

ICAC V K Motaye.

2023 INT 166

CN: 64/2015 [FCD CN: 33/2020]

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

In the matter of: -

Independent Commission Against Corruption

v/s

Krishnaduth Motaye

JUDGMENT

Accused stands charged under 32 counts with the offence of wilfully and unlawfully being in possession of several sums of money which, in part, indirectly, represent the proceeds of crime where Accused had reasonable grounds to suspect that the sums of money represented the proceeds of crime in breach of sections 3 (1) (b) ,6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002. [FIAMLA] Accused pleaded not guilty to the charges and was assisted by counsel at the trial.

In a gist, Accused was one of the directors of Change Express Ltd from 2003 to 2005. The contention of the prosecution is that that he misappropriated funds from the company by submitting inflated salary sheets to the bank. Mr Badoo was appointed as an internal auditor and has prepared a report [DOC AW]. An edited report was produced in court. His conclusion is that Accused has misappropriated the funds of the company. [DOC AW]

Several documents were also produced in court including salary sheets, a certified copy of the minutes of a board meeting [DOC R] which was held on the 23rd of September 2015 which reveals that the salary of Accused was Rs 32,500. The certificate of incorporation, document relating to the change of name of the company, a list of shareholders, office

bearers and directors, a list of share transactions, the statements of accounts for 2002, 2003 and 2004 for Direct Plus Limited and Change Express Ltd and the bank statements of Mr Krishnaduth Motaye were also produced in court.

2 statements of Accused were read and produced in court by Mr Bholah who also produced an information bearing cause number 1276/2012. and a statement which was given by the Accused to the central CID on the 14th of July 2009. The salient parts of his testimony are as follows:

The internal auditor of Change Express Ltd noted discrepancies in the salary sheets and concluded that the salary which was being credited into the bank account of Accused had not been approved by the board of directors. There were also certain payments for which there had been no approval of the board of directors.

Under cross-examination, it was elicited from the witness that;

- the case for the prosecution rests mainly on the enquiry conducted by Mr Badoo,
- the sum of Rs 615,000 has been allegedly misappropriated.
- The board members had already been interviewed in respect of the issue of salary increase
- When he was referred to DOC B which refers to remuneration received as Rs 1,745,000 executive directors, he could not say how many executive directors there were at the time.
- He did not verify whether Mr Badoo had been appointed by the Board of directors.
- Mr Poteau is abroad and he could not confirm whether Poteau has received the said amount of money.
- As regards the contract between Mr Oderuth and the company, he did not enquire into the sum of money paid to Mr Oderuth by the company. He did not check the nature of work which had been carried out by Mr Oderuth. He added that the investigation was focussed on the amount paid and not the work performed. He stated that the work was only carried out in one place and that he did not conduct any enquiry as regards the equipment which was used.
- He was unable to say whether the external auditor had mentioned anything about the issue of payment to Mr Oderuth

- He agreed that Mr Badoo mentioned that the external auditor was requested to carry out an audit exercise at the end of each financial year in view of the different salary receipts.
- He agreed that the external auditor did not mention any misappropriation of funds by the Accused and did not find any discrepancy.
- He agreed that Accused mentioned in his statement that “si jamais ena aine changement dans la paye, bisin gagne consentement banne le zotte directeurs”. He then stated that he did record a statement from ex director Mr Bacha and Mr Bacha stated that at no point in time, the issue of salary was discussed at the level of the board.
- He agreed that Accused mentioned in his statement that the policy of the company is to have 2 sets of pay sheets. One is kept at the company's division and one at the bank and that Accused explained that the Board did not want the staff to know what was the actual payment of the directors. He conceded that this was never put to any of the directors.
- He agreed that Accused has mentioned that the company paid him damages in the sum of about 4 million rupees but added that he did not investigate into the matter since it was not material to the criminal case and could not confirm whether or not the money has been paid to the Accused.
- He did not agree that all the sums paid to the Accused by way of salary were approved by the Board of directors.
- He added that he has relied on the version Mr Badoo and the other directors including Mr Bacha and Mr Vythilingum.

In re-examination, he stated the investigation has revealed that there is a difference between the amount banked and the amount inserted in the salary sheet.

It can be gathered from Mr Badoo's testimony that he was the internal auditor of Change Express Ltd in 2006. He carried out an internal audit, the scope of which was to review the Board minutes, maintenance of records, review the system of control and to determine whether transactions and operations are being conducted within the legal parameters. He was appointed by the company following the approval of the Bank of Mauritius and Accused signed an appointment letter to grant authorization. He noted certain discrepancies. His conclusion pertaining to expenses was based on books and records

available to the company and independent confirmation from other sources such as salary sheets. His report was produced in court. [DOC AW]. As part of the internal audit exercise, the company record and salary sheets had to be reconciled and discrepancies were noted which could not be explained. Salary sheets are prepared by Accused and go to the bank through the instruction letter. He produced several documents. DOC M refers to a cheque paid to Mr Poutou as commission but that the latter never encashed the commission. As per the minutes of proceedings [DOC R], the salary of Accused is Rs 32,500 effective as from July 2005. There is no company record of any increase in salary. Mr Gungah even tabled a letter to deny the fact that he had approved the payment of inflated salaries. Mr Badoo then produced a covering letter in respect of the salary sheets and tables. He stated that the instructions sent to bank should normally match the company records. All the salary sheets which are kept in the company records and the instructions which were sent to the bank were produced in court. His version is that there is no evidence on record or minutes that Accused was entitled to any salary increase. The only approval of an increase dates back July 2005 and it amounts to Rs 32,500. Prior to July 2005, there are no board minutes to substantiate any increase in salary and Accused has not given any plausible explanation to explain the difference.

Under cross-examination,

- Mr Badoo explained that he has based himself on the minutes of Board and the salary sheets to reach his conclusion.
- He conceded that Horwaths Limited has not made any mention of misappropriation of any sum of money by the Accused.
- It was agreed by Mr Badoo that he did not record any statement from Mr Gungah
- When he was asked whether he has enquired into the discrepancy between the 2 sets of payslips, he stated that it is not the practice to have 2 sets of payslips and that he did confirm from Mr Vythilingum but that he did not deem it necessary to have a written statement from him.
- He stated that he did not contact the previous auditor whilst preparing the report and added that there was no internal auditor previously.
- He denied that Mr Lim was the previous auditor and stated that he was a part time accountant.
- He agreed that he did not question him about the practice of bookkeeping.

- He is not aware whether the Rs 40000 which had to be paid to Mr Busgeeth was not paid because the latter had purchased foreign currency from the company.
- He agreed that he did not record any statement from Mr Busgeeth. He however spoke to him verbally in May 2006.
- He agreed that there was an agreement reached between the company and Accused after he resigned whereby the company agreed to effect ex gracia payment to the Accused in the sum of Rs 3,250,000. He did not agree that the Accused did not misappropriate any funds from the company.

In re-examination, he explained that he did not annex the statements of all the persons referred to by Learned Counsel for the defence because all the exchange of correspondence was tabled to the Board. He stated that DOC R is credible since it has been duly signed by the secretary of the company. He added that external auditors conduct the audit exercise on a sample basis whilst the internal auditor has to do a 100 % test. He added that the settlement relates probably to Accused's shares.

The main features of Mr Olivier Louis France Sylvain's testimony are as follows:

He was requested by Mr Motaye to encash a cheque and he handed over Rs 225,000 to him. He also encashed a cheque of Rs 3150 and handed over the money to Accused. As regards the cheque in the sum of Rs 200,000, he stated that he gave the cash to Accused. When he was asked whether he gave the whole amounts of Rs 100000 and Rs 225000 to the Accused, he stated that he could not recall whether he gave the whole amount to the Accused. Under cross-examination, he stated that he could not recall who asked him to give a statement at ICAC.

The gist of Mr Oderuth's testimony is that in 2003, he was working as carpenter and was carrying out renovation works at the office of Change Express Ltd. The company agreed to refurbish the office for the sum of Rs 75,000. He received Rs 40000 as advanced payment and the remaining sum in cash. He was unable to recall with whom he negotiated. His memory was refreshed with leave of the court and he agreed that he negotiated with the Accused. When he was shown DOC K, he stated that he has not received Rs 300000. He could not say how much money he claimed from the company. Under cross-examination, when he asked about the costs for the work he did at Quay street, he could

not answer. When he was confronted with a statement that he did other work apart from Quay street renovation, and has not yet received payment, he was most hesitant and asked for clarifications with regard to the nature of such works. He added that he told the truth in statement. When he was again asked whether he received payment for the other work, he stated that he did not do other work. He then stated that he performed another work for the company at Sir William Newton street. When he was asked whether the company paid him for Quay street and Sir William Newton street, he answered in the affirmative. He could not recall how much money was paid for the work at William Newton street. In re-examination, he stated that he did not receive Rs 300,000.

The main features of Mr Bacha's testimony are that he was appointed director of Change Express Ltd on the 5th of December 2000 and acted as Secretary of the Board of Directors from June 2000 to 2004. Mr Krishnaduth Motaye was the Chief Executive Officer at the time. According to him, any salary increase for the Chief Executive Officer must be approved by the directors although it does not necessarily have to go through a board meeting. There was indeed an increase in the salary of Mr Motaye when he was in office. He agreed that an increase in the salary of the executive officer is indeed an important decision. DOC R was shown to him. He agreed that as per that document, he was present at the meeting **and** that item 4 relates to the salary of Accused and other directors. He added that he was aware of a salary increase of Mr Motaye as per financial statements. At that stage, he was confronted with a previous inconsistent statement, he admitted that he mentioned that during the tenure of his office, he was not aware whether there has been an increase in salary of Mr Krishnaduth Motaye. He explained that his answer should be taken in its context and that when he gave that answer, he had no file or records in his possession. It would be incorrect to say that he was not aware of any increase in salary.

Under cross-examination, it was elicited from him that;

- When he gave his statement, he was not in presence of any document and he was not confronted with any documents.
- An internal audit is an audit of the system which is in place and is not an internal investigation and is based on documents.
- Before finalizing his report, the auditor must obtain the version of the person he is pinpointing following which an investigation is carried out by the board or by a forensic accountant who is independent.

- The financial statement of the external auditor is an official document which carries all its weight all the more since it has been deposited at the Registrar of companies. The said document was prepared by Horwaths Mauritius Limited and was certified by Mr Vythilingum. The document does not reveal any malpractice from July 2002 up to June 2006.
- DOC J is in contradiction with the financial statement in respect of the salary and the misappropriation referred to in DOC J is incorrect.
- The sum of Rs 1745128 was shared between Mr Gungah and Accused, albeit not equally.
- There was an accord a l'amiable in November 2007 which was reached between the company and Mr Motaye.
- He did not agree that there was any misappropriation of funds by the Accused. He is not surprised that there are two sets of salary sheets. He added that the financial report is based on the bank statements.
- Mr Busgeeth was paid Rs 40,000 in 2004 or 2005 and he was approached in his capacity as partner of Horwaths Ltd. He did not agree that the Accused has pocketed the sum of Rs 50, 000.
- The renovation work at Quay street was carried out with high quality wood.
- He was not involved in the day to day running of the company but only in the management.
- He denied that there are any funds which have been misappropriated
- He explained that as per DOC B2, there is no detailed of salary for director and non-executive director since there were no corporate governance regulations in force at the time.

Accused's testimony on the other hand reveals that all changes and expenses are ratified and approved at the Annual General Meeting statement and the document is submitted to the Registrar of Companies. Mr Oderuth was a contractor who was engaged by the company and the contract was for Rs 300,000 and he was paid for his work. There was also a receipt and all the documents were submitted to the external auditors. An agreement was reached between the company and himself whereby they agreed to pay him the sum of 6 million rupees. The first agreement was for the sum of 3.250 million rupees following which the case he lodged was withdrawn. The second case dated 14th of November 2007 represents payment as damages in the sum of 4.3 million rupees. As

regards the existence of 2 sets of salary sheets, he explained that it is the current policy of companies to keep 2 types of salary sheets; one for higher management and one for normal employees since the higher management receives other benefits. This is normally done so that employees do not know how much a senior manager is getting since it is confidential. All payments which are made to directors are approved at the Annual General Meeting. Even Mr Gunga, an ex-director signed the annual report. The procedure for appointment of an internal auditor is that the Bank of Mauritius has to give his approval. Mr Badoo was never appointed as internal auditor since there was no board meeting and Mr Lee was still in post at the time. When he was shown DOC R where there has been a proposal for review of remuneration package for executive directors, he stated that there was never any board meeting and he was not convened to that meeting. He was the only executive director in 2012 and his annual salary was Rs 480,000 and not Rs 245,760. He added that DOC B1 is an official document filed at the Registrar of companies. He was referred to B2, B3 which are official documents which were approved at the AGM. He added that Mr Badoo ought to have gone through the financial accounts before drafting his report. He was never confronted with DOC J. He denied that he pocketed Rs 50000 by falsifying a remittance advice and withdrawing funds from the company account and maintained that Mr Busgeeth undertook private work for the company. He denied that Mr Oderuth was not paid his dues for the work he has completed. He denied having misappropriated any bonus.

Under cross-examination, it was agreed by Accused that he was in possession of all the sums of money as averred under counts 1,3,4,5,6,7,8,9, 10,12,13,14,16,17,18,19,20,21,22,23,24,25,26,27,28,29,31 He agreed that there is Board approval for important decisions. When he was shown DOC R, he denied having attended the meeting. He stressed that his increase in salary was discussed at the Annual General Meeting but that there is a formal document to that effect which has been filed at the Registrar of Companies. He added that he was the executive director who has received payment and that in the annual return, it is not specified who is the executive director. He agreed that it is mentioned executive directors in DOC B1. He agreed that important decisions have to be documented. He agreed that as per DOC B2, the directors are given a gross remuneration of Rs 1,745,128 and that there were 2 executive directors at the time and that his individual salary is not specified in DOC B2. As regards B3 which englobes the salary of directors in respect of the annual report dated 2005/2006, he

confirmed that the individual salary is not included in the report. He agreed that he was the one responsible for the payment of the salaries although Mr Gungah was also handling salaries. DOC R was shown to him and he stated that he thinks it is his signature. He then retracted from such version and denied having signed the document. He could not say whether it is a fake document. He maintained that he did not sign the document. He denied having inflated his salary. He added that only the accountant and the Board of directors have access to the salary sheets. He denied having kept 2 records with a view to embezzling the company. He denied that there is no documentary evidence as regards his increase in salary and stated that they are in the audited accounts which disclose the salaries and which constitute a legal document. He agreed that they do not specify the individual salaries. He agreed having been prosecuted before the Intermediate Court for larceny and possession of stolen property and that the charges were dismissed against him. He agreed that he paid Mr Oderuth Rs 40000 by cheque and Rs 35000 cash. He explained that the agreement dated 25/09/2003 has nothing to do with the sum Rs 300000 which was related to another building. He maintained that Mr Oderuth was paid for his work. He denied that Mr Oliver remitted money to him and added that that he gave it to the counter. He explained that payment was effected to Mr Busgeeth. He denied that he was in possession of Rs 50,000. He denied having stolen money which was destined for Mr Busgeeth. He agreed that the agreement between him and Change Express Ltd does not refer to any criminal case. He added that there was in fact a claim to remove all the cases he had lodged against company and its directors. He stated that the salary sheets sent to the bank are the official salary sheets and that the table which has been produced is the result of Badoo's workings which do not include the final payment. He added that ICAC never asked for the salary sheets and that when he was summoned by ICAC in 2012, he did not have any documents since he had already resigned from the company. He has not kept any record of his pay slips. He denied that there is no evidence to prove that he was entitled to the salaries as per the salary sheets he sent to the bank. All the salaries he has received were recorded, audited and approved at the Annual General Meeting. He reiterated that he cannot recognize document R and was never present at the said meeting. He denied that he is lying. In re-examination, he denied that he has misappropriated the funds of the company. He denied that his signature appears on the DOC R. He added that he paid Mr Oderuth Rs 300000 and does not owe him any money. Since he was forced to resign, he could not have access to the documents.

Mr Rampoortab also gave evidence in favour of the defence. The gist of his testimony is that he lodged a case at the Supreme Court on behalf of the Accused to safeguard Accused's interests as 20% shareholding in Change Express Ltd. The case was settled. A case was also lodged before the Industrial Court and a global agreement was reached in the sum of 3 million rupees to put an end to all the disputes between the company and Mr Motaye. He explained that the agreement is a global agreement taking account of the shareholding and unfair dismissal of Mr Motaye.

Mr A Sewraz gave evidence that Mr Kemraz Sharma, the managing partner of Horwaths Ltd is unfit to attend court and filed a medical certificate to that effect. He was referred to DOC AAE which is the report of Horwaths Limited, the external auditor and stated that it has been signed by Mr D Busgeeth.

It has been confirmed by Ps Nundah that Mr D Busgeeth left Mauritius on the 29th of October 2022 for Dubai and that the date of his return is unknown.

Accused's version as per his unsworn statement is that it is the Board of directors which decides on salary of directors and that it is he or Mr Gungah who approves the salary sheets. He added that the consent of the other directors is needed for approval but that it is not necessary to have a meeting. He stated that his salary was increased with the authorization of the other directors and that any salary increase is duly noted in the financial statements which are submitted to the Registrar of Companies. He added that when the security officer encashes a cheque, he normally remits money to the counter. He could not recall whether sums of Rs 50000, 225000 and 200000 were remitted to him by Mr Oliver.

Submissions

Mr Naga submitted that Accused has clearly inflated his salary in the light of DOC R, the fact that 2 sets of salary sheets had been kept at the company and the report of Mr Badoo. He laid emphasis on the report of Mr Badoo quoting a long extract from his report. He further submitted that Mr Oderuth was adamant that he never obtained the sum of Rs 300000.

Miss Jadoo (who was replacing Mr Jadoo) on the other hand submitted that Mr Bacha who deposed in favour of the prosecution gave evidence in favour of the Accused and agreed that an increase of salary of Accused was discussed amongst the directors and he denied that there has been any misappropriation by the Accused. She further submitted that no weight ought to be given to Mr Badoo's report.

Analysis and findings

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

Counts 1,3,4,5,6,7, 8,9,10,12,14,16,17,18,19,20,21,22,23,24,25,26,27,28,29, and 31

In the light of the documentary evidence, I am satisfied that the prosecution has proved the element of possession in respect of the above-mentioned counts.

The next element to be established is whether the said sums which were in the Accused's possession represent the proceeds of any crime. In order to establish the status of the property, the prosecution is entitled to rely on the Anwoir principle. In that respect, the following observations of Latham LJ at paragraph 21 in the case of **R v/s Anwoir [2008] 2 Cr App R 36** who referred to 2 ways in which the Crown can prove that the property derives from crime, are worth reproducing:

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

The contention of the prosecution is that the sums of money which form the subject matter of the above charges were obtained as a result of fraudulent misappropriation by the

Accused and that the Accused did not in fact benefit from any increase in salary. In support of such contention, it is relying on Mr Badoo's report and DOC R. On the other hand, Accused has denied having misappropriated any funds. His version is that he did in fact benefit from an increase in salary as evidenced by the audited reports of the external auditor and that there was a discussion and the approval of the other directors. He added that he was keeping 2 sets of salary sheets so that the lower staff does not become aware of the salary of the directors.

Since the conclusion of Mr Badoo relates to an ultimate issue which has to be determined by this court, it is crucial for this court to scrutinize the facts on which such conclusion is based before it can reach its own conclusion.

I have borne in mind the tenor of DOC R which refers to the board resolution dated the 23rd of September 2015 and which was relied upon by Mr Badoo. The salary of Accused which was approved by the then directors as per DOC R is in contradiction with the salary included on the salary sheets which have been sent to the bank. Accused's version is that the salary sheets which were sent to the bank reflect his salary following the salary increase which he had benefited which had been discussed with and approved by the directors. It is expedient to note that amongst the ex directors, the prosecution opted to call only Mr Bacha as its witness and the latter has corroborated the version of the Accused to the effect that he was aware of a salary increase of Mr Motaye and there was a discussion amongst the directors to that effect. This court is left in the dark as to the version of the other directors who could have enlightened the court whether a salary increase had indeed been discussed and approved all the more when the enquiring officer has confirmed that they were all interviewed and have given their versions on this crucial issue.

As regards the practice of keeping 2 sets of payslips, I have found the Accused's version that he did not want the lower staff to know the salary of the directors to be difficult to believe. Nevertheless, I find that the prosecution ought to have called the other directors to confirm Mr Badoo's version that the practice was not regular. It is essential to highlight here that Mr Badoo's version that he has obtained confirmation from Mr Vythilingum, an exdirector of the company that the practice of keeping 2 sets of payslips is irregular cannot be relied up since such version has not subjected to any test of reliability by cross-

examination. It is significant that Mr Badoo himself stated at the end of the report that a thorough investigation was imperative in view of the discrepancies which were noted. It is questionable that a thorough investigation was indeed carried out.

A scrutiny of Accused's testimony on the other hand reveals incoherence in certain aspects of his testimony for instance his dubious version that he is aware of the contents of DOC R and was never present at the meeting. Mr Bacha has confirmed that the existence of such meeting when he was confronted with the document. I have also take note of the Accused's farfetched explanation as regard the 2 sets of salary sheets. Furthermore, the report of the external auditor dated the 28/09/2006 which reveals that proper accounting records have been kept cannot be given much weight since the person who has prepared such report did not testify in court despite the endeavours of the defence to secure the attendance of the witness in court. There is evidence on record that the person who has prepared the report has left the country.

Be it as it may, this court finds that the report of Mr Badoo is inconclusive to the extent that it is mostly based on the hearsay statements of ex directors and staff of the company who did not give direct evidence in court and hence, it cannot be safely relied upon. I therefore conclude that an irresistible inference that the sums of money which form the subject matter of the above counts can only be derived from crime cannot be drawn in the present case in view of the absence of direct evidence from the ex-directors of the company and Mr Busgeeth, all the more when the only ex director who gave evidence in court deposed in favour of the Accused. The documentary evidence by itself including DOC R is insufficient to prove that the sums of money which were being credited into the account of Accused were the result of any criminal activity.

Count 2

In respect of count 2 which concerns the sum of Rs 265,000, a cheque [DOC K1] was produced in sum of Rs 300000 and there is evidence that it was cashed by the Accused. Accused's version is that he did pay Mr Oderuth his dues and does not owe him any money. An agreement between Direct Plus Ltd and Mr Oderuth in respect of work for the sum of Rs 75,000 was produced in court. The contention of the prosecution is that Mr Oderuth performed other work for Rs 300,000 but that he obtained only Rs 75000 for the

work carried out at Quay street and that the remaining sum was cashed by the Accused. An examination of the evidence of Mr Oderuth reveals that he was not only evasive but that he wavered in his version on the issues whether he did in fact perform other work for the company and whether the company did pay him for all the work he had performed. On this score, I cannot agree with the submissions of Mr Naga that Mr Oderuth was adamant that he was never paid the sum of Rs 300,000. In the light of his answer in cross-examination that he was paid for both works, [pg 20 of T12/09/2022], it cannot be concluded beyond reasonable doubt that the company owed him any money and that Accused had pocketed such money. For the above reasons I find that it has not been proved beyond reasonable doubt that the sum of Rs 300,000 represents the proceeds of crime.

Counts 11, 15 and 32

In respect of counts 11, 15 and 32, the proof of the element of possession rests on the testimony of Mr Oliver who allegedly handed over the said sums of money to the Accused. Accused stated that the sums were money were not remitted to him but to the counter.

In respect of the sum of Rs 112,500, which relates to count 15 although Mr Olivier admitted having encashed the cheque in sum of Rs 225000. [DOC N], he was evasive when he was asked whether he gave the whole sum of Rs 225,000 to Accused, and could not confirm whether he did remit the whole amount of Rs 225000 to the Accused. As regards the sum of Rs 100,000 under count 11, although he stated that he gave the sum of Rs 100000 to the Accused, he could confirm whether he had given the whole sum to Accused. in view of Mr Olivier's evasive answers, I find that the prosecution has failed to adduce conclusive evidence that the sums of money in respect of counts 11,15 and 32 have indeed been remitted to the Accused and conclude that the element of possession has not been proved beyond reasonable doubt. Counts 11,15 and 32 are therefore dismissed.

Count 30

Turning now to count 30, Mr Badoo's report reveals that "*there is conclusive proof that the former CEO has pocketed Rs 50000 by falsifying a remittance advice and withdrawing funds from the company*". The above observation relates to the additional payment of Rs 50000 which was allegedly pocketed by Accused in relation to professional services by Horwaths Ltd is not supported by any direct evidence from Mr Busgeeth. It is noted that the invoice marked DOC P refers to the sum of Rs 220000 although there is an entry on the invoice signed by Accused that an additional sum of Rs 40,000 was requested by Mr Busgeeth. As for the out of court statement of Mr Busgeeth which was referred to in Mr Badoo's report to the effect that he has received only one cheque in the sum of Rs 220,000, it is evident that it cannot be relied upon since it is tantamount to hearsay. In order to establish that the sum of Rs 50, 000 which was handed over to Accused emanates from crime, it was incumbent on the prosecution to call Mr Busgeeth as a witness. He would have enlightened the court whether indeed such additional payment represents consultancy and related services personally requested by him as alleged by the Accused. It must be pointed out that the part of Mr Badoo's report referring to the fact that an overpayment was noticed by one Mr Ramdoo, the then marketing officer, who voiced his concern cannot be given any weight. Suffice it to say that such allegation of overpayment is inadmissible hearsay to the extent that Mr Ramdoo was not called as a witness. For the above reasons, I find that the prosecution has failed to prove beyond reasonable doubt that the sum of Rs 50,000 has an illicit origin.

For the above reasons, all the charges are dismissed against Accused.

N Senevrayar-Cunden (Mrs)

[Delivered by N Senevrayar-Cunden, Magistrate of Intermediate Court]

[Delivered this 27th of June 2023]