

Cause Number:16/20

IN THE INTERMEDIATE COURT OF MAURITIUS

In the matter of :-

ICAC

VS

FEROZ KHAN RUJBALLEE

Judgment

1. Accused stands charged with the offence of :

- I. Money Laundering in breach of section 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 under Count 1 and Count 3 to Count 23;
- II. Money Laundering in breach of sections 3(1)(a), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 under Count 2.

The accused pleaded not guilty to all twenty-three charges and he was assisted by counsel.

2. This case was lodged before Intermediate Court (Criminal Division) bearing CN:904/15 and pursuant to Section 80A of the Court (Amendment) Act 2020, the case was transferred to Intermediate Court (Financial Crimes Division).

3. Witness no.4, Mr Sreekissoon, had been delegated by the MCB to produce the following documents:

- (1) An Account Opening Form together with Bank Statements for Saving Account of Bibi Soolma bearing account number 192597256 for period 01/06/02 to 29/12/10 marked as Doc AA;
- (2) Application Form for Credit Card in the name of Feroz Khan Rujballee together with Bank Statements of the credit card for period 07/10/08 to 15/01/09 collectively marked as Doc AB;



- (3) Bank statements for Saving account bearing number 193851199 in the name of Bibi Raicha Rujballee for the period 16/10/10 to 29/12/10 collectively marked as AC;
- (4) Deposit envelopes and document containing the table showing ATM Deposit for cash deposited on MCB Account bearing number 192597256 jointly held in the name of Bibi Solmah Eckbarally and Feroz Khan Rujballee collectively marked as Doc AD;
- (5) Seven Deposit envelopes for cash deposited on MCB Account bearing number 193851199 held in the name of Raeesha Rujballee collectively marked as Doc AE;
- (6) A certified copy of a cheque drawn in the name of BAI Co Ltd showing the amount of Rs2,100,300 marked as Doc AF;
- (7) Three hundred and two cheques cheque which have been deposited in MCB Saving account bearing number 19259725 marked as Doc AJ-Doc AJ1-Doc AJ302.

Under cross-examination witness no.4 stated that the Table (Doc AD Refers) which has been produced related to the ATM envelope which have been produced. He stated that the 302 cheques (Doc AJ-Doc AJ302 Refer) are the documents which have been requested by ICAC for investigations.

Under re-examination witness no.4 confirmed that after consulting the documents from the bank he put the said Table (Doc AD Refers).

4. Witness no.5, Mr Charoux, testified to the fact that in 2011 he was AML Compliance Officer at SBM Limited. He stated that following a Judge's Order he has been delegated by the bank to identify and produce the following documents:

- (1) Statement of Account bearing account number 03610100112482 for the period 10/01/11 to 10/01/11 marked as Doc AH;
- (2) Certified copy of four Cheques drawn in the name of the accused marked as Doc AG-Doc AG1-Doc AG2-Doc AG3

After refreshing the memory of witness no.5 he confirmed that accused has declared his occupation as a police officer, he was posted at Poudre D'or police station and he was earning a monthly salary of Rs7000.

5. Witness no.1, Investigator Daibee, read and produced the following documents:

- (1) Statement of the accused dated 05/03/13 which was marked as Doc AK;
- (2) Affidavit sworn by the Accused and the Annexures marked as Doc AL;
- (3) Letter dated 28/01/13 showing the post occupied by the accused and particulars of his salary marked as Doc AM;

He stated that he investigated into money laundering offence in relation to the assets of the accused which he has acquired by illegal means. He stated that during his investigation and his analysis of the banking documents he noticed that the accused had used his credit card to pay to Mega Uploads and Tectonics. He confirmed that these two websites are mainly used for downloading movies at cheaper rates. He stated that the analysis of the bank documents revealed that cheques were being credited to the accused bank account and in June 2010 the account was showing a total amount of Rs2,130,000. On 21st June 2010 the accused applied for an office cheque with the MCB in favour of the BAI Co Mauritius Ltd in relation of an insurance policy. He stated that 218 Cheques amounting to some Rs830,000 were received but the amount of money which was credited to the account was approximately Rs1,030,000. He stated that according to his observation nearly all the cheques have been made by the owners of the video club operating in the northern region. He stated that he recorded statement from the video club owners and all of them confirmed having issued those cheques in favour of the accused.

In cross-examination witness no.1, testified to the fact that Mr Callycharun (Witness no.2) made a complaint to ICAC for infringement of copyrights. He stated that witness no.2 is not the copyright holder of all the films distributed in Mauritius and he did not specify for which films he was the copyright holder. He stated that he did not enquire into the infringement of the video. He stated that his enquiry revealed that the money credited to the account of the accused was derived from a source other than his salary as a police officer. He stated that the video owners told him that they have paid cheques to the accused but they did not specify for which particular film the payment was effected. He confirmed that witness no.2 was not the copyright owner of the films which were sold by the accused to the video owners. He further explained that his enquiry was not based



solely on the films of which witness no.2 was the copyright owner but he also enquired about DVDs, VCDs and movies which have been infringed. He could not specify which films that were commercialized by the accused were infringing copies and he did not know whether the films which witness no.2 had copyright was sold by the accused. He confirmed that the proceeds were from an illegal activity and he put to the accused : "ICAC pe suspecter c'est banne l'argent de banne VCD, DVD films en copie . Et qui mo fine capave commettre ene offense sous l'acte FIAMLA . . .". He confirmed that the illegal activity is about the selling and distribution of infringed DVDs and not about the breach of copyright. He cannot answer which films were infringed but he maintained that all the films which were sold were copies. He stated that no identification parade was carried out in the present matter because the video shop owners stated that they knew the accused well as he was a police officer working at Good lands police station. He explained that he put it to the accused whilst recording the latter's statement whether he was willing to participate in an identification parade . He admitted that there was no need to put it to the accused. He maintained that there was no need to carry out an identification parade despite the fact that accused agreed to carry out an identification parade. He confirmed that he did not inform the accused that he would not carry out an identification parade. He also confirmed that despite the video shop owners asked to identify the accused he did not carry out the identification parade.

In re-examination he stated that accused was not authorized to sell DVDs and VCDs in the predicate crime.

6. Witness no.5, Mr Clement, was recalled and he explained that the cheque [Doc AJ3 Refers] was drawn on 7/12/10 and the date 24/12/10 is when the person receiving the cheque would call at the bank to process the cheque that is either to credit the bank account or to cash it.

Under cross-examination witness no.5 stated that 24th December 2010 is the date on which the cheque is being processed. He stated it is also correct to say that it may be or it may not be the date on which the accused's bank account was being credited.



7. Witness no.22, Mr Joomuck, testified to the fact that in 2008 he was the director of Perfect Deal Co Ltd and on 18th February 2018 he sold a Honda Civic for the sum of Rs300,000. He stated that the price included the showroom price and the VAT but excluded the registration, the road tax and miscellaneous expenses. He stated that the accused had paid for the car in cash. He produced the document in respect of the sale of the car which was marked as Doc AP.

In cross-examination witness no.22 explained that the price of the car was Rs300,000 and when adding registration , stamp duty and other expenses the total amount paid for the car is Rs420,000. He stated that he accepted the payment as he did not find anything suspicious .

8. Witness no.20, Mr Dabeesing, testified to the fact that Rapidshare Techtronics and Megaupload have shut down their services a long time ago . He stated that Megaupload had shut down mainly because of copyright issues and IP breaches. He stated that ICTA does not regulate these issues.

In cross-examination witness no.20 stated that he learnt that Megaupload had ceased activities. maintained that ICTA has nothing to do with the closing of Megaupload and ICTA did not receive any complaints from any quarters.

In re-examination witness no.20 stated that he learnt that Megaupload was closed via the internet.

9. Mr Neerajan, witness no.23, testified to the fact he was the director of Right Image Film Ltd and he was importing original films. He stated that the salesman were collecting the original films and distributing to about 400 to 500 video clubs thereafter they would remit to him the receipts and the money collected by them.

In cross-examination witness no.23 stated that he imported Indian films from India and Malaysia. He confirmed there were four salesmen who were distributing the films to 400

to 500 video clubs around the island. He was receiving the receipts and the money but he was not aware how these salesmen were distributing the films.

10. Witness no.2, Mr Callicharan, testified to the fact that he is the director of Mont Ida Entertainment Ltd which is involved in the importing and distributing of movies with rights in the movie theatres of Mauritius. He stated that he has the right to distribute European and Indian movies. He stated that he paid for a Royalty for the movies then he obtained a Power of Attorney to protect their rights in Mauritius. He produced the Power of Attorney which was marked as Doc AQ and he confirmed that the Power of Attorney was notarized. He explained that he bought the copyrights from Shemaroo company and he has exclusive rights over these films. He stated that he imported the original films . He stated that he had received complaint that one Feroz was distributing copies of the films which he was the copyright owner in the north. He stated that one, Mr Khan, the owner of the video club who was purchasing original films from him informed him that the sale for his films have decreased as another video club was selling copies of these films. He stated that he enquired from other video clubs in the north and he found out that one Feroze who is a police officer was selling copies of his original films.

In cross-examination witness no.2 stated that his power of attorney does not cover for European films . He stated that he did not see anyone selling copies of the films. He said that he did not carry out the enquiry and he has never seen Mr Feroze .He confirmed that in 2012 he went to give a declaration at ICAC.

11. Witness no.3 deposed to the fact that in 2003 he was running a video club called Bollywood Star and when Mr Naguib was not able to deliver the original he would sent his brother in law Mr Feroze Rujballee. He stated that Mr Rujballee was a police officer and he was delivering copies of European and Indian film. He asked him to purchase the copies of the films from him but he declined to purchase those films . He informed Mr Callicharan about the fact that Mr Feroze Rujballee was selling copies of the films which he was the copyright owner. He stated that he was watching Mr Feroz and he noticed

that he was delivering copies of films to the other video clubs . He was driving a car make Honda bearing number 746ZT02 to deliver the films.

Under cross-examination witness no.3 stated that he had bought original Indian films from Mr Feroze and he did not buy copies from him. He explained that he sent a person to follow Mr Feroze in the video clubs and to record the doings of Mr Feroze. He stated that following information he had received he knew Feroze was selling copies of the films.

12. Witness no.10, Mrs Dulthumun , testified to the fact that in 2003 her husband was the owner of a video club at Goodlands and she was working together with her husband. She stated that her husband was buying the films. She was shown 58 cheques [Doc AG3 to AG 139 Refers] and she explained that she had a joint account with her husband. She stated that she did not know to whom payment was effected and she did not know Mr Rujuballee. She confirmed that she was buying copies of Indian films, European Films and cartoons from one Mr Feroze Khan. She said that she knows Mr Feroze and she described him as " li ti longue, maigre" "ni brun ni clair". She said that Mr Feroze was a police officer and he was living in the north. She said that she could not differentiate between copies and original however in her statement to the police she gave a full description between original and copies. She further explained that she asked her husband before going to the ICAC and her husband explained to her the difference between an original and a copy. Following an argument on the issue of identification the Court ruled that dock identification was allowed however witness no.10 did not identify accused as Mr Feroze in Court.

13. Witness no.12 , Mr Lutchmun, testified to the fact that between 1990 and 2003 he was running a video club and he was selling CDs and DVDs and the films were originals. He also stated that he was selling copies and several distributors were selling those copies to him. He stated that during the period 1995 to 2005 he bought original films and ordered copies from Mr Feroz. He stated that he did not meet Mr Feroz and his workers were dealing with him. He confirmed that he was buying copies of films from Mr Feroz and he



was paying him in cheque. He maintained that he has never met Mr Feroz and he was leaving the cheque with his worker to give it to Mr Feroz.

14. Witness no.13, Mrs Bernadette, testified to the fact that in 2009 she was working on a premises of a factory. She stated that she was running a shop on one side and on the other side her husband was running the video club. She said that she was not aware of the types of films which was on sale as her husband was purchasing those films. She said that she only signed the cheques but she did not insert the name on the cheques.

In cross-examination witness no.13 maintained that her husband ran the video club and she was running the shop. She also maintained that there was only one current account in her name and she was the only one who signed the cheques.

15. Witness no.11, Mr Moorghen, testified to the fact that between 2006 to 2008 he was running a video club and he was renting video. He stated that he was buying the video from one Naguib and two other salesmen but he did not remember their names as he was not dealing with them on a regular basis. He stated that he was buying original video from the salespersons at Rs175 each. He was shown 12 cheques (Doc AG64 -Doc AG82 Refer) and he explained that he inserted the figure and he signed the cheques however he never inserted the name of the person on the cheque. He said that he can't remember Mr Feroz Khan Rujballee and he also said "possib possib..." he remembers him. He said that he did not pay all these cheques to Mr Feroz Khan Rujballee and it is possible that he paid some of the cheques to him. He did not identify Mr Feroze in Court and he denied having bought copies. He maintained that he bought originals from the salesman and he bought the copies from a shop in Port-Louis.

Under cross-examination witness no.11 maintained that he bought the originals from the salesman and he bought copies from a shop in Port-Louis.

16. Witness no.14, Mr Ramjutton, in 2002 he was running a video club and he was selling



original VCD and DVD. He stated that the price of the VCD and DVD was not fixed and the price was fixed according to the type of film which was sold. He said that he cannot differentiate between copies and original films. He was shown two cheques (Doc AG300-AG301) and he stated that he had effected payment to Mr Naguib who came to deliver the original films. He stated that he did not write on the cheques and he does not know Mr Feroze Rujuballee. The prosecution put inconsistent statement to the witness and he maintained he never mentioned the name of Mr Feroze Rujuballee in his statement. He said that he can't see Mr Feroze in Court.

17. Witness no.15, Mr Jakhun, testified to the fact that in 2003 he was running a video club which was selling original films. He said that he was selling French films in copies and originals for Indian films .He was shown one cheque (Doc AG276 Refers) and he said that he paid the cheque to Mr Naguib and he does not know Mr Feroze Rujuballee. He maintained that he did not pay the cheques to Mr Rujuballee but to Mr Naguib.

18. Witness no.16, Mr Busgeeth, testified to the fact that he was selling original films and he was not aware how to differentiate copies and original . He said that the ICAC officer put pressure to give a certain version in his statement. He was shown 14 cheques and he said he paid those cheques to the representative of Right Image company who was delivering original films to him . He said he does not know Mr Feroze Khan Rujuballee. He said that the ICAC Officer insisted with him to give the version that this person was coming to his video club in uniform.

19. Witness no.17, Mr Jootun, deposed to the fact that he had to close the video club as he was selling copies. He was shown one cheque (Doc AG277 Refers) and he stated he does not know Feroz Khan Rujuballee. He maintained that he does not know Mr Feroze Khan Rujuballee and the ICAC Officer has put pressure on him to give his statement.

20. Witness no.1, Mr Dabee, produced the statement of witness no.7 dated 27/09/17 which was marked as Doc AR.



Under cross-examination witness no.1 confirmed that in his statement witness no.7 stated " Si mo trouve li mo capave identifier li" and he also confirmed that no identification parade was carried out.

Case Closed For Prosecution

Accused did not adduce any evidence

Case Closed for Defence

DETERMINATION

21. The Court has analysed all the evidence on record ,assessed the demeanour of the witnesses, and duly considered the submissions of counsel for the prosecution and the defence.

COUNT 1, COUNT 3-COUNT 23

Money Laundering in breach of sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti Money Laundering Act 2002

> LAW

22. The relevant statutory provisions under which the accused stands charged are provided in section 3(1)(b) , section 6 and section 8 of the FIAMLA which are reproduced below :

Section3(1)(b)

"Any person who –

(b) receives, is in possession of, conceals, disguises, transfers, converts, disposes of, from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime, where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence."

Section 6 :



"(1) A person may be convicted of a money laundering offence notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered.

(2) Any person may, upon single information or upon separate information, be charged with and convicted of both the money laundering offence and of the offence which generated the proceeds alleged to have been laundered.

(3) In any proceedings against a person for an offence under this Part, it shall be sufficient to aver in the information that the property is, in whole or in part, directly or indirectly the proceeds of a crime, without specifying any particular crime, and the Court, having regard to all the evidence, may reasonably infer that the proceeds were, in whole or in part, directly or indirectly, the proceeds of a crime."

Section 8

"(1) Any person who –

(a) Commits an offence under this Part; or

(b) Disposes or otherwise deals with property subject to a forfeiture order under subsection(2)

shall on conviction, be liable to a fine not exceeding 2 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Any property belonging to or in the possession or under the control of any person who is convicted of an offence under this Part shall be deemed, unless the contrary is proved, to be derived from a crime and the Court may, in addition to any penalty imposed, order that the property be forfeited."

(3) Sections 150, 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction under this Part.

Therefore, in order to establish its case under section 3(1)(b) of the FIAMLA the prosecution must prove the following elements:

(1) possession of property;



- (2) in whole or in part, directly or indirectly, represents the proceeds of a crime;
- (3) he has reasonable grounds to suspect that the property is derived, in whole or in part directly or indirectly from a crime.

It is clear that it must be shown that the property possessed, concealed, disguised, or transferred represented the proceeds of any crime and proof of a specific offence is not required in order to establish guilt. Furthermore Section 6(3) requires the prosecution to adduce sufficient evidence from which the court may reasonably infer that the proceeds were, in whole or in part, directly or indirectly, derived from a crime. In other words, there must be a connection between the crime and the proceeds. In the case of The DPP v A.A.Bholah [2010] PRV 59 at paragraph 33 the Board referred to section 17(1) of ECAMLA which is now section 3(1) of the FIAMLA held as follows:

"The Board has therefore concluded that proof of a specific offence was not required in order to establish guilt under section 17(1) of ECAMLA. It is sufficient for the purposes of that subsection that it be shown that the property possessed, concealed, disguised, or transferred etc represented the proceeds of any crime – in other words any criminal activity – and that it is not required of the prosecution to establish that it was the result of a particular crime or crimes."

23. COUNT 1 Possession of a car bearing registration number 746ZT02 which in whole directly represented the proceeds of crime

(1) Possession of property

It is undisputed that the accused was found in possession of a car make Honda Civic . In fact, accused has readily accepted in his affidavit (Doc AL-paragraph 31 Refers) that he is the owner of a Honda Civic.The element of possession of property is satisfied under count 1

(2) Whether the property in whole or in part directly represents the proceed of a crime?

This leads us to the predicate offence that is a crime which is committed in furtherance of the larger crime. However it is important to note that in the case of Bholah [Supra] the

Board held that the proof of a particular predicate crime is not necessary but it must be shown that the property possessed represented the proceeds of any crime. Thus it is important to show that the property was obtained through an unlawful conduct and the proceeds are linked to a criminal activity. This principle was confirmed in **Audit v The State [2016] SCJ 282** where the Court held as follows : "In DPP v Bholah the Judicial Committee held that *"Proof of a particular predicate crime is not an essential "element" of the offence of money laundering.*" It is therefore sufficient for the purposes of section 3(1) of FIAMLA that it was shown that the appellant was in possession of property, which is, in whole or in part, directly or indirectly represent the proceeds of any crime that is any criminal activity."

As per the evidence on record witness no.22, Mr Joomuck, testified to the fact that in 2008 he sold a Honda Civic for the sum of Rs300,000 to the accused and he also stated that he accepted the payment as he did not find anything suspicious. It is clear that there is no evidence which links the Rs300,000 to any criminal activity or that it represented the proceeds of an illegal trading and that the car represents the proceeds of a crime. In view of the prosecution evidence on record, the Court finds that the prosecution has failed to prove that the car was derived in whole or in part, directly from proceeds of crime. Thus, the prosecution did not prove the second element of the offence.

(3) Reasonable grounds to suspect that the property is derived, in whole or in part directly or indirectly from a crime

The mens rea for money laundering offences is knowledge or suspicion . The Court finds it apt to quote an extract of the Judgment of **Manraj & Ors v ICAC [2003] SCJ 75** which deals with the mental element of 'reasonable grounds to suspect' as follows:

"...First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr.App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view..... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."

The Court must consider all the facts and circumstances of the case in order to determine whether it can be inferred that the accused had reasonable grounds to suspect that the proceeds were proceeds of crime. Antoine J.M.D J.V The State [2009] SCJ 328. After considering all the evidence on record the Court is of the view that there is no need for the Court to embark on the issue of reasonable grounds to suspect as the prosecution has failed to establish the connection between the possession of the car and the proceeds of crime in whole or in part

In light of the above the evidence of the prosecution falls short of satisfying the requirements of section 6(3) of FIAMLA and the Court therefore finds that the prosecution has failed to prove its case against the accused. The Court accordingly dismiss Count 1 of the Information against the accused.

23. COUNT 3: On 26/10/10 possessed a sum of Rs20,000 in his Saving Account 192597256;

COUNT.5: On 08/07/10 possessed a sum of Rs 20,000 in his Saving Account 192597256;

COUNT 6: On 23/07/10 possessed a sum of Rs10,000 in his Saving Account 192597256;

COUNT 8: On 06/08/10 possessed a sum of Rs10,000 in his Saving Account 192597256;

COUNT 10: On 01/09/10 possessed a sum of Rs10,000 in his Saving Account 192597256;

COUNT 11: On 16/09/10 possessed a sum of Rs14,000 in his Saving Account 192597256;

COUNT 15: On 26/10/10 possessed a sum of Rs 10,000 in his Saving Account 192597256;

COUNT 17: On 10/11/10 possessed a sum of Rs10,000 in his Saving Account 192597256;

COUNT 19: On 30/11/10 possessed a sum of Rs10,000 in his Saving Account 192597256;



Count 21: On 23/12/10 possessed a sum of Rs20,000 in his Saving Account 192597256.

(1) Possession of property

It is undisputed that the accused was in possession of the Mauritian rupees deposited in his Savings Account bearing number 192597256 at the MCB under each Count and this is substantiated by the Bank Statements (Doc AA Refers) The element of possession of property is satisfied under each Count.

(2) Whether the property in whole or in part directly represents the proceed of a crime?

This leads us to the predicate offence that is a crime which is committed in furtherance of the larger crime. At this point it is important to note that in the case of **Bholah [Supra]** the Board held that the proof of a particular predicate crime is not necessary but it must be shown that the property possessed represented the proceeds of any crime. Thus it is important to show that the property was obtained through an unlawful conduct and the proceeds is linked to a criminal activity. This principle was confirmed in **Audit v The State [2016] SCJ 282** where the Court held as follows : "In DPP v Bholah (Supra) the Judicial Committee held that "Proof of a particular predicate crime is not an essential "element" of the offence of money laundering." It is therefore sufficient for the purposes of section 3(1) of FIAMLA that it was shown that the appellant was in possession of property, which is, in whole or in part, directly or indirectly represent the proceeds of any crime that is any criminal activity."

As per the evidence on record Miss Solmah Eckbarally and Mr Feroz Khan Rujballee jointly hold a Saving Account bearing number 192597256 of the MCB and this is substantiated by the Bank Statements which have been produced (Doc AA Refers). However the prosecution did not adduce any evidence which link the money deposited in the Saving account of the accused under each Count to any criminal activity or that it represented the proceeds of an illegal trading. As per the evidence of witness no.1 during his investigation he noticed that accused used his credit card to pay Mega Uploads and Tectonics and these websites are mainly used for downloading movies at cheaper rates.

The Court is of the opinion that it can't rely on this evidence as it is too vague. In view of the prosecution evidence on record, the Court finds that the prosecution has failed to prove that the deposits in the Saving Account of the accused under each Count was derived in whole or in part, directly from proceeds of any crime. Thus, the prosecution did not prove the second element of the offence in respect of each Count.

(3) Reasonable grounds to suspect that the property is derived, in whole or in part directly or indirectly from a crime

The mens rea for money laundering offences is knowledge or suspicion. The Court finds it apt to quote an extract of the Judgment of **Manraj & Ors v ICAC [2003] SCJ 75** which deals with the mental element of 'reasonable grounds to suspect' as follows:

"...First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr.App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view..... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."

The Court must consider all the facts and circumstances of the case in order to determine whether it can be inferred that the accused had reasonable grounds to suspect that the proceeds were proceeds of crime, **Antoine J.M.D J.V The State [2009] SCJ 328**. After considering all the evidence on record the Court is of the view that there is no need for the Court to embark on the issue of reasonable grounds to suspect as the prosecution has failed to establish the connection between the possession of the deposits under each Count in the Saving Accounts of the accused and the proceeds of crime in whole or in part.

In light of the above the evidence of the prosecution falls short of satisfying the requirements of section 6(3) of FIAMLA in respect of each Count and the Court therefore finds that the prosecution has failed to prove its case against the accused. The Court

accordingly dismiss Count 3, Count 5, Count 6, Count 8, Count 10, Count 11, Count 15, Count 17, Count 19 and Count 21 of the Information against the accused.

- 24. COUNT 4 :On 06/07/10 possessed a sum of Rs30,000 in Saving Account 193851199 of Minor daughter Bibi Raeesha Rujballee;**
- COUNT.7:On 30/07/10 possessed a sum of Rs 10,000 in Saving Account 193851199 of Minor daughter Bibi Raeesha Rujballee;**
- COUNT 9: On 01/09/10 possessed a sum of Rs10,000 in Saving Account 193851199 of Minor daughter Bibi Raeesha Rujballee;**
- COUNT 13: On 12/10/10 possessed a sum of Rs10,000 in Saving Account 193851199 of Minor daughter Bibi Raeesha Rujballee;**
- COUNT 14: On 26/10/10 possessed a sum of Rs10,000 in Saving Account 193851199 of Minor daughter Bibi Raeesha Rujballee;**
- COUNT 18: On 30/11/10 possessed a sum of Rs10,000 in Saving Account 193851199 of Minor daughter Bibi Raeesha Rujballee;**
- COUNT 22: On 23/12/10 possessed a sum of Rs20,000 in Saving Account 193851199**

(1) Possession of property

It is undisputed that the accused was in possession of the Mauritian rupees that he deposited in the Savings Account bearing number 193851199 of his minor daughter Raeesha Rujballee under each Count and this is substantiated by the ATM Deposits Envelope (Doc AE Refers). In fact the accused has readily accepted in his affidavit (Doc AL at paragraph 29 Refers) that he opened a Saving account in the name of his minor daughter Bibi Raeesha Rujballee and the money in that account was cash in hand accumulated by him. Thus the element of possession of property is satisfied under each Count.

(2) Whether the property in whole or in part directly represents the proceed of a crime?

This leads us to the predicate offence that is a crime which is committed in furtherance of the larger crime. At this stage it is important to note that in the case of **Bholah [Supra]** the Board held that the proof of a particular predicate crime is not necessary but it must be shown that the property possessed represented the proceeds of any crime. Thus it is not important to prove the predicate offence but we must show that the proceeds is linked to a criminal activity or has been obtained through an unlawful activity. This principle was confirmed in **Audit v The State [2016] SCJ 282** where the Court held as follows : "In DPP v Bholah (Supra) the Judicial Committee held that "*Proof of a particular predicate crime is not an essential "element" of the offence of money laundering.*" It is therefore sufficient for the purposes of section 3(1) of FIAMLA that it was shown that the appellant was in possession of property, which is, in whole or in part, directly or indirectly represent the proceeds of any crime that is any criminal activity."

As per the evidence on record Mr Feroz Khan Rujballee has opened a Saving Account bearing number 193851199 at the MCB in the name of his minor daughter and this is substantiated by the Affidavit of the accused (Doc AL Refers) and the ATM Deposits Envelope which have been produced (Doc AE Refers). However the prosecution did not adduce any evidence which link the money deposited in the Saving account under each Count to any criminal activity or that it represented the proceeds of an illegal trading. In view of the prosecution evidence on record, the Court finds that the prosecution has failed to prove that the money deposited by the accused in the Saving Account of the Minor Raeesha Rujballee under each Count was derived in whole or in part, directly from proceeds of any crime. Thus, the prosecution did not prove the second element of the offence in respect of each Count.

(3) Reasonable grounds to suspect that the property is derived, in whole or in part directly or indirectly from a crime

The mens rea for money laundering offences is knowledge or suspicion . The Court finds it apt to quote an extract of the Judgment of **Manraj & Ors v ICAC [2003] SCJ 75** which deals with the mental element of 'reasonable grounds to suspect' as follows:



"...First, the suspicion should be reasonable: *King v Gardner* (1979) 71 Cr.App. R. 13; *Prince* [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view..... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: *Inland Revenue Commissioners v Rossminster Ltd* [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: *King v Gardner* (supra); *Prince* (supra); *Ware v Matthew* February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: *Pedro v Diss* [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."

The Court must consider all the facts and circumstances of the case in order to determine whether it can be inferred that the accused had reasonable grounds to suspect that the proceeds were proceeds of crime, **Antoine J.M.D J.V The State [2009] SCJ 328**. After considering all the evidence on record the Court is of the view that there is no need for the Court to embark on the issue of reasonable grounds to suspect as the prosecution has failed to establish the connection between the possession of the deposits under each Count in the Saving Accounts of the Minor Raeesha Rujballee and the proceeds of crime in whole or in part.

In light of the above the evidence of the prosecution falls short of satisfying the requirements of section 6(3) of FIAMLA in respect of each Count and the Court therefore finds that the prosecution has failed to prove its case against the accused. The Court accordingly dismiss Count 4, Count 7, Count 9, Count 13, Count 14, Count 18 and Count 22 of the Information against the accused.

25. COUNT 12 :On 27/09/10 possessed a sum of Rs7,975 in his Saving Account 03610100112482 ;

COUNT.16 :On 27/10/10 possessed a sum of Rs 4,925 in his Saving Account 03610100112482;

COUNT 20: On 01/12/10 possessed a sum of Rs5,375 in his Saving Account 03610100112482;

COUNT 23 : On 24/12/10 possessed a sum of Rs4,950 in his Saving Account 03610100112482.

(1) Possession of property

It is undisputed that the accused was in possession of the Mauritian rupees that he deposited in his Savings Account bearing number 03610100112482 at SBM under each Count and this is substantiated by the Letter and Bank Statements (Doc AH Refers). In fact the accused has readily accepted in his affidavit (Doc AL at paragraph 28 Refers) that he opened a Saving account in his name at SBM and the money in that account was cash in hand accumulated by him. Thus the element of possession of property is satisfied under each Count.

(2) Whether the property in whole or in part directly represents the proceed of a crime?

This leads us to the predicate offence that is a crime which is committed in furtherance of the larger crime. At this stage it is important to note that in the case of **Bholah [Supra]** the Board held that the proof of a particular predicate crime is not necessary but it must be shown that the property possessed represented the proceeds of any crime. Thus it is not important to prove the predicate offence but we must show that the proceeds is linked to a criminal activity or has been obtained through an unlawful activity. This principle was confirmed in **Audit v The State [2016] SCJ 282** where the Court held as follows : "In DPP v Bholah (Supra) the Judicial Committee held that "*Proof of a particular predicate crime is not an essential "element" of the offence of money laundering.*" It is therefore sufficient for the purposes of section 3(1) of FIAMLA that it was shown that the appellant was in possession of property, which is, in whole or in part, directly or indirectly represent the proceeds of any crime that is any criminal activity."

As per the evidence on record Mr Feroz Khan Rujballee has opened a Saving Account bearing number 03610100112482 at the SBM in his and this is substantiated by the Affidavit of the accused (Doc AL at paragraph 28 Refers) and the Bank Statements which have been produced (Doc AH Refers). However the prosecution did not adduce any evidence which link the money deposited in the Saving account under each Count to any



criminal activity or that it represented the proceeds of an illegal trading. In view of the prosecution evidence on record, the Court finds that the prosecution has failed to prove that the money deposited by the accused in his Saving Account under each Count was derived in whole or in part, directly from proceeds of any crime. Thus, the prosecution did not prove the second element of the offence in respect of each Count.

(3) Reasonable grounds to suspect that the property is derived, in whole or in part directly or indirectly from a crime

The mens rea for money laundering offences is knowledge or suspicion. The Court finds it apt to quote an extract of the Judgment of **Manraj & Ors v ICAC [2003] SCJ 75** which deals with the mental element of 'reasonable grounds to suspect' as follows:

"...First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr.App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view..... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."

The Court must consider all the facts and circumstances of the case in order to determine whether it can be inferred that the accused had reasonable grounds to suspect that the proceeds were proceeds of crime, **Antoine J.M.D J.V The State [2009] SCJ 328**. After considering all the evidence on record the Court is of the view that there is no need for the Court to embark on the issue of reasonable grounds to suspect as the prosecution has failed to establish the connection between the possession of the deposits under each Count in the Saving Accounts of the accused and the proceeds of crime in whole or in part.



In light of the above the evidence of the prosecution falls short of satisfying the requirements of section 6(3) of FIAMLA in respect of each Count and the Court therefore finds that the prosecution has failed to prove its case against the accused. The Court accordingly dismiss Count 12, Count 16, Count 20 and Count 23 of the Information against the accused.

COUNT 2: Money Laundering in breach of sections 3(1)(a), 6 and 8 of the Financial Intelligence and Anti Money Laundering Act 2002

26. Section 3(1)(a) FIAMLA reads as follows:

'Any person who - (a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime;'

(b) (...)

'...where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence.'

The prosecution must prove the following elements:

- (1) engages in a transaction that involves property;
- (2) which is, or in whole or in part directly or indirectly represents, the proceeds of crime;
- (3) where he suspects or has reasonable grounds for suspecting that the property is derived, realised, in whole or in part, directly or indirectly from any crime

(1) Engages in a transaction that involves property

It is undisputed that the accused has taken an insurance policy for the sum insured of Rs2.1 million (Doc AF Refers) and the accused has readily accepted in his affidavit (Doc AL at paragraph 26 Refers) that he took an insurance policy and he transferred Rs2.1 million from his personal saving account at the MCB to BAI Co Ltd. Thus the first element is satisfied.



(2) *Whether the transaction in whole or in part directly represents, the proceeds of crime ?*

As per the case of **Bholah [Supra]** the Board held that the proof of a particular predicate crime is not necessary but it must be shown that the property possessed represented the proceeds of any crime. Thus it is not important to prove the predicate offence but we must show that the proceeds is linked to a criminal activity or has been obtained through an unlawful activity. This principle was confirmed in **Audit v The State [2016] SCJ 282** where the Court held as follows : "In DPP v Bholah (Supra) the Judicial Committee held that "Proof of a particular predicate crime is not an essential "element" of the offence of money laundering." It is therefore sufficient for the purposes of section 3(1) of FIAMLA that it was shown that the appellant was in possession of property, which is, in whole or in part, directly or indirectly represent the proceeds of any crime that is any criminal activity."

In the case of **A R Ferrell v The Queen [2010] UKPC 20**, the Board held that:

"12. The only question is whether a jury was entitled to infer that it was drugs money. In the opinion of the Board, the answer to that question, at any rate in the absence of a credible explanation to the contrary, is yes. The only suggestion made by or on behalf of the appellant was that the cash came from working as a doorman and from smuggling tobacco into Spain. There was however no support for the evidence that it came from tobacco smuggling. On the other hand, there is evidence that the appellant was a drug dealer, albeit at a later time than he was laundering the money. It was open to the jury to reject his explanation and to conclude that there was no reasonable doubt that the money came from earlier dealing in drugs."

As per the evidence on record Mr Feroz Khan Rujballee has transferred the sum of Rs 2.1 million rupees to BAI Co Ltd. As per the evidence on record the prosecution did not establish that the Rs2.1 million came from any criminal activity or that it represented the proceeds of an illegal trading. Thus there is no evidence that accused was laundering any money. As per his affidavit the accused explained that the 2.1 million is mostly cash accumulated from the various businesses mentioned in the affidavit. In view of the prosecution evidence on record, the Court finds that the prosecution has failed to prove that the Rs2.1 million which was transferred from his Saving Account to BAI Co Ltd was



derived in whole or in part, directly from proceeds of any crime. Thus, the prosecution did not prove the second element of the offence in respect of Count 2.

(3) Reasonable grounds to suspect that the property is derived, in whole or in part directly or indirectly from a crime

The mens rea for money laundering offences is knowledge or suspicion. The Court finds it apt to quote an extract of the Judgment of **Manraj & Ors v ICAC [2003] SCJ 75** which deals with the mental element of 'reasonable grounds to suspect' as follows:

"...First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr.App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view..... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."

The Court must consider all the facts and circumstances of the case in order to determine whether it can be inferred that the accused had reasonable grounds to suspect that the proceeds were proceeds of crime, **Antoine J.M.D J.V The State [2009] SCJ 328**. After considering all the evidence on record the Court is of the view that there is no need for the Court to embark on the issue of reasonable grounds to suspect as the prosecution has failed to establish the connection between the Rs2.1 million which was transferred from his Saving Accounts to BAI Co Ltd and the proceeds of crime in whole or in part.

In light of the above the evidence of the prosecution falls short of satisfying the requirements of section 6(3) of FIAMLA and the Court therefore finds that the prosecution has failed to prove its case against the accused. The Court accordingly dismiss Count 2 of the Information against the accused.

27. Identification

As per the evidence on record there was no identification exercise carried out at the level of the enquiry as the owners of the video club knew the accused. [Transcript dated 17/02/2021 at page 104 Refers]. True it is that identification was not made a live issue but the fact remains that the main witnesses that is the video club owners did not state in clear terms that accused is the person to whom they gave the cheques or the person to whom they bought any copies of films or DVDs or VCDS. As per their version they were dealing with one Feroz and in Court they clearly stated that they did not see "Feroz" in Court. This create doubts surrounding the identification of the said Accused.

27. Cheques Paid by Video Club Owners

As per the version of witness no.1, the main enquiry officer, according to his observations all the cheques were issued by the owners of the video club. However in Court witness no.13 stated that her husband ran the video club. She was shown 16 cheques (Doc AG48 TO AG 63 Refer) and she said does not know the person whose name is on the cheque. Witness no.10 stated that she did not see Mr Feroze in Court. Witness no.11 was shown several cheques (Doc AG 64 to AG 82) and he stated that he was purchasing original films only from Mr Naguib. He further stated that he has never inserted the name on the cheque and he did not see Mr Feroze in Court. Witness no.14 was shown the cheques (Doc AG300 to AG 301 Refer) and he stated that he has effected payment to Mr Naguib and he does not know Mr Rujballee Feroz. He also stated that he did not see Mr Feroze in Court. Witness no.15 stated that he knew Mr Naguib only and he did not know Mr Rujballee. He was shown one cheque (Doc AG Refer) and he stated that he did not pay any cheque to Mr Rujballee. Witness no.16 was shown 14 cheques and he said he does not know Mr Rujballee. Witness no.17 was shown one cheque (Doc AG277 Refers) and he said Mr Rujballee is unknown to him. It is clear as per the evidence of the video club owners they did not insert the name of Feroz Rujballee on the cheques, they dealt with one Naguib and they gave the cheques to Mr Naguib. They were not able to identify Mr Feroz in Court.

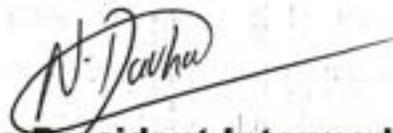


28. Enquiry and the Statement of witness no.7 (Doc AR Refers)

In **Bhogun v The State [2005] SCJ 144** the Supreme Court held that an out of court statement had rightly been discarded as it included extensive hearsay evidence emanating from third parties who were not called as witnesses. However one of the accepted categories is where the legislator creates statutory exceptions to the rule. Section 188C(1) of the Courts Act create one such statutory exception where a statement made out of court can be produced without the maker thereof being called as a witness. The issue of admissibility of the statement on the ground that it amounts to hearsay does not therefore arise. However, the weight to be attached to such a document can still be challenged. As per the evidence on record the video club owners clearly stated and maintained that the enquiry officer has put pressure on them to give a particular version. in their statement. The prosecution put inconsistent statement to witness no.14 and he maintained he never mentioned the name of Mr Feroze Rujuballee in his statement. Witness no.16 even stated that the ICAC Officer insisted with him to give the version that this person was coming to his video club in uniform. After considering all the circumstances of the case and the version given by the video club owners the Court was not persuaded to act on the version witness no.7 gave to the ICAC and it casts doubt on the straightforward account given by witness no.7. Therefore the Court is of the view that it cannot safely rely on the contents of the statement of witness no.7. Furthermore these elements affect the fairness of the enquiry and this creates doubts in the case of the prosecution.

29. Conclusion

The Court is of the view that the prosecution has failed to prove the elements of the offence beyond reasonable doubt under each Count and the Court therefore dismisses the case against Accused



**[Delivered by Ag Vice President Intermediate Court (Civil Div):
N DAUHOO]**

[Delivered on 21st April 2022]