

IN THE INTERMEDIATE COURT OF MAURITIUS
FINANCIAL CRIMES DIVISION

CN : FR/L20/2023

In the matter of:

The Independent Commission Against Corruption

V

Joseph Andre Noel

JUDGMENT

The accused stands charged as follows:

Counts 1 to 5: wilfully, unlawfully and criminally transferring 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.**

Count 6: 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 charges and was not represented by counsel.

Mr Nulliah conducted the case for the prosecution.

The case concerns various sums of money, totaling 2.4 million rupees allegedly remitted by the accused to one Parvin Appadoo between the 9th March 2016 to 18th March 2016 to acquire a boat from Société des Bains de Mer Ltée, which money the prosecution claims that the Accused had reasonable grounds for suspecting to have been derived from a crime. Count 6 relates to the accused allegedly being in possession of a concrete residential building which was acquired and renovated from money claimed to be proceeds of crime.

Four statements were recorded from the Accused. He denied having given the money to buy the boat. With regard to the purchase of the property which was done in the name of his concubine, and the renovation work done thereto, he explained that the money came from his business of pig breeding.

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 transferred money (Counts 1 to 5) and was in possession of property (Count 6)
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 transferred money and was in possession of property

The accused denied having known Mr Appadoo and having given any money to him for the purchase of a boat. However, from the evidence on record pertaining to the manner in which the transaction took place, it is clearly established that it was the accused who handed over the money to Mr Appadoo for payment to be made.

There is firstly the testimony of Mr Appadoo who confirmed that the accused remitted the various amounts to him in 2016 for the purchase of the boat. He explained in detail the purpose of his involvement in purchasing the boat. He was called to intervene since the transaction, being one in cash, could not proceed¹ and he had to issue various cheques for the payment.

Secondly, the fact that Mr Appadoo received a commission for issuing the cheques, shows that the money came from someone else. He was consequently prosecuted and convicted for having received the said sums of money. He maintained all along that it was the accused who gave him the money on several occasions for which he issued 10 cheques over the period 9th of March 2016 to 18th of March 2016.

¹ Page 16 of court proceedings of the 11th of October 2013.

Further to that, there is the testimony of Mr Jeewooth, the general manager of Société des Bains de Mer Ltee who confirmed that the Accused met him and enquired about the boat and when he was informed that the hotel will not accept cash, he left stating that he will come later with his accountant². He ultimately came with Mr Appadoo to hand over the cheques (**Document C**).

Despite an attempt by the Accused to raise an issue of identification, it goes beyond doubt that there is ample evidence to prove that the Accused transferred the money referred to in Counts 1 to 5 to Mr Appadoo, who in turn converted the sum in cheques which were then paid to Mr Jeewooth for the purchase of the boat.

With regard to Count 6, the prosecution had to prove that the accused was in possession of the concrete residential building. Despite the fact that the owner is one Marie Ketty Sandy Allaghen, the concubine of the accused, it has been revealed by the accused that he was the one who paid for the property in the sum of 740,000 rupees in 2009³ (**Document A**). And he was adamant on the fact that he paid for the renovation work done to the house by addition of a room and upgrading of the floor and enclosure⁴ to the tune of 200,000 rupees.

In such circumstances, it can therefore safely be concluded that the accused was in possession of the building.

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 or part, 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

² Page 36-38 of court proceedings of the 9th of November 2013.

³ Though the title deed makes mention of 750,000 rupees.

⁴ Page 22 of court proceedings of 27th September 2013/ Answer 32, 43, 44 in Doc B)

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."

The prosecution is relying on the second part of the principle established in **R v Anwoir** to prove that the properties are derived from illicit source, that is, circumstances in which the property/money is handled, giving rise to the irresistible inference that it can only be derived from a crime.

Counts 1 to 5

Having considered the evidence on record, I find that the circumstances are such that it can only be inferred therefrom that the money is derived from illicit source.

The very fact that the Accused proposed to purchase the boat in cash, and upon refusal, he turned to Mr Appadoo to arrange for office cheques (10 cheques in all), is very revealing of the fact that there is something unlawful about the transaction. It is obvious that he had the money in cash but did not want to credit it to his account for a proper office cheque to be issued. A detailed analysis of the 10 cheques issued in the name of Société des Bains de Mer Ltee for the total sum of 2.4 million rupees (**Document C**) show that the amount of each cheque never exceeded 400,000 rupees, clearly not to raise suspicion. Then, there is the fact that the application of the cheques was made to various banks, in different branches and by various persons including Mr Appadoo. What is more relevant is that the "purpose" mentioned in the application for the issuing of the various office cheques has nothing to do with the purchase of a boat, but instead mentioned is made of "booking for an engagement", "wedding hotel reservation", "wedding", which raise suspicion as to why the accused had to go through all these dealings if the money had emanated from his lawful activity.

Now, after having taken the pain of avoiding suspicion with regard to the source of the money, the boat was ultimately purchase in the name of Mike Didier Brasse. The question then arises as to why the Accused would use his money to purchase a boat, purportedly for tourism activity, where no application has been made to the Tourism Authority for a licence and finally purchased in the name of Mike Brasse who was arrested around November 2016 in Reunion Island with 100 Kg of drugs, of value 150 million rupees and was sentenced there to 7 years in jail.

The connection between the accused and Mike Didier Brasse has been clearly established. Mike Didier Brasse was arrested together with one Osman, a mechanic and one Capdor,

skipper. It was the said Osman who, in 2016, introduced Mr Appadoo to the accused for the conversion of the 2.4 million rupees in cash into office cheque. According to Mr Jeewoath, on the day of last payment, it was Mike Brasse who accompanied the accused and the latter instructed him to transfer the boat in the name of Mike Brasse⁵. There is also evidence to the fact that the accused had, in October 2015, made money transfer from Mauritius, in the name of Mike Brasse in Reunion Island through Western Union, as shown by the testimony of Mr Naggea, witness 7. **Document E** relates to such transfer and the amount shown therein is 125 Euros. But what is more striking is the relationship between the two, is described as “friend”.

Now, the version of the accused is that he is not acquainted to Mike Brasse. The only conclusion which the court can come to, bearing in mind the above evidence, is that they were both accustomed and they colluded for the purchased of the boat. The fact that the transfer of the boat was in the name of Mike Brasse, it is obvious that the money comes from him. Evidently, the accused did not, in 2016, have the means to buy the boat. The money cannot come from his lawful activities, which is pig breeder. Despite the fact that the accused is a pig breeder since 2007 and registered with the Food and Agricultural Research and Extension Institute (The FAREI), their report dated 2017 (**Document F**) has shown that since the year 2014, the accused had no pig population at his place. Now, even if the court had believed that the money came from his business, there was no impediment in him depositing same in his bank account, instead of going through Mr Appadoo to get office cheques and even paying him a commission for his operation.

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 Mike Brasse, a drug dealer, the court can reasonably infer that the money was proceeds of crime.

Count 6

This count is in relation to the accused being in possession of a land and house at Albion which was bought in 2009 for 750,000 rupees⁶ and was afterwards renovated. The house was bought in the name of Mrs Allaghen, his concubine, but the accused does not dispute the fact that he bought it and made the renovation work amounting to 200,000 rupees.

The accused explained that he met Mrs Alleghen, a salesgirl, in 2004 and they started dating. They were living together at his mother’s place, on a “crown land” at Roche Bois in a wooden house. Following her pregnancy in 2005, his concubine stopped working. It was in 2004 that he took over the business of pig breeder from his mother. He was earning some 150,000 to 200,000 rupees from every sale, which occurred 4 to 5 times. Besides that, for the years 2005 and 2006 he was working as part time driver during the night, earning 15,000 to 20,000 rupees monthly.

With regard to the purchase of the land in Albion and the renovation work, the accused stated that the money basically comes from his business. He revealed that the renovation consisted in the addition of a room, upgrading the flooring and building a concrete enclosure: “*Mo fine*

⁵ Page 45-46 of court proceedings of 9th November 2023.

⁶ As per the Title Deed- **Document A**

*met marbre et mo fine met parquet et mo fine cloture lacaze avec bloc et roche taille coulere*⁷. In addition to that he bought the furniture for the house. In 2005/2006 he bought a lorry Nissan Cabstar through leasing, which he had already paid. He sold it later on and in 2013, he bought another lorry for 185,000 rupees.

He had been travelling to various places since 1998, including Austria, Germany, France, Switzerland, Italie and Reunion Island. Between 1999 to 2016, he has made 9 trips to Reunion Island for holidays where he stayed in hotels.

The issue is whether the accused could lawfully afford paying for the house and doing the renovation work done taking into account his income and other lavish expenses. The report from the FAREI (**Document F**) shows that the yearly pig population at the accused's place from 2007 to 2013 was around 75 and 85 prior 2009 and 100 to 200 post 2009. However, what is striking is that the report shows that the yearly production stopped in October 2008, there being no production in 2009 and started anew in January/February 2010. This means that the year the land in Albion was bought, there was no production and therefore no earning for a whole year. The production started anew in 2010 with 2 sows, 15 gilts, 90 fatteners and 10 piglets, with an estimated production of 100 pigs for that year. This means that over and above the expenses for the house, the accused had had to invest in his business anew, restarting the production afresh. This does not give him much room to invest in renovation work. The unchallenged report produced from Mr Dumazel, Chartered Quantity Surveyor (**Document D**) shows that the renovation works amounted to 2,5900,000 rupees as at 2009.

Taking into account the explanations given by the accused with regard to his various expenses and earning, it is clear that he did not have the legal means of accumulating the cash to pay for the renovation works done.

Even though he was arrested in 2016 when the land and building was bought in 2009 and renovation work done around that time, it does not mean that he was not involved in illegal activities prior to that. In the case of **A R Ferrell v The Queen [2010] UKPC 20**, where all the money laundering counts related to transactions that pre-dated the possession of the drugs in the drugs counts, the Board held 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.

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:

⁷ Page 22 of Court Proceedings of 27th September 2023.

“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.”

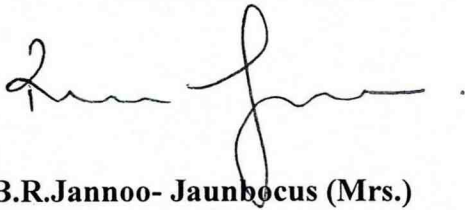
“Reasonable suspicion” is no instinct, allows no guess, no sixth sense. It is scientific. It has to find support on facts, not equivocal facts but facts consistent with guilt. All that an investigatory authority may do with its hunches is keep the person under observation but it cannot act on it.

“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.”

When the accused lied in an attempt to conceal the true origin of the money, he knew that the money comes from a tainted origin.

Having considered the evidence on record, the court finds proven that the accused had reasonable grounds to suspect that the property was derived from a 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 in respect of all 6 counts.



B.R.Jannoo- Jaunocus (Mrs.)

President

Intermediate Court

Financial Crimes Division

This 19th June 2024.