

FCD CN: 62/2020

CN: 724/2018

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIME DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

1. Arun Mossuddee
2. Bheemal Bissessur
3. Govinduth Lutchman
4. Nice Trips Co. Ltd

RULING

The motion was raised and formulated by Mr K. Trilochurn who appeared for accused no.1 and argued the matter equally on behalf of accused nos. 2 and 3. Ms S. Mootien appeared for accused no.4 and offered short submissions on the same motion.

The point raised by the defence can be summarised as follows:

The prosecution is asking for a fee, representing the administrative cost of preparation and communication of the brief to the defence. Such is in contravention of section **10(2)(c) of the Constitution** which states: *Every person who is charged with a criminal offence, shall be given adequate time and facilities for the preparation of his defence.* The contention of the defence therefore is that the disclosure requirements on the prosecution must be effected free of charge.

It is not disputed that the accused no.1 has been communicated the brief of the case by the prosecution and, which has been duly paid for. None of the other accused parties in the case has adduced evidence or made statements as to whether anyone of them has been communicated with the brief, and if not, whether the inability to



pay for the brief was the reason for it. Counsel on behalf of accused no.4, did not submit on this point. Counsels for accused nos.2 and 3 chose to be replaced and did not offer submissions on the point. It is clear that the defence raised the point in the abstract, that is, irrespective of the ability of the accused to pay for the brief, he or she should not pay for it. For instance the question of actual prejudice for the accused no.1, in the form of incapacity to prepare his defence, does not arise since the brief had in fact been communicated and paid for. It is the general principle which is being challenged.

The prosecution submitted to the effect that should the accused qualify for legal aid, the brief would have been made available free of charge. There is no entry on the court record that any of the accused parties wished to be represented 'in forma pauperis' for the case. In fact, letters from counsels of all accused parties were filed as formal notification of their representations. Counsel for accused no.4 argued that there should be no difference between an accused benefitting from legal aid and one who does not. It is noted that accused no.4 is a company.

The difference in my finding is material, as it goes to the core of the principle being challenged. The State, including any prosecutorial institution, will provide for an accused party who is unable to afford the means to properly defend himself. Legal thresholds have therefore been put in place to distinguish those with sufficient means and those without. If none of the current accused parties has applied to be considered as an individual without sufficient means, the state or the prosecution cannot come to his or her aid. The lack of synchronicity between the legal conditions to be satisfied to fall within the bracket of a person without means, and the actual costs of a legal brief however high it may be, might be arguable. However to challenge such state of affairs would be to overestimate the law making capability of this court.

The full bench of the Supreme Court has addressed the issue of administrative fee for accused parties in **Mertz S B V State 2012 SCJ 382**:

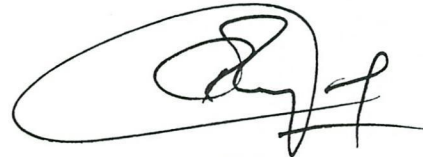
As far as the issue of payment for the copies of brief is concerned, the office of the Director of Public Prosecutions is a public office run with tax-payer's money. It is not a charitable institution. If it requires administrative charges -mistakenly referred as a fee -to be paid to enable copies of briefs to be made, that is the least asked of counsel for the purpose of covering the administrative costs involved in the preparation of briefs. In this case the charges amounted to Rs1130 or \$30. The appellant did not qualify for legal aid. Unless the appellant is not what he styles himself to be - an American investment business consultant. This must be a



ridiculous sum by any standard both for him and his three lawyers. The American Embassy was by his side all the time. One of his lawyers, we note, is a foreign lawyer. It is disparaging for appellant to raise such an argument that his free holiday in Mauritius should have included \$30 for briefs if arrested on reasonable suspicion that he was involved in a drug trafficking transaction.

The reasoning above concerned the Office of the Director of Public Prosecutions, but the same principle would apply to the Independent Commission Against Corruption (ICAC). Since the general principle with regards to payment of administrative fee for briefs has already been adjudicated by the full bench of the Supreme Court, such is reiterated by this court. There is no breach of section 10(2)(c) of the Constitution and the right to a fair trial for all accused parties has not be impeached.

The motion from the defence is therefore set aside.



P K Rangasamy
Magistrate of the Intermediate Court
22.06.22

