

FCD CN: 30/20
CN: 410/14

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIME DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

1. Lakshmi Yashna Benika SUBDHAN
2. Zafirah Bibi GOULAMGHOSS

RULING

Accused no.1 is being prosecuted for the offence of Money Laundering in breach of sections 3(1)(a), 6(3) & 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA). Accused no.2 is equally being prosecuted for the offence of Money Laundering but in breach of sections 3(1)(b), 6(3) & 8 of FIAMLA. At the motion of the prosecution, all counts of the Information have been discontinued against the accused parties except counts 13 and 14 against accused no.1, and counts 26 and 27 against accused no.2. It is further noted that this case has been started anew.

Both accused parties pleaded not guilty to the Information and were legally represented by their respective counsels throughout the proceedings.

The current argument concerns only accused no.1 and was conducted by Mr G. Glover SC. The prosecution was represented by counsel from the ICAC, Mr Guiness.

Following the discontinuance of proceedings with regards to counts 1 to 12 against accused no.1, the defence moved that the extracts pertaining to those counts be edited out of the defence statements of the said accused. There was no objection from the prosecution and a typed and edited version of the accused's defence statement was produced as Doc AB.



During the course of trial, the prosecution sought to produce a number of deposit vouchers as part of their case. The subject of this argument is the objection raised by the defence against the production of any deposit voucher which is not related to counts 13 and 14, the only existing counts against accused no.1. The bundle of deposit vouchers was produced at the previous trial as Doc E (E1 to E37). The said bundle of documents therefore does not form part of the court record in the current trial.

During cross-examination of prosecution witness no.1, questions were put as follows:

Q: Can you identify in that bundle the documents relating to counts 13 and 14 please, which are the only counts of the Information still standing to the name of the accused no.1?

A: Well I know which document is being referred to, document bearing initial AK and AL.

Q: Which document E relates to counts?

A: 36 and 37

...

Q: I am showing to you E36 and E37, will that be the two documents in relation to counts 13 and 14. Count 13 relates to a transaction of the 5th August 2010 for Rs100,000, is that E36?

A: Yes

Q: And E37 is a transaction of the 9th August 2010 for Rs100,000

A: Yes Your Honour

It is noted that there was no re-examination from the prosecution. It is therefore manifest that the only documents in the bundle, previously marked as Doc E, and which are related to counts 13 and 14 are Docs E36 and E37. That is borne out by the prosecution's evidence.

The contention of the prosecution is that the accused was confronted with the whole bundle of deposit vouchers at enquiry stage and same is recorded in his defence statement. Furthermore, all deposit vouchers are relevant for the prosecution's case to prove the accused's mens rea in committing the offences laid under counts 13 and 14. Reference was made to section 3(1)(a) of FIAMLA and **Antoine v State 2009 SCJ**

328 which held that the court has to analyse the whole evidence on record in order to infer the reasonable suspicion of the accused.

As a general rule, evidence is admissible if it is sufficiently relevant, even if the converse may not be true. The rationale underpinning the principle is the overriding duty of the court to ensure a fair trial. The more probative a piece of evidence is, the more relevant it is, and here the converse is also true. Adducing irrelevant evidence carries the danger of not only being supernumerary, but prejudicial to the accused if its corollary effect is likely to poison the mind of the court.

The issue raised by the defence is one of relevancy, not admissibility due to failure to inform the accused of the evidence against him. The deposit vouchers have been confronted to the latter during the recording of his defence statement at a time when prosecution was being contemplated for a number of alleged transactions. However, confrontation at enquiry stage does not validate the admissibility of a piece of evidence for all purposes in court. It merely makes the suspect aware of the case he has to answer. That point as contended by the prosecution is therefore untenable.

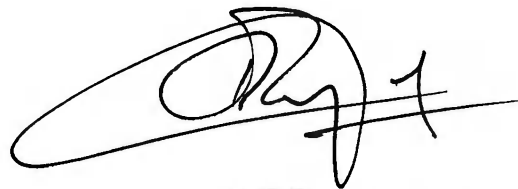
The second limb of the prosecution's submission purportedly to satisfy the relevancy test, is that the bundle of deposit vouchers would be used to prove the mens rea of the accused, or more precisely, that the accused suspected or had reasonable grounds for suspecting that the property is the proceeds of crime. The case of Antoine (supra) relied upon by the prosecution, clearly stated that the court has to analyse the whole evidence on record to reach a decision on the accused's state of mind. The Supreme Court did not hold that the court has to consider all evidence gathered during enquiry. The bundle of deposit vouchers is not on record at this stage of proceedings. It is very much in the realm of possibility that some evidence obtained through the investigative process, is inadmissible in a court of law. Once a piece of evidence has passed the test of admissibility and placed on record at trial, the court as held in Antoine (supra) will have to consider it.

At the motion of the prosecution, twelve counts of the Information against the accused were discontinued, counts 13 and 14 being the remaining ones. Such decision falls squarely within the discretion of the prosecution. It is settled that any one piece of evidence can be used to prove multiple offences and hence related to numerous counts in an Information. However, the witness called by the prosecution has given evidence to the fact that the deposit vouchers previously marked as Docs E36 and E37 are the only ones related to counts 13 and 14 against the accused. The submission from counsel for the prosecution is at variance with the evidence adduced during the argument. The court is unable to bypass the evidence of witness no.1 and rule that



the bundle of documents is nevertheless related to the mens rea of the accused with regards to counts 13 and 14. The prosecution has not shown how such evidence would be used to prove the state of mind of the accused when it comes to those two specific transactions under the two remaining counts against accused no.1.

For these reasons, I find that the bundle of documents previously marked as Doc E is not admissible, except Docs E36 and E37 within the bundle.

A handwritten signature in black ink, appearing to be 'P K Rangasamy', written in a cursive style with a long horizontal stroke extending to the right.

P K Rangasamy
Magistrate of the Intermediate Court
26.01.23