

OSHI v L.C. Raffaut Building Contractor Limited

2024 IND 12

THE INDUSTRIAL COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

CN 112/2023

OSHI

v.

L.C. Raffaut Building Contractor Limited

SENTENCE

1. The Accused company, represented by its director, pleaded guilty to two counts of an information charging it with the offences of: (i) causing a scaffold to be constructed without holding a permit or enlisting the services of a scaffold contractor, in breach of Regulations 4(1) and 60 of the Occupational Safety and Health (Safety of Scaffolds) Regulations 2013 (GN 16 of 2014) coupled with section 44(2) of the Interpretation and General Clauses Act (IGCA) and section 94(3)(b) of the Occupational Safety and Health Act 2005 (OSHA); and (ii) failing to keep a register at the workplace where there is a scaffold, in breach of Regulations 8 and 60 of the said Regulations, coupled with the aforementioned provisions of the IGCA and the OSHA. The Accused has been found guilty under both counts.

2. The unchallenged facts and circumstances of the case as led in evidence at the hearing are that, on 02 June 2022, following a visit to one of the Accused's construction sites in Bagatelle, Mrs P. Seetohul, Ag. Principal Occupational Safety and Health Officer, Ministry of Labour, noticed two scaffolds erected by the Accused without permit, and without enlisting the services of a scaffold contractor. It was also

found that no scaffold register was kept at the construction site as required by law. Photographs of the two scaffolds, of height 7.5 metres and 9.5 metres respectively, were produced (**Documents A1 and A2**).

3. In its out-of-court statement (**Document B**), the Accused, through its director Louis Cherry Raffaut, admitted the charges and apologised. The latter stated that he was unaware of the relevant legal provisions. He undertook to comply with the applicable legislation henceforth. This was reiterated in Court during the hearing.

4. According to section 94(3)(b) of the OSHA, the Accused is liable “*to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year*” under each of the two counts of the information as specified above. This sentencing provision applies to the whole panoply of offences falling under the OSHA, except for those committed by employees for which the law contemplates a much lesser sentence. In **General Construction Company Limited v. Occupation, Safety and Health Inspectorate, Ministry of Labour, Industrial Relations and Employment (2020) SCJ 40**, the Supreme Court stressed that “*the legislator’s intent behind OSHA is to ensure the safety of workers and OSHA therefore sets out the responsibilities of the employer in that regard.*” The creation of technical offences is a means to achieve that purpose.

5. In the case of **Mosaheb v. The State (2010) SCJ 150**, the Supreme Court highlighted the need for sentences to be individualised and held that “*the sentence in each case has to be determined in accordance with the facts and circumstances surrounding the commission of the particular offence and the other relevant personal circumstances of an accused party.*” Moreover, the Court needs to be mindful of the principle of proportionality so that whatever sentence passed is commensurate with the nature and seriousness of the case – *vide Hossen v. The State (2013) SCJ 367*.

6. In the present matter, the Accused has admitted the charges and pleaded guilty at the earliest opportunity. This is in itself a very strong mitigating factor. Moreover, the Accused has a clean record, as indicated by the prosecution. I note that the Accused’s director affirmed that he was unaware of the requirements of the law as regards scaffolds at construction sites. In that respect, I find the following extract from the case of **Director of Public Prosecutions v. Maroam (2014) SCJ 56** pertinent:

*[The Accused's] belief that his action was not criminal, however honest, is no defence in law. Although it cannot be presumed that everyone knows the law, there is a rule of law that ignorance of the law does not excuse. (Vide **Evans v Bartlam [1937] A.C 473**, **Johnson v Youden [1950] 1 K.B.544**, **Saury Pike Ltd v The State [2011 SCJ 357]**)."*

7. After consideration of the nature and circumstances of the offences at hand, the timely guilty plea and the other mitigating factors borne out on record, I sentence the Accused to pay a fine of Rs 2,000. under Count I, and Rs 1,000. under Count II of the information. The Accused is also ordered to pay Rs 200. as costs.

29 April 2024

M. ARMOOGUM

Magistrate