

DI DALAM MAHKAMAH TINGGI DI KUALA LUMPUR  
DALAM NEGERI WILAYAH PERSEKUTUAN KUALA LUMPUR

NO. KES: WA-44-86-09/2023

ANTARA  
ROSMAH BINTI MANSOR  
LAWAN  
PENDAKWA RAYA

DI HADAPAN YA TUAN MUNIANDY A/L KANNYAPPAN

MAHKAMAH TERBUKA

NOTA PROSIDING

Khamis, 19 Disember 2024

No. Kandungan : 1

Jenis Prosiding : Keputusan

Pemohon : DATO FIROZ HUSSEIN, AMER HAMZAH ARSHAD, MOHAMED REZA BIN ABDUL RAHIM, RAJIVAN NAMBIAR, JOSHUA TAY, HAREL NIEUYAN, LEE YEE WOEI

Peguam Responden : AHMAD AKRAM GHARIB, MUSTAFFA KUNYALAM, DEEPA NAIR, POH YIH TINN [Jabatan Peguam Negara, Wilayah Persekutuan Kuala Lumpur]

MINIT:

ROSMAH BINTI MANSOR [No. Kad Pengenalan: 511210055558]

19.12.2024

PP v Rosmah Mansor

Application made to strike out preferred charges against accused.

For decision.

Parties present as recorded.

Broad grounds of judgment read out in open court.

Full grounds of judgment would be furnished eventually.

I shall leave out the authorities relied on to avoid prolixity when reading the broad grounds.

Case History

1. Charge against accused was preferred on 19.12.2018.
2. Case registered in court as No. WA-45-9-12/2018.
3. There were altogether 17 charges which were read out to the accused and the accused has pleaded not guilty, thus claiming trial to all charges.
4. Charges preferred are for offences under section 4 (1) (a) of Act 613, both pre and post amendment.
5. This case is to be tried on its own.

6. On 30.5.2019, trial dates were fixed on May 11-14; June 18-21, 29-30; July 1-2, 6-9, 13-16, 2019. It was all vacated on 12.5.2020. (First set of trial dates in the year 2019).

7. It was vacated as the trial could not proceed due to MCO imposed for that period of time. The court was also involved in a priority case involving the same accused in WA-45-9-03-2019 & WA-45-19-07-2019.

8. Following to that a series of dates for case management was fixed. In fact, a series of dates for case management were fixed by the court to observe the progress of case before dates for trial were fixed. Myriad of reasons ensued – counsel was taken ill due to Covid 19; appeal was pending at the COA on the decision of the trial judge who did not recuse himself from continuing to try the accused person and so forth.

9. On 25.2.2021, further trial dates were fixed on 15-17, 29 – 30 November 2021; 1, 2, 13 & 14 December 2021; 10-13, 24-27 January 2022. (Second set of trial dates in the year 2021).

10. Indeed, new trial dates were fixed after that on 12/1, 24-26/1/2022; 27/4, 28/4/2022; 9/5, 17-19/5/2022. It was also vacated as there were applications filed for recusal of the trial judge which had gone on appeal to the COA and so forth. (Third set of trial dates in the year 2022).

11. Case was then fixed for trial on the following dates in 2023: 12.5; 28.6, 30.6; 6.7, 7.7, 27.7, 28.7, 31.7; 1.8, 2.8, 11.8; 24.8, 25.8 and 7 & 8.9.2023. (Forth set of trial dates in the year 2023).

12. The trial dates were again vacated as accused via her counsel has made a representation to the AG dated 3.5.2023 for total withdrawal of all charges against her.

13. Prosecution had informed the court that they were not ready to proceed with the trial and to consider the representation made. They had prayed for a new set of dates for trial.

14. Thus, this court had allowed the postponement and trial dates were fixed on 24.8.2023, followed by 25.8.2023 as well as 7 & 8.9.2023.

15. Trial of the case proceeded on 24.8.2023 and thereafter adjourned as the accused via her counsel wishes to move this court to have the preferred charges against her struck out.

The application to strike out charges

16. The application is made on 6.9.2023 supported by the affidavit in support of the accused.

17. The respondent Public Prosecutor (PP) opposed the application with an affidavit filed by DPP Poh Yin Tinn dated 20.9.2023 denying the averments contained in the AIS of the accused.

18. A further AIR dated 22.9.2023 was filed and served by the applicant accused.

19. The substratum of the application is for this court to strike out the preferred charges against the accused person on the grounds inter alia that the said charges are flawed, it being defective as it does not disclose an offence under the law; illegal for duplicity.

20. Aside that, the applicant is also seeking an order of this court to declare that the MACC which is the law enforcement agency which had investigated into the offence allegedly committed by the accused did not lawfully do so, as it had no powers to investigate an offence involving contravention of the Income Tax Act (ITA) 1967.

21. Additionally, the applicant is also seeking an order to declare section 85 of Act 613 unconstitutional, as the Minister of Finance by himself has no authority to enlist serious offences into the second schedule of Act 613, without having to go through the legislative process at the Parliament.

The preferred charges

22. There are altogether 17 charges against the accused, who is the applicant to the present motion to strike out the charges against her.

23. The preferred charges are for offences of money laundering (ML) pursuant to section 4 (1) (a) of Act 613, both pre and post amendment, its acronym, AMLATFA and AMLATFPUA 2001.

1st to 8th charges

- As for the 1st to 8th charge, the time range is from 4.12.2013 to 8.4.2014.

- The charges state the accused has engaged directly in a transaction that involves proceeds of unlawful activity – without

specifying what is the transaction that involves proceeds of unlawful activity; how is she engaged directly in that transaction; but stating by causing to be deposited proceeds of unlawful activity, in total adding up to RM1.1 million.

- The charges do not disclose the key elements of the offence of ML.
- The transaction involving ML is not disclosed.
- The conduct of the accused is not disclosed in the charges.
- The monies referred to in the charges do not reveal a transaction as envisaged under Act 613, AMLATFA.
- What is the unlawful activity is also not disclosed.
- But the proceeds of unlawful activity have appeared from nowhere.
- Without those elements, what is available on the charge is only an act of deposit of a sum of monies into the bank account, which by itself is not an offence known in law.

#### 9th charge

- The time range is from 4.9.2014 to 22.12.2014.
- The charge states the accused has engaged directly in eight (8) transactions that involves proceeds of unlawful activity – without specifying what is the transaction that involves proceeds of unlawful activity; how is she engaged directly in that transaction; but stating by causing to be deposited proceeds of unlawful activity, in total adding up to RM1,604,450.
- The charges do not disclose the key elements of the offence of ML.
- The transaction involving ML is not disclosed.
- The conduct of the accused is not disclosed in the charges.
- The monies referred to in the charges do not reveal a transaction as envisaged under Act 613, AMLATFPUA.
- Likewise, without those elements, what is available on the charge is only an act of deposit of a sum of monies into the bank account, which by itself is not an offence known in law.

#### 10th charge

- The time range is from 21.1.2015 to 12.12.2015.
- The charge states the accused has engaged directly in one hundred and twenty-seven (127) transactions that involves proceeds of unlawful activity – without specifying what is the transaction that involves proceeds of unlawful activity; how is she engaged directly in that transaction; but stating by causing to be deposited proceeds of unlawful activity, in total adding up to RM3,853,300.
- The charges do not disclose the key elements of the offence of ML.
- The transaction involving ML is not disclosed.
- Save for deposit of monies into the accused own account, the conduct of the accused vis a vis money laundering is not disclosed in the charges.
- The monies referred to in the charges do not reveal a transaction as envisaged under Act 613, AMLATFPUA.

#### 11th charge

- The time range is from 28.1.2016 to 7.11.2016.
- The charge states the accused has engaged directly in eighty-seven (87) transactions that involves proceeds of unlawful activity – without specifying what is the transaction that involves proceeds of unlawful activity; how is she engaged directly in that transaction; but stating by causing to be deposited proceeds of unlawful activity, in total adding up to RM510,000.
- The charges do not disclose the key elements of the offence of ML.
- The transaction involving ML is not disclosed.
- Save for deposit of monies into the accused own account, the conduct of the accused vis a vis money laundering is not disclosed in the charges.
- The monies referred to in the charges do not reveal a transaction as envisaged under Act 613, AMLATFPUA.

#### 12th charge

- The time range is from 29.3.2017 to 8.6.2017.
- The charge states the accused has engaged directly in one five (5) transactions that involves proceeds of unlawful activity –

without specifying what is the transaction that involves proceeds of unlawful activity; how is she engaged directly in that transaction; but stating by causing to be deposited proceeds of unlawful activity, in total adding up to RM30,000.

- The charges do not disclose the key elements of the offence of ML.
- The transaction involving ML is not disclosed.
- Save for deposit of monies into the accused own account, the conduct of the accused vis a vis money laundering is not disclosed in the charges.
- The monies referred to in the charges do not reveal a transaction as envisaged under Act 613, AMLATFPUA.

The 13th to 17th charges

- As for the 13th to 17th charges, there is no disclosure of any unlawful activity. The conduct referred to is stated to be tantamount to an offence under the Income Tax Act (ITA) but not ML.
- The ML offence cited ranges for actus reus of the accused from dates 1.5.2014 until 1.5.2018 when she is supposed to have not disclosed her income to the LHDN. But the offence of ML is alleged to have been committed by the accused on 1.5.2014. Further, the offence alleged against the accused in the 13th charge is an offence under the ITA and not under Act 613 as stipulated in the charge.
- As such the proceeds of the unlawful activity is not stated in the charge.
- The scheme of Act 613, requires a ML offence to be predicated by the commission of a serious offence by the accused person, which forms the unlawful activity and it is the proceeds of unlawful activity dealt with by the accused, which amounts to a ML offence.
- But in charge 13, at point of inception, the offence cited is under the ITA to start with on the date when the ML offence was alleged to have been committed, as such there are no proceeds of unlawful activity for the conduct cited in the charge to be ML. Essentially there is no identifiable unlawful proceeds.

Mode and manner of the charges framed

- 13th charge relates to the 1st, 2nd and 3rd charge – amount stated adds up to RM500,000 – thus same as the amount stipulated in the 13th charge.
- 14th charge which pertains conduct of non-disclosure of income for the dates 28.1.2014 and 22.12.2014 – it also relates to the 4th to 9th charge – dates and the amount stated corresponds.
- 15th charge for the alleged offence on 1.5.2016 pertains to conduct of non-disclosure of income for dates ranging from 21.1.2015 to 12.12.2015 – it also relates to the 10th charge – dates and amount stated corresponds.
- 16th charge for the alleged offence on 1.5.2017 pertains to conduct of non-disclosure of income for dates ranging from 28.1.2016 and 7.11.2016 – it also relates to the 11th charge – dates and amount stated corresponds.
- 17th charge for the alleged offence on 1.5.2018 pertains to conduct of non-disclosure of income for dates ranging from 29.3.2017 and 8.6.2017 – it also relates to the 12th charge – dates and amount stated corresponds.
- For the 13th to 17th charge – the proceeds of the unlawful activity not stipulated. Therefore, there are no identifiable unlawful proceeds. There is also no stipulation on the transaction involved for the dealing to be ML.
- The 13th to 17th charge, overlaps with the 1st to 12th charge as the dates and amount stated corresponds, save for the offence punishable, the 1st to 12th being under section 4 (1) (a) of the AMLATFA 2001 and the 13th to 17th charge under section 4 (1) (a) of the AMLATFPUAA 2001. But the offences alleged to have been committed by the accused is still ML, wherein it has to emanate from a serious or predicate offence, forming unlawful activity and the proceeds of that unlawful activity was to have been laundered by the accused. But there is no stipulation of the unlawful activity, so there are no proceeds of it being laundered. Even if there is undisclosed income to the LHDN, there has to be transaction involved reflecting dealing by the accused with the undisclosed income for it to amount to ML.
- On that score, there are not only multiplicity of charges but also duplicity of charges which is per se illegal under the law pursuant to section 163 of the CPC which stipulates that for each and every distinct offence, there has to be a separate charge.

Offences stated in the preferred charges are premature

- The Public Prosecutor (PP) has framed the charges on the premise that the income undisclosed to the LHDN by the accused is in

fact chargeable income, as it is taken that the amount stated as income which is banked into the account at the Affin Bank are "taxable".

- Failing to furnish income tax return comes within section 77 (1) of the ITA. The offence punishable under section 112 of the ITA is only triggered if all the available avenues under the ITA is exhausted, which includes, income tax assessment has to be raised by the Director General of the Income Tax Department (ITD), followed by appeal process available to the tax payer pursuant to section 99 to 102 of the ITA or Part VI of the ITA. The final determination of the amount of tax payable would have to be determined by the Special Commissioner of Income Tax (SCIT) and after that determination the tax payer has the avenue of judicial review. Section 112 of the ITA is only triggered after the domestic redress avenue under the ITA is exhausted.
- On that plank, there is no predicate or serious offence committed by the accused yet as stipulated in the charge, hence no unlawful activity, what more emanating transactions culminating into a dealing to form a ML offence.
- The preferred charges are not based on a proper appreciation and understanding of the laws involved, including the fundamental rule of law on charges found in section 152 (5), 153 (1), 154 and 163 of the CPC, Act 613 and the ITA.
- Section 152 (5) of the CPC provides that the fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case against the accused. But in the present case is to the contrary, the legal conditions as to "transaction"; "unlawful activity"; "proceeds of unlawful activity"; "dealing with the proceeds of unlawful activity" are not stipulated before the offences alleged to have been committed by the accused is ML.
- Section 153 (1) of the CPC provides that the charge shall contain such particulars as to the "thing" in respect of which the offence of ML was committed as are reasonably sufficient to give the accused notice of the matter with which she is charged. In the preferred charges, bereft of a transaction, unlawful activity, proceeds of unlawful activity as well as dealing with the proceeds of unlawful activity, the offences of ML as per the charges preferred are yet to be committed.
- For the same justifiable reason, section 154 of the CPC is also not fulfilled, whereby, when the nature of the case like the present, where the particulars mentioned in the charges do not give the accused sufficient notice of the matter with which she is charged, the charge is expected to contain such particulars of the manner in which the alleged offences was committed as will be sufficient notice to the accused person, which is lacking in the preferred charges.
- Section 163 of the CPC provides that for every distinct offence of which the accused is accused of, there shall be a separate charge, entailing a separate trial. Notwithstanding the need for a separate trial, charges 13th to 17th altogether are duplicated, as it discloses two offences, which are non-disclosure of income under section 112 of the ITA and ML under section 4 (1) (a) of Act 613.
- The clear offence is non-disclosure of income under section 112 of the ITA whereas the purported ML offence lacks particulars and description as required under Act 613. The legal conditions requiring compliance under Act 613 is not fulfilled, thus the offence of ML is not disclosed, although the charge is for that offence.
- Moreover, the date of the offences is the same as the date of the ML offence, thus the proceeds of unlawful activity ought to be identified but it is not. Therefore, what is left of those charges are only failure to declare income, which only becomes an offence upon compliance of the accused with the avenues under the ITA. The non-disclosure would only tantamount to be an offence if the income is chargeable, if not it is not offence. Thus, the purported offence stated under section 112 of the ITA is prematurely charged.
- What is stated in the charges are merely the monies allegedly deposited into the account of the accused. It per se does not meet the requirement of proceeds of unlawful activity but only the income not disclosed to the LHDN. To reiterate, without any identifiable proceeds of unlawful activity there is no transaction and/or dealing involved as envisaged by Act 613 for it to amount to a ML offence. involving proceeds of an unlawful activity.
- An offence of ML entails placement, layering and integration. For these criminal conducts to have taken place, it has to involve proceeds from the unlawful activity. Bereft of identifiable proceeds of unlawful activity, there cannot be placement, layering or integration for it to culminate into a ML offence. In order for it to tantamount to placement, layering or integration there has also be a transaction to deal with the proceeds of the unlawful activity.
- Surveying the preferred charges against the accused, the only act alleged in the charges is deposit of monies into accounts at the bank and nothing more. It is not linked or identified with any unlawful activity. For the proceeds from it to tantamount to be

proceeds of an unlawful activity, there is also no identifiable transaction or dealing as envisaged under section 3 of Act 613, for it to culminate into a ML offence.

Issue on legality of the MACC being the law enforcement agency involved

- This issue hinges on the procurement, preservation and production of relevant and material evidence in court as proof of the offences alleged to have been committed by the accused person.
- Thus, the issue is central to a trial, if it proceeds and progresses and it touches on the realm of the legality of obtaining evidence in order to support the charge.
- But, the present application does not go into to root of the trial of the case involving the accused but only on the legality and propriety of the charges preferred against the accused which is submitted not to disclose a ML offence, although the accused is specifically charged for that said offence.
- Hence, this court decides that the issue on the legality of the MACC being the law enforcement agency which had investigated the offences concerned in the charge is not appropriate to be decided at this juncture, as the gravamen of the application is to strike out the preferred charges against the accused person.

Issue on the constitutionality of section 85 of Act 613

- Parties including Dato Firoz appearing for the applicant has advanced a much coherent and captivating argument with all tenacity on the existence and constitutionality of the second schedule to Act 613, which for all intents and purposes list out all the serious offences which are predicate offences, on which the ML offence has to be predicated in our jurisdiction.
- But just like the issue on the legality of the investigation by the MACC, the issue on constitutionality of section 85 which allows the Minister of Finance to be totally responsible for the listing and inclusion of serious offences into the second schedule to Act 613, is an issue not appropriate to be dealt with in this application to strike out charges but in another forum, like judicial review for a declaration etc.
- As such, this court is not making any ruling on this issue raised too.

The appropriate order of this court

- The application made by the accused is to have the preferred charges against her to be struck out for want of legality, propriety and probity.
- Thus, if the application is allowed, the ensuing order has to be an order of striking out of the charges. With that there would not be a trial on the preferred charges, as it would not be before this court.
- However, in the present case, the case is partly heard, wherein two witnesses for the prosecution have testified. The trial of the case is to continue.
- But, it has been overtaken by this application to have the charges struck out, which has to be heard by this court which is bestowed by the Courts of Judicature Act 1964 (Act 91) to try the offences alleged to have been committed by the accused, in its original jurisdiction pursuant to a transfer of this case to this court for trial.
- As the charges are to be tried within the jurisdiction of this court, this court is also bestowed with jurisdiction to have the application to strike out the charges heard, as it is a related application filed for and on behalf of the accused who is facing trial of the said charges.
- Since the year 2018, the trial of this case has taken a back seat for the reasons alluded to earlier, and so often the application for postponement of the trial is at the behest of the prosecution.
- Even at the point of partly hearing this application to strike out the charges, the DPP appearing for and on behalf of the prosecution had applied to this court for a postponement of the application as they are seriously considering a representation made by the accused to have the charges against her withdrawn.
- There are instances when the DPP has informed the court that they are not ready to proceed with the trial, and it is best if the representation advanced by the accused is considered to its fullest before this court embark on the mode of trial.
- Therefore, the case surrounds a situation wherein, the preferred charges dates back to the year 2018; and the charges lacks probity, propriety and legality as discussed earlier; and the prosecution has appraised this court that they are serious in considering the representation made by the accused to have the charges against her totally withdrawn. Meanwhile the preferred

charges against her are hanging over her indefinitely.

- In the circumstance, an appropriate order of this court has to be a discharge amounting to an acquittal, which is a DAA and not a discharge not amounting to an acquittal, which is a DNAA.

Conclusion

- In view of the findings arrived at by this court on the legality, probity and propriety of the seventeen (17) charges preferred against the accused, this court in its exercise of its original jurisdiction, in which the trial of this case of the accused is pending, allow the application made by the accused to have the charges struck out.
- Order in terms of the application is granted, and all the seventeen (17) charges against the accused are struck out.
- Consequently, on the premise of the case alluded to, this court also acquits and discharge the accused of all the seventeen (17) charges against her pertaining arrest case no. WA-45-9-12/2018.
- This court decides on the matter in terms of the preferred charges; arguments advanced by both parties; and the prevailing applicable law, including the CPC, ITA and Act 613.
- It has to be reiterated, that once the PP has exercised his prosecutorial discretion to institute charges against the accused, and the matter is before the court, this court has the jurisdiction to deal with it appropriately, and in the present case with the application to have it struck out.
- To recap, the charges framed for ML offence, do not disclose such an offence for the reasons I have alluded to. It is also settled law that a charge should be so drawn that the accused should know exactly and with particularity and specificity the case which she has to meet and not be left guessing as to which of the laws she has offended, in this case, the ITA or Act 613. But the charges say Act 613, yet there has been non-compliance with the legal conditions that fortify an offence of ML.
- This court also takes this great opportunity to thank parties including DC Amir Hamzah, DC Reza, DC Dato Firoz and associates as well as DPP Akram, DPP Poh and associates for their arduous effort to have this application resolved and for their measure of professionalism, indulgence and very able lawyering skills when arguing the matter for this court's consideration.

JAMIN:

N/A

HUKUMAN:

N/A

KEPUTUSAN:

Dilupuskan – Pendengaran Penuh

TARIKH AKAN :  
DATANG

Diendorskan oleh,  
Puan Siti Nur Liyana Binti Mohd Sulaiman