

CN : 273/2015

**POLICE v MANINDRA UTCHANAH**

**In the District Court of Riviere du Rempart**

**Police**

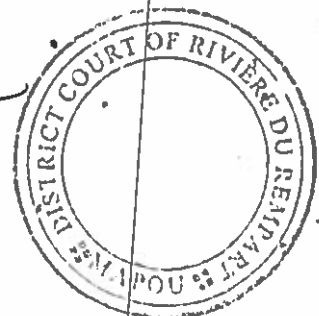
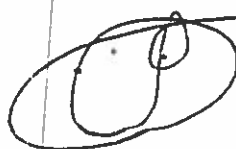
**v**

**Manindra Utchanah**

**Ruling**

Accused stands provisionally charged with the offence of conspiracy to commit an unlawful act by playing an audio recording at a public meeting within the hearing of members of the public and same was harmful to the honour, character and reputation of Honourable P Jugnauth and his family in breach of sections 109 of the Criminal Code (Supplementary) Act and sections 288(1) (3) and section 206 of the Criminal Code Act. Defence counsel has moved that the provisional charge be struck out on the grounds that there was no reasonable suspicion to arrest Accused and that the provisional charge does not disclose an offence known to the law.

The gist of Pc Rugoonundun's testimony is that on the 8/12/2014, a meeting was held at Riviere du Rempart and an audio recording was played through a sound system. The operator of the sound system, one Mr Bowanee stated that Accused was present during the meeting and he was approached by one Mr Penthiach with a view to playing the CD. Accused volunteered to download the contents of the recording to his phone and he adjusted the phone to the sound system and played it and it was stopped eventually due to protests coming from the audience. In cross-examination, he stated that the audio recording contains information which is prejudicial to the family of one minister. He added that in his statement Mr Bowanee refers to one neveu Penthiach and he added that during the first identification exercise the said Bowanee could not identify Accused positively and did so only during the second exercise to which Accused was not agreeable.



I have carefully assessed the whole of the evidence on record.

It goes without saying that the present charge is a provisional charge. *The purpose of which is to bring the detention of an individual under judicial supervision and control so as to prevent an administrative detention and to enable a judicial authority to decide whether the detainee should be released on bail or not and if not, for how long he should be detained. No detainee pleads to provisional information and no trial takes place. Consequently, no question arises as to whether evidence is required to be given in those proceedings.* DPP v/s Indian Ocean International Bank and Shanto [1989] MR 110.

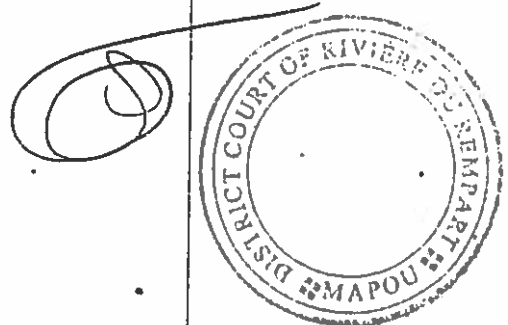
Section 5 of the Constitution stipulates that any person who is **arrested upon reasonable suspicion of his having committed or being about to commit a criminal offence shall be afforded...**

I find it apt to quote a pertinent excerpt from the case of Fox Campbell and Hartley v the United Kingdom, 30 august 1990, p 16, par 32, which was referred to the case of Ah Sue Mario Alain Chung Ching v/s State [2015] SCJ 110 which has expatiated on the meaning of reasonableness as ascribed by the European Court of Human rights;

*"the fact of having a reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence, however what may be regarded as "reasonable" will depend on all the circumstances"*

The following extract from Blackstones Criminal Practice 2013 at page 1190 which provides some guidelines for the determination of what may constitute reasonable suspicion is also useful;

*Information required to form reasonable suspicion is of lower standard than that required to establish a prima facie case. Reasonable suspicion may take into account matters which are not admissible in evidence and which, while admissible do not form part of a prima facie case.*



The following cardinal principles were laid down in the case of **Manraj DD& Ors V ICAC [2003]**

*Reasonable suspicion is no instinct, allows no guess, no sixth sense. It is scientific. It had to find support on facts, not equivocal facts but facts consistent with guilt.*

It was further stressed in the case of **Manraj [supra]** that where the facts point **unequivocally** to the view taken by the police, the suspicion is reasonable. Where they are equivocal, no coercive action may be taken by the police until the facts become unequivocal.

It is clear in the light of the above authorities that reasonable suspicion has to find support on facts which are unequivocal and are consistent with guilt.

In the present case, evidence was adduced that declarant failed to identify Accused during the first identification exercise and only did so during the second exercise when in fact Accused was allegedly not agreeable. It must at this juncture be stressed that there is no need for police to discount all possible defences which may be open to Accused. In that respect, it is apposite to refer to another excerpt from **Blackstones' (supra)** at page 1190;

*D1.5 a constable who has reasonable grounds to suspect that an offence has been committed is not obliged to discount all possible defences before carrying out arrest. (Ward v Chief Constable of Avon and Somerset Constabulary".[1986]*

A relevant excerpt from the case of **Jugnauth P v the Secretary to the Cabinet and The Head of Civil Service affairs & ors [2013] SCJ 132** is ; *the provisional charge is merely a preliminary stage where the prosecution is still carrying out an investigation and had not made a decision yet. It does not lead to a determination of issues of guilt and an accused party does not run the risk of being convicted or sentenced at this stage .*

In the light of the above authorities, I am of the view that the any potential weaknesses in identification evidence are matters which ought to be thrashed out at the trial stage when the declarant will give evidence and when his testimony can be appropriately



assessed and weighed. It is not the duty of this court to go on the merits and identify potential flaws and weaknesses in the identification exercise.

Albeit whether or not the present arrest satisfies the reasonable suspicion requirement, and whether the police at the time of arrest was in the presence of unequivocal facts which constituted reasonable justification for Accused's arrest, I am of the view that the provisional charge as couched cannot stand in as much as it does not disclose an offence known to the law as rightly submitted by defence counsel. It is apposite to refer to the case of **Alain Gordon-Gentil v State of Mauritius [1995] SCJ 118** in which it was made clear that *only an offence known to the law and not any act sanctioned as an offence should give birth to a provisional information.*

Section 288(1) of the Criminal Code provides that *any imputation or allegation of a fact prejudicial to the honour, character or reputation of the person to which such fact is imputed is defamation.*

*(3) Any person who, by any of the means specified in section 206, is guilty of defamation shall be liable to imprisonment for a term not exceeding 5 years and a fine not exceeding 50,000 rupees.*

Section 206(1) (a) provides that any person who -

*(i) By words, exclamations or threats used in a public place*

*(ii) By any writing, newspaper, pamphlet or other printed matter or by any drawing, engraving, picture or image sold or distributed or put up for sale or exhibited in any public place or meeting; or*

*(iii) By any placard or handbill, exhibited for public inspection commits any outrage against any religion or against good morals or against public and religious morality shall on conviction...*

In the light of the above sections, it is clear that the offence of defamation is not simply committed by the mere imputation of a fact but that one of the means specified in section

206 must have been resorted to. Since playing an audio recording which was the means by which the facts were allegedly disseminated is not one of the means which is contemplated by section 206, the mere playing of an audio recording is not sufficient to create the offence of defamation. Since the information does not disclose an offence known to the law, the provisional charge is struck out.

  
[Delivered by N. Senevrayar-Cunden, Senior District Magistrate]

[Delivered on the 24th of July 2015]