

## **POLICE VS VAYID HASSAM AHMODE MAMODE - Ruling**

**2016 UPW 31**

### **POLICE VS VAYID HASSAM AHMODE MAMODE**

Cause Number: 1746/15

**IN THE DISTRICT COURT OF UPPER PLAINES WILHEMS**

In the matter of:-

**POLICE**

**VS**

**VAYID HASSAM AHMODE MAMODE**

### **Ruling**

The Applicant stands charged with the offence of conspiracy to defraud in breach of section 109(1) of the Criminal Code (Supplementary) Act.

On the 27<sup>th</sup> October 2015, the Applicant was arrested and a provisional charge was lodged against him. The particulars of the charge against the Applicant is that he knowingly, wilfully and unlawfully agreed with Mr Yatemanji Gujadhur and Mr Shivananda Poolay Mootien to do an act which is wrongful to other persons, namely to defraud shareholders and investors of the Bramer Banking Corporation Ltd in the sum of Rs 40,152,360.

On the 27<sup>th</sup> October 2015, three distinct and separate provisional charges were lodged against the three people involved in the alleged conspiracy, namely the Applicant, Mr Gujadhur and Mr Mootien. All three parties have been charged with the same offence, arising from the same set of facts.

In December 2015, both Mr Gujadhur and the Applicant had moved that the provisional charges against them be struck out. The matter was fixed for Argument on the 4<sup>th</sup> February 2016. The case for Mr Gujadhur was debated. However, the Prosecution could not sustain the argument

against the Applicant in the present case because there was no enquiring officer to enlighten the Court concerning the provisional charge against the Applicant.

I have today delivered a ruling in the case of Police vs Yatemanı Gujadhur. I shall apply the decision contained in the ruling of Police vs Yatemanı Gujadhur to the present case basing myself on the following reasons:

- (i) The Court is well aware that each case must be judged on its own facts and merits and the judgment of one case cannot be binding on another one at a District Court level. However, this case is not a main case. It is only a provisional charge. There is no need to dwell and determine the evidence. There is no need to consider the involvement of the Applicant as opposed to Mr Gujadhur. What the Court needs to do is to consider whether there is reasonable suspicion on the part of the police that the Applicant committed an offence **(RE: MANRAJ D D & ORS VS ICAC (2003) SCJ 75)** as per the Information lodged against him;
- (ii) The offence for which the Applicant is charged is identical to the offence for which Mr Gujadhur in the case of Police vs Yatemanı Gujadhur was charged. They have both been charged for conspiring to commit the same unlawful acts as can be transpired in their identical Information. It is the particulars of the alleged unlawful acts which gave rise to suspicion on the part of the police, warranting the provisional charges.
- (iii) In the case of Police vs Yatemanı Gujadhur, I have found that the suspicion on the part of the police was not reasonable from an objective point of view and was not based on facts. I have therefore found that the Information which contains the particulars of the unlawful acts and therefore the grounds of suspicion on the part of the police, cannot stand;
- (iv) If this Court has concluded that the provisional charge in the case of Police vs Yatemanı Gujadhur is not based on reasonable suspicion based on facts, it goes without saying that the provisional charge against the Applicant cannot stand since the Applicant has been charged with the same Information containing the same particulars of unlawful acts giving rise to suspicion on the part of the police;

(v) The Court can only rely on ex-facie the Information to determine whether there is reasonable suspicion on the part of the police to warrant a provisional charge. The enquiring officer has expatiated on the grounds of suspicion in the case of Police vs Yatemanı Gujadhur. The Court has a duty to restrict itself only on an overview of the evidence which will be the same in this case, since the alleged present offence arises from the same sets of facts and circumstances.

In view of the above, I find that the provisional charge cannot stand against the Applicant since I have found that there is no objective reasonable suspicion based on facts on the part of the police for an identical Information based on the same facts and circumstances arising from the same incident in the case of Police vs Yetamani Gujadhur.

It is to be remembered that the legal principles behind provisional charges are not laid down in any statute books in Mauritius. A provisional charge is only a settled practice in Mauritius. I therefore find that the ruling in case Police vs Yetamani Gujadhur bearing Cause Number 1745/15 should apply to this case.

I therefore strike out the present provisional charge. I further order that all orders which have been imposed on the Applicant as a result of the provisional charge to lapse forthwith.

I deem it fit to remind the Prosecuting authority that all investigations against the Applicant may still continue to result in a new provisional charge or a main case against the Applicant, if need be, provided that the charge against the Applicant is based on reasonable suspicion based on facts.

Ruling delivered by: M.GAYAN-JAULIMSING, Senior District Magistrate

Ruling delivered on: 15<sup>th</sup> February 2016