

REPUBLIC v KRISHNAMART & CO (PTY)

(2011) SLR 154

V Benjamin for the Republic
B Georges for the first defendant
S ajasudram for the second defendant

Ruling delivered on 3 June 2011 by

GASWAGA J: The charges herein were filed on 11 December 2009 against Nelson Pillay and Saroja Pillay in their capacity as directors of Krishnamart & Company (Bty) Limited. The said charges stem from a Bank of Baroda cheque no 051554 for the sum of R2,609,462.17 that was issued for payment by Krishnamart & Company when there was no sufficient provision.

It has been submitted that given the delay in bringing the charges against the accused before the Court, yet the case had been reported to and investigated by the police way back in April 2004, the accused's right to a speedy trial was breached. It is not in dispute that according to the police docket, by 3 June 2004 the matter had been fully investigated and all statements, including those from the accused and the bank obtained. The charges were laid almost six years later.

The prosecution contends that such delay does not constitute a breach of the accused's said constitutional right because the case had not yet been brought in the court system for the time to start running. On the other hand, Mr Georges submitted that once the matter was reported to the police, the criminal justice system had been triggered and the accused were in one way or another pegged onto it, and any delay caused thereof prejudiced them. In addition, the charge with an offence does not relate to the commencement of the time but it is what gives the person *locus standi* to come to the Court, and the time then is both the period before and the period since the laying of the charge. Further, that there was no reason or plausible explanation given for the delay in the prosecution. He also submitted that this was a fundamental constitutional issue which raised considerable interest in a number of cases and could only be determined by the Constitutional Court. That it was therefore crucial and urgent that it be determined by the said Court pursuant to article 46(7) of the Constitution of Seychelles.

So, does a delay in formally instituting charges against a defendant in a matter which has already been reported to and investigated by the police constitute a breach of the right to be tried within a reasonable time as enshrined in article 19(1) of our Constitution?

Article 19(1) reads thus:

Every person *charged with an offence* has the right, unless the charge is withdrawn, to a fair hearing *within a reasonable time* by an independent...Court... (emphasis mine)

The provision guarantees to everyone a hearing within a reasonable time, the purpose of which is to protect all parties to court proceedings against excessive procedural delays, and it underlines the importance of rendering justice without delays which might jeopardize its effectiveness and credibility. (See *Stogmuller v Austria*, ECHR, Decision of 10 November 1969 at [5] and *H v France*, ECHR, Decision of 24 October 1989 at [58].

The meaning of the reasonable time requirement therefore is to guarantee that within a reasonable time and by means of a judicial decision, a trial is conducted and an end is put to the insecurity into which a person finds himself or herself on account of a criminal charge against him or her. This is in the interest of the person in question as well as of legal certainty.

It must be stressed that in criminal cases the time to be taken into account starts running with the institution of the charge and must not necessarily be looked at in a global sense as suggested by Mr Georges. Article 19(1) is clear on the matter in that one is considered to be charged with an offence only when formally arraigned before a court of law. (See also ECHR Decisions in *Scopelliti v Italy*, 23 November (1993) at [18], and *Deweer v Belgium*, 27 February (1980) at [42]. The time ceases to run when the proceedings have concluded at the highest possible instance, ie when the determination becomes final.

When assessing whether a length of time may be considered reasonable, the court can examine the length of the proceedings from the date on which the charges were filed and look into factors such as the complexity of the case, the conduct of the applicant, the conduct of the judicial and administrative authorities of the State, and what is at stake for the applicant. The court may also have regard to particular circumstances of the case and not necessarily establish an absolute time limit. In some cases the court may make an overall assessment rather than referring directly to the above-mentioned criteria.

Going by the above discourse and all the authorities cited by both counsel including *Regina v Askov* [1990] SCR at 1199, *Regina v Finta* [1994] SSR 701 and *Archbold, Criminal Pleading, Evidence and Practice*, 2008 as well as the fact that the charges herein were instituted in December 2009, when the time started running, it cannot be said in such circumstances that the trial has been delayed to the extent of breaching the accused person's right to a speedy trial. Had the applicants demonstrated that by virtue of the delay in bringing the charge to court they were unable to find evidence or meaningfully defend the case, then that would have been a different matter calling for an examination of the entire exercise starting from the time of commencement of police investigations.

In conclusion, I am unable to agree with the defence submissions on the matter and their application is accordingly rejected. There being no serious constitutional issue to be entertained by the Constitutional Court, I hereby decline to refer the case to the said court. Instead, the case must continue to trial.

I so order.