

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC ...

XP2/2021...

In the matter between

EXPARTER ANTI-CORRUPTION COMMISSION SEYCHELLES Applicant

Represented by its Chief Executive Officer

Ms May De Silva

Of ACCS HB Emporium, Providence Industrial Estate

(rep. by Mr Anthony Juliette)

Neutral Citation: Anti-Corruption Commission (Exp 2/2021) [2021] SCSC 19
November 2021)..

Before: Govinden CJ

Summary: **Application under Section 66(1) of the Criminal Procedure Code as read**
with Section of the Anti Corruption Act for permission to proceed with a
prosecution; permission granted

Heard: 19 November 2021

Delivered: 19 November 2021

RULING

GOVINDEN CJ

[1] This is an ex parte Notice of Motion filed by the Anti-Corruption Commission (ACCS) under Section 66 (1) of the Criminal Procedure Code (CAP 59), herein after referred to as “*the Code*”, read with Section 64 of the Anti-Corruption Commission Act 2016, as amended, herein after also referred to as “*the Act*”. In this motion as supported by an affidavit the Applicant seeks the leave of this court to conduct a prosecution against Mr Mukesh Valabhji and Mrs Laura Valabhji (ne Laura Alcindor), also referred to as “*the suspects*”.

[2] The Notice of Motion is supported by the Affidavit of the Commissioner of the Anti - Corruption Commission, Ms May De Silva.

[3] The Notice of Motion seeks the following orders from this court;

1. For leave to be given to prosecute the criminal matter under Section 64 of the Anti-Corruption Commission Act 2016.
2. For leave to be given for summons and charges to be filed by the Applicant in the named persons in the summons.
3. For leave to be given to file an application under Section 101 of the Code
4. For leave to be given under Section 66(1) of the Code for Mr Anthony Juliette to act on behalf of the Applicant in the private prosecution.

[4] In its supporting affidavit the Applicant makes the averments that the ACCS has investigated money laundering acts against the suspects together a number of other persons and that the former were arrested on the 18th of November 2021 and she goes on to repeat the substance of her motion thereafter.

[5] The affidavit is annexed with a number of documents; these are the affidavit of Mr Juliette; his Legal Practitioner's License; two applications for further holdings of the suspects Mukesh Valabhji and Laura Valabhji.

[6] I have thoroughly considered the averments in the Motion and affidavit; the submissions of counsel and the legal principles applicable to this application. Having done so I have come to the following findings.

[7] I first note that the Anti-Corruption Commission is a prosecuting authority. It is endowed with prosecuting powers. This is so by virtue of Section 64 of the Act, which provides that prosecution for an offence under part III of the Act may be instituted by the Commission. The former provision that subject a prosecution to the consent of the Attorney General was deleted and replaced with the actual provision.

- [8] This power to prosecute has to obviously read to and has to be in accordance to Article 76(4) of the Constitution, which gives prosecuting powers to the Attorney General and makes him the national prosecuting authority. This power to prosecute is found in Article 76 (4) (a) of the Constitution.
- [9] However, reading this Article 76 (4) of the Constitution in its entirety leads me to conclude that though the Attorney General is the principal prosecuting authority he is not the sole prosecuting authority in this country. This is clear upon a reading of article 76 (4) (b) and (c) of the Constitution.
- [10] Article 76(4) (b) can be paraphrase as follows, the Attorney General shall have the power in any case in which he considers it desirable to do so, to take over and continue any criminal proceedings that have been instituted or undertaken by any other person or authority. Whist Article 76 (4) (c) provides that the Attorney General shall have the power to discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by any other person or authority.
- [11] By necessary implications therefore Article 76 (4) (b) and (c) of the Constitution grants constitutional power to a person or authority to prosecute criminal cases by instituting and or undertaking criminal prosecutions. The only power of the Attorney General over these prosecutions are supervisory, that is to take over and continue or to discontinue at any stage any prosecutions otherwise commenced by any persons or authority before judgment is give.
- [12] On the other hand section 4.(1) of the Act provides as follows, “ There is hereby established a Commission to be known as the Anti-Corruption Commission which shall be a body corporate with perpetual succession and a common seal capable of suing and being sued in its own name. (2) The Commission shall be a self-governing, neutral and independent body and shall not be subject to the direction " or control of any person or authority.”.

- [13] Accordingly, the Anti-Corruption Commission is a statutory authority, which read with Section 64 of the Act and Article 76 (4) (b) and (c) has power to prosecute its own cases and under its own name.
- [14] The criminal prosecution not being brought by the Attorney General in the name of the Republic under Article 76(4) (a) for reasons that the Attorney General and I am informed by counsel that the Attorney General himself has refused to prosecute, the Applicant has sought to file its application under Section 66(1) of the Code and seek the permission of this court to allow a person other than a public prosecutor or other officer generally or specially authorised by the President, to conduct the prosecution.
- [15] From what I have said so far it is clear that the Anti-Corruption Commission does not need permission from this court in order to conduct its prosecution and it can therefore proceed any prosecution without the necessity to proceed under the Code. However, it appears that in the abundance of caution it is seeking permission of the court under Section 66 of the Code; this is particularly so given that the an advocate other than a subordinate officer of the Attorney General has to be appointed under Section 66(3) of the Code to prosecute this case. Accordingly, I will limit myself to this prayer on the Notice of Motion, which is the only relevant one.
- [16] Having make the above determinations I am of the view that the Applicant has not satisfied this court that it has power to prosecute on its own right without the need to seek permission under Section 66 (1) of the Code, and so I order. This prosecution, however, has to be done strictly within the limit of Section 64 of the Act and subject to the Constitution. Prosecution entails any matters arising out of or necessarily preceding a prosecution and connected applications. Therefore any separate applications that needs to be made within that prosecution should be made in those proceedings, this would include the application under Section 101(1) of the Code as annexed to this motion.
- [17] I accordingly direct the Registrar of the Supreme Court to cause to be served forthwith the 101 Remand Application attached or referred to on and in this Notice of Motion upon Mr Mukesh Valabhji and Mrs Laura Valabhji. This application shall be mentioned before this court at 11am.

[18] I further appoint Mr Anthony Juliette, Attorney at Law, under Section 66(3) of the Code to be the Advocate of the Applicant as I am satisfied that he fulfils all the prerequisite for him to be so appointed.

Signed, dated and delivered at Ile du Port on 19th November, 2021

R Govinden
Chief Justice