ICAC v Beezadhur

2010 INT 229

In the Intermediate Court

Police v Toolsy Beezadhur

Cause No 453/2010

Judgment

1. The Accused is being prosecuted for five counts of limitation of payment in cash, in breach of sections 5(1) and 8 of the Financial Intelligence and Anti Money Laundering Act (the "Act"), and has pleaded not guilty.

2. The facts of the case are not greatly disputed. In respect of each count, the Prosecution adduced evidence in the form of admissions in the defence statement and photocopies of deposit vouchers and receipts. The Accused has also given evidence to the effect that he made the five transactions in question. The Prosecution has therefore undoubtedly proved that the Accused made a cash deposit of Rs 600,000 in cash on 14/6/2002 (**count I**), and accepted a payment of Euros 90,000 in cash on 12/1/2003 (**count II**), and made a cash deposit of Rs 500,000 on 11/1/2006 (**count III**), and made a cash deposit of Rs 500,000 on 17/1/2006 (**count IV**), and made a further cash deposit of Rs 820,000 on 10/1/2007 (**count V**). There is also no doubt that all of the above transactions were not in respect of funds whose origins were tainted. The Accused has explained in both his defence statement and under oath that the above money was the fruit of his savings; and there is nothing on record to prove the contrary.

3. On the one hand, defence counsel has strongly submitted that the information is defective inasmuch as one of the material elements, namely that the property was the proceeds of a crime, has not been averred. In support of that submission reliance was made on the fact that section 5(1) is to be found in Part II of the Act, which deals with money laundering offences. It was submitted that criminal liability cannot arise where a person makes a simple money transaction in cash over a certain limit and that the law in question must be targeting transactions where the money is of tainted origins. It was also submitted that section 6(3) of the Act places a duty on the Prosecution to aver that the property is the proceeds of a crime. Section 6(3) reads as follows:

"In any proceedings against a person for an offence under this Part, it shall be sufficient to aver in the information that the property is, in whole or in part, directly or indirectly the proceeds of a crime, without specifying any particular crime, and the Court

having regard to all the evidence, may reasonably infer that the proceeds were, in whole or in part, directly or indirectly, the proceeds of a crime."

The argument for the defence is that since the present proceedings are for an offence under Part II of the Act, then the proceeds of a crime must be averred.

4. On the other hand, the present information is in the express words of section 5(1) of the Act and one of the cardinal principles of the Criminal Law is certainty as regards the elements of the offence. The issue therefore is whether or not proceeds of a crime may be inferred as being an element of the offence under section 5(1). Firstly, there is no reason to read words into the section 5(1) which the Legislature has deliberately omitted. Secondly, it would not be proper for this forum to delve into the realm of the Legislature by questioning whether criminal liability should arise from a mere cash transaction as opposed to a cash transaction related to a crime. There are numerous issues involved which are better left to the Legislature to thrash out. Thirdly, a general reading of section 6(3) shows that it is concerned with method of proof and does not in any way impose an additional element of the offence on section 5(1). Accordingly, where proceeds of a crime are an element of an offence such as in section 3(1) of the Act, "it shall be sufficient to aver in the information that the property is, in whole or in part, directly or indirectly, the proceeds of a crime". Where proceeds of a crime are not an element, as in the present case, there is no need to make such averments because it would be irrelevant.

5. It was also submitted by the defence that the Court cannot exercise its discretion to amend the information. Given that the present information is not defective, the issue of amendment does not arise. Furthermore, it was submitted that the Accused has suffered prejudice in conducting his defence on account of the delay in prosecuting this case. As rightly stated by counsel for the Prosecution, this issue was not raised at trial but at the stage of submissions. The Prosecution witnesses therefore have had no opportunity to address the issue of delay. The Accused has testified that he has had difficulty in obtaining documentary evidence in relation to the transactions which took place in the years 2002 and 2003 but the defence version has been fully placed on record nonetheless. The issue of delay therefore has little bearing in the present case. It was also submitted that this is not a strict liability offence; however, the Prosecution has shown from the surrounding circumstances that the Accused intentionally made the cash transactions in question. The fact that the Accused did not know that he could not make a cash payment over a certain limit is not relevant on the issue of guilt.

6. For the reasons given above, the Accused is found guilty of five counts of limitation of payment in cash as charged.

Delivered by Mr D. Mootoo, Magistrate Intermediate Court

Delivered on 25/11/2010