

ICAC v Parvin Appadoo

2022 INT 15

FCD CN: 12/2020

CN: 709/2019

**IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIME DIVISION)**

In the matter of:

Independent Commission Against Corruption

v/s

Parvin Appadoo

RULING

The accused has been prosecuted under five counts for the offence of Money Laundering in breach of sections 3(1)(b), 6 & 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA). He pleaded not guilty to the Information and is legally represented.

The defence counsel, Mr Hurhangee has moved for further particulars to the Information with regards to the following items:

- i. Particulars of any declarant mentioned in the Information under each count.
- ii. Particulars of the property, the sum of money averred under each count of the Information.
- iii. Particulars of the reasonable suspicion which the accused had that the property was derived from a crime.

THE LAW

The relevant statutory principles are encapsulated as follows:

Section 125. Information (District and Intermediate Courts Act (Criminal Jurisdiction) Act 1888)

- (1) 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.

Section 10 Constitution

Every person who is charged with a criminal offence

- (b) shall be informed as soon as reasonably practicable, in a language that he understands and, in detail, of the nature of the offence;

The recent case of **Sookur v State 2022 SCJ 4** has reiterated the established principles as follows:

It is well established that our rules governing the layout of an Information provide for the information to contain in the first place a brief description of the offence charged in the words of the law creating it and its material circumstances. Particulars of the offence need also be averred where the offence is not sufficiently clear, in order to give reasonable information as to the nature of the charge.

In **State v Treebhoowon and Anor 2012 SCJ 214**, the Supreme Court held the following:

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 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".

The case of **DPP v Bholah 2010 PRV 50** dealt with similar issues on particulars for the offence of money laundering. The particulars of the Information are now reproduced and the subsequent extracts are of relevance.

That in or about the month of April 2001, the said 1. Ahmud Azam Bholah and 2. Mohammed Irfan Mohammed Laffir did transfer outside Mauritius a sum of USD 1,822,968.40 from Delphis Bank account no 4170599, operated by them at the Delphis Bank Ltd., Port Louis Branch, which said sum of money are the proceeds of crime."

34. *The decisions in the English cases are informative beyond their firm conclusion that proof of a specific predicate offence is not required, however. They are unanimous, in the Board's view, in suggesting that where it is possible to give particulars of the nature of the criminal activity that has generated the illicit proceeds, this should be done. Some of the cases appear to suggest that this is an indispensable requirement; others that it is merely required where it is feasible. All are agreed, however, that where it is possible to give the accused notice of the type of criminal activity that produced the illegal proceeds, fairness demands that this information should be supplied.*

35. *Section 17(7) of ECAMLA did not preclude a request for particulars of the type of criminal activity which was said to have produced the illegal property. The Supreme Court's conclusion that a request for particulars could not be made was founded on its opinion that a specific predicate crime had to be identified and proved in order to meet the requirements of section 10(2)(b) of the Constitution. There is nothing in section 17(7) or its successor which contraindicates a request for particulars of the type of criminal activity that is alleged to have been the source of the criminal property nor is there anything in that provision which would relieve the prosecution of its obligation, in the interests of fairness, of supplying it, if it was able to do so.*

36. *In this case the particulars supplied in the information that was lodged against the respondent and his co-accused were less than wholly informative about the nature of the criminal activity involved and it may well be that, in their unvarnished form, they did not fulfil the requirements of section 125(1) of the District and Intermediate Courts (Criminal Jurisdiction) Act. But any deficiency in that regard was more than cured by the way in which the proceedings were conducted and by the interviews of the respondent before trial. He and his legal advisers cannot have been in any doubt that the nature of the criminal activity alleged to have produced the proceeds of crime was the illegal procuring of the transfer of funds from Mr Nunez's account to the company account of the respondent. There can be no question therefore that the respondent and his legal representatives were not fully alerted to the case that he had to meet in relation to the charge of money laundering. In the Board's judgment no unfairness in the manner in which the respondent was required to meet that charge can be detected.*

ASSESSMENT OF THE COURT

The Information in the present matter contains five counts with corresponding particulars. The said particulars are identical save and except the date and the sum

of money averred. A reproduction of the particulars under Count 1 should be sufficient for the purposes of this argument.

On or about the aforesaid date and place, the said Parvin Appadoo received sum of Rs800,000 in cash from one Joseph Noel Andre, which received sum, in whole or in part, directly or indirectly represented the proceeds of a crime and where he, the said Parvin Appadoo, had reasonable grounds for suspecting that the said sum was derived in whole or in part, directly or indirectly from the said crime.

Even if the above set of particulars is similar to that of **DPP v Bholah (supra)**, each item sought by the defence will be considered.

The defence, in their convoluted submissions, did raise the issue of the one Joseph Noel Andre averred in the particulars of the Information. The latter is not on the witness list. The defence has submitted that no information regarding the one Joseph Noel Andre has been communicated to them as part of the brief. Counsel for the prosecution has stated that much of the information sought by the defence is part of the communicated brief. It is however noted that the prosecution has been coy in disclosing more information on the individual in question, in their oral address to court. The court is not privy to the information exchanged between the parties. There was no motion made by the defence about an incomplete brief. Nevertheless, on the current motion of further particulars sought, the law is settled. The Information has to set out the elements of the offence in the words of the law, and the particulars or material circumstances must be sufficient so that the accused understands the nature of the charge laid against him, vide **Sookur v State (supra)**. Understanding the nature of the charge does not mean stating the gist of the prosecution's case in the Information. The particulars sought by the defence as to whether; the one Joseph Noel Andre was prosecuted and convicted, whether he will be a declarant in the present case, the outcome of the enquiry on him, are all matters which fall outside the content of an Information. The nature of the case against the accused is five counts of stand-alone money laundering offences. The facts of the predicate offence with which the one Joseph Noel Andre is connected as per the submission of the defence, do not have to be averred in an Information for money laundering, vide **DPP v Bholah (supra)**. The Privy Council did hold that there is nothing precluding the prosecution from giving particulars of the criminal activity if they were able to do so. However any deficiency in that regard can be cured by the way proceedings are conducted or pre-trial disclosure made. I therefore find that, for the purposes of this argument, facts pertaining to the involvement of the one Joseph Noel Andre are matters of evidence which can only be canvassed at trial.

The second motion deals with particulars of the sum of money averred under each count of the Information. Since it is alleged that the sums were received by the accused from the one Joseph Noel Andre, the issue is connected to the one above and the same principles therefore apply. It is a matter of evidence which can be taken up at trial stage. I take inspiration from the analogous situation argued in the case **Audit v State 2016 SCJ 282** where the following was stated:

From a reading of section 3 above, the words “directly” or indirectly” do not create two distinct ways of committing the offence of money laundering but are simply designed to convey that it is immaterial whether the property was in whole or in part derived directly or indirectly from a crime. What is important is that the property was derived from the proceed of a crime which in the present case was larceny. In section 3, the legislator was targeting any property emanating from a crime, and the words “directly” or “indirectly” were used to cover all circumstances whereby the proceed of the crime may be used. Therefore, whether the property was the direct proceed of the crime (referring to the article that was stolen) or that the property was indirectly the proceeds of a crime (referring to a stolen article being sold and its proceeds being used to purchase another property) is not important. Section 3 of FIAMLA does not create two separate offences i.e. one where the property “directly represents the proceeds of any crime” and one where the property “indirectly represents the proceeds of any crime”. The issue of “directly or indirectly” was not of the essence of the offence charged.

It is one element of the offence of money laundering to prove that the accused received *any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime*. The sum of money is the property allegedly derived from the proceeds of a crime. There is no necessity to give further particulars on the property as the sum of money is in itself self-explanatory.

The last item sought by the defence is further particulars on the reasonable suspicion that the accused must have had that the property is derived from a crime. This is the mental element of the offence and as such it can be proved by circumstantial evidence which can only be adduced during trial.

CONCLUSION

In light of the above assessment, it is trite law that particulars are to be furnished so as to give clarity to the nature of the charge as couched in the Information. I find that the Information in its current form, discloses sufficient material circumstances for the accused to understand the nature of the charge he has to answer. The motion by the defence for further particulars is therefore set aside.

P K Rangasamy
Magistrate of the Intermediate Court
20.01.22