

**ICAC v M A Haulkory**

**2023 INT 164**

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

**CN: 1150/2015 [FCD CN 40/2020]**

**Independent Commission Against Corruption**

**v/s**

**Mohamed Ali Haulkhory**

**Judgment**

Accused stands charged, as per the amended information, under 23 counts with the offence of money laundering in breach of sections 3(1) (b),6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002. Accused has pleaded not guilty to the charges and was assisted by counsel

Several documents were produced in court including certain bank documents emanating from the British American Exchange, BAI money receipts, cheques a certified copy of an information statement of account of Accused, several deposit envelopes, cash deposit vouchers, certified copies of 2 title deeds were produced in court.

It can be gathered from Chief Investigator Dowlut that there is no evidence that Accused and her partner filed any return with the MRA. She stated that the police secured 9700 euros and 500 Subutex tablets of a value of Rs 780000 at Accused's house in March 2007. Under cross-examination, she confirmed Mr Komul has been convicted for drug dealing. She stated that Accused was working as driver at one time but that she did not verify how much money he was getting. As regards his version that he had a business of selling cars, the Accused did not have any permit to do that business and could not produce any document in support of his version. She went to Pailles but could not find any company of the name of SS Plastic As regards the predicate offence, she conceded that

the charge was dismissed against the Accused. She agreed that the plot of land on which the Accused built the house was given by his father.

Mr Teemul Anoop Sharma, Mrs Persand, Mr Mohanund and Mrs Komul testified in court.

The evidence which transpired from examination in chief of Mr Komul is as follows:

- He is currently serving sentence for offence of selling drugs and that he was convicted in 2010.
- He was prosecuted for money laundering in relation to certain deposits which he had made. The transactions relate to sums of money which his brother in law, the Accused had given him and he has pleaded guilty to those charges.
- Accused had requested him to keep the money and send him the money when the need arises. He initially stated that Accused did not inform him about the origin of the sums of money. He was confronted with an inconsistent statement and agreed having mentioned that Accused informed him that his business generates big money and that he could not keep such money in his bank account and asked him whether he could keep the money which emanates from the business of selling drugs. He added that it is the truth and that he could not remember since he has been in jail for 12 years.
- In June 2010, ADSU officers carried out a search at his house and found Subutex and money. His version is that the drugs and money belonged to the Accused. The drugs and money was seized and he was prosecuted and convicted.
- He identified DOC N, N3, N6, N7, N8, N9, N11, N12, N13, N14, N15, N16, N17, N18, N19 and agreed that he carried out the transactions as evidenced by the said documents and that the sums of money referred to on those documents emanate from Accused.
- As regards DOC N 4, the sum of money referred to on the document emanates from lottery winnings. As regards DOC N 10, the money comes from his earnings.

- He pleaded guilty in the case involving money laundering charges because the money supposedly emanate from drugs.
- He repeated that the sum of money referred to on DOC N4 emanates from lottery winning. He reiterated that the sum of money referred to on DOC N10 represents his earnings. When he was confronted with a previous inconsistent statement, he maintained that the sum of Rs 250,000 comes from lottery winnings whilst the sum of Rs 20,000 comes from his earnings.

Under cross-examination, Mr Komul agreed that he informed the police that when ADSU officers questioned him in respect of the presence of Subutex pills and euros, he informed them that it belongs to the Accused. He explained that he remained silent initially and it was only in jail that he gave that statement. Initially, when he was arrested, he did not incriminate Accused. he agreed that he is the one who showed the officers the drugs and sum of money. When he was informed that he was the one who was involved in drug trafficking in view of his conviction, he could not answer. He then came up with the version that he mentioned that the drugs belonged to him since he was threatened by Accused. He added that it is his wife who gave him that information. He could not say which threats he received. He then stated that his mother in law asked him to accept the charges and that what he mentioned about the threats in his statement is not the truth and that he in fact concocted a story. He admitted that he did not mention in his statement that his mother in law had asked him to accept the charges. He agreed having lied regarding the alleged threats by Accused. He was unable to recall from where the sum of Rs 67500 emanates. He could not recall whether he gave a cheque of Rs 250000 to Accused to give to one Subeetee Houssama. . In respect of DOC N10, he stated that it represents his earnings. He stated that in relation to count 4, which refers to the sum of Rs 250, 000, it is the Accused who gave him the money. He added that he made a mistake when he stated that the sum of Rs 250, 000 emanates from lottery winnings. He agreed that he has changed his version. He maintained that Accused gave him several sums of money. He agreed that they bought a plot of land together for the sum of Rs 400,000 and that each one paid half. He denied that Accused had been reimbursing small sums of money in relation of the purchase of the plot of land. He agreed that he is not on speaking terms with the Accused. When he was asked whether he was in good terms with the Accused,

he stated that he has been convicted for his sake. In re-examination he maintained that the sum of Rs 250,000 was given to him by Accused.

### **Accused's testimony**

The main features of his testimony are as follows:

From 2001-2004, he started working for Bronze Peacock and was earning Rs 4000 on a monthly basis. He was getting additional money when he worked overtime. His salary could reach Rs 10000 to 20000. From 2004-2007, he started working for himself and was involved in the business of buying and selling cars. He used to advertise in the newspaper. He started earning Rs 60000 to 75000. He was making a profit of about Rs 20000 per vehicle. In 2007, he started another business of toys . As from 2009, he was distributing goods which he imported in supermarkets and shops and used to get Rs 50000 a month. In 2011 he started distributing drinks to Phoenix beverages, Lai Fat Fur and his wages were about Rs 100,000 on a monthly basis. He set up a company known as Briquet des lles. His father purchased a plot of land for him and he built a house on the land with the profits which derive partly from his business and partly from his father. He mortgaged his house when he took a loan for his business. The loan was in the amount of Rs 1,400,000 to invest in his business. As regards his warehouse, he had to stop that business in 2011 since his workers started stealing and he made a loss and could not settle his loan. He had to sell his house and one Mr Persand agreed to pay him Rs 4,450,000. The latter paid Rs 1,200 000 cash and later small sums of money on several occasions. Following the sale of the house, he managed to purchase a car and a small house for the sum of Rs 600,000. He gave explanations in respect of the sums of money related to counts 1, 2 and 4. In respect of the counts which aver the element "conceal", he explained that these represent the sums of money which he owed Mr Komul in relation to a plot of land they had bought together. As and when he gets money, he used to reimburse Mr Komul. He confirmed from a document that the sale was affected to him and Mr Komul on the 6<sup>th</sup> of November 2008 and that it was duly registered. Normally he would reimburse Rs 10000 at different intervals. He maintained that he owed him money and used to reimburse in instalments.. The money emanates from his own profits. He started to reimburse him from 2008. He cannot recall the exact sums. He was positive that he reimbursed money to him

over a period of 18 months. He denied that he was involved in the business of selling drugs. As regards the foreign currency found on him, he produced all documents and the charge was struck out. He agreed that the charge of drug dealing against him was dismissed. He denied having been involved in the business of selling Subutex. He added that all the various sums he remitted to Mr Komul emanate from his business .

Under cross-examination, he agreed that he did not mention in his unsworn statement that the different sums of money which he gave Mr Komul represent reimbursement in relation to the purchase of a plot of land. He agreed that he denied in his unsworn statement having remitted money to Mr Komul. . He agreed that there was indeed a search at Petit Raffray in his house and a certain quantity of Subutex and euros were found at his house on the 14/03/2011. He agreed that he used to stay with Mrs Maistry who was arrested and convicted for drug dealing but that the charge against him was dismissed. He agreed that in his statement he mentioned that the transfer which he effected in the sum of Rs 250000 was for Sada Curpen who requested him to send the money to one Ussama Isbidite and that the money was from lottery winnings. He added that the contents of his statement are accurate. He then stated that he questioned Komul to ask him whose money it was and the latter said "tel dimoune so case, alle fair ca pou li". When he was questioned by Western Union, he stated that the money emanates from his car business. He agreed having given 2 different versions. As regards the sum of Rs 107,100, he maintained that he did give a sum of money to Mr Jerome. He added that the 107,100 comes from his earnings when he made profits from the sale of cars. In respect of count 2 which relates to the sum of Rs 67,500, he conceded that he did not give the complete name of Wesley who is his friend. but that he is no longer in touch with him and does not know is whereabouts. He agreed that Briquet des Iles was doing business and was receiving bank statements but all documents have been destroyed. In addition, he did not keep any record of his car business.\_He stated that when he was receiving cash, he was not depositing same every day into the bank. He was also gambling in 2006 when he was out of job and was going to casino 20 days a month. He has no document to substantiate his winnings in the casino. When he was asked a specific question regarding the source of Rs 5400, Rs 2500 and Rs 24000 deposits on 8/01, he stated that he could not recall. He could not produce any documents in connection to Briquet des Iles. He stated that the charge for drug dealing was dismissed against him since he was not involved in any drug dealing and he agreed that his wife was a witness in that case. He has no documentary evidence

to substantiate the various jobs he has been doing. He agreed that MRA has no record of his income. He agreed that he cannot give exact figures with regard to the profits he made. He initially denied having mentioned in his statement that from 2001 up to 2011 he had no savings or investment and spent all the money he was receiving. He however agreed having mentioned that he had kept the money with him. He agreed that on the 7<sup>th</sup> of March 2011, he was arrested with a certain quantity of foreign currency in the amount of 8700 euros and they were in parcels containing cheese boxes. He denied that when he was questioned he stated "c'est l'argent ene business sa, mo finne gagne change sa black, mo pena aucaine recu, mo ti pe alle quitte sa dehors". He denied having stated that "mo pas pou capave dire qui business , aine business illegal sa". He agreed that in his house at Petit Raffray, the police also secured euros. He stated that at the time his wife was not in employment and he was the sole bread winner at the time. He conceded that his father was retired and that in respect of the job of colporteur, he has not produced any documents . but added that he did inform ICAC to whom he sold the products. He maintained that he used to keep all his money at home and that he had no import or export permit or receipts from the casino. His father gave him Rs 900,000 to help him build his house. He agreed that he spent 2.3 million rupees on the construction of the house. He denied having given money to Mr Komul on condition that he would give him the money when he needs. He denied that having concealed the sums of money as averred in counts 3,4,6,7,8,9,10,11,12,13,14,15,16,17,18,19, and 20 in the bank account of Mr Komul which emanate from crime and denied that the sums which he received from Mr Komul as per counts 1, 2 and 5 emanate from criminal activity. He further denied that he had reasonable grounds to suspect that the said sums of money emanate from crime. He denied that the house which he disposed in May 2013 represents the proceeds of crime. He denied that he was involved in drug dealing activities. In re-examination, he stated that although his father was retired he had savings which he shared amounts his children. He stated that when he travelled to china , he was in the car business and had money since he was working at the time.

A Witness from Automatic Systems gave evidence that Accused won a pick 6 in the sum of Rs 169,244 on the 7/06/2008 and produced a document to that effect but he could not certify whether Accused came in person to take the money. A witness from La Sentinelle produced a transaction report. A representative from Grays and Phoenix Beverages gave

evidence and produced records of transaction of purchase effected by Accused from February 2011 up to December 2012.

The statements of the Accused are on record.

### **Submissions of Mr Y Laloo**

Mr Laloo submitted that the Accused has explained his profits. He was involved in the import business and also the sale of cars. He has produced a document from La Sentinelle in support of his business of cars. He further explained that he did not keep other records due to the lapse of time. As regards the sums of money given to Mr Komul by Accused, Accused explained that these sums amounted to reimbursement of money which was owed to Mr Komul in relation to a plot of land. The charge of drug dealing against the Accused was dismissed. He highlighted that Mr Komul was not a credible witness and that he had an axe to grind.

### **Submissions of Mr Ponen**

Mr Ponen submitted that Accused was not a credible witness. He has not been able to substantiate his version as regards the various jobs he was doing. As regards his alleged job of selling cars, there is no evidence of the number of cars which were sold and amount of sale. As for the extracts from Petite annonces which were produced by the Accused, they do not establish that the cars have indeed been sold. He further submitted that a conviction for drug dealing is not an essential element of the offence. An inference that the sums of money emanate from crime can be inferred from the large quantity of euros was found on the Accused, the fact that Accused was the sole breadwinner of the family, the fact that he was unable to satisfactorily explain the transactions as per his bank statement, the fact that his version in respect of his jobs have not been substantiated, the fact that a significant amount of Subutex and euros were found on the Accused. The issue at the end of day is one of legitimacy. Accused's wife was arrested and convicted for drug dealing and did not give evidence against Accused. Accused agreed that he had no savings, yet he owned a big house. His explanations about his job in 2012 is irrelevant to counts 21,22 and 23 since the house was purchased well before. The absence of records

from NTA cannot be overlooked. There is no evidence to substantiate the version of the Accused.

### **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, 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.

It is incumbent on the prosecution to firstly establish that the sums of money which were the subject matter of the charges emanate from crime.

In order to establish the status of the property, the prosecution is entitled to rely on the Anwoir principle which was referred in the case of **DPP v/s A.A. Bholah** [2010] PRV 59. 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 **Anwoir** principle was quoted with approval in the case **R v/s MK & AS [2009] EWCA 952** In the case of **R v/s MK & AS** [2009] EWCA 952, Hellet LJ at paragraph 12 said *‘It is open to the prosecution to try to prove guilt from the evidence of the circumstances in which the property was handled’ which it is said “give rise to the irresistible inference that it can only be derived from crime”. They do not have to prove specific crime’.*

It is therefore imperative for this court to look at all the circumstances to determine whether an irresistible inference may be drawn that the sums of money which are the subject matter of the charges emanate from crime.



## **Count 1**

As regards count 1 which relates to the sum of Rs 107,100 which Accused received from Mr Komul on the 16<sup>th</sup> of April 2009, Accused's version is that one Jerome Mohanund gave him the money through Mr Komul. This court notes that Accused has given a totally different version in his statement where he says that the said sum of money was deposited by Mr Mohanund into his bank account and comes from one Georgy who asked him to purchase a spare part from China. Such version has been discredited by the testimony of Mr Mohanund who vehemently denied having deposited the sum of Rs 107,100 into the account of Accused and added that he does not know any Georgy. It is significant that Mr Komul has been convicted for money laundering in respect of the sum of Rs 107,100 which was received by Accused from Mr Komul as per DOC N1. The irresistible inference from Accused's wholly inadequate explanation as regards the purpose of the transaction, the fact that a significant number of drugs and Euros was found at his place on the 14<sup>th</sup> of March 2011, the lack of documentary evidence that he did use the money to purchase a spare part for one Georgy is that the sum of Rs 107,100 has an illicit origin.

The next question is whether Accused had reasonable grounds to suspect that the said sum of money has an illicit origin. I find that it can be inferred from the following circumstances that Accused had reasonable grounds to suspect that the money emanates from crime;

- His proximity to Mr Komul who was convicted of money laundering in respect of the sum of Rs 107,100 which Accused received and is serving sentence for drug dealing
- The fact that he has given 2 different versions to explain the source of money

I therefore find Accused guilty as charged under count 1.

## **Count 2**

As regards count 2 relating to the amount of Rs 67,500 which was received by Accused via a transfer effected by Mr Komul through Western Union. Accused explained that he allegedly received an order from one Wesley and Accused asked the said Wesley to

leave the money with his wife who in turn gave the money to Mr Komul so that the latter could transfer money to him. It cannot be overlooked that in his statement Accused stated that it is Lucy Mestry who gave him the sum of money. I note that Accused did not give the full name of the said Wesley and it could not be confirmed from the said Wesley whether he had indeed ordered any item for the sum of Rs 67,500 and given a sum of money to Accused's wife. The fact that there is no evidence that it is indeed Wesley who gave the money, the fact that Accused went through Mr Komul who has been convicted of money laundering and the fact that he has given different versions to explain the source of the money, the fact that the said Lucy Mestry who, as per Accused's version, had given the money to Mr Komul was eventually convicted for drug dealing, the large amount of drugs which was found at his place on 14<sup>th</sup> of March 2011 are circumstances which lead to an irresistible inference that the sum of Rs 67,500 emanates from crime.

The next question is whether Accused had reasonable grounds to suspect that the sum of money is tainted with criminality. I find that it can be inferred from the following circumstances that Accused had reasonable grounds to suspect that the money emanates from crime;

- His proximity to Mr Komul who was convicted of money laundering in respect of the same sum which was received by Accused.
- The fact that he gave different versions regarding the source of the money
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I therefore find Accused guilty as charged under count 2.

### **Count 5**

As regards count 5 which relates to the sum of Rs 218,000 which was transferred abroad by Accused to one Oussama, Accused's testimony in court depicts that Mr Komul requested him to transfer some money to France to one Oussama. He gave him Rs 250,000 cash. Accused transferred Rs 218,000 since he had to pay certain costs. It was agreed by the Accused that he gave a different version in his statement to the effect that the transfer which he carried out in the sum of Rs 218000 was for Mr Sada Curpen who requested him to send the money. He added that the contents of his statement are

accurate. He then came up with the version that he questioned Mr Komul to ask him whose money it was and he said “tel dimoune so casse sa, alle faire sa pou li”.

I find that the circumstances in which the said sum was transferred, the fact that the money emanates from Mr Komul who has been convicted of money laundering in respect of the sum of Rs 218000 which he gave to Accused, the fact that a significant number of drugs was found at his premises in March 2011 give rise to an irresistible inference that the sum of Rs 218,000 was indeed derived from criminal activity.

Turning now to the issue of mens rea, I find that it can be inferred from the following circumstances that Accused had reasonable grounds to suspect that the sum of Rs 218000 emanates from crime.

- The contradiction in his version on the question as to who requested him to transfer the money
- The fact that he lied in the form which he submitted to the Western Union when he gave information on the purpose of the transaction strongly suggests that he tried to obscure the origin of the money

For the above reasons, I find Accused guilty as charged under count 5.

**Counts 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20**

As per the above counts, it is averred that Accused concealed certain sums of money in the bank account of Mr Komul. Accused has admitted under oath having from 2009 to 2010 given several sums of money to Mr Komul. He has however denied that the said sums of money emanate from criminal activity. His version is that they represent reimbursement to Mr Komul in respect of the land which they had purchased together. Mr Komul on the other hand testified that Accused gave him the sums of money on the understanding that same would be returned to Accused and that they emanate from proceeds of drugs.

The first crucial issue to be thrashed out at this juncture is whether Accused did “conceal” several sums of money in the bank account of Mr Komul. In order to determine the real

purpose of the transactions in respect of the above counts, the credibility of witness Komul is a crucial issue since he was the one who received the said sums of money from the Accused. Mr Komul's initial version is that Accused did not inform him of the origin of the sums of money which had been remitted to him. It is only when he was confronted with an inconsistent statement that he admitted that he mentioned that Accused informed him that his business generates big money and that he cannot keep such sums of money in his bank account and asked him whether he could keep the money which emanates from the business of selling drugs. He agreed that it is the truth and that he had forgotten.

Although the above departure can be explained by the passage of time, there are material self-contradictions in the testimony of Mr Komul which render his version unreliable. A salient one is his admission having lied when he told the police that the drugs belonged to him because he had been threatened by the Accused. It is noteworthy that he altered his version in respect of the source of the sum of Rs 250,000. Furthermore, his version that it is his mother in law who asked him to accept the charges cannot be given any credence since such version does not appear in his statement. A key element which cannot be overlooked is the fact that the sums of money which had been given to Mr Komul under the above counts are not substantial and that there is no plausible reason why the Accused would need to conceal such small sums of money. For the above reasons, this court cannot safely rely on Mr Komul's version that Accused had informed him that the money emanates from drug proceeds to conclude that Accused concealed several sums of money in his bank account.

I therefore conclude that the prosecution has failed to prove beyond reasonable doubt that Accused did conceal the sums of money which are the subject matter of counts 3,6,7,8,9,10,11,12,13,14,15,16,17,18 19 and 20 and I dismiss the said charges against Accused.

#### **Count 4**

The charge under count 4 is that Accused concealed the sum of Rs 250,000 in the bank account of Mr Komul. In view of the unsatisfactory testimony of Mr Komul as regards the source of the Rs 250, 000, I find that there is insufficient evidence to prove beyond

reasonable doubt that Accused did conceal such sum of money in Mr Komul's bank account and I dismiss count 4 against the Accused.

### **Counts 21, 22 and 23**

Turning now to count 22 which relates to the house which he sold, Accused's version is that he spent about 2,250,000 rupees for the construction of his house and that his father gave him Rs 900,000. He explained that he used his profits from his business to construct the house. It is essential here to highlight that the evidence Mr Komul is not related to counts 22, 21, 23 and the fact that he came across as a witness who is not credible does not carry any weight in so far as those counts are concerned. The main question to be thrashed out in respect of count 22 is whether the Accused's explanations as regards the source of the funds which were used to construct his house are plausible. A scrutiny of Accused's testimony depicts that Accused was far from being a truthful witness. His contradictory explanations as regards the sums of money he received from Mr Komul are revealing. His various explanations about the jobs he was doing have not been substantiated. As regards his car business, although there is evidence that he advertised in the newspaper, there is no evidence of the amount of sales and of the number of cars which have been sold. He did not adduce documentary evidence in support of the fact that he has been doing such jobs. He conceded that he did not file any return with the MRA. He was unable to give any figures with regard to the profits he had made and conceded that he has no import permit. As for the documents revealing the transactions between Briquet des Iles and Phoenix Beverages and Grays Ltd, one cannot overlook that the dates of those transactions relate to 2011 whilst the house was constructed well before 2012. I therefore conclude that the Accused has utterly failed to bring any cogent evidence demonstrating that he was involved in any business of a legitimate kind before he embarked on the construction of the house. It is also borne in mind that a significant number of drugs and foreign currency which were found at his house on the 14/03/2011. In that respect, it is important to point out that the mere fact that the predicate offence has been dismissed against him is not a factor which carries any weight in the light of the principles enunciated in **DPP v A. A Bholah** [supra] that it is not incumbent to prove a particular crime. It follows that the dismissal of the charge of drug dealing against the Accused cannot be regarded as a co-existing circumstance which would weaken or destroy any inference of guilt. **Teper v R [1952] AC 480** In the light of the foregoing, I find

that the irresistible inference from the above circumstances is that the house was constructed partly with funds which emanate from criminal activity.

The next question is whether there is sufficient evidence of mens rea, that is, suspicion or reasonable suspicion on the part of the Accused that the money derives from criminal activity. As highlighted in the case of **Antoine v/s State [2009] SCJ 328**, "*Since suspicion is based on facts, it is the duty of this court to analyse the whole of the evidence on record in order to determine whether or not it can be inferred from the facts that Accused reasonably suspected that the proceeds were proceeds of a crime*". The central question therefore revolves around the existence of facts which were known to the Accused from which he could have reasonable grounds to suspect that the sum of money which he had used to construct his house emanate from criminal activity.

I find that the following circumstances lead to an irresistible inference that Accused had the necessary mens rea;

1. The various contradictions in his evidence when he attempted to explain the source of his money
2. The fact that he was not a truthful witness and his explanations strongly indicate that he was trying to obscure the source of the sums of money.

I therefore find Accused guilty as charged under count 22.

As regards counts 21 and 23, since there is evidence that the car and house were purchased with the proceeds of sales of the house which was constructed partly with tainted money and Accused did have reasonable grounds to suspect that the money had an illicit origin, I find Accused guilty as charged under counts 21 and 23.

For the above reasons, I find Accused guilty as charged under counts 1, 2, 5, 21, 22 and 23 and I dismiss all the other charges against Accused.

N Senevrayar-Cunden (Mrs)

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

[Delivered this 27<sup>th</sup> of June 2023]