‘To No One will We Sell
To No One Deny or Delay Justice’

Chapter 40, Magna Carta 1215

Office of the
Director
Of Public
Prosecutions

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Legal Update
Newsletter
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Dear Readers,

In this 10th issue, the Director of Public Prosecutions, Satyajit Boolell, SC, gives a resumé of his participation at the 5th Annual Conference and General Meeting of the IAACA in Marrakech on the topical issue of asset recovery.

We also inform our readers that the case of DPP V Bholah has been heard by the Judicial Committee of the Privy Council recently and it raises issues of interest in relation to money laundering cases.

We have our usual update on recent judgments, which we have extended to lower courts.

I wish you all a pleasant reading.

Zaynah Essop
State Counsel

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BUDGET REPORT 2012

In view of the Budget 2012 which was presented on Friday last, provision has been made for the setting up of the Asset Recovery Unit since the Asset Recovery Bill was passed recently in Parliament. The Act will be proclaimed in January 2012 and this shows that strong political will on the part of the Government to combat crimes in general.

Provision has also been made for the setting up of a new scheme for the support of victims and witnesses in criminal cases. The purpose of witness assistance is to achieve efficient prosecution and avoid secondary victimization or re-victimization of the witness in the trial process (in other words, victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim).

The Asset Recovery Unit shall consist of 15 funded positions as from 2012. As regards staffing, there are now 2 additional posts of Senior Assistant DPP and 4 additional posts of Assistant DPP. The number of Senior State Counsel posts has increased from 4 to 10. In 2012, the number of State Counsel positions will be 31 instead of 22.
I was invited by the IAACA at its 5th Annual Conference and General Meeting to chair Workshop One dealing with Articles 51 to 53 of the UN Convention against Corruption. The conference was followed by the 4th Session of the Conference of the States Parties to the United Nations Convention against Corruption. The two events took place in the historical city of Marrakech.

The focus for my address was chapter V of the Convention which deals with asset recovery. Chapter V of the UN-CAC establishes asset recovery as a "fundamental principle" of the Convention. The provisions on asset recovery lay a framework, in both conviction and non-conviction based instances for tracing, freezing, forfeiting and returning funds obtained through corrupt activities. Under Chapter V the requesting state will in most cases receive the recovered funds as long as it can prove ownership. In some cases, the funds may be returned directly to individual victims.

Three countries formed part of the panel of speakers namely Thailand, Yemen, Maldives. Mr Gerry Osborne Executive Director for the Centre of Anti-corruption Studies Department of the Icac Hong Kong was rapporteur.

Recognizing that recovering assets once transferred and concealed is an exceedingly costly, complex and onerous process, several speakers expressed their disappointment that information badly required to enforce the law is not forthcoming when bribes are negotiated and paid abroad. In reply some delegates pointed out that some countries had concerns that basic human rights might be compromised in some countries and procedural protection associated with criminal liability not respected. It was also pointed out that In the wake of the Arab spring the whole scenario has now changed and it should be recalled that freezing orders were initiated against the assets and wealth of the toppled leaders by several western countries.

Several delegates expressed concern in relation to the danger of not subscribing to the presumption of innocence in cases of corruption when provisions are made in the law to reverse the burden of proof on persons suspected of corruption on the basis of their lifestyle. The preferred approach was said to be the one adopted in many common law countries which places an evidential burden on an accused party.

Finally the workshop agreed on the importance of Article 54 of the UNCAC as an important provision for mutual legal assistance in matters of corruption. UNCAC signatories may use the Convention itself as a legal basis for enforcing confiscation orders obtained in a foreign criminal court. Specifically, Article 54(1)(a) of the UNCAC provides that: "Each State Party (shall)... take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another state party". Indeed, Article 54(2)(a) of the UN-CAC also provides for the provisional freezing or seizing of property where there are sufficient grounds for taking such actions in advance of a formal request being received.

The contribution of Mauritius as chair and intervener was acknowledged at the plenary.

Satyajit Boolell, SC
Director of Public Prosecutions
An update on Privy Council cases

After the cases of *Aubeeluck v The State* and *Moodoosoodun v The State* heard before the Judicial Committee of the Privy Council (sitting in Mauritius) in April 2010, the next criminal appeal which has been heard is that of *Ahmud Azam Bholah v The State of Mauritius*, an appeal brought by the DPP. It was heard on 06 October last before the Judicial Committee in London.

The case of *Bholah* was one of the first cases tried in Mauritius on money laundering charges. On 21 September 2004 Mr Bholah (and a co-accused) were found guilty by the Intermediate Court of an offence of money laundering under Sections 17(1)(b) and 19 of the Economic Crime and Anti Money Laundering Act (ECAMLA), for which he was fined one million rupees. Mr Bholah successfully appealed to the Supreme Court where his conviction was quashed on 11 December 2009 on the basis that Section 17(7) of ECAMLA was ‘an impermissible attempt by the legislator to derogate from the clear provision of Section 10(2)(b) of the Constitution’, and that the particular crime from which the property had generated had to be specified and proved.

The issues of law raised by the *Bholah* case are of immense interest, to prosecutors conducting money laundering cases and Defence Counsel alike. If Section 17(7) of ECAMLA was right in its approach (it has its counterpart today in Section 6(3) of the Financial Intelligence and Anti Money Laundering Act 2002), then the prosecution neither needs to aver nor prove the specific crime which would have generated the proceeds being laundered. This possibility was accepted by our Supreme Court in *Abongo v The State* in 2009 (prior to the judgment in *Bholah*), with the result in that case that the criminal origin of property was inferred from all the circumstances of the transaction.

These issues, moreover, are not of interest to Mauritius alone. England has had a line of conflicting decisions of its Court of Appeal on the issue whether the underlying or predicate crime needs to be specified and proved in a money laundering prosecution. In most of the decisions (Rv Anwoir(2008) EWCA Crim 1354, R v Craig (2007) EWCA Crim 2913, R v N and K (2011 EWCA Crim1692), the English Court of Appeal has held that there is no need to specify the underlying crime. This is the position of the Scottish High Court too: Mohammad Ahmad v Her Majesty's Advocate (2009) HCJAC 60, and the position in Australia and New Zealand, Rv Allison 1 NZLR 721.
In other cases, the best known of which is the decision of the English Court of Appeal in R v NW (2008) EWCA Crim 2, a different approach has been taken, requiring the prosecution to at least aver and prove the class or type of crime in question (for example theft or drugs etc). There has been substantial concern expressed in a number of jurisdictions concerning the “draconian” breadth of the money laundering offence that results from not requiring the prosecution to prove the specific crime. Fears are expressed that this may lead to abuse, especially in situations of unexplained wealth, where a person put on trial for such wealth may not know what case he has to meet. In the UK too in the context of civil recovery provisions (known as the lifestyle cases), it has been accepted that it was necessary to show the class or type of offending that had given rise to the criminal property.

The judgment in the case of Bholah is an awaited one, in the context of the complexity of the issues and the dilemma faced by prosecutors in deciding where to draw the line in each stage of a money laundering prosecution, from a decision to give particulars (with or without a request for same) to averring the predicate offence (where it is known). In another sphere, those who participate in international financial transactions also have responsibilities to ensure that companies are not used as vehicles for fraud or money laundering.

At the hearing of the appeal, the DPP was represented by Mr Geoffroy Cox QC of Thomas More Chambers (with Mr Simon Gledhill and myself as juniors) and Mr Bholah was represented by Mr Simon Stafford-Michael and Ms Rosa Zafutto, of Lombard Chambers, London.

Sulakshna Beekarry
Principal State Counsel

This news update (and the perspective it gives) is my own responsibility. It neither binds the Office, nor purports to comment on matters presently under consideration by our Highest Court of Appeal. The aim is to inform our readers that the matter has been heard and raises issues of importance often undecided or unsettled in other jurisdictions.
Below are the latest judgments for the month of October 2011

Malloo v The State [2011 SCJ 342]
Caunhye & Devat JJ.
Leave to appeal to the Privy Council - Interpretation of the constitution - Question of great general public importance

The Applicant sought leave to appeal to the Judicial Committee of the Privy Council on the ground that a question as to the interpretation arose, and also due to its great general public importance, the matter ought to be submitted to the Privy Council.

The Applicant relied on same grounds in respect of both limbs. His argument was whether the failure of the Appellate Court to entertain additional grounds of appeal outside delay has resulted in a breach of fair trial under section 10 of the Constitution. He further added that the level of adjudication of the lower court was ‘of such substandard level’ that this had led to an affront to the administration of justice.

The Supreme Court, after reviewing the case-law, held that the first question did not involve a question of interpretation of the constitution, but one of application. It also held, after reviewing the reasons for which the additional grounds were not entertained outside delay, that there was no question of great general public importance that should be submitted to the Privy Council.

The second argument was rejected inasmuch as there was no adjudication by the Appellate Court on the issue. The only ground of appeal at appellate stage was one against sentence. The application was set aside with costs.

[NB: An application for permission to appeal has been lodged by Mr Malloo before the Privy Council]

State v Riviere [2011 SCJ 349]
Peeroo J.
Drug importation

The accused, a Malagasy National, had pleaded guilty to the charge of importation of 332.6 grams of heroin contained in 42 cylindrical parcels concealed in his body with the averment that having regard to all the circumstances of the case, he is a drug trafficker. He was found guilty as charged.

The Court considered the timely plea of guilty of the accused, his clean record and the remorse shown by him as well as the circumstances mentioned in the case of The State v M Mpopoya [2011 SCJ 239], and the circumstances of the present case and sentenced the accused to pay a fine of Rs 150,000 and to undergo penal servitude for a term of 25 years. Half of the 938 days the accused had spent on remand was deducted from the custodial sentence imposed.

Ramsahye v The State [2011 SCJ 343]
Caunhye & Teelock JJ.
Section 130 Road Traffic Act - Notice of Intended Prosecution

The Appellant was prosecuted before the District Court of Grand Port for the offences of:-

1) Driving without due care and attention;
2) Failing to report accident;
3) Taking away vehicle without testing in case of accident;
4) Failing to produce driving licence; and
5) Refusing to furnish name and address to a Police Officer

He challenged his conviction under the first count and his sentence under all the counts. His ground of appeal against conviction was that since no ‘notice of intended prosecution’ was served on the Appellant in accordance with section 130 of the Road Traffic Act, he could not be convicted.

Applying section 130, the Appellate Court found that there was a presumption of regularity which relieved the prosecution from proving that the Notice was sent. The presumption was a rebuttable one. Nevertheless, the fact that no Notice was sent was no bar to conviction if it was proved that the Accused could not be served with a Notice through his own conduct. Such was the case in the present matter.

The other grounds challenged the appreciation of evidence by the lower court. The Appellate Court did not find fault in the findings of the Learned Magistrate and the appeal was dismissed with costs.

Jeekarahjee V The State [2011 SCJ 361]
Bhaukaurally & Chan Cheong JJ.
Failure to pay alimony

The appellant was prosecuted and convicted before the District Court of Pamplemousses for failure to pay alimony in breach of section 261(1) of the Criminal Code. He pleaded not guilty and was represented by Counsel. He appealed against conviction. Appellant submitted that the prosecution has failed to establish clearly that the appellant did not pay the full amount of alimony during two months.

It was held that the case for the prosecution rested on the testimony of the former wife of the appellant (witness No.2) and the Court found no reason to interfere with the findings of the learned Magistrate who had the undeniable advantage of seeing and hearing the witness. Reference was made to the cases of Andoo v The Queen [1989 MR 241] and The Director of Public Prosecutions v Bhaugeerutty [2006 SCJ 158].
The Director of Public Prosecutions v Radio Plus Ltd [2011 SCJ 355]
Matadeen SPJ. & Caunhye J.

Contempt of court

The DPP applied to commit the Respondent for contempt of court “for having, following the broadcast of excerpts of a press conference in a news bulletin “Le Grand Journal” on the 29 July 2010 at 16.30:

- publicly scandalised the Supreme Court and brought the administration of justice into disrepute; and
- published statements made by one Devendranath Hurnam whereby the latter made adverse comments and allegations on the conduct of the proceedings in a case (vide case of Paradise Rentals Co Ltd and Ors v Barclays Leasing Co Ltd SCR 5 A/148/10) which was still pending before the Supreme Court thereby usurping the functions of the Supreme Court to decide the case according to law”.

In the light of the evidence placed before the Court and “more especially the prefatory and concluding words of the newscaster and the highly contemptuous words used by Mr Dev Hurnam and the fact that the case referred to therein was still pending before the Supreme Court thereby usurping the functions of the Supreme Court to decide the case according to law”.

The Respondent was found to be in grave contempt and sentenced to pay a fine of two hundred thousand rupees.

Saury Pike Ltd v The State And Anor [2011 SCJ 357]
Balancy & Hajee Abdoula JJ.

‘Personne morale’ – Mens Rea

The appellant company (“the accused”), as represented by Mr Napaul, was prosecuted before the Intermediate Court on an information which, averred that the accused did, in the month of February 2006 at the Customs and Excise Department in the District of Port Louis, unlawfully and knowingly import prohibited goods, namely 126 units of water dispensers containing R12, a CFC refrigerant. The accused pleaded not guilty to the charge. The learned Magistrate found the accused guilty as charged, and sentenced it to pay a fine of Rs 510,705 and Rs 500 as costs.

The accused company, as a ‘personne morale’ rather than a ‘personne physique’, could be found to have the requisite mens rea upon proof of such a state of mind on the part of “a director or senior manager in actual control of the company’s operations who could be identified as the controlling mind and will of the company”: Tesco Supermarkets Ltd v Nattrass (1971) 2 ALL ER 127. In the present case, A. Napaul, by whom the accused was represented, was its director and was, clearly, according to the evidence on record, its controlling mind.

State v Chocalingum [2011 SCJ 345]
Balancy J.

Murder

Accused was prosecuted before the Assizes for the murder of his mother. The jury returned a verdict of guilty against him. After taking into consideration the heinous nature of the crime, the court sentenced him to 42 years penal servitude minus two-thirds of the time spent on remand.

Boodhun Premchand v The State of Mauritius [2011 SCJ 353]
Sik Yuen CJ. & Bhaukaurally J.

Vague and Uncertain grounds of appeal

The appellant was prosecuted before the Intermediate Court on two counts of an information charging him respectively with the offences of possession of cannabis for the purpose of distribution and cultivating cannabis.

The appellant initially pleaded not guilty but subsequently changed his plea to one of guilty. The value of the drugs secured was given at some MRU 157000. The trial Court, after taking account of a previous conviction for a drug offence in 2003, sentenced the appellant to undergo 3 years penal servitude in respect of each of the two counts.

The appellant appealed against conviction and sentence, which appeal was set aside.

Ground 2, which stated that “the decision of the learned Magistrate as having taken into account extraneous and irrelevant matters and having failed to take into account the appellant's cooperative attitude” was held to be vague and uncertain – Dubignon v The Queen [1984 MR 165], Bageenauth v The State [2006 SCJ 250] and Nibert v The State [2005 SCJ 78].

Grounds 1 and 3 related to sentence and the Court held that the evidence on record clearly showed that the appellant was more than a mere consumer and that he was fully engaged in drug dealing, namely in cultivating and distributing cannabis and to which charges he had pleaded guilty.
The sentence of 3 years penal servitude meted out to the appellant on the two counts of the information which carries a maximum sentence of MRU 1 million fine and a term of penal servitude not exceeding 20 years was accordingly richly deserved.

Director of Public Prosecutions V Dhooharika D. & Anor [2011 SCJ 356]  
Matadeen SPJ. & Caunhye J.  
Contempt of Court

The DPP made an application to commit the respondents for contempt of court for having publicly scandalised the Supreme Court and brought the administration of justice into disrepute by the editorial note, articles and interview published in the issue of Saturday 14 August 2010 of the weekly newspaper “Samedi Plus”, of which the first respondent is the editor in chief and the second respondent is the owner and publisher.

The respondents had not denied the publication of the various allegations and the widespread public diffusion given thereto.

The first respondent claimed that he wrote the editorial and the articles in good faith, and that “as a journalist he was duty bound in good faith to bring the grievances of Mr Dev Hurnam to the notice of the readers of Samedi Plus without any so called judiciary – media confronta-".

The First Respondent raised the preliminary objections that the proceedings should be stayed:

First, as they constituted a breach of the doctrine of separation of powers as enshrined in our Constitution inasmuch as the applicant, a member of the Executive, was acting on behalf of the Judiciary when such proceedings should have been initiated by a complaint from the member of the Judiciary who had been scandalised.

Secondly, as they constituted an abuse of the process of the court and a breach of the rules of natural justice inasmuch as the applicant was acting both as complainant and as the prosecuting authority.

The Court rejected the preliminary objections by stating that:

- the purpose of the law of contempt is not to protect the feelings of Judges but to protect the administration of justice and to ensure that public confidence in the administration of justice is maintained and that the Judiciary is not brought into disrepute, and
- the applicant derives his powers to institute criminal proceedings under section 72 of the Constitution and he initiates criminal proceedings for contempt whenever he is of the view that it is in the public interest to do so. Accordingly there was no breach of the doctrine of separation of powers. Court referred to the cases of Director of Public Prosecutions v Boodhoo [1992 MR 282], and Hurnam v Sik Yuen [2010 SCJ 373].

On the merits, the Court held that it is a contempt to publish a matter so defamatory of a judge or court as to be likely to interfere with the due administration of justice by seriously lowering the authority of the judge or court, that the offence of scandalising the court is not inconsistent with the protection of freedom of expression which is guaranteed by section 12 of the Constitution, and that the Supreme Court of Mauritius has power as part and parcel of its constitutional role to punish for contempt. Both Respondents were found guilty for contempt of Court. The first respondent was sentenced to imprisonment for a term of three months and the second respondent to pay a fine of three hundred thousand rupees.

[Note: There is an application for conditional leave to appeal to the Privy Council presently before Court. The applicant Dhooharika has been granted bail]

Police v Beeharry M. [2011 INT 253]  
Her Honour Magistrate Kwok Yin Siong Yen  
President of the Intermediate Court (Criminal Division)  
Firearm for intimidating

The Accused, District Court Magistrate, stood charged before the Intermediate Court (Criminal Division), for having used a firearm to intimidate one Mr. Rashid Emamdee by having pointed the said firearm at his forehead and having uttered the following to him “Talere mo eclate to la cervelle”.

The evidence disclosed that on 14th December 2010 at about 15.00 there was an incident following a dispute between the Accused and the said R Emamdee over Accused’s car being parked on a parking space reserved for motorcycle. A hostile crowd of about 200 persons had gathered at the scene of the incident.

Mr R Emamdee testified to the effect that there was an argument between himself and the Accused. According to his version, the Accused angrily alighted from his car, and pointed a pistol at him, whilst he was still on his motorcycle, stating, “Talere mo eclate to la cervelle”. The Accused threw the pistol upon seeing a policeman on the spot. There were many witnesses who saw the Accused threatening him with the pistol.

The full bench of the Intermediate Court, comprising of Her Honour Mrs V. Kwok Yin Siong Yen President (Criminal Division), Her Honour Mrs K. Bissoonauth (Magistrate), His Honour Mr A. Neerooa (Magistrate) in its judgement assessed all aspects, and held that
Mr R Emamdee was not a witness of truth, as he never mentioned that the Accused did not point the pistol at his forehead; by only stating that the Accused had pointed the pistol at him, and not at his forehead, he contradicted himself, as far as the element of ‘intimidation’ was concerned;

had the alleged offence really occurred, he would have reported the matter to a person in authority as soon as possible. Mr R Emamdee neither reported to PC Putty, the first police officer on the scene, nor to PS Roheemun, who subsequently attended the scene. PC Putty’s version is at variance with that of Mr R Emamdee. This in itself was held by the Court to be a contradiction;

regarding the declaration made at the Pope Hennessy Police Station, ‘although this was a serious matter’, Mr R Emamdee did not make any mention of the Accused having intimidated him with a pistol. Further a diary book entry was inserted to the effect that the parties left the station on speaking terms;

no independent eye-witnesses were called to support the version of Mr R Emamdee into the fact that he was threatened by the Accused.

The Court therefore held that Mr R Emamdee “was far from being a straightforward and convincing witness”, and given that the case against the Accused rested on his sole testimony, the Court dismissed the case against the Accused.

Police v Ramatoolah & Others [2011 INT 252]
His Honour Magistrate Neerooa
Variation Order

Accused party H Ramatoolah is presently awaiting trial, scheduled on the 1st March 2012. He is charged with 5 counts, namely (a) Possession of weapon which discharges noxious materials, (b) Larceny, (c) conspiracy, (d) aiding and abetting the author of a crime, and (e) knowingly receiving articles obtained by means of a crime.

He has now applied for the variation of the prohibition order against him, viz for travelling to Saudi Arabia for one month, for the purposes of travelling to Mecca for performing religious pilgrimage, i.e., Hajj.

By virtue of the Bail Act, s14, the prohibition order stays in force until disposal of the case. Under section 16(2) of the said Act, upon an application by an Accused party, such an order may be varied by the Court if “it is satisfied that it is necessary to do so –

• to avoid loss or prejudice to the applicant;
• to avoid damage or loss to the applicant’s property;
• because of the health of the applicant or his next of kin; or
• in such other cases as the Court thinks fit.”

The evidence adduced by the prosecution is to the effect that there was a risk that the Applicant absconds should he be allowed to travel to Saudi Arabia based upon the fact that he was facing serious charges which provide for penal servitude, upon conviction. It also came to light that the Applicant was a material witness in a connected case against one Cehl Fakeemehah. The evidence also disclosed that there would be no way to control the movement of the Applicant and to trace out in Saudi Arabia, as there was no protocol between the immigration authorities of Mauritius and Saudi Arabia.

The Applicant testified to the effect that he was due to accompany his sisters, one married and the other a widow, as according to Islamic beliefs, a woman could not travel for the Haj on her own. He stated that he was the only one who could accompany his sisters, as his brother in law, who did not have the means to accompany his wife, was ineligible. He also stated that he had another brother. He could not account for the accommodation arrangements, as according to him, this was up to the organizers.

The Court, in refusing to vary the order, held that “whilst carrying the balancing exercise against the various rights involved in the light of the facts of this case ... the overriding test of necessity on any one grounds as set out under section 16(2) of the Bail Act has not been satisfied”. The Court held that his “main objective ... was to accompany his sisters ... [and not] to discharge his own religious duty incumbent upon him to perform pilgrimage”. Given that (a) there would be “...Jurking uncertainty of his whereabouts in Saudi Arabia”, and that the Applicant did not call any witness (i) to show that travel arrangements were not within his knowledge, and (ii) to support his version that his brother-in-law could not accompany his sisters, the Court held that “the reasons put forward by the Applicant carries less weight than his responsibility and obligations towards the administration of justice and the institutions of this country to face his trial whatever its outcome”.

The Court, citing Dookhy v Passport & Immigration Officer 1987 SCJ 196, held that whilst the Constitution guarantees the freedom of movement of the individual, there is nothing inconsistent in restricting that movement, unless it was should not to be reasonable justifiable in a democratic society.

The Court also considered section 11 of the Constitution, freedom to manifest his religion. It was held that “whilst [it] is obvious that freedom of religion is absolute right, it goes without saying that freedom to manifest one’s religion is a qualified right as under section 11(5), there may be restrictions imposed in interest of defence, public safety, public order, public morality or public health.” X v UK
The Accused pleaded not guilty to the charge she was facing under s38(1) of the Criminal Code, coupled with section 46(h)(ii) (using telecommunication service to cause annoyance to any person) and 47 of the Information and Communication Technologies Act 2001, for having given instructions to commit a crime, viz, that she had given instructions to one Oulagen Chetty Gobalakishnen to cause annoyance to another person, on the telephone number of that person.

After having heard evidence, the Court dismissed the charge. The Court held that the witnesses called by the prosecution could not “give the number or name of the lady who was targeted”.

The prosecution called as its witness the said Oulagen Chetty Gobalakishnen who stated that on the material date, he was with Keshav Alleck, and Ravi Koonjeebeen, when they met with the Accused, who told them that her husband was having an affair with a lady, and to harass that lady. He testified that he did not note the number of the lady, nor did he recall whether the Accused gave them a number.

Witness Keshav Alleck confirmed the version of O C Gobalakishnen. He further stated that he had been prosecuted for having harassed the Accused’s husband.

The case for the prosecution rested on these two witnesses. As per the charge, the Accused gave the number to O C Gobalakishnen. However, the latter “failed to give any evidence whatsoever as to the particulars or identity of the lady and her phone number”.

The other witness testified that the Accused gave him the number on his mobile phone. Even though the said mobile phone was secured by the police, this was not produced in Court. The Court held that “it is only now in court that the witness is stating that accused gave him a number by putting same on his mobile.”

The accused was charged under section 230(1) of the Criminal Code for having wilfully and unlawfully inflicted wounds and blows upon one J.K.F.F. Accused pleaded not guilty and conducted her own defence. At the opening of the prosecution case, the PF58 was filed and the defence statement was read and produced. Complainant deposed and thereafter case for the prosecution was closed. The accused chose to make a statement from the dock. The prosecution witnesses were found to have deposed in a convincing manner and stood the cross-examination firmly. The PF58 supported the version of the prosecution.

The Learned Magistrate addressed her mind to the fact that the accused did not wish to subject herself to cross examination. Reference was made to Andoo v. R [1989 MR 241]: “Where the evidence for the Prosecution establishes a strong and unshaken prima facie case and the accused chooses not to swear to his statement and expose himself to cross examination, the trial Court is perfectly entitled to conclude that the Prosecution evidence remains unrebutted. It is of course true that the burden of proving the guilt of an accused squarely lies on the Prosecution and that the accused is entitled to remain silent. His right to silence, however, is exercised at his risk and peril when, at the close of the case for the Prosecution, a prima facie case has been clearly established since the burden then shifts on him to satisfy the Court that it should not act on the evidence adduced by the Prosecution. We need only repeat what was said by Sir A. Herchenroder C.J in Ramkalawon v R [1914 MR 124], namely that the observation of Beccaria should never be forgotten – ‘imperfect proofs, from which the accused might clear himself, and does not, become perfect’.

‘It is the spirit and not the form of the law that keeps justice alive’

Earl Warren
Police v. Ahmad Ehsan Mungroo [2011 LPW 70]

Her Honour Magistrate Bhogun-Ramjutton

Breaking Government Seal

The accused was charged with the offence of ‘Breaking Government Seal’ in breach of Section 173 of the Criminal Code under two counts of the information. He pleaded not guilty under both counts and was represented by Counsel. The accused was one of the directors of a company against which a winding up order had been issued and premise was sealed. Prosecution’s witnesses testified having seen the accused inside the sealed premises and the seal was broken.

Reference was made to Encyclopédie Dalloz, Note 27: “la loi punit le gardien charge de veiller à la conservation des scellés dès lors que la négligence de celui-ci a permis le bris, abstrection faite de toute participation au bris lui-même. Encore faut-il démontrer cette négligence, qui ne résultera pas du seul fait que les scellés ont été brises - Garçon, sous art 249 a 253, no 22.

Reference was also be made to Dalloz (C.Pen – Art 249) Note 9: “Il faut distinguer également entre les gardiens des scellés et les personnes non chargées de leur garde.”

The Learned Magistrate addressed her mind to the issue that the information was headed “breaking Government seal”, whereas the relevant section of the law makes mention of “Failing to prevent the breaking of Government seal”. The Magistrate found that “the section makes it an offence if the ‘person in charge of it’ has failed to prevent the breaking of the seal and does not cater for situations where an accused party breaks the seal himself. Although this point has not been canvassed by Counsel for the defence, I shall rule on this issue ‘proprio motu’. It is clear from the French doctrine quoted above that the ‘gardien’ referred to under that section is the person “chargé de veiller à la conservation des scellés” and must be someone other than the accused and at any rate cannot be the accused himself because the accused cannot be the dépositaire of the seal – Vide Garçon Code Penal – Livre III – Article 249 à 253 Note 21 et 22 (supra) and Faustin and Hélie – Pratique Criminelle des Cours et tribunaux (1954) Tome 2 p198 Note 314 (supra).”

It was held that the prosecution did not prove that the accused had the ‘garde’ of the seal and that it was broken by his mere negligence.

Latest United Nations Office on Drugs and Crime (UNODC) News on Human Trafficking

The UNODC has launched its first global database on human trafficking cases. Such crime is now a global phenomenon which affects nearly every part of the world, whether as a source, transit or destination country. It has been noticed over the years that behind the legal aspects of human trafficking, there is a lack of knowledge and understanding at the global level. In cases where prosecutions have been undertaken, very little is known about them internationally. This often leaves open questions as to how practitioners use the respective laws and what, if any, the characteristics of successful prosecutions are. The global database has therefore been launched with a view to answer these questions. The database is available at: http://www.unodc.org/cld.

Also, on 1st November 2011, the UNODC and the Office of the United Nations High Commissioner for Refugees (UNHCR) have signed a memorandum of understanding aimed at furthering joint cooperation in combating human trafficking and migrant smuggling. The agreement covers migration management issues and health-related work in refugee camps and expands joint activities carried out under the United Nations Global Initiative to Fight Human Trafficking.

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