

ICAC JUDGMENTS - JAN 2023 - AUGUST 2023

SN.	JURISDICTION	CASE NAME	DATE DELIVERED	HEARD BY	DELIVERED BY	SUMMARY
1	Supreme Court	DPP v RUJBALLEE F.K.& ANOR 2023 SCJ 25	24-Jan-23	1. Hon. S.B.A. Hamuth-Laulloo 2. Hon. K.D. Gunesh-Balaghee	Hon. S.B.A. Hamuth-Laulloo	<p>Law: Sections 3 (1) (b) and 3 (1) (b), 6 and 8 of the Financial Intelligence And Anti-Money Laundering Act 2002 2002</p> <p>Facts: Respondent (then Accused) was prosecuted for money laundering under 23 counts and the Magistrate of the Financial Crimes Division dismissed the case against the Respondent. The Applicant applied for leave to lodge and prosecute the appeal outside the prescribed statutory delay. ICAC abided by decision of the Court.</p> <p>Held: Leave to appeal outside delay was granted. The Court assessed the circumstances due to which the delay was caused and allowed the leave outside the prescribed delay in light of the fact that: (1) the delay is not attributable in any manner whatsoever to the applicant or his legal officers; (2) the grounds of appeal do not appear to be frivolous and therefore, it would be in the interests of justice to have the case decided on the merits by the Court of Appeal; and finally (3) the very short time which has elapsed between the date on which the delay for appeal lapsed and the date the grounds were ready to be lodged.</p> <p>The Supreme Court therefore held that there were enough reasons for the Court to exercise its discretion to allow the DPP to lodge an appeal against the judgment outside the prescribed delay for appeal.</p>
2	Supreme Court	BOOLELL S. v THE INDEPENDENT	06-Feb-23	1. Hon. S.B.A. Hamuth-Laulloo	Hon. S.B.A. Hamuth-Laulloo	<p>Law: Section 46(3) of the Prevention of Corruption Act 2002(POCA);</p>

		<p style="text-align: center;">COMMISSION AGAINST CORRUPTION & OTHERS 2023 SCJ 53</p>		<p>2. Hon. K.D. Gunesh- Balaghee</p>	<p>Rule 15 and 22 of the Supreme Court Rules 2000.</p> <p>Facts: The Applicant applied for Judicial Review seeking an Order of Certiorari to bring before the Supreme Court all the records and files relating to the decisions of ICAC to proceed with further investigations under Section 46(3) of the POCA, to convene the applicant to ICAC and to require him to make a statement under warning, in order to have the said decisions quashed, reversed and or set aside on the grounds that the said decisions are unlawful, ultra vires, unfair, irrational, unreasonable, procedurally improper and made for improper motives.</p> <p>Following the Respondents' first affidavit, the Applicant moved the Supreme Court for (i) an Order of Disclosure directing the ICAC to provide full and accurate explanations of the facts as averred by the Applicant in his affidavit and (ii) to strike out certain part of the ICAC's affidavit.</p> <p>Held:</p> <p>(i) Motion for disclosure – Not granted After hearing submissions of parties, the Supreme Court held that disclosure of documents in judicial review proceedings is not automatic and is granted only when such order is deemed necessary to resolve the matter fairly and justly. The Applicant has failed to show that there is any necessity of the disclosure order being sought in the present matter to resolve it fairly and justly. The Applicant has failed to show that there is any necessity of the disclosure order being sought in the present matter to resolve it fairly and justly. The Court also found that granting such an order would serve no purpose as the ICAC had through its affidavit, disclosed all the relevant facts and materials that would assist the Court in making a determination of the matter at hand.</p> <p>(ii) Motion to strike out statements from Respondent's affidavit – Not granted</p>
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						<p>The Applicant contended that the affidavits exchanged between parties constitute pleadings and therefore there can be no controversy about the applicability of Rule 15(1) of the Supreme Court Rules relating to the striking out of pleadings. The Court found that although Rule 22 SCR states that the affidavits are to be treated “<i>as if</i>” they were pleadings, it is paramount to point out that there is a clear difference in nature and substance between applications by way of motion paper and affidavit and a plaint with summons. A motion is a prayer supported by affidavit which contains sworn evidence whereas a plaint with summons contains only averments which need to be subsequently proved in court by adducing evidence. The Court did not consider pleadings to be akin to averments in a plaint.</p> <p>Additionally, the Judges stated that even if they were to consider that Rule 15 applies to the striking out of affidavit evidence, extreme caution needs to be exercised whilst doing so. The Court found that the paragraphs in ICAC’s affidavit in fact provide a full background to the case which will help the Court determine the issues at hand. The Court therefore refused to strike out part of the ICAC’s affidavit which substantiate the information.</p>
3	Supreme Court	<p>ENL LIMITED & ANOR v. INDEPENDENT COMMISSION AGAINST CORRUPTION 2023 SCJ 190</p>	17-Feb-23	<p>1. Hon. B. R. Mungly-Gulbul 2. Hon. N. F. Oh San-Bellepeau 3. Hon. K. D. Gunesh-Balaghee</p>	Hon. B. R. Mungly-Gulbul	<p>Law: Article 474 of the Code de Procédure Civile; and The Companies Act 2001</p> <p>Facts: This was a "tierce opposition" application made for the discharge of the ex parte order granted by the Judge In Chambers to ICAC ordering FSC the disclosure of certain document and files concerning ENL, Rogers, NMH and Swan. ICAC raised a Preliminary Objection that the representatives of the respective applicants who have sworn affidavits in support of the application, were not properly authorised to represent the applicants and affirm the affidavits on their behalf. This, in view of the fact</p>

					<p>that in the founding affidavit, the deponents have not testified that they had been duly authorised to represent the respective company pursuant to a board resolution. As such ICAC contends that the said affidavits are not valid and do not have any probative or evidential value and the application must accordingly be set aside. The Applicants made a motion that this argument be heard by a full bench in view of the confusion which has allegedly arisen with regard to the legal principles governing the issue of representation of companies.</p> <p>Held: The Supreme Court ascertained that the management of a company is vested in the Board which has all the powers to manage and conduct the affairs and business of the company. As regards litigation by a company with powers vested in the Board, it is the directors who have authority to act in the name of the company. The Board is empowered to delegate any of its powers to another person. The question that arose was who would be a duly authorised person to represent the company and how would such a person be appointed as a representative of a company in the course of civil proceedings. The Court referred to legislations and cases in UK, New Zealand and India and held that in order for a person to represent a company in legal proceedings, unless he is so authorised under the Articles of the company, that person must be duly authorised by the Board pursuant to a Board Resolution.</p> <p>The Court must be satisfied that aforementioned process has been followed, which would entitle representative to give evidence on behalf of and binding the company. The issue of ratification of an act done without authority was also considered. It was held and directed, with regard to the additional preliminary objection, that: (1) subject to any restriction in the constitution of a company, the Board of a company may lawfully delegate and authorise any person to represent the company and to give evidence on behalf of the company in the</p>
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					<p>course of any civil proceedings; (2) such authorisation must normally emanate from the Board in conformity with its constitution and the relevant legislation; (3) the lack of a formal resolution does not render the proceedings void as it is open to a properly constituted Board of directors to ratify subsequently authority to represent the company and to give evidence on behalf of the company; (4) in the present matter the conditions have been met for a valid ratification of all the acts and doings of the representatives of the companies.</p>
4	The Supreme Court Of Mauritius	SEERUTTUN S C v THE ICAC & ANOR 2023 SCJ 321	14- Aug-2023	Hon. R Teelock Judge & Hon Seetohul- Toolsee	<p>Law: Section 7(1) of the Prevention of Corruption Act 2002</p> <p>Facts: The appellant appealed against his conviction for the offence of using his office for gratification for another person in breach of section 7(1) of the POCA.</p> <p>The Appellant was the General Manager of the Beach Authority and he authorised the transfer of a beach trader's licence of one Mr Joomun to operate as an ice cream seller from one public beach to another.</p> <p>This appeal has raised seven grounds, grounds 1 to 3 concern the definition of gratification, an element of the offence in the present matter, as well as the related evidence. Grounds 4 to 6 relate to the relevant procedure within the Beach Authority and whether the appellant had complied with it as well as the evidence relied upon by the learned magistrate.</p> <p>Held: The appeal is dismissed with costs</p> <p>On Grounds 2 and 3, the Supreme Court found that it was clear from an application of the of the dicta in <i>Joomer v The State</i> [2013 SCJ 413] that for an offence to be committed under section 7(1) of POCA, the fact that Mr Joomun was the person who benefitted from the transfer of the licence, is</p>

						<p>sufficient to bring the acts of the appellant within the offence, hence both grounds were dismissed .</p> <p>As regards Grounds 4, 5 and 6, the Supreme Court found that the evidence adduced at the trial clearly demonstrated that neither the appellant nor the Chairman of the Board had authority to grant a transfer of the licence in question and evidence further showed that the appellant knew or was “reckless” when he signed the licence of the said Mr Joomun.</p> <p>In light of the evidence, Court found no fault with the reasoning of the learned magistrate and grounds 4, 5 and 6 are dismissed. Ground 7 was also dismissed inasmuch as Learned Magistrate was entitled to prefer the testimony of one witness over the other, the moreso that the Court on appeal loathes to intervene in such a finding of fact which does not reveal any perversity.</p> <p>It is noteworthy to emphasis the observations made by the Court that “though the present offence may seem trivial, the legislator has taken the initiative to criminalise the behaviour of public officials”. An extract from the book Bribery and Corruption Law in Hong Kong by Ian Mc Walters 2003 edition was quoted: “Criminalising misconduct by public officers, therefore, manifests the will of society in embedding within the criminal law an ethical standard, applicable only to a particular class of employee.</p>
5	Intermediate Court – Financial Crimes Division	ICAC v S VEERASAWMY 2023 INT 4	12-Jan-23	-	Hon. A. Joypaul	<p>Law: Section 10 (4) of the Prevention of Corruption Act 2002</p> <p>Facts: Accused introduced himself as an officer of the Financial Intelligence Unit (FIU) to one Sunilduth Jowaheer and solicited sum of Rs 100,000 from the latter, by making him believe that he is investigating in a case where the said Sunilduth</p>

						<p>Jowaheer is involved and as such, he (Accused) can use his influence upon his superior officer in order not to proceed with the arrest of the said Sunilduth Jowaheer.</p> <p>Held: Accused was found guilty as charged. From all that the Accused had told the complainant, it was clear that the Accused has acted as someone “<i>qui se prévaut d'une influence réelle ou supposée et qui sollicite ou accepte des offres, promesses, dons, présents ou avantages quelconques en vue de faire obtenir au remettant des avantages ou faveurs de toute sorte, dont les pouvoirs publics sont prétendument les dispensateurs</i>”. In addition, the defence raised by the Accused was implausible.</p>
6	Intermediate Court – Financial Crimes Division	ICAC v B. RAMCHURN 2023 INT 11	18-Jan-23	-	Hon. N. Senevrayar-Cunden	<p>Law: Sections 3 (1) (b) and 3 (1) (b), 6 and 8 of the Financial Intelligence And Anti-Money Laundering Act 20022002</p> <p>Facts: The Accused, a Police Inspector met one Mrs. S for the first time in Court where the former was working as Police Prosecutor and Mrs. S appeared as suspect in provisional charge of money laundering in January 2013. Accused and Mrs S spoke about the case when they met after one month in a supermarket and the Accused endeavoured to help her. Following which, they embarked in an extra-marital affair and whilst they were in a relationship, Accused received several sums of money [which are the subject matter of the charges] from Mrs S and that the latter was convicted of fraud in the sum of 4.5 million rupees whilst she was working at Euro CRM. The proceeds from the fraud at Euro CRM was also used to purchase a car bearing registration number 2135 ZX 08 by the Accused.</p> <p>Held: Accused was found guilty as charged.</p> <p>The Court found that there was cogent evidence of facts which were known to the Accused which would have raised reasonable suspicion that the money</p>

						<p>transferred from Mrs S’s bank account emanates from criminal activity, the more so that there is unshaken evidence that the Accused was working as a Prosecutor in the Court where Mrs. S was appearing as a suspect in respect of a provisional charge of money laundering.</p> <p>Furthermore, the Court found it apt to reproduce the following relevant excerpt of the transcript “<i>noune depense quasiment tout l’argent avec cette affaire parce qu’a l’époque quand la centrale avait pris mon compte , il n’y avait rien</i>”. She further stated that she paid his credit card bills. It follows that Accused was aware of the amount of money which had been transferred into her bank account. The amount of money which had been transferred into her bank account ought to have raised a red flag that the money was not from a legitimate source, bearing in mind that Accused knew that Mrs Soorkea was working as accounts clerk/executive and was earning a modest salary of about Rs 30,000 as per the latter’s testimony.</p> <p>Thus, the Court rejected the Accused unsworn version that he was not aware that the money which had been transferred into his bank account emanated from fraud.</p>
7	Intermediate Court – Financial Crimes Division	ICAC v A GOBURDHUN 2023 INT 41	17-Feb-23	-	Hon. N. Senevrayar-Cunden	<p>Law: Sections 3(1), 6 and 8 of the Financial Intelligence And Anti-Money Laundering Act 2002 2002</p> <p>Facts: Accused was charged under 91 counts with the offence of wilfully, unlawfully and criminally engaging in a transaction concerning property, that is money in his bank account, where he had reasonable grounds for suspecting that the property was derived from crime. An agreed statement of facts was produced in respect of undisputed facts between the Parties.</p> <p>Held: The case was dismissed against the Accused.</p>

						<p>The Court found the following elements to have been proved:</p> <ul style="list-style-type: none"> - Accused made 91 deposits into his bank account, deposits subject matter of the Information. - Deposits falls within the purview of the word ‘transaction’ - That the Accused has indeed engaged in a transaction by depositing the said sums into his bank account. <p>The next element to be established was whether the deposits emanated from proceeds of crime. The Prosecution relied on the following circumstances in support of the above element: a) The fact that he was provisionally charged for drug dealing in 2011; b) The fact that there has been drastic increase in the turnover from 3.6 million in 2007 to 9.1 million in 2011 and subsequently decrease in turnover after; c) The fact that the invoices of other pharmacies were being banked into the account of PCL; d) The fact that the Accused allegedly did not provide sufficient documents to Mr Barosa for the compilation of the account. The Court found that the circumstances relied upon by the Prosecution were not sufficiently cogent to raise powerful suspicion that the deposits emanate from criminal activity or illegal drugs. Since the nexus between the deposits and any criminal activity has not been established beyond reasonable doubt, the case was dismissed against the Accused.</p>
8	Intermediate Court – Financial Crimes Division	ICAC v APPADOO 2023 INT 40	21-Feb-23	-	Hon. P. K. Rangasamy	<p>Law: Sections 3(1), 6 and 8 of the Financial Intelligence And Anti-Money Laundering Act 2002 2002</p> <p>Facts: A pleasure craft worth Rs. 2.4m was purchased by one Joseph Noel Andre and payment was made through office cheques. The Accused accepted having received Rs 2.4m in cash from the said Andre which he then converted into office cheques, with the help of friends and relatives, and</p>

						<p>the cheques were then used to pay for the boat. The boat was ultimately registered under the name of one Mike Brasse, who was arrested and detained in Reunion for a drug case. The link between Mike Brasse and Joseph Noel Andre was established and the Rs2.4M was suspected to be from proceeds of a crime, that is, drug dealing activities.</p> <p>Held: Accused was found guilty as charged.</p> <p>The Court carried out an assessment of the evidence on record to gauge whether the constitutive elements of the offence were present. The Court held that a complete analysis of the evidence on record would have to show that reasonable bystander in the place of the Accused would have suspected that the property constituted proceeds of crime. The Court held that the circumstances in which the Accused was faced and dealt with created the reasonable doubt that he should have known the money of Andre to be from illicit sources. The circumstances relied upon were that: (i) the meeting with the said Andre at a mechanic's place and accepting to turn Rs 2.4 m into cheques; (ii) using friends and relatives to apply for office cheques; (iii) misleading those friends and relatives as to the purpose of the cheques; and (iv) the Accused should have questioned as to why Mr. Andre himself did not apply for the office cheques himself.</p>
9	Intermediate Court – Financial Crimes Division	ICAC v BURTON 2023 INT 98	21-Apr-23	-	Hon. P. K. Rangasamy	<p>Law: Sections 13(2) and (8) of the Prevention of Corruption Act 2002</p> <p>Facts: The Accused was the Chairperson of the Board of the National Computer Board (NCB). An interview exercise was carried out for the recruitment of a qualified person for the post of Manager Incubator. The recruitment process was carried out in 3 stages, and during which Accused sat on all 3 committees/ Board. The successful candidate for the post was in fact found to be the sister-in-law</p>

						<p>of the Accused. It is the version of the Accused that he did declare his interest during the interview exercise as well as the staff committee. However, he did not declare his interest at the level of the Board when the appointment of his sister-in-law was being tabled. The Board of the NCB is the final decision-making authority.</p> <p>Held: Accused was found guilty as charged.</p> <p>The Court found that the minutes of the Board did not disclose any declaration of interest by the Accused. Furthermore, the court but highlighted that Section 13(2) of POCA does not require public official to declare his interest, but rather, to not take part in any proceeding relating to decision-making. Accordingly, since Accused took part in the final decision-making process in respect of his sister-in-law, Accused was therefore, found guilty.</p>
10	Intermediate Court – Financial Crimes Division	ICAC v JAUFURALLY 2023 INT 118	17-May-23	-	Hon. P. K. Rangasamy	<p>Law: Sections 4(1)(a) (2) and 83 of the Prevention of Corruption Act 2002</p> <p>Facts: Accused, who is a police officer, had received money in the sum of Rs 5,000 from one Mr. Shahil Partab. The money the Accused received was withdrawn from an ATM by one Mr. Shirwin Naidoo, a friend of Mr. Partab and then handed over to the latter. At the time that the Accused received the money, the Accused was supposed to be on sentry duty at SSR Medical college on the material day but was not. The Prosecution contends that the Accused obtained gratification from Mr. Partab so as not to take action against Mr. Partab and Mr. Naidoo. The latter witnesses, who are South African nationals and who have left Mauritius, did not testify before Court in the present matter, and the purpose for which the Rs 5,000 was remitted to the Accused has therefore not been adduced before the Court.</p> <p>Held: The case was dismissed against the Accused.</p>

						<p>The Court carried an assessment to see if the constitutive elements of the offence were present. The mere remittance of Rs. 5000, cannot automatically amount to gratification. The Prosecution had to demonstrate that the obtention of the money by the Accused was related to an act, or inaction, which falls within the execution of the officer's functions. The version of the Accused is that he lent Rs. 5000 to Mr. Partab and Mr. Naidoo as a loan and thus, it was the repayment of this said loan. The version of the Accused was unrebutted by the Prosecution since the main witnesses (Mr. Naidoo and Mr. Partab) who were supposed to explain the purpose of the remittance of the money to the Accused, did not come to testify in the present matter. There was insufficient evidence on record showing that the money obtained by the Accused was unlawful. The circumstantial evidence relied upon by the Prosecution did not create the irresistible inference that the Accused did not receive the money as repayment of debt owed to him.</p>
11	Intermediate Court – Financial Crimes Division	ICAC v SEWSURN 2023 INT 125	24-May-23	-	Hon. N. Senevrayar-Cunden	<p>Law: Sections 7(1) and 83 of the Prevention of Corruption Act 2002</p> <p>Facts: Accused was a police officer who allegedly made use of his position as a public official for a gratification for himself inasmuch as he offered to facilitate the release of the son of Mrs. Grande Oreille against payment of a sum of money.</p> <p>Held: The case was dismissed against the Accused. The Court assessed the demeanour of the Prosecution's main witnesses - Mrs. Grande Oreille, her other son, Mr. Louis Grande Oreille and Mr. Agamemnon, a detainee whom Accused allegedly proposed to help in return for sum of money. The Court found that in view of the inconsistencies in the evidence of Mrs Grande Oreille who is self-confessed accomplice who has been granted immunity, the fact that the photographs do not shed light on the version of the declarant, the</p>

						inconsistency in the testimony of the declarant and her son and the dubious answers of witness Agamemnon who was key witness, the Prosecution has not been able to establish a prima facie case.
12	Intermediate Court – Financial Crimes Division	ICAC v SUBRUN 2023 INT 134	30-May-23	-	Hon. P. K. Rangasamy	<p>Law: Sections 10(4) and 83 of the Prevention and Corruption Act 2002</p> <p>Facts: The Accused was charged for <i>Trafic d'influence</i> inasmuch as he took money, a mobile phone and 2 bottles of whisky from one Mr. Lebrasse. The issues as submitted by the Prosecution and the defence are mostly factual. The contention of the defence is that an essential element of the offence is lacking from the Information as the phrase 'real or fictitious' has not been averred.</p> <p>Held: The case was dismissed against the Accused. The Court held that the words "real or fictitious" are not elements of the offence to be proved by Prosecution, and thus no need to aver in the Information. The Court carried out a factual assessment and identified several inconsistencies and contradictions in the statements and testimonies of witnesses. The main issue on which Mr. Lebrasse was unable to give clear account, was the sum of money paid to the Accused. The Court assessed the testimony of Mr. Lebrasse and held that his demeanour did not depict the hallmarks of highly credible witness. It was also held that the version of the Accused has created reasonable doubt in the case for the Prosecution, which has not been dispelled by the evidence on record.</p>
13	Intermediate Court – Financial Crimes Division	ICAC v RAMOLY 2023 INT 150	07-Jun-23	-	Hon. P. K. Rangasamy	<p>Law: Sections 5(1)(b) and (2) of the Prevention of Corruption Act 2002</p> <p>Facts: It was alleged by ex-Prison Officer Mr. Justine that he obtained cars free of charge from the Accused and in exchange he communicated confidential information to Accused's friend one Siddick Islam, a convicted drug dealer, about when</p>

					<p>searches would be made in prison cell, such that latter is not caught with any illegal or prohibited items.</p> <p>Held: The case was dismissed against the Accused.</p> <p>The main witness for the Prosecution, Mr. Justine, did not come up to proof while deposing. Mr. Justine only referred to the person he met and took cars from as one 'Kalil'. The Court also ruled against any dock identification to be carried out given that no identification exercise was carried out during the enquiry. The Prosecution had to rely on the circumstantial evidence present in the case, such as the link between the Accused and convicted drug dealer Siddick Islam and the latter with Mr. Justine, to create the irresistible inference that the said Kalil referred to by Mr. Justine is the Accused himself.</p> <p>While the Court highlighted that an identification exercise ought to be carried out during enquiries, the circumstantial evidence on record was not sufficient to paper over the cracks of the Prosecution's case. The circumstances on which the Prosecution relied upon do not create the irresistible inference that the said Kalil was indeed the Accused.</p>
14	Intermediate Court – Financial Crimes Division	ICAC v MOTAYE 2023 INT 166	27-Jun-23	-	<p>Law: Sections 3 (1) (b), 6 and 8 of Financial Intelligence And Anti-Money Laundering Act 2002 2002</p> <p>Facts: Accused was one of the directors of Change Express Ltd from 2003 to 2005. The contention of the Prosecution is that that the Accused misappropriated funds from Change Express Ltd during the time he was one of the directors of Change Express Ltd. Mr Badoo was appointed as an internal auditor in the latter company and he prepared an internal audit report wherein he concluded that the Accused had misappropriated the funds of the company. Accused was thus prosecuted under 32 counts with the offence of wilfully and unlawfully being in possession of</p>

						<p>several sums of money which, in part, indirectly, represent the proceeds of crime where Accused had reasonable grounds to suspect that the sums of money represented the proceeds of crime.</p> <p>Held: The case was dismissed against the Accused. After having carried out an assessment of the documentary evidence, the Court held that under most counts, the Prosecution had proved the element of Possession against the Accused. However, the Learned Magistrate dismissed all counts given that she could not hold that sums in possession of the Accused represented proceeds of crime beyond reasonable doubt given that:</p> <ul style="list-style-type: none"> (a) Mr. Badoo concluded in his internal audit report, that a thorough investigation had to be carried out in light of the discrepancies in the salary sheets and it was not clear for the Court whether a thorough investigation had actually been carried out; (b) Mr. Bacha, one of the former directors of Change Express corroborated the version of the Accused that the Board was aware of the increases in salary; and (c) The Court did not believe in the version of other Prosecution witnesses in light of their contradictory testimonies.
15	Intermediate Court – Financial Crimes Division	ICAC v HAULKHORY 2023 INT 164	27-Jun-23	-	Hon. N. Senevrayar-Cunden	<p>Law: Sections 3(1) (b),6 and 8 of Financial Intelligence And Anti-Money Laundering Act 2002 2002</p> <p>Facts: Under counts 3, 4, 6 to 20, the Accused was charged for the offence of Money Laundering for having concealed sums of money in the bank account of his brother-in-law. Under the remaining counts 1,2, 5 and 21 to 23, the Accused was charged with possession of proceeds of crime and having engaged in a transaction which involved proceeds of crime. Accused’s brother-in-law was cross examined and he admitted Accused informed him that his business generates big money and that he could not keep such</p>

						<p>money in his bank account and asked him whether he could keep the money which emanates from the business of selling drugs. Accused's version was that the money emanated from his car business. The evidence is to the effect that the police secured 9700 Euros and 500 Subutex tablets of a value of Rs 780,000 at Accused's house.</p> <p>Held: The Accused was found guilty as charged under counts 1, 2, 5, 21, 22 and 23 and thee charges under counts 3, 4, 6 to 20 were dismissed against the Accused.</p> <p>It was incumbent on the Prosecution to establish that the sums of money which were the subject matter of the charges emanate from crime. With regards to counts 3, 4, 6 to 20, the brother-in-law, who was the Prosecution witness, gave evidence of concealing. However, the Learned Magistrate, after having assessed the credibility of the Prosecution witness, did not rely on the version of the latter. Consequently, the Learned Magistrate dismissed the said counts.</p> <p>With regards to counts 1, 2, 5, 21, 22 and 23, the Court therefore proceeded to look at all the circumstances to determine whether an irresistible inference may be drawn that the sums of money which are the subject matter of the charges emanate from crime. The Court concluded that the Accused could not satisfactorily explain his source of funds and hence concluded that the properties in issue were proceeds of crime. Hence, the Court found Accused guilty as charged under counts 1, 2, 5, 21, 22 and 23.</p>
16	Intermediate Court – Financial Crimes Division	ICAC v LUNGUT 2023 INT 165	27-Jun-23	-	Hon. N. Senevrayar-Cunden	<p>Law: Section 3 (1) (b), 6 and 8 of Financial Intelligence And Anti-Money Laundering Act 2002 2002</p> <p>Facts: The Accused was the sole director of Sunrise Academy Ltd (SAL) since 2005. He proposed a 2-day training course at IS Villa to one Mr. A in favour of latter's employees without Mr. A having to disburse any money. Mr. A would only have to give</p>

the Accused the money received from the Human Resource Development Council (HRDC). The alleged course was a bogus one given that it was not held at the venue for which SAL had obtained approval from the Mauritius Quality Assurance i.e IS Villa; employees only carried out activities on the beach and no course was held on the following day.

Following the alleged training, the Accused made Mr. A complete a G3 Application Form in order to get a refund from the (HRDC). For the purposes of the refund, a forged attendance record was submitted to the HRDC. Employers such as Mr. A can apply to the HRDC for a refund of training costs they have incurred on their employees by virtue of a levy grant scheme (the refund will depend on several factors such as the contribution of the Employer to the levy). The HRDC refunded Mr. A the sum of Rs 101,721/- and Mr. A drew a cheque of Rs 91,000/- in favour of SAL and gave for accepting the cheque of Rs 91,000/- which, in part, directly represented the proceeds of a crime from Mr. A, representing a refund from the HRDC for the alleged conduct of training where the Accused had reasonable grounds to suspect that the property was derived from criminal activity.

Held: The case was dismissed against the Accused. The Learned Magistrate analysed the evidence on record and observed that: (a) the bank statement of SAL clearly reveals that it was SAL which received the sum of Rs 91,000; (b) the charge which was put to the Accused was that SAL committed the offence of money laundering when SAL received the sum of Rs 91,000 into its account; and (c) it was the manager of SAL, who made the claim from Mr A.

The Learned Magistrate thus dismissed the Information against the Accused in light of the fact she was of the view that it was SAL, the company wherein the manager of SAL was the sole Director that should have been prosecuted and not the manager in his personal name.

17	Intermediate Court – Financial Crimes Division	ICAC v NANUCK 2023 INT 167	27-Jun-23	-	Hon. N. Senevrayar-Cunden	<p>Law: Sections 3 (1) (a) ,6 and 8 of Financial Intelligence And Anti-Money Laundering Act 2002(FIAML A); section 5 (2) of the Banking Act; and Section 44 (1) (b) of The Interpretation and General Clauses Act 1974</p> <p>Facts: Accused was the director of the company See Ring Investments Limited (SRIL). He was also the sole bank signatory of the account of SRIL. It was contended that Accused was allegedly operating an illegal investment scheme. The victim of such illegal investment scheme indicated that Accused made use of fraudulent pretences to make him believe that he was in the business of selling scrap metal. SRIL had a permit to sell foodstuff, IT, computer equipment but not scrap metal. The victim invested Rs. 1m in the business of the Accused to earn a return, which he never received.</p> <p>Held: Accused was found guilty as charged.</p> <p>The Court held, in light of the documentary evidence and Accused’s unsworn version, that the sums of Rs 497,627.50 and Rs 395,922.50 have been transferred by the Accused from the account of SRIL into the account of a third party and that the sum of Rs 100,000 has been withdrawn by Accused. The Court assessed each of the elements of an offence in breach of section 3(1)(a) of FIAML A and found that:</p> <ul style="list-style-type: none"> - the company acted in breach of section 5 (2) of the Banking Act when it received a deposit from a member of the public without having a licence from the central bank; - another criminal activity may also have been inferred, that of inducing a person to join a fictitious investment scheme; and - based on the circumstances, that Accused had reasonable grounds to suspect that the sums of money which had been transferred to Mr Issa and withdrawn by
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						himself derived from criminal activity.
18	Intermediate Court – Financial Crimes Division	ICAC v YAN SHI 2023 INT 170	28-Jun-23	-	Hon. P. K. Rangasamy	<p>Law: Sections 5(1)(a), (2) & 83 of the Prevention of Corruption Act 2002</p> <p>Facts: Accused, a Chinese national, was arrested by the police for bribery of public official and the case was referred to ICAC. Accused was stopped for Road Traffic Act offences by PC Mootoo and Accused placed Rs. 1000 in the open satchel of the police officer. The gist of the Prosecution’s or the defence’s case, is whether the Rs1000 was given as a gratification or not.</p> <p>Held: Accused was found guilty as charged.</p> <p>The transfer of such property (the Rs. 1000) cannot inexorably amount to gratification, unless the remittance is placed in its proper context. It is therefore inevitable that the intention with which the Accused gave the Rs1000 to PC Mootoo, is a relevant consideration. The Court found it could be construed that the Accused could not verbally communicate with PC Mootoo on the material day and it is unlikely that he understood the exact contraventions he was being booked for. However, the Accused did get the gist that he had committed some kind of road traffic offences. That act of placing the money into the satchel of a police officer, who was in the process of booking for a contravention, is not indicative of payment of a fine. The remittance of Rs1000 from the Accused to PC Mootoo gave rise to a gratification.</p>
19	Intermediate Court – Financial Crimes Division	ICAC v KHODABOCUS C/N: 105/2020	29-Jun-23	-	Hon. N. Senevrayar-Cunden	<p>Law: Section 13 (1) (a)(b)(3) of the Prevention of Corruption Act 2002</p> <p>Facts: Accused was public officer who was posted at the Ministry of Health. She was working as the Assistant Procurement and Supply Officer at Victoria Hospital situated at Candos. Whilst she was working as public officer, Amsif Trading Ltd (ATL)</p>

					<p>whose director is her father regularly supplied materials to the MOH. Whilst she was still working as APO, one KBS Trading (KBS) supplied materials to MOH. A letter was produced from the MCB to the effect that Accused trades under the trade name KBS Trading.</p> <p>Charge – Accused was being prosecuted for 2 Counts whereby she failed to disclose her interest whereby her father held more than 10% of the total issued share capital of Amsif Trading Ltd, with which the MOH was proposing to deal as regards the procurements of materials, and also the fact that the accused held the total equity participation of KBS trading, with which the MOH was proposing to deal as regards the procurements of materials.</p> <p>She was also being prosecuted for 85 Counts whereby she took part in the proceedings, relating to a decision taken by the MOH, by choosing to purchase the required materials from AMSIF and KBS trading which were owned by her father.</p> <p>Held: Accused was found guilty as charged under count 1 and 2 and the charges under counts 3 to 87 were dismissed.</p> <p>It is not disputed that Accused is public official. As regards the issue of interest, it is clear that Accused's father had direct interest in the proposal to deal with ATL since he was ATL's director. Moreover, here is evidence that Accused had direct interest in KBS (admitted by Accused). There was not an iota of evidence that Accused disclosed her interest to the Ministry of Finance, responsible for procurements. It was incumbent upon the Accused to disclose her interest in writing to the public body and there is no evidence that she did so. No weight could be given to the Accused's unsworn statement that she did declare her interest. It was observed that the Accused did have the requisite mens rea since the HR manual</p>
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						<p>was explicit and she was aware that she had to disclose her interest in writing.</p> <p>As regards the remaining counts, Prosecution had to prove Accused did take part in proceedings of public body relating to decision which public body had to take. The very fact that the forms in fact contained several signatures and that several persons could fill in the forms leave reasonable doubt that Accused had say on the choice of the supplier and that she actually chose the supplier by inserting the name of the supplier on certain forms. It was held that there was insufficient evidence to prove beyond reasonable doubt that the Accused did take part in the proceedings in respect of counts 3-87. Charges under these counts were dismissed.</p>
20	Intermediate Court – Financial Crimes Division	<p>ICAC V Rohitanund Rambarassah 2023 INT 233</p>	30– Aug-2023	-	Hon. A.R.Tajoodeen	<p>Law: Section 7 Prevention of Corruption Act 2002</p> <p>Facts: Accused was charged for the offence of Public Official Using His Position for Gratification in breach of section 7 of the Prevention of Corruption Act 2002. He pleaded not guilty.</p> <p>The issue in the present matter is in respect of the processing of travel grant payable to private secondary schools’ staff where the Accused was responsible for the file of Mrs Gita Devi Bachwa (the complainant).</p> <p>Mrs. Gita Devi Bachwa (witness no.3) is a teacher at Friendship Girls College. She was initially the owner of motor vehicle bearing registration number 1573 MY 02 on which she was drawing travel grant from the PSEA. By way of a car loan from the PSEA, she bought a Nissan Qashqai bearing registration number B1259 on 30" June 2016. On 09" August 2016, she sold her car bearing registration number 1573 MY 02 to a colleague, one Shravan Kumar Suntoo. However, the said Shravan Kumar Suntoo did not inform the NTA of that sale because he was waiting to take reception of another car he had ordered. Mrs. Gita Devi Bachwa (witness no.3) had</p>

informed the college administration of this change of car because college staff does not deal directly with the PSEA.

On 21st December 2017, she was informed by one Mrs. Caullee of Friendship Girls College that one Mr. Rambarassah from the PSSA (which is now the PSEA) was looking for her. She phoned to landline number 4547031 and her call was transmitted to the said Mr. Rambarassah who told her that she did not follow the procedure for change of car. She was requested by the said Mr. Rambarassah to come and meet him immediately at the PSSA.

During the meeting the accused showed her several files of persons in similar situation and informed her that she will have to pay Rs. 60,000. Mr. Rambarassah then spoke in a low tone and told her that he will see what he can do with the auditor, who is his friend. Afterwards, Mr. Rambarassah asked her to phone him at 3pm.

Whilst going home, she narrated to her husband the conversation she had with Mr. Rambarassah who told her to "...donne la peine..." Her husband told her that it seemed that Mr. Rambarassah was looking for a bribe. Around 3pm, she phoned at the PSSA and talked to Mr. Rambarassah.

He told her that his auditor friend did not want to do anything and that she will have to pay Rs. 72,000/- instead of Rs. 60,000/-. However, if she gave his auditor friend "...so la peine..." of Rs. 5,000/-, the matter could be resolved. Mr. Rambarassah then asked her to credit that sum in a bank account. He gave her a bank account number which she wrote down on a piece of paper.

Held: The Court found the accused guilty as charged.

WILLFUL AND UNLAWFUL USE OF POSITION

FOR A GRATIFICATION FOR HIMSELF OR ANOTHER PERSON

The conduct of accused, namely:

(i) meeting with Mrs. Gita Devi Bachwa (witness no.3) at the PSEA on 21" December 2017 as an officer of the PSEA who was dealing with her file together with the two telephone conversations he had with her;

(ii) telling Mrs. Gita Devi Bachwa (witness no.3) that the matter could be sorted out if a sum of Rs.5000/- is paid;

(iii) the fact that he wrote down the telephone number of Mrs. Gita Devi Bachwa on the letter (Doc N); and

(iv) the letter (Doc N) being addressed and personally remitted to him by Mrs. Gita Devi Bachwa ,

shows clearly that he was knowingly and unlawfully making use of his position at the PSEA when talking to Mrs. Gita Devi Bachwa and telling her that the matter could be sorted out. He portrayed himself as someone, at the PSEA, who could do something about that situation, i.e., issue of travel grant.

It was submitted by Counsel for accused that the expression "...la peine..." could mean anything and not necessarily money. That argument should fail for two reasons, namely:

Firstly, Mrs. Gita Devi Bachwa stated that she understood that it meant a bribe after talking to her husband whilst going home after having met accused at the PSEA.

Secondly, during the second phone conversation, accused told her, in an unequivocal manner, that "...la peine..." would be Rs. 5000. Therefore, "...la peine...", as per the version of Mrs. Gita Devi Bachwa can only mean the Rs. 5000/- solicited by accused and nothing else.

						As per the testimony of Mrs. Gita Devi Bachwa (witness no.3), accused solicited Rs. 5000/- to sort out matter so that she would not have to pay a sum of Rs. 72,000/-. The matter to be sorted can only be in relation to travel grant since, from the first phone conversation, accused told her that she did not follow the procedure for change of car. Therefore, accused did solicit a sum of Rs. 5000 to regularize a matter concerning travel grant in favour of Mrs. Gita Devi Bachwa as particularized in the information.
21	Intermediate Court – Financial Crimes Division	ICAC v Marie Annais Cinthya Francoise CN 14/23	30-Aug-23	-	Hon J Jaunboccus	Law: Section 3 (1) (a) and (b) of the Financial Intelligence And Anti-Money Laundering Act 2002 Accused pleaded guilty on all seven counts. Sentence to be delivered on 12 Sept 2023.
22	Intermediate Court – Financial Crimes Division	David Ricardo Emmanuel	21-Aug-23	-	Hon. A.R.Tajoodeen	Law : Section 3 (1) (a), 6 and 8 of the Financial Intelligence And Anti-Money Laundering Act 2002 Accused pleaded guilty under all 8 counts. Sentence to be delivered on 05 Sept 2023.
23	Intermediate Court – Financial Crimes Division	Gopalsamy Mooneegadoo	23-Aug-23	-	Hon. A. Joypaul	Law: Section 15 of the Prevention of Corruption Act 2002 There was a change of plea from non-guilty to guilty on 23 Aug 2023. Sentence to be delivered on 07 Sept 2023

