

ICAC v BOJNATHSING PANRAY RAMCHURN

2023 INT 11

CN: 644/2018 [FCD CN: 92/2020]

**IN THE INTERMEDIATE COURT OF MAURITIUS [FINANCIAL CRIMES
DIVISION]**

In the matter of: -

Independent Commission Against Corruption

v/s

Bojnathsing Panray Ramchurn

JUDGMENT

Accused stands charged as per the amended information with the offence of money laundering under counts 1-10 in breach of section 3 (1) (b) ,6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002. [FIAMLA] Accused pleaded not guilty to the charges and was represented by counsel at the trial.

The undisputed facts are that Accused received several sums of money which are the subject matter of the charges from Mrs S Soorkea and that Mrs S Soorkea was convicted of a fraud in the sum of 4.5 million rupees whilst she was working at Euro CRM.

Several documents including certified copies of cash cheques were produced by Mrs Arlene Marjorie Fong. Several bank statements were produced by Mrs Sheela Golab.

The main features of Mrs Soorkea's testimony are as follows:

In 2012, she was working at Euro CRM as accounts clerk/executive and was earning a salary of about Rs 30,000. She was prosecuted by ICAC for having fraudulently transferred from Euro CRM to her bank account from the period 27th of August 2012 until 6th of August 2013. She committed the fraud by altering the account number and certain entries so that the money could be transferred into her bank account. She met Accused in court once when she went to court as a suspect in an ICAC case. She conceded that from the 27th of August 2012 until the 6th August 2013, she fraudulently transferred 4.5 million rupees from CRM into her bank account and she was sentenced to pay a fine. She met Accused once when she went to court and then subsequently in a supermarket. He approached her and they spoke about the case. He took her phone number and told her he will try to help her in relation to the case. Following the meeting, he sent her many messages and she ended up having an extra marital affair with him. Accused was always complaining about the money which had been transferred into her account. She started giving him money. She paid all his debts and his credit card bills. They travelled and spent almost all the money connected to this case. When her bank account was seized, all the money was gone. She is not aware whether Accused knew the details of the case in which she was a suspect but added that all the details were in the files which were with the prosecutor. She could not say whether Accused knew anything about the CRM fraud. She stated that she did not tell him anything about the source of the money she had given him but that he was constantly complaining about money. She added that she was a suspect in a case of money laundering when she met Accused in court for the first time. The Accused was working as prosecutor on that day. She added that she is sure that he endeavoured to know what the case was about. She was then confronted with several copies of cash cheques which she identified. Under cross-examination, she stated that the fraud at EURO CRM in respect of which she was sentenced to pay a fine of Rs 200,000 was the second fraud offence she had committed. She was arrested for the first time in respect of a fraud case in 2012 and she went to the Bail and Remand court. Following that, she went to court every 3 months. She met Accused for the first time in January 2013 and she agreed that when she saw him, she had already started stealing from Euro CRMC since August 2012. She agreed that she met him later by coincidence in the supermarket. She agreed having mentioned in her statement "mo ti demande li couma li capave aide moi and même jour , li ti dire moi li pou aide moi dans sa case la et

nous finne interchange numero portable et ler la même nous finne lier d'une amitié” and that it is the truth. She added that he knew that she was working at CRM at the time and of the position she was occupying. She stated she is not aware of the contents of the provisional files and of the number of documents in the file.

Accused has admitted in his unsworn statement that he was in a relationship with Mrs S Soorkea from February 2013 until August 2013. He received various sums of money from Mrs Soorkea. His main line of defence is that he was not aware that Mrs Soorkea fraudulently transferred the sum of 4.5 million rupees from Euro CRM to her bank account. He denied having benefited from any fraud. He remained mute when he was confronted with the allegations the sums of money which were credited into his account emanate from the funds which had allegedly been fraudulently embezzled by Mrs Sharron Soorkea.

He added that he is the owner of car 2135 ZX 08 which was purchased for Rs 400,000. He has contracted a loan in sum of Rs 300,000 in order to purchase the car and the remaining Rs 100,000 was from his own savings. He added that he effected payment in instalments. He denied that it is Mrs Soorkea who contributed towards the purchase of the car. He agreed that Mrs Soorkea paid the insurance money but added that he has reimbursed the money. As regards the discrepancy in the deed of sale which reveals 200000 as the sale price, he stated that he only signed the deed and that it is the seller who put all the relevant entries.

Analysis and findings

Section 3 (1) (b) of the FIAMLA 2002 provides that any person who receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents the proceeds of a crime where he suspects or has reasonable grounds for suspecting that the property is derived or realised ,in whole or in part, directly or indirectly from any crime, shall commit an offence.

It is incumbent on the prosecution to prove that

1. Accused received the property as averred in counts 1-9 and was in possession of car 2135 ZX 08;

2. the sums of money which Accused has received from Mrs Soorkea represent the proceeds of any crime;
3. Accused suspected or had reasonable grounds for suspecting that the money is derived from any crime

The case for the prosecution rests mainly on the testimony of Mrs Soorkea and the documentary evidence. To the extent that Mrs Soorkea is a self-confessed accomplice, this court needs to address its mind to the dangers of acting on her sole, uncorroborated evidence and gives itself the required warning before assessing the weight to be given to her evidence.

Mrs Soorkea deposed in an open manner in court and I am satisfied that her testimony can be safely relied upon. All the more to the extent that she has already been convicted for the fraud offence, it cannot be said that she had a purpose of her own to serve or an axe to grind.

The first question to be addressed is whether Accused received the sums of money as averred in counts 1-9 and was in possession of vehicle 2135 ZX 08 [count 10]

The testimony of Mrs Soorkea supported by documentary evidence clearly establishes that Accused did receive the sums of money which are the subject matter of the charges from Mrs Soorkea. It is not disputed that Accused was in possession of car 2135 ZX 08.

The next important element which must be established by the prosecution is that the property which is the subject matter of the charges emanates from some criminal activity

In order to establish the status of the property, the prosecution is entitled to rely on the Anwoir principle. In that respect, the following observations of Latham LJ at paragraph 21 in the case of **R v/s Anwoir [2008] 2 Cr App R 36** who referred to 2 ways in which the Crown can prove that the property derives from crime, are worth reproducing:

- a. *“by showing that it derives from conduct of a specific kind and that the conduct of that kind is unlawful”, or*
- b. *“by evidence of the circumstances in which property is handled which are such as to give to an irresistible inference that it can only be derived from crime”*

There is direct evidence in the case at hand that that the sums of money which Accused received from Mrs Soorkea during the period 3rd of April 2013 until the 30th of May 2013 emanates from criminal activity; more specifically the fraud committed by Mrs Soorkea at Euro CRM for which she has been convicted. The testimony of Mrs Soorkea reveals that she has embezzled about 4.5 million rupees over a period of 10 months from 27th of August 2012 until August 2013. and that the proceeds of crime have been credited into her bank accounts 000440988403 and 014326027. There is unrebutted documentary evidence that she was the holder of accounts 000440988403 which was opened on the 1/08/2011 and account 014326027 which was opened in 1996.

In support of counts 1,2,3,6,,7,8 and 9, there is unrebutted evidence that several cash cheques, the copies of which were identified by Mrs Soorkea, were issued by the latter in various sums of money in respect of account number 000440988403 and that the said sums of money which are the subject matter of counts 1,2,3,6,7,8 and 9 were credited into Accused's credit card account number 49100764915208674 as evidenced by the bank statements. In support of counts 4 and 5, there is unrebutted evidence, as per the copies of cheques which were produced in court and identified by Mrs Soorkea, that the latter issued 2 cheques, 1 of which was credited into Accused's savings account and one was encashed by the Accused. In support of count 10, there is unrebutted evidence that Mrs Soorkea issued a cheque in the sum of Rs 150,000 on the 27th of May 2013 which was encashed by the drawer on the same date and that the deed of sale, in respect of car 2135 ZX 08 was signed on the 30th of May 2013. I have borne in mind Accused's unsworn version that he used the loan in the sum of Rs 297,000 from Mutual Aid Association and his savings to purchase the car. It is significant that that the deposit of the loan money into his bank account was effected in September 2012 whilst the car was purchased in May 2013 as per DOC P. Mrs Soorkea has confirmed that the Rs 150,000 was a contribution towards the payment of car 2135 ZX 08. For the above reasons, I reject as untrue Accused's version that the car was purchased solely with the loan money and his savings. It is evident from the above facts that Mrs Soorkea did contribute towards the purchase of the car.

I have duly considered the submissions of Mr L Balancy that the sums of money which the Accused received from Mrs Soorkea could have emanated from the latter's salary.

There is however no evidence that her salary was being credited into the bank account 0004400988403 which contained the proceeds of crime and was being used to transfer funds to Accused's bank account. For the above reasons, I am satisfied that the prosecution has proved beyond reasonable doubt the nexus between the money which was obtained by Mrs Soorkea from criminal activity and the sums of money which Accused received from Mrs Soorkea.

The final crucial element to be proved by the prosecution is whether there is sufficient evidence of mens rea, that is, suspicion or reasonable suspicion on the part of the Accused that the money derives from criminal activity.

As highlighted in the case of **Antoine v/s State [2009] SCJ 328**, "*Since suspicion is based on facts, it is the duty of this court to analyse the whole of the evidence on record in order to determine whether or not it can be inferred from the facts that Accused reasonably suspected that the proceeds were proceeds of a crime*". The above excerpt was quoted with approval in the case of **Audit Y v/s The State & Anor [2016] SCJ 282**. The central question therefore revolves around the existence of facts which were known to the Accused from which he could have reasonable grounds to suspect that the money which was being credited into his bank account from Mrs Soorkea emanates from criminal activity.

I have borne in mind the unsworn version of Accused that he was not aware that the money which was being credited into his bank account by Mrs Soorkea has a tainted origin and the evidence of Mrs Soorkea to the effect that she did not inform the Accused of the tainted origin of the money. There is however cogent evidence of facts which were known to the Accused which would have raised reasonable suspicion that the money transferred from Mrs Soorkea's bank account emanates from criminal activity.

Firstly, it must be pointed out that Mrs Soorkea has admitted under cross-examination that she committed 2 fraud offences, the first one being an offence of money laundering. There is unshaken evidence that Accused was working as prosecutor in the court where Mrs Soorkea appeared as a suspect in respect of a provisional charge of money laundering in January 2013 [first charge]. Accused and Mrs Soorkea spoke about the case when they met after one month in a supermarket and the Accused endeavoured to help her, following

which they embarked on a relationship. It may reasonably be inferred from the above facts that Accused was deemed to know that Mrs Soorkea had faced a provisional charge of money laundering prior to having received several sums of money from her.

Furthermore, it can be gathered from the testimony of Mrs Soorkea that the Accused constantly complained about his own money problems and the money which had been transferred into her bank account and that they both eventually spent almost all the money. I find it apt to reproduce the following relevant excerpt from page 14 of the transcript « *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* ». 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. [page 38 of the transcript].

I cannot subscribe with the submissions of Mr Balancy that there was a relationship of trust between Accused and Mrs Soorkea and hence, he could not suspect that the money emanated from fraud. Suffice it to say that the Accused was not a layman at the time he met Mrs Soorkea. He was working as a prosecutor and was aware that she had been arrested on a provisional charge of money laundering. It is not plausible that he would place his trust in a suspect who had been provisionally charged of money laundering.

For the above reasons, I reject Accused's unsworn version that he was not aware that the money which had been transferred into his bank account emanated from fraud and conclude that the irresistible inference from the above circumstances is that Accused did reasonably suspect that the various sums, as averred in counts 1-9 and the sum of Rs 150,000 which he received from Mrs Soorkea and was used to purchase car 2135 ZX 08 were obtained from criminal activity.

For the above reasons, I conclude that the prosecution has proved its case beyond reasonable doubt. I find Accused guilty as charged.

N Senevrayar-Cunden (Mrs)

[Delivered by N Senevrayar-Cunden, Magistrate of Intermediate Court, this 18th of January
2023]