ICAC V GENDOO

2019 INT 7

Cause Number: 1693/2013

IN THE INTERMEDIATE COURT OF MAURITIUS
[CRIMINAL DIVISION]

In the matter of:-

INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

V/S

MOHAMED NASSER GENDOO

JUDGMENT

The accused stands charged under Counts 1 to 39 with the offence of "**Money Laundering**" in breach of Sections 3(1)(b) & 8 of the Financial Intelligence and Anti Money Laundering Act.

He pleaded not guilty to all those 39 Counts and he was assisted by counsel at his trial.

Witness 1 Sub-Inspector Sookuram deposed and produced the out of court statement of the accused dated 29/4/2005 – **Doc A.**

Upon cross-examination he stated that the enquiry against the accused was for money laundering in view of the several money deposits into his bank account. He confirmed that amongst those deposits there were also 3 debits in excess of Rs.350,000 each. He stated that the explanation given by the accused regarding those incomes was that he got those sums from gambling.

Witness 2 PC Luximon also deposed and produced another out of court statement recorded from the accused on 4/5/2015 – **Doc A1**.

In cross-examination he stated that the accused explained that he derived those sums of money from gambling. He could not say since when football betting was illegal.

Witness 3 Jules Clifford Allet, Manager at the Mauritius Commercial Bank, testified to state that following a Disclosure Order dated 29/1/2007 he produced to the ICAC true and certified copies of the bank statement of the accused with A/C No: 252730054 for the period of 1/7/1997 to 11/2/2007. He produced those bank statements in court – **Doc B.**

Witness 4 ASP Jiavoo deposed to only state that he was one of the main enquiring officer in the case.
The case was then closed for the prosecution.

The accused did not adduce any evidence. His case was closed too.

I have carefully considered the whole of the evidence on record as well as the submissions of both learned counsels.

The 39 charges leveled against the accused as per the present information are with regards to the offence of money laundering.

Section 3(1)(b) of The Financial Intelligence and Money Laundering Act (FIAMLA) reads as follows:-

"*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 any 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.*"

Section 6 of the same Act provides the following:-

"*(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 a 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 regards to all the evidence, may reasonably infer that the proceeds were, in whole or in part, directly or indirectly, the proceeds of a crime." (emphasis supplied).

In the case of **The Director of Public Prosecutions v A.A.Bholah [2011] UKPC 44**, the **Privy Council** held the following:-

"*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 purpose of*

that subsection that it is 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. In the light of this conclusion it follows that a failure to identify and prove a specific offence as the means by which the unlawful proceeds were produced is not a breach of section 10(2)(b) of the Constitution. In the Board's view, that section requires that the nature of the offence of which the accused person must be informed is that with which he is charged, in this case the offence of money laundering. Proof of a particular predicate crime is not an essential "element" of the offence of money laundering."

Nevertheless, I find it apt to reproduce the provision of **Section 61A of the Gaming Act** which is as follows:

"*Any person who transacts any business which is regulated by this Act with a person who is not licenced under this Act shall commit and offence and shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding one year.*"

It is clear from the evidence adduced that the charges of money laundering have been put to the accused during the enquiry. In Docs A-A1 it is specifically mentioned therein that the accused was suspected of having committed the offence of money laundering during the period of year 2002 to 2004. This goes without saying that several such offences were allegedly committed by the accused during that span of time. The contrary would have mentioned of only one particular date.

It is on record as evidence as contained in Doc A that the accused was allegedly deriving a sum of about Rs.80,000 monthly from his gambling. It is clear from a perusal of Docs A-A1-B that the bank credits of the accused into his bank account by far exceeded the amount he stated of deriving. In fact, I find that the accused was all aware that those sums of money, as particularized in the 39 charges in hand, were proceeds of crime.

At this stage it is apposite to make reference to the case of **Jean Marc Dominik Janot Antoine v The State [2009] SCJ 328** where the Supreme Court held the following:-

"*The mental element 'reasonable grounds to suspect' has been elaborated and explained in the Chambers case of Manraj and Others v ICAC 2003 SCJ 75. We find it apt to quote and extract of the Learned Judge's judgment which we find appropriate and relevant. It reads 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."

Since, the onus is on the accused to show cause the source of the funds as particularized in the 39 charges, his explanation was that he gained those funds from gambling on local horseracing, overseas football and at funerals. From questions put to him as contained in Docs A-A1 he has been unable to provide any receipt from bookmakers. Moreover, he has been unable also to explain how his bank credits were much more in excess of the Rs.80,000 he allegedly was earning. Further, he could not give any plausible explanation for the large amounts he credited and for some amounts which he debited. Besides, in Doc A1 he clearly confessed that he was betting with illegal bookmakers (Folio 18352).

From a due consideration of all of the above observations this Court concludes that it has enough evidence in hand to infer that the sums as mentioned in the different 39 charges in hand were proceeds of crime.

I, therefore, find the case for the prosecution proved beyond reasonable doubt.

I, accordingly, find the accused guilty as charged under all the 39 Counts, as per the information.

Mr. Raj Seebaluck
Vice-President
Intermediate Court – Criminal Division
This 18 January, 2019.