

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 287
CO114/2021

In the matter between:

THE ANTI-CORRUPTION COMMISSION
(rep. by Mr Anthony Juliette)

Prosecution

and

MUKESH VALABHJI
(rep. by Mr France Bonte)

1st Accused

LAURA VALABHJI
(In person)

2nd Accused

ANDRE LESLIE BENOITON
(rep by Mr Basil Hoareau)

3rd Accused

SARAH ZAQUARNI RENE
(rep by Mr Daniel Cesar & Mr Joel Camille)

4th Accused

MAURICE JEAN LEONARD LOUSTEAU LALANE
(rep by Mr Basil Hoareau)

5th Accused

LEKHA NAIR
(rep by Mr Basi Hoareau)

6th Accused

Neutral Citation: Rep v Mukesh Valabhji & Ors[CO114/2021) [2022] SCSC287 [25 March 2022].

Summary Disclosure of Prosecution documents

Before: Govinden CJ,
Heard: 25 March 2022
Delivered 25 March 2022

RULING

GOVINDNE CJ

- [1] This is a Notice of Motion filed by the ACCS requesting this Court to set out a time table for disclosure of Prosecution documents to ensure that the accused are granted adequate time and facilities to prepare their defences to the charge at trial within a reasonable time and in accordance with Article 19(1) and 2(c) of the Constitution.
- [2] According to the Applicant the investigation into the offences committed by the Respondent is ongoing and will take some time to complete.
- [3] It is averred that the 1st batch of disclose document was effected on the 18th of February 2022.
- [4] That it has instructed its Counsel to conduct a review of the evidence and charges in the case.
- [5] That pending that review the following time table for disclosure is proposed:-
- (a) Service of 2nd batch of evidence by the 29th of April 2022.
 - (b) Service of amended charges by the 29th of April 2022.
 - (c) Pleas to be entered on the 20th of May 2022.
 - (d) Direction relating to fixing of a trial dates and disclosure of outstanding materials to begin on the 20th of May.
- [6] The Applicant has filed this Application based on the Article 48 of the Constitution, Article 19(1) of the Constitution, the case of the Constitutional Court of Republic versus Bernard Georges CO1 of 1998, Article 10(3) (1) of ICCPR, case law of the United Nation's Human Rights Committee which shall decided the issue of reasonableness of time in respect of fair hearing.
- [7] The 2nd accused has through her Counsel filed a written submissions in response to this Application and has orally supported this submission in Court today.

[8] The 2nd accused in her submission submitted as follows:-

(1) The defence are ready to enter a plea, noting that disclosure provided on the 2nd of February 2022 and 18th of February 2022 amounts to adequate disclosure for pleas to be taken.

(2) The Court is requested to issue firm orders for the time table of disclosure of any remaining evidence that the Prosecution intends to rely on.

(3) The Court is requested to issue an order for the service of the following items:-

(a) Documents which has been seized and copied by ACCS as referred to in the Schedule produced by Peter Bennett (Exhibit PB/SIFT 120/22

(b) A full inventory of all items (other than documents and weapons) seized from the premises at Morne Blanc, this includes but is not limited to personal items such as watches, jewellery, electronics and other valuables.

[9] The 2nd accused founded her submission on the provisions of Article 19(1) of the Constitution and avers that the ACCS has stated its investigations started since 2018 and that it's a matter of logic and law that a the time of laying of the charges it should be having enough evidence to make its case.

[10] At any rate it is submitted that it is a mute point that the Applicant is still investigating the case if investigation shows new evidence they can always be the subject matter of separate charges.

[11] This said the 2nd defendant asked the Court that the Court orders the ACCS to serve evidence in support of the charges by the 31st of March 2002 and that no other evidence in support of the case may be served without the Court order.

[12] The 2nd accused also filed a fresh submission entitled "written submissions for hearing on the 25th of March 2022."

- [13] In the new submissions the 2nd accused proposed the ACCS served its amended charge by the 8th of April 2022, that the pleas be taken on the 29th of April 2022, the direction hearing be held on the 20th of May 2022 to fix trial dates, and for future notices to be served electronically on the 2nd accused Counsels abroad. That the ACCS further served by the 31st of March all documents seized by Peter Bennett, that the ACCS served by the 31st of March an inventory of all items seized for the 1st and 2nd accused premises at Morne Blanc.
- [14] Learned Counsel for the 1st defendant on the other hand does not make any specific submission and submitted himself to the order of the Court.
- [15] Learned Counsel for the 3rd, 5th and 6th accuseds approved and supported the 2nd accused Application.
- [16] Lastly the 4th Counsel for the 4th accused has no objection to the Application.
- [17] I have thoroughly considered the Application and its attached Affidavit in support and the several submissions for and against the Application. I have also given consideration to the law with regards to disclosure of materials relied upon by the Prosecution and favourable to the defence in the course of a criminal trial.
- [18] The law on pre-trial disclosure of documents relied upon by the Prosecution is that all documents relied upon by the Prosecution or that are useful to the defence is well established. In order to assess the reasonableness of the time between the charge of an accused and the subsequent trial the Court will have to make an assessment of fact as such a right might be impugned by the late disclosure by the Prosecution.
- [19] In so doing the Court bear the following in minds:-
- (a) The complexity of the case.
 - (b) The content of the different document.
 - (c) The conduct of the investigating Authority and the Prosecution.

- (d) The level of prejudice to the defendant, especially if the defendants are in custody.
- [20] Usually the more complex the case a longer time will be afforded when it comes to consideration for a reasonable time as it was held in the case of **Sextus versus Trinidad and Tobago Comm 818/98**.
- [21] Cases involving more than one accused and more complex financial cases that cross jurisdictions and fraud cases needs more time, especially when they require Forensic analysis of documents and cross borders mutual assistance.
- [22] In the case of **Wolf v/s Panama Comm 289/19880** filed before the United Nations Human Rights Committee, under the ICCPR, the Committee did not find unreasonable delay in a fraud case that took four and a half years between the arrest and the judgment because of the nature of the investigation it was an allegation of fraud in a complex case. The same occurred in the case of **Sayadi versus Belgium (Comm No. 1472/2006)** where the same Committee found that 3½ year investigation into an allegation of money laundering was not unreasonable.
- [23] However. this Court is also conscious that where the accused is held on pre-trial detention there is a Constitutional obligation for the trial to proceed more expeditiously. And in the United Human Rights committee report general comments No. 32 (2007) it was held that in such circumstances the trial must be tried as expeditiously as possible.
- [24] This case is a complex fraud case and a complex money laundering case. It is 16 years old and the offences are spread throughout those years, it involves many accused person, it has been allegedly committed in more than one jurisdiction and between jurisdictions, it relates mostly to documentary evidence that must be seized catalogue printed, downloaded and disclosed. The Court is informed that it amounts to several thousands of documents and that the investigation is still ongoing to-date. The complex nature of the case cause for this Court to interpret reasonable time under Article 19(1) more liberally than a straight forward case. This said the Court bears in mind that some of the accused are in pre-trial detention and it will have to deal with the case as expeditiously as possible.

[25] For these reasons I will accede to the Motion of the Prosecution and I make the following orders:-

- (a) The accused has to be served its second batch of disclose materials by the 29th of April 2022.
- (b) That it will seek leave to amend its charge if any by the 29th of April 2022. The Application for leave to amend must be served before that date.
- (c) The pleas of the accused would be entered on the 20th of May 2022 after taking the plea the trial date shall be fixed.
- (d) Further the documents which has been seized and copied by the ACCS as referred to in the Schedule produced by Peter Bennet (Exhibit PB/SIFT/120/122) has to be disclosed with the rest of the documents by the 29th of April 2022.
- (e) The Applicant has to provide to the Court a full inventory of all items seized excluding fire arms from the premises relevant to this case from the premises of the 1st and 2nd defendant including jewelleries, electronics and other valuable materials by the 8th of April 2022 at 9.30.
- (f) I would also order that all notices of Motion and other such documents should be electronically served upon the legal representative of the 2nd accused either Mr James Lewis QC or Miss Mirenda Ching on an electronic address to be provided by them.

Signed, dated and delivered at Ile du Port on 25th March 2022

Govinden CJ