

Privy Council judgment in case of DPP V Bholah

On 20th December 2011 the Law Lords of the Judicial Committee of the Privy Council delivered judgment in the case of Director of Public Prosecutions (Appellant) V A. A. Bholah (Respondent) [2011] UKPC 44. The Respondent was prosecuted before the Intermediate Court of Mauritius for the offence of money laundering under sections 17(1)(b) and 19 of the Economic Crime and Anti-Money Laundering Act 2000 ('ECAMLA'). He was found guilty and he was given a fine of Rs 1 million which he failed to pay.

In December 2009, the Respondent successfully appealed to the Supreme Court of Mauritius where his conviction was quashed on the following grounds: (a) s17(7) of ECAMLA was repugnant to the fair trial provisions of s10(2)(b) since the latter provision required that the prosecution should particularise and prove the precise offence said to have generated the proceeds of crime; and (b) since the Respondent had been deprived of the right to be informed 'as soon as reasonably practicable...and in detail of the nature of the offence,' and therefore he had not had adequate time to prepare his defence, he had been deprived of a fair trial.

The Director of Public Prosecutions appealed to the Judicial Committee of the Privy Council against the decision of the Supreme Court. The Law Lords held the following: (a) Proof of a specific offence was not required to establish guilt under s17(1) ECAMLA. It is sufficient for the purposes of that subsection that it be shown that the property possessed, concealed, disguised, or transferred etc represented the proceeds of any crime – in other words any criminal activity – and that it is not required of the prosecution to establish that it was the result of a particular crime or crimes. Therefore, failure to identify and prove a specific offence as the means by which the unlawful proceeds were produced is not a breach of s10(2)(b) of the Constitution. That section requires that the nature of the offence of which the accused person must be informed is that with which he is charged, in this case the offence of money laundering. Proof of a particular predicate crime is not an essential "element" of the offence of money laundering; and (b) S17(7) ECAMLA did not preclude a request for particulars of the type of criminal activity which was said to have produced the illegal property. There is nothing in s17(7) or its successor which contraindicates a request for particulars of the type of criminal activity that is alleged to have been the source of the criminal property nor is there anything in that provision which would relieve the prosecution of its obligation, in the interests of fairness, of supplying it, if it was able to do so. In the present matter, the particulars supplied in the information that was lodged against the respondent and his co-accused were less than wholly informative about the nature of the criminal activity involved and it may well be that, in their unvarnished form, they did not fulfil the requirements of s125(1) of the District and Intermediate Courts (Criminal Jurisdiction) Act. But any deficiency in that regard was more than cured by the way in which the proceedings were conducted and by the interviews of the respondent before trial. No unfairness therefore in the manner in which the Respondent was required to meet that charge can be detected.

The appeal has therefore been allowed and the decision of the Learned Magistrate restored.

[A full copy of the judgment can be found at the following link:
http://www.jcpc.gov.uk/decided-cases/docs/JCPC_2010_0059_Judgment.pdf]

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