jahangeer were arrested in May 2011 on separate days and provisional charges were lodged against them. They were bailed out on different dates. These provisional charges were subsequently struck out by the Court.
- (xi) The decision to prosecute Mr Gungaram and Mr and Mrs Jahangeer was taken by the Board on 25<sup>th</sup> January 2012 and the file was sent to the ODPP on 8<sup>th</sup> March 2012 for advice.
- (xii) There were queries by the ODPP which were dealt with and the RICs were signed on 14<sup>th</sup> September 2012.
- (xiii) A formal information was lodged before the Intermediate Court on 4<sup>th</sup> October 2012 and the case was heard as from 22<sup>nd</sup> June 2016.
- (xiv) There was a motion for separate trial by Counsel for Accused No. 1 on 15 May 2017 and following advice from ODPP that same is not warranted, arguments were heard and the motion was set aside by the Court.
- (xv) On 26<sup>th</sup> March 2018, a discontinuance of proceedings was filed against Accused No. 4 who passed away.
- (xvi) Following national confinement in 2020, the Learned Magistrate hearing the case was transferred to the ODPP as Assistant DPP.
- (xvii) Counsel for Accused No. 2 moved for a permanent stay of proceedings on 3<sup>rd</sup> August 2020.

- (xviii) On 5<sup>th</sup> November 2020, the matter was transferred to the Financial Crimes division of the Intermediate Court in virtue of Section 80(2) of the Courts Act.
- (xix) A motion for stay of proceedings was made on 24<sup>th</sup> May 2021 and a ruling was delivered on 22<sup>nd</sup> June 2021.
- (xx) On 19<sup>th</sup> July 2023, there was a motion by Counsel for Accused No. 2 for the proceedings to be permanently stayed.
- (xxi) The case was fixed for arguments on 10<sup>th</sup> January 2024 and the ruling was delivered on 3<sup>rd</sup> June 2024.
- (xxii) The present motion for a permanent stay of proceedings was made on 16<sup>th</sup> January 2025. The case was then fixed for Arguments on 20<sup>th</sup> March 2025 and then to 14<sup>th</sup> July 2025 following the filing of an Agreed Statement of Facts on 6<sup>th</sup> May 2025.

During cross-examination, the following noteworthy points arose noted:

- (i) The investigation started some 18 years ago.
- (ii) The alleged offences dated back to May 2008.
- (iii) Accused Mr Chooramun who passed away was the managing director of the Development Bank of Mauritius
- (iv) The Bramer Banking Corporation Limited where some of the witnesses for the prosecution were posted, is no longer in existence.
- (v) Many of the prosecution witnesses who come to Court on behalf of the prosecution may not recollect several matters when questions are put to them.

He was not re-examined.

### **The case for the defence**

No evidence was adduced on behalf of the accused parties.

### **Submissions by the defence**

Learned Counsel for accused No. 1 submitted that Section 10 of our Constitution provides in clear terms that an accused party in a criminal matter shall be afforded a fair hearing within reasonable time. It was submitted that a fair hearing in light of the Section 10 of the

Constitution means that in all due process of the law is to be respected and that witnesses are called and given the opportunity to be cross-examined, submissions will be offered and so forth. The reasonable time requirement is of paramount consideration and reference was made to the Privy Council judgment of *Bissoon Mungroo v. The Queen* [1990] PRV 22. Learned Counsel highlighted that a trial within a reasonable time means that the accused is not prejudiced in his defence by delay as it is possible that delay impacts on the quality of the testimony of prosecution witnesses. Learned Counsel laid emphasis on the fact that there has been tremendous delay i.e 17 year delay which is due to the case for the prosecution not being in shape as witnesses were absent, motions by defence Counsels praying for postponements, systemic delays due to changes at the level of the bench and the case had started with some evidence adduced. It was further submitted that after 17-18 years the prosecution will be able to prove its case beyond reasonable doubt when prejudice has been caused to the accused parties by the passage of time. Reference was made to the judgment of *The Director of Public Prosecutions v. J.C.R de L'Estrac* [2010] SCJ 118 where their Ladyships dismissed the appeal being given that almost 11 years had lapsed since the event had occurred and that it would be a breach of the accused's right to a fair trial for the case to proceed. Learned Counsel submitted that the Court is duty-bound to carry out a balancing exercise between the competing interests. Learned Counsel also referred to the judgment of *McFarlane v. The Director of Public Prosecutions* [2008] IESC 7, [2008] 4 IR 117. He prayed for the information to be dismissed against all accused parties and not to allow the trial to proceed unfairly against them.

#### **Submissions in reply by the prosecution**

Learned Counsel for the prosecution submitted that there has not been any undue delay on behalf of the prosecution and he referred to the judgment of *The State v. Bissessur* [[2001] SCJ 50. Reference was also made to the judgments of *B.W Casimir v. The State* and *R.D Jean Jacques v. The State* [2024] SCJ 459. It was submitted that the complexity of the case, the limbs that the case involved as well as the seriousness of the offence have to be considered. Learned Counsel also referred to the judgment of *R v. Maxwell* [2010] UKSC 48, 2011 WL 2747637 where the Court held that the gravity of the alleged offence has be weighed in the

balance by Court when considering a motion of a stay of proceedings. It was also submitted that it must be shown that there has been trial-related prejudice.

Learned Counsel for the defence briefly replied to same.

### **Analysis**

I have considered the submissions by the prosecution and the defence as well as the authorities filed.

### **The Law**

At the outset, this Court refers to the principle of a fair hearing as laid out in the judgment of *Velvindron v. the State [2003] SCJ 319* as follows:

“One of the safeguards provided under section 10(1) of our Constitution is that any person who is charged with a criminal offence shall be afforded a fair hearing. In that respect, the principle which underlines the jurisdiction to stay proceedings is that the Courts have the power and the duty to protect the law by protecting its own purposes and functions as was expressed in the words of Lord Devlin in *Connelly v. D.P.P.* (1964 A.C. 1254) “The Courts have an inescapable duty to secure fair treatment for those who come or are brought before them” and at page 1296 Lord Reid said “..... there must always be a residual discretion to prevent anything which savours of abuse of process.” ....”

This was further emphasized in the case of *Sumodhee v. the State [2005] SCJ 71*:

“Moreover, it is true that the concept of a fair trial guaranteed by section 10(1) of the Constitution involves fair and impartial inquiries into the allegations of accused parties without in any way causing any prejudice to them in their defence or in the preparation of their defence.”

### **The reasonable time requirement**

In *Bissoon Mungroo v. the Queen [1990] PRV 22*, it was held that:

“The right to a trial “within a reasonable time” secures, first, that the accused is not prejudiced in his defence by delay and, secondly, that the period during which an innocent

person is under suspicion and any accused suffers from uncertainty and anxiety is kept to a minimum.”

**When does the reasonable time requirement start?**

This question has been answered by the Court in *The State v. Marie François Bernard Maigrot* [2023] SCJ 437:

“It was held in **Attorney-General’s Reference** [No.2 of 2001] while referring to the paragraph 73 of the Court’s judgment in **ECKLE v Federal Republic of Germany** (1982) 5 EHRR 1, 27 that:

“73. In criminal matters, the ‘reasonable time’ referred to in Article 6(1) begins to run as soon as a person is ‘charged’; this may occur on a date prior to the case coming before the trial Court such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened.

‘Charge’, for the purposes of Article 6(1), may be defined as: “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence,” a definition that also corresponds to the test whether “the situation of the [suspect] has been substantially affected” [**Deweer v Belgium** [1980] 2 EHRR 439 459, para 46].

As a general rule, the relevant period will begin at the earliest time at which a person is officially alerted to the likelihood of criminal proceedings against him.”

A similar stand was taken in the case of **Darmalingum Sooriamurthy v The State** (Privy Council) (supra) whereby **Deweer v Belgium** [1980] 2 EHRR 439 was cited, that the starting point is the moment of the arrest, that is, the reasonable time guarantee started upon the arrest of the accused.

With regards to what would amount to a reasonable time, it was held in **Dyer (Procurator Fiscal, Linlithgow) v Watson and another; K v Lord Advocate** [2002] 4 All ER 1 that there are three areas for particular inquiry namely:

“the complexity of the case, the conduct of the defendant and the manner in which the case had been dealt with by the administrative and judicial authorities.”

In the present case, Learned Counsel for the defence lengthily submitted with the passage of time is 17-18 years, it becomes more and more unfair to have a trial within a reasonable time. He also lengthily cross-examined the enquiring officer as to whether the latter would remember all the details about this case. For the defence, a delay of 17-18 years in trying an accused party cannot be considered as reasonable time.

In the present case, it is presumed that the reasonable time starts to run<sup>1</sup> at the time that the accused parties were arrested and provisionally charged before the District Court. In his affidavit **Doc AAA**, the enquiring officer painstakingly explained the various steps in the enquiry from the time the complaint was received until the main case was lodged.

This Court has duly taken note of the time lapse in the present case:

- (i) the accused parties (then suspects) were arrested on 12<sup>th</sup> May 2011, 16<sup>th</sup> May 2011 and 19<sup>th</sup> May 2011 respectively and a provisional charge was lodged against each one of them on the said corresponding day;
- (ii) no less than 37 witnesses were interviewed in the present matter. (paragraph 7 of **Doc AAA** refers)
- (iii) the complex nature of the enquiry was explained in detail including enquiries at the level of the Registrar of Companies, disclosure orders sought and documents from financial and non-financial institutions. (paragraph 11 of **Doc AAA** refers)
- (iv) three further suspects were interviewed.
- (v) the enquiry was completed and the file was sent to the ODPP on 8<sup>th</sup> March 2012.
- (vi) At the level of the Court, the main case was lodged before Intermediate Court on 4<sup>th</sup> October 2012. Subsequently, the case was transferred to the Financial Crimes Division on 5<sup>th</sup> November 2020. Prior to this, the Learned Magistrate hearing the case was transferred to the ODPP.

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<sup>1</sup> **ECKLE v Federal Republic of Germany** (1982) 5 EHRR 1

From the time when the accused parties were arrested and provisionally charged until now, some 14 years have elapsed. Bearing in mind section 10(1) of the Constitution, the Court has taken into consideration the chronology of the events by the then ICAC until the case was referred to the ODPP and lodged before this Court as outlined in **Doc AAA**. The Court has considered the complex nature of the enquiry (as set out in **Doc AAA**), factors such as the national confinement due to the Covid-19 pandemic in 2020, administrative decisions such as the transfer of the Learned Magistrate before whom the case was being heard and the transfer of the case to the Financial Crimes division of the Intermediate Court. It is apparent that some delay has occurred in the present case.

The next question that this Court will address is whether there has been a breach of the reasonable time requirement in this case.

**What does a breach of the reasonable time requirement entail?**

At this stage, it is important to note the following principles as laid out by the Board in the case of **Boolell v. The State (Mauritius)** [2006] UKPC 46,

- (i) If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of section 10(1) of the Constitution, whether or not the defendant has been prejudiced by the delay.
- (ii) An appropriate remedy should be afforded for such breach, but the hearing should not be stayed or a conviction quashed on account of delay alone, unless (a) the hearing was unfair or (b) it was unfair to try the defendant.

Learned Counsel for the defence has referred to the judgment of **McFarlane v. The Director of Public Prosecutions** [2008] IESC 7 (05 March 2008) of the Supreme Court of Ireland where the Court held that:

**“SYSTEMIC DELAY**

Should systemic delay be seen as qualitatively different from prosecutorial delay? From an applicant’s point of view, assuming he has not occasioned or contributed to the delay arising since the inception of the criminal process, I believe that the distinction is one



without a difference. I believe that systemic delay is to be governed by the same principles which govern prosecutorial delay, not least because both forms of delay affect an accused in the same way. Such a view is consistent with that taken in *Barker v Wingo* and in this jurisdiction by Finlay C.J. in *DPP v. Byrne* [1994] 2 I.R. 236.

Systemic delay caused by failures of the criminal justice system may take various forms. There may be a failure by the State to provide an adequate number of judges, back-up staff, court room facilities or the other assistance which is required to enable the criminal process move forward with reasonable expedition. There may be failures by judges to give decisions or judgments within an appropriate time. The decisions of the European Court of Human Rights make it clear that a State is obliged to organise its legal system so as to allow its courts to comply with the reasonable time requirement of article 6, a requirement and obligation which does not cease to exist simply because domestic law requires the parties themselves to take initiatives or steps to progress proceedings."

This Court is alive to the fact that there has been some delay in the present case. However, this cannot be solely attributed to the prosecution as there have been postponements granted to the defence over the years, circumstances beyond the control of the Court such as the national confinement and administrative decisions such as the transfer of the Learned Magistrate (Doc AASF refers). The Court notes the observations of the Court in *McFarlane* (supra) on the issue of delay:

"Delay may be seen as the enemy of justice, both from the point of view of the community whose interest in having serious crimes prosecuted is put in jeopardy by prosecutorial or systemic delay and, perhaps more particularly, from the point of view of an accused person."

However, it is pertinent to highlight the following observation by the Court:

"However, what at first glance in this case seems to be an enormous delay, whether calculated either from the date of the original alleged offences or from the inception of criminal proceedings, transpires on closer examination to be amenable to a variety of very simple explanations for its different component parts. What is beyond dispute is the fact that, in the aftermath of the applicant's arrest and interrogation in January, 1998, this case was ready for trial the following year and that trial would have then proceeded but for the fact

that the applicant brought eleventh hour judicial review proceedings. This Court has already held that all complaints by the applicant of pre-charge delay are groundless (*McFarlane v. D.P.P.* [2007] 1 I.R. 134). I am satisfied that the only blameworthy delay arising in this case in 1998 and 1999 is that of the applicant who failed to move promptly with his judicial review application."

Thus, in the abovementioned case, the Court held that the applicant was responsible for the delay due to his judicial review application made at the time that the case was scheduled for trial. Hence, this Court considers that it is important to look at the sequence of events in the present case as what appears to be an enormous delay has in fact been explained step by step in the affidavit.

The following observations by the Board in *Bissoon Mungroo v. The Queen* (supra) are pertinent:

"Their Lordships reject this submission as being too simplistic. When delay amounting to an infringement of a constitutional right is alleged, the courts must have regard to the reasons for the delay and to the consequences of the delay. In *Bell's* case, at page 953, the Board expressed the view that the delay must also be considered in the context of the prevailing system of legal administration and in the prevailing economic, social and cultural conditions to be found in the country concerned.

In some cases, lack of resources, shortage of skilled staff and pressure of work cause delays which are not avoidable in practice and could only be avoided in theory by vast expenditure on sophisticated facilities and equipment and by an instant improvement in the number and quality of skilled professionals and administrators. In one country investigations may be made and decisions taken at a level, in a manner, and within a time scale which could not be achieved elsewhere. Problems which are considered to be complex in one administration may be dealt with more expeditiously and with greater certainty and understanding in another. At the same time the constitutional rights of the individual must not be placed at the mercy of inefficiency. The expressed constitutional right contained in section 10 to a hearing of a criminal case within a reasonable time injects the need for urgency and efficiency into the prosecution of offenders and demands the provision of adequate

resources for the administration of justice but, in determining whether the constitutional rights of an individual have been infringed, the courts must have regard to the constraints imposed by harsh economic reality and local conditions.”

The Board lays emphasis on “the reasons for the delay and the consequences of the delay”. In the present case, there are various reasons including administrative reasons which have engendered the delay and this has been explained in Doc AASF.

Now, the defence has moved for the proceedings to be stayed for the reasons as set out above.

The Court will proceed to consider in which circumstances this Court may exercise its power to stay proceedings.

### The power to stay proceedings

In **Archbold digital edition 2018 at para 4.75**, the power of the court to stay proceedings is noted as follows:

“Although it can be exercised in many different circumstances, the court has power to stay proceedings in two categories of case, namely—

(a) where it will be impossible to give the defendant a fair trial, and

(b) where a stay is necessary to protect the integrity of the criminal justice system: **R. v. Maxwell** [2011] 2 Cr.App.R. 31, SC, and **Warren v. Att.-Gen. for Jersey** [2012] 1 A.C. 22, PC (indicating that these two categories are distinct and should be considered separately).”

At para 4.99, the following is also noted:

“In the leading judgment of the Privy Council in **Warren v. Att.-Gen. for Jersey** [2012] 1 A.C. 22, Lord Dyson stated that the court had to strike a balance between the public interest in ensuring that those who are accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct does not undermine public confidence in the criminal justice system and bring it into disrepute.”

Nevertheless, it is pertinent to note that at para 4.76 that this power

"The power of justices to stay criminal proceedings for abuse of process is to be most sparingly exercised, and should be strictly confined to matters directly affecting the fairness of the trial of the particular accused with whom they are dealing, such as delay or unfair manipulation of court procedure, since the wider supervisory responsibility for upholding the rule of law is vested in the High Court; where, therefore, a question arises as to the deliberate abuse of extradition procedures, they should exercise their discretion to grant an adjournment to facilitate an application to the High Court: **R. v. Horseferry Road Magistrates' Court, ex p. Bennett** [1994] 1 A.C. 42, HL." (The underlining is mine)

Thus, it can be gleaned from the above principles that the Court's power to stay proceedings may only be "sparingly exercised."

This Court will now consider the circumstances in which a stay of proceedings may be granted on the ground of delay.

#### **A stay of proceedings on the ground of delay**

At paragraph 4-79 of **Archbold digital edition 2018**, the common law principles were set out:

On an application for a stay on the ground of delay, a court should bear in mind the following principles:

- (a) even where delay is unjustifiable, a permanent stay should be the exception rather than the rule;
- (b) where there is no fault on the part of the complainant or the prosecution, it will be very rare for a stay to be granted;
- (c) no stay should be granted in the absence of serious prejudice to the defence so that no fair trial can be held; and
- (d) on the issue of possible serious prejudice, there is a power to regulate the admissibility of evidence and the trial process itself should ensure that all relevant factual issues arising

from the delay will be placed before the jury for their consideration in accordance with appropriate directions.

If, having considered all these factors, a judge's assessment is that a fair trial will be possible, a stay should not be granted: **R. v. S. (S.P.) [2006] 2 Cr.App.R. 23**, CA, restating the principles set out in **Att.-Gen.'s Reference (No. 1 of 1990) [1992] Q.B. 630, 95 Cr.App.R. 296**, CA, in the light of subsequent authorities, and doubting whether they would today have been expressed in terms of a burden on the defendant to show on a balance of probabilities that no fair trial could be held (post, §4-102).

**R. v. S. (S.P.)** was approved by a five-judge Court of Appeal in **R. v. F. (S.) [2011] 2 Cr.App.R. 28**, where particular importance was attached to the reference in (iv), ante, that it is for the trial process to ensure that all relevant factual issues will be placed before the jury for their consideration, including the reasons for the delay; the reasons for the delay are only relevant to an application to stay if they bear on how readily the fact of prejudice may be shown, such as where unjustified delay in the making of the complaint, or institutional prosecutor misconduct, may make the judge more certain of prejudice (which may even have been the aim of the delay). *Unjustified delay could not, of itself, be a sufficient reason for a stay.*" (Emphasis added)

In ascertaining whether the accused has been deprived of his right to a fair trial, the Court will consider the following<sup>2</sup>:

1. Length of delay.
2. The reasons given by the prosecution to justify the delay.
3. The responsibility of the accused for asserting his rights.
4. Prejudice to the accused.<sup>3</sup>

The Court notes that in determining whether the right has been denied or not, same should not be by the application of a mathematical or administrative formula *but rather by a judicial*

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<sup>2</sup> The State v. Bissessur [2001] SCJ 50

<sup>3</sup> Bell v. DPP [1986] LRC (Const) 392, [1985] 2 All ER 585, [1985] Ac 937

*determination balancing the interests which the section is designed to protect against factors which either inevitably lead to delay or are otherwise the cause of delay.*<sup>4</sup>(Emphasis added)

In *Att.-Gen.'s Reference (No. 1 1990)* [1992] Q.B. 630, 95 Cr. App. R. 296, C.A., it was held that:

"Stays imposed on the ground of even unjustifiable delay should only be granted in exceptional circumstances. Still more rare should be cases where a stay can properly be imposed in the absence of any fault on the part of the complainant or the prosecution. Delay due merely to the complexity of the case or contributed to by the actions of the defendant should never be the foundation of a stay. Where there has been no fault on the part of the prosecution, there should be no stay unless the defendant shows on a balance of probabilities that owing to the delay he will suffer prejudice to the extent that no fair trial can be held; in other words, that the continuance of the prosecution amount to a misuse of the process of the court." In *D.P.P. v. Hussain*, The Times June 1 1994, the Divisional Court reiterated the principle.

Applying the abovementioned principles, this Court will now consider whether the accused parties have been able to show on a balance of probabilities that they have suffered prejudice.

### **The prejudice caused to the accused parties**

In *The State v. Bissessur* [2001] SCJ 50, the Court held that:

"With regard to the question of prejudice, any accused party who has the shadow of a criminal case hanging over his head will inevitably suffer some sort of prejudice and the longer the delay the greater would be the prejudice. However, it is not just any prejudice, which will avail an accused party. The court must be satisfied that the accused has suffered trial-related prejudice. Taking into account, the nature of the charges, I find that the accused have failed to show that they would suffer trial-related prejudice namely that their defence would, in any way, be impaired."

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<sup>4</sup> R v. Morin [1992] 1 SCR 771, (a decision of the Supreme Court of Canada) referred to in State v. Bissessur [2001] SCJ 50



At this stage, the following passage in *The Director of Public Prosecutions v. S. Beeharry* [2007] SCJ 89 which quoted the following the words of Lord Wolf C] in *R v B* [2003] 2 Cr App R 13 is of relevance:

“A stay should only be employed in exceptional circumstances. In assessing whether there was likely to be serious prejudice, the power of the judge to regulate the admissibility of evidence, and the trial process, which should ensure that all relevant factual issues arising from delay would be placed before the jury together with the power of the judge to give appropriate directions should be borne in mind. Judges should be assiduous to ensure that there really was evidence of serious prejudice to the extent that a fair trial could not be held before they found that the defendant had discharged, on a balance of probabilities, the burden of proof that lay on him before any power of the sort sought to be invoked could be used....”

Thus, it follows from the above that there is the need for the Court to ensure that that there is *serious prejudice* (emphasis added) which would deprive the accused of a fair trial. Thus, the accused must show on a balance of probabilities that he will suffer prejudice resulting to an unfair trial<sup>5</sup>.

In the present case, Learned Counsel for the defence submitted that the accused parties have been prejudiced due to the passage of time and whether a fair trial is even possible being given that 17-18 years have lapsed. True it is that there has been delay in the present matter, however the accused parties have to show that they have suffered trial-related prejudice (Re: *Bissessur* (supra))

This Court will also consider the judgment of *Director of Public Prosecutions v. Christian René Guy Marcel Ducasse* [2023] SCJ 20 where their Lordships held that:

“For these reasons, we do not find that this omission of the police has caused any *irreparable prejudice* to the respondent which would deny him of a fair trial. In fact, we are of the view that the learned Magistrate overlooked what was really relevant, namely that the respondent had been fully apprised of the case he had to meet when considering *whether it was still*

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<sup>5</sup> *Att.-Gen.'s Reference (No. 1 1990)* [1992] Q.B. 630, 95 Cr. App. R. 296, C.A

*possible for the respondent to have a fair trial without irreparable prejudice being caused to him. In a gist, she failed to properly assess the likelihood and the seriousness of any prejudice before granting the stay of proceedings.” (Emphasis added)*

Thus, it follows from the above that the Court’s reasoning was based on an even higher threshold i.e the operative words being “irreparable prejudice” to assess whether the accused had been deprived of a fair trial.

Learned Counsel for the defence submitted that the delay is not only likely to affect the quality of the testimonies of the prosecution witnesses as they may not recollect the events but also it may have an impact on the ability of the accused parties to conduct their defence. Furthermore, the psychological perspective of the case on the accused parties and how this may have an impact on the fairness of the trial were also brought up during submissions.

However, this Court is of the view that the defence has not shown on a balance of probabilities how irreparable prejudice has been caused to the accused parties.

At this stage, the Court will also consider the submissions of the Learned Counsel of the defence, who relied on the judgment of *The Director of Public Prosecutions v. J.C.R de L’Estrac* (supra) where their Ladyships held that the lapse of 11 years was another compelling reason for the case not to proceed. This Court is of the view that the abovementioned judgment ought to be distinguished from the present case for the following reasons:

- (i) The respondent was charged with an alleged offence which occurred in February 1999;
- (ii) The information did not disclose an offence;
- (iii) The case had been postponed on numerous occasions over a period of three years on motions of the prosecution and the defence;
- (iv) The prosecution had sought to amend the information by adding witnesses and on 4<sup>th</sup> December 2007, almost three and a half years since the case had been lodged, an important element of the offence was sought to be added.



The Appellate Court found that there had been a real likelihood of prejudice to the respondent and “unnecessary and excessive delay” by the prosecution to prosecute the defendant under the proper charge. These are not applicable to the case at hand.

### **The public interest**

Judge Richard Bray in an article on *R v. Beckford* (supra) emphasized that “[t]he underlying principle behind the doctrine of abuse of process is the concept that the court has a duty in criminal cases, to hold the balance between the interests of the state in maintaining order and the rights of individuals, and in exercising that duty the court retains a residual power to stay prosecutions which are vexatious or oppressive.”<sup>6</sup>

Thus, this Court has carried out a balancing exercise by weighing on one hand, the public interest for the accused to be tried for the crime that he may have committed and on the other hand, the competing public interest to uphold public confidence in the legal system<sup>7</sup>. This Court is of the view that the balance tips in favour of the public interest for the accused to be tried.

Although, the Court notes that there has been delay (not an inordinate delay) since the accused parties have been provisionally charged and until a formal charge was lodged against the accused parties, this is not sufficiently exceptional to warrant a stay of proceedings. All in all, the accused parties may still benefit from a fair trial.

At this stage, I also find it apposite to refer to the judgment of *Rummun Hassen Eid-En v. The State of Mauritius [2012] PRV 33*, where the Court held that:

“It will also be familiar with such sentencing guidelines as exist to point to the range of sentence that would have appropriate if there had not been delay and how much, if at all, that range should be adjusted to reflect the violation of the appellant's constitutional right to a trial within a reasonable time.”

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<sup>6</sup> R Bray, ‘Beckford and Beyond Some Developments in the Doctrine of Abuse of Process’ *The Denning Law Journal* 2007  
<<https://www.ubplj.org/index.php/dlj/search/authors/view?firstName=Lord&middleName=&lastName=Go&affiliation=&country=>>

<sup>7</sup> *Warren v. Att.-Gen. for Jersey* [2012] 1 A.C. 22

This would apply in the circumstances where the accused is convicted and the delay ought to be considered when sentencing the latter.

**Conclusion**

In the light of all the above, the motion by the defence is set aside.



Ms N. Seebaluck

Acting Magistrate Intermediate Court

13.03.2026

