

**Republic v Labodo
(2006) SLR 43**

Ronny GOVINDEN for the Republic
Antony DERJACQUES for the Defendant

Ruling delivered on 30 January 2006 by:

KARUNAKARAN J: At all material times, the Defendant was an employee of the Public Utilities Corporation. On 19 July 2005, the police arrested him as a suspect in a case involving an alleged offence of “Stealing by servant” contrary to Section 266 of the Penal Code. According to the police, the Defendant - hereinafter called the “suspect” - during the course of his employment with PUC, made and authorised local purchase orders dishonestly, representing his employer and used them to purchase construction materials and other items fraudulently to the tune of R1,055,772 and thereby defrauded his employer.

On 20 July 2005, the police having started investigation in this matter, arrested the suspect and detained him in their custody for 24 hours. And, thereafter, they applied to the Court in terms of Section 101 of the Criminal Procedure Code, for a further holding of the suspect, pending investigation on the grounds that:

- (i) The offence alleged was a serious one;
- (ii) The suspect should be prevented from interfering with potential witnesses and obstructing the course of justice; and
- (iii) Investigation is incomplete.

The Court having heard the parties granted the application for the further holding and remanded the suspect in custody until 25 July 2005 so that the police could complete the investigation. However, the police could not complete the investigation within the said remand period. According to the police, the investigation is complex and time consuming since it involves verification of a number documents, financial transactions, and investigation into transfers of huge sums of money to and from different bank accounts. Moreover, a number of witnesses involved in those transactions have also to be interviewed. In the circumstances, the Court on 25 July 2005, that is, after the expiry of the said remand period, released the suspect on bail pending investigation on condition inter alia, that he should surrender his passport to the Registrar of the Supreme Court. Although this condition impliedly restricted the suspect's “freedom of movement” it was obviously intended to compel the suspect to be present in Seychelles and make him available to the police so as to assist them to complete their investigation. The police are still investigating the matter and according to them, they still need two more months to complete the investigation.

In the meantime, Mr Derjacques, learned counsel for the suspect, applied for an order to dismiss the case and discharge the suspect unconditionally and release his impounded passport so that he could travel freely in and out of the country. According to counsel, section 101 of the Criminal Procedure Code cannot justify the detention away from the suspect's fundamental right to "Freedom of Movement" that is guaranteed by the Constitution.

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On the other side, Mr Govinden, learned State Counsel argued that Section 101 of the Criminal Procedure Code empowers the Court to release the suspect unconditionally or impose any reasonable condition which the Court may deem necessary having regard to the circumstances of the case. Therefore, he submitted that the Court might in its discretion, releases a suspect on condition that the suspect would surrender his passport and thus, may restrict his freedom of movement the completion of investigation. This, the counsel contended, is a reasonable condition in the given circumstances of the instant case. However, such a restriction according to Mr Govinden, cannot be made for an unduly indefinite period. In a particular case, the police reasonably require a period of only two months to complete the investigation. Hence, he requested the Court to adjourn the proceedings for two months hence and secure that the suspect is available to the police for the completion of the investigation.

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On a diligent examination of the arguments advanced by the counsel on both sides, it seems to me the following are the questions before the Court for determination:

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- (i) Does Section 101 of the Criminal Procedure Code empower the Court to impose restriction on the suspect's freedom of movement by impounding his passport for the purpose of assisting the police to complete the investigation?
- (ii) Can this restriction be extended for an indefinite period for a suspect for any reason whatsoever?
- (iii) Should the police in the instant case on hand, be given more time namely, two more months for the purpose of completing the investigation?

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To my mind, the answers to all three questions lie squarely, in favour of the suspect, and Section 101 of the Criminal Procedure Code, hereinafter called the "Code", reads thus:

Section 101 of the

101(1) Subject to section 100, a police officer or other person who is holding a person without a warrant (in this section referred to as the "suspect" may, where the police officer or other person has reasonable ground for believing that the holding of the suspect beyond the period specified in section 100 is necessary-

- (a) produce the suspect before a Court; and
 - (b) apply in writing to the Court for the further holding of the suspect.
- (2) An application under subsection (1) shall state-

- (a) The nature of the offence for which the suspect has been arrested or detained;
- (b) The general nature of the evidence on which the suspect was arrested or detained;
- (c) What inquiries relating to the offence the police and what further inquiries the police have made proposes;
- (d) *The reasons for believing...*

And shall be supported by an affidavit.

- (3) A Court shall not hear an application under this section unless the suspect has been served with copy of the application
- (4) Where an application is made under subsection (1), the Court shall release the suspect unconditionally or, where the Court has reasonable ground for doing so, upon reasonable condition unless the Court, having regard to the circumstances specified in subsection (5), determines that it is necessary to remand the suspect in custody.
- (5) The circumstances referred to in subsection (4) and (7) are-
 - (a) Where the magistrate's Court...
 - (b) The seriousness of the offence for which the suspect was arrested or detained;
 - (c) there are substantial grounds for believing that the suspect will fail to appear for trial or will interfere with witnesses or will otherwise obstruct the course of justice or will commit an offence while on release;
 - (d) There is necessity to keep the suspect in custody for the suspect's own protection...
 - (e) Suspect is serving a custodial sentence;
 - (f) The suspect has been arrested pursuant to a previous breach of condition...
- (6) Subject to this section, where a Court makes an order under subsection (1) for the remand in custody of a suspect, the period of remand shall not exceed 4 days.
- (7) The police officer ... the period of extension granted... shall not,... together

exceed in aggregate 7 days.

- (8) The reasonable conditions referred to in subsection (4) are reasonable conditions necessary to secure that the suspect-
- (a) does not, whilst on release, commit an offence or interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person
 - (b) is available for the purposes of enabling inquiries or a report to be made to assist the Court in dealing with the offence of which the suspect is accused.
 - (c) appears at a later date at the time and place required in connection with proceedings preliminary to a trial or with the trial of the offence or for the purpose of assisting the police with their enquiries
- (9) A Court may..... require the suspect
- (a) To execute a bond...
 - (b) To provide ... Sureties for the bond.

It is necessary now to find the answers to the questions above in light of the above provisions of law.

As regards question No. (i), it is evident from section 101 (4) where the Court has reasonable grounds for doing so, may impose a reasonable condition necessary to secure that the suspect is available for the purpose of enabling police inquiries or reporting to be made to assist the Court in dealing with the offence of which the suspect is accused. In fact, if the suspect is allowed to leave the territorial jurisdiction before the completion of the police inquiries, it will obviously, hamper the investigation of the alleged crime and would obstruct the course of justice. In the circumstances, it is just and necessary for the Court to take all reasonable measures to ensure that the suspect is available in the jurisdiction for the purpose of enabling police inquiries. In my considered view, one of such reasonable measures is to put restriction on the suspect's right to leave the jurisdiction before the completion of police enquiries. Hence, as I see it Section 101 of the Criminal Procedure Code, does empower the Court to impose restriction on the free movement of a suspect by impounding his passport in the remand proceedings pending police investigation or inquiries.

As regards questions 2 and 3, it is truism that the Court in imposing the passport of a suspect, it does impose restriction on the suspect's right to leave the jurisdiction in effect, curtailing his, freedom of movement guaranteed under the Constitution. However, the Court does so through its lawful orders, in the larger interest of society in order to

in light of the above

(8) (b) supra that a suspect upon release for the purpose of enabling police inquiries or reporting to be made to assist the Court in dealing with the offence of which the suspect is accused, it will obviously, hamper the investigation of the alleged crime and would obstruct the course of justice. In the circumstances, it is just and necessary for the Court to take all reasonable measures to ensure that the suspect is available in the jurisdiction for the purpose of enabling police inquiries. In my considered view, one of such reasonable measures is to put restriction on the suspect's right to leave the jurisdiction before the completion of police enquiries. Hence, as I see it Section 101 of the Criminal Procedure Code, does empower the Court to impose restriction on the free movement of a suspect by impounding his passport in the remand proceedings pending police

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protect the rights and freedoms of other persons. And the Court in this process has to strike a delicate balance between the interest of an individual namely, the suspect on the one hand and that of the society on the other hand. Indeed, in terms of article 25(3) (b) and (c) the right to freedom of movement is subject to such restrictions as are prescribed by a law necessary in a democrat society for protecting the rights and freedoms of other persons and for the prevention of a crime or compliance with an order of a Court. Therefore, to my mind, this reasonable restriction imposed by the Court on the suspect's freedom of movement is legal and falls within the parametres of the Constitution as such measure is prescribed by a law in this particular case the Criminal Procedure Code. However, as rightly submitted by Mr Govinden such a restriction cannot be imposed arbitrarily on a suspect for an indefinite period in the guise of assisting police inquiries or for any other reason whatsoever. Having said that, I hold that the period of such restriction in each case, has to be determined by the Court on the basis the facts and circumstances peculiar to that case, giving due consideration to all the factors such as the complex nature of investigation, the seriousness of the offence alleged, and the necessity to secure the suspect's presence in the jurisdiction to gather or preserve evidence relating to the offence alleged etc. Coming back to the case on hand, after giving due consideration to all the circumstances surrounding the enquiry, it seems to me reasonable, just and necessary that police should be given a further period of two months to complete the enquiry.

Therefore, I refuse the motion of the defence counsel for dismissal but adjourn the proceedings to a later date granting a further period of two months for the police to complete the enquiry in this matter. The case will be reviewed on 31 March 2006. The suspect is accordingly, directed to appear in Court on the said date at 9 am.

Record: Criminal Side No 52 of 2005