ICAC v Ganessen Arjanen

2024 INT 95

IN THE INTERMEDIATE COURT OF MAURITIUS
Financial Crimes Division

CN : FR/L48/2023

In the matter of:

The Independent Commission Against Corruption

V

Ganessen Arjanen

JUDGMENT

The accused stands charged with wilfully, unlawfully and criminally being in possession of property which, in whole or in part, directly or indirectly represented the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived, in whole or in part, directly or indirectly from a crime, in breach of **Sections 3(1) (b), 6 and 8 of The Financial Intelligence and Anti-Money Laundering Act**.

He pleaded not guilty to the charge and was not represented by counsel.

Mr Arzamkhan appeared for the prosecution.

The particulars of the property, as laid down in the information, is that the Accused was in possession of a private motor car bearing registration number 919 FB 00, make Volkswagen Passat, which property, in whole or in part, directly or indirectly, allegedly represented the proceeds of crime.

The accused does not dispute the fact that on the 13th November 2017, he bought the said car from a doctor for the sum of 85,000 rupees, which he paid in cash to an agent. Several witnesses were called to that effect and the deed of sale was produced (**Document B**).

The accused, however, denied that the money was proceed of crime. His version, as contained in his statement to the ICAC is that he received 50,000 rupees from his uncle in France who sent the money to his Aunty Kamladevi Etienne. He then received the amount of 29,000 rupees as earnings in prison where he was working as tailor. As for the remaining amount, he could not account for it.

Learned Counsel for the prosecution referred to each element of the offence as stated in the case of **Audit Y v The State and Anor 2016 SCJ 282** and submitted that when the accused

lied in an attempt to conceal the true origin of the funds used to acquire the motor vehicle, this clearly shows that he knew that the money comes from a tainted origin.

The law

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

> *"**3. Money Laundering***
>
> *(1) Any person who –*
>
> *(b) 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; or*
>
> *…*
>
> *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 has therefore to prove the following elements:

1. the accused was in possession of property
2. the property represented the proceeds of a crime
3. circumstances showing that the accused had reasonable grounds to suspect that the property was derived from a crime.

1. Whether the accused was in possession of property

This element is not really is issue.

The accused does not dispute that fact that he bought the car and paid in cash and the sale was concluded on the 13th of November 2017 (**Document H**).

Both the doctor (*witness 5*) and the agent (*witness 6*) deposed to the effect that car 919 FB 00 was sold to the accused. Mr Sookur, the agent, confirmed that the accused gave him sum of 85,000 rupees in cash and took possession of the car on the same day.

It can therefore safely be concluded that the accused was in possession of car on that particular day.

2.The proceeds of crime

By virtue of **Section 6(3) of the FIAMLA**, it shall be sufficient to aver in the information that the property is in whole, directly the proceeds of a crime, without specifying any particular crime.

There have been several pronouncements that proof of a specific predicate crime is not required. Where it is possible to give particulars of the nature of the criminal activity that generated the illicit proceeds, fairness demands that this should be done.

In **The DPP V A. A. Bholah 2011,** the Privy Council referred to several cases and concluded at paragraphs 33 that:

"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. In 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.

The Board also considered the case of **R v Anwoir [2009] 1 WLR 980**, quoting Latham LJ in **R v W (N**) who said this, at paragraph 21:

"*We consider that in the present case the Crown are correct in their submission that there are two ways in which the Crown can prove the property derives from crime, (a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime*."

There is evidence on record that the accused was arrested in 2007 and was found in possession of heroin and money (*Inspector Rujub, witness 3*). He was consequently prosecuted and convicted. In 2013, he was again apprehended for drug dealing together with other persons (*CI Luchoomun, witness 2*).

The certificate from the Commissioner of Prison (**Document F**) indicates that the accused detained in prison from the 14th of August 2014, serving a sentence of 3 years penal servitude and 250 days for fine not paid. He was released on the 6th of November 2017, which is a week before he bought the car.

The nature of the predicate crime can be established therefrom. It is clear that the accused had strong connection with drug offences and such dealings would undoubtedly generate funds.

The case of **A R Ferrell v The Queen** is very relevant to the present case. In that case, the Appellant was convicted of two counts of possession of a controlled drug, two counts of possession of a controlled drugs with intent to supply and nine counts of concealing/transferring the proceeds of drug trafficking. The controlled drug was cocaine.

The Board had the following to say:

"…the drugs would of course have sold for money, which would then require to be banked and, in all likelihood, laundered. The Attorney General correctly accepted that the prosecution had to show, in the case of each of the ***money laundering*** *counts 7 to 15 that some at least of the money derived from drug dealing. He submitted, however, that on the facts set out above, it was open to the jury to infer that the money was indeed the proceeds of drug dealing. He accepted of course that all the money laundering counts related to transactions that pre-dated the possession of the drugs in the drugs counts but submitted that, in the absence of a credible explanation to the contrary, it was open to the jury to infer that the appellant had had a system of selling drugs and laundering the money over an extended period. The Court of Appeal accepted that submission and so does the Board. Mr Salter (for the Appellant) correctly accepted that the evidence relating to the money was evidence that the appellant was laundering money for some illegal or improper purpose. He could not do otherwise. The Appellant had no apparently legal means of accumulating significant amounts of cash. Yet he had deposited nearly 70,000 pounds and moreover did so in individual amounts of under 1000 pounds. A jury would be very likely to infer that in doing so he was laundering ill-gotten gains."*

Whether the accused had the legal means of accumulating the cash to pay for the car is quite a significant point. When the accused was questioned about the source of funds, he stated that:

- he was provided financial assistance by his uncle in France, through his Aunt, Mrs Kamladevi Etienne (Witness 7) in the sum of 50,000 rupees;
- he received 29,000 rupees for work done in prison whilst he was serving sentence;
- he cannot recall the origin of the remaining sum of 6,000 rupees.

Investigator Purgaus (witness 1) revealed that during the enquiry, this version of the accused was not supported. Firstly, in her statement to the ICAC, Mrs Etienne denied having given any money to the accused. Then when it was verified from the Prison, it was found that when the accused was discharged on the 6th of November, he was paid the sum of 3,032 rupees and 691.50 rupees only. Mr Attiave, representing the Commissioner of Prisons, confirmed same when he deposed.

However, Mrs Etienne came up with a different version in court. She stated that she indeed remitted the sum of 50,000 rupees to the accused, supporting his version that the money was sent by her uncle in France, purportedly to pay his fine. She went on to say that the officers of the ICAC did not note her true version and she was pressurized to sign her statement. Despite being a witness for the prosecution, she was treated as a hostile witness, resulting in damaged credibility. It is clear that not much weight can be attached to her testimony since she gave varying versions. There was no independent evidence in support of her version that she received the money from France. Therefore, her explanation that she was forced to give such a statement does not stand.

I have furthermore noted from the report of the Commissioner of Prisons (**Document G**) that when the accused was detained at Petit Verger Prison, he received frequent visits from Mrs Etienne since February 2017 until his release in November 2017, almost on a monthly basis. It can be concluded therefrom that Mrs Etienne has a purpose to serve when she changed her version in court and clearly wants to protect the accused.

Now, irrespective of the testimony of Mrs Etienne, from the evidence on record, it is obvious that the accused has lied with regard to not only the amount he received in prison, but to the origin of the total sum of 85,000 rupees. In court, after he was explained of his rights to adduce evidence, he chose to speak from the dock. He came up with a different version. Whilst

maintaining that he received the 50,000 rupees from his uncle in France, he added that his father and grandmother gave him 35,000 rupees when they came to know that he was buying a car.

The court has taken on board that the acquisition of the car was made only a week after he was released from prison. He was at that time unemployed, had the financial responsibility of his mother and two children; his bank account held at the Mauritius Commercial Bank showed a balance of 35.10 rupees, which account has remained inactive since 2012. There is also evidence from the Mauritius Revenue Authority that the accused was registered as taxpayer with the Authority but did not make any filing (**Document E**).

Based on the above, in absence of credible explanation from the Accused as to the source of fund, coupled with the fact that he had strong connection with drug related offence and considering the incessant changing versions of the accused, which the court does not find to be credible, the court can reasonably infer that the money was proceeds of drug business.

3. Whether the circumstances show that the accused had reasonable grounds to suspect that the property was derived from a crime.

D D Manraj and Ors v ICAC 2003 SCJ 75 defines what the court needs to look into when deciding whether there was a reasonable suspicion:

"Reasonable suspicion" must necessarily be grounded on facts:

"Reasonable suspicion, in contrast to mere suspicion, must be founded on fact. There must be some concrete basis for the officer's belief, related to the individual person concerned, which can be considered and evaluated by an objective third person."

"Reasonable suspicion" must necessarily be distinguished from mere suspicion.

"Mere suspicion, in contrast, is a hunch or instinct which cannot be explained or justified to an objective observer."

"Reasonable suspicion" is no instinct, allows no guess, no sixth sense. It is scientific. It has to find support on facts, not equivocal facts but facts consistent with guilt. All that an investigatory authority may do with its hunches is keep the person under observation but it cannot act on it.

"An officer who had a hunch or instinct might well be justified in keeping the person under observation but additional grounds would be needed to bring suspicion to the level of reasonable suspicion."

If an offence was committed under Section 3 of the FIAMLA when the accused had suspicion or reasonable grounds for suspicion that the property comes from a crime, it goes without saying that the offence is also committed when the accused knew of the tainted nature of the property: **Antoine v The State 2009 SCJ 328**.

It was further held in **Antoine v The State** that: "Since *'knowledge' necessarily implies and encompasses the notion of 'reasonable grounds for suspicion' we do not find that the*

legislature has made a blunder by omitting to include, in the money laundering offences, 'knowledge' as one of the mental elements, although we concede that this element could have been included and there would have been absolutely no harm in doing so."

When the accused lied in an attempt to conceal the true origin of the funds, he knew that the money comes from a tainted origin.
Having considered the evidence on record, the court finds proven that the accused had knowledge that the 85,000 rupees used to acquire the car were derived from a crime, the more so that he was involved in the predicate crime.

For the above reasons, the court holds that the prosecution has proved its case beyond reasonable doubt and finds the accused guilty as charged.

B.R.Jannoo- Jaunbocus (Mrs.)
President
Intermediate Court (Financial Crimes Division)
This 26th April 2024.