

ICAC v Vijaya Narainen

2022 INT 119

IN THE INTERMEDIATE COURT (THE FINANCIAL CRIMES DIVISION)

CN 8/2020

In the matter of:

INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

V

VIJAYA NARAINNEN

JUDGEMENT

Background

The accused

1. The accused Vijaya Narainen worked at the British American Insurance Company Ltd (BAI) since 2007. She joined the BAI as insurance advisor. During the course of her employment the accused Vijaya Narainen was responsible for both in-house and outdoor sales of insurance products. She would often meet with customers in order to market and sell the insurance policies which the BAI proposed. One of those policies is the Super Cash Back Gold.

The Super Cash Back gold Scheme and Mr Richard Albert Rase.

2. During the trial it was explained by the prosecution witnesses, namely the representative of the former BAI that the Super Cash Back Gold Plan or policy

is an investment which the customer makes with the BAI. A sum of money is invested with the BAI until its maturity date for a minimum ranging from one to ten years. When the policy reaches its maturity date, the customer can either reinvest or take the money. The benefit of that policy that the BAI proposes is that the money invested fructifies at end of the maturity period. Mr Richard Albert Rase had subscribed to insurance policies under that scheme. His sister is Mrs Mary Anne Esmelda Rase. She holds a joint account with him.

The Charge

3. In an information dated 30th December 2016, prosecution was initiated by the Independent Commission Against Corruption (ICAC) against the accused for the offence of **conspiracy to commit the offence of money laundering** under **Section 4** of the **Financial Intelligence and Anti Money Laundering act** (FIAMLA). The three counts in the information describe the alleged offences.
4. **Count 1** states that on the 25th of August 2014 at the BAI the accused agreed with *one Mary Anne Esmelda Rase to cause the sum of Rs. 3 M to be invested in the Super Cash Back Gold Insurance Policy of the BAI and where she the said Vijaya Narrainen born Caroopenen had reasonable grounds for suspecting that the said sum was derived from crime.*
5. **Count 2** states that on the 17th November 2014 at the BAI the accused agreed with *one Mary Anne Esmelda Rase to cause the sum of Rs. 2 M to be invested in the Super Cash Back Gold Insurance Policy of the BAI and where she the said Vijaya Narrainen born Caroopenen had reasonable grounds for suspecting that the said sum was derived from crime.*
6. **Count 3** states that on the 17th November 2014 at the BAI the accused agreed with *one Mary Anne Esmelda Rase to cause the sum of Rs. 3 M to be invested in the Super Cash Back Gold Insurance Policy of the BAI and where she the said Vijaya Narrainen born Caroopenen had reasonable grounds for suspecting that the said sum was derived from crime.*

Accused pleads not guilty.

7. On the 11th September 2017 the accused pleaded not guilty to the three counts in presence of her counsel before the Criminal Division of the Intermediate Court. The matter was fixed for trial to the 5th February 2018. The prosecution witnesses listed for the trial on the information are as follows:

LIST OF WITNESSES

1. *Technical Officer (Ex Investigator of ICAC) Foolessur of MRA.*
2. *Mrs Pramila Rase born Ramsaran, 47 years, no calling and residing at 114 Ligne Berthaud, Vacoas/Spinnesiden 20A 1536 Moss, Norway.*
3. *Mrs Hamda Rumjeet, 30 years, Team Leader Customer Service at the National Insurance Company Ltd and residing at Dr Ross Ave, Quatre Bornes.*
4. *Mr Jacques Dany Tong Sam, 41 years, Head of Customer Service at the National Insurance Company Ltd and residing at 217, Royal Road, Curepipe.*
5. *Mrs Shazia Mamode born Hateea, 52 years, Branch Manager at HSBC Ltd and residing at Impasse Auguste Esnouff, Curepipe.*
6. *Mr Jean Francois Lindsay Chan Kim Seng AH-CHAM, 48 years, Anti Money Laundering and Fraud Investigator at the MCB Ltd and residing at Ave. Geranium, Morc Raffray, Le Hochet, Terre Rouge.*
7. *Mr John Spencer Rase also known as Johnny, 88 years, retired and residing at La Caverne No 1, Vacoas.*
8. *Mrs Marie Stephanie Lim Sam born Naigom, 40 years, Sales Agent at Island Life Insurance and residing at C1, Cite La Caverne, Vacoas.*
9. *Investigator Nohur (added on the 27th March 2018).*
10. *Registrar General to depute the relevant officer to produce an affidavit notoriété apres deces affidavit de succession bearing TVNo 201508/000735.¹*

¹ Added as witness on the 11th August 2021

11. N. Burumdoyal to come and produce CID Report No 03/2016².

12. Civil Status officer to depute the relevant officer to produce certified extract of marriage certificate bearing certificate No 379³.

The Trial

8. On the 4th June 2021 the trial was started⁴ before this Division and the prosecution opened its case. On that day the prosecution called Witness 4 Mr Jacques Dany Tong Sam Head of Customer Service at the National Insurance Company Ltd.

The prosecution case

9. Mr Tong Sam's testimony has been summed up extensively in this judgment because his testimony not only sets the background to the insurance policies involved but it also describes the practice which was in use at the BAI regarding the Super Cash Back Gold Insurance Scheme.

10. In examination in chief Mr Tong Sam initially explained that the BAI is an insurance company that deals with insurance policies amongst which there is one scheme called the Super Cash Back Gold. Mr Tong Sam testified that the Super Cash Back Gold is like any other insurance policy that can be subscribed to. Namely there is a premium which has to be paid and the insurance policy can be of a duration of up to ten years for its maturity. The payment of the insurance policy is made at the end of the maturity period or upon the death of the policy holder to his beneficiaries. Witness 4 indicated that upon reaching the maturity period the policy holder has two options. The first option is that the policy holder can take the insurance money and the second one is to subscribe anew to another insurance policy. In his testimony Mr Tong Sam added that if the policyholder passes away before the end of the maturity period, usually it is the heirs of the deceased or someone entrusted with the latter's succession who notifies the BAI about the death. Thereupon,

² Ibid.

³ Ibid

⁴ Delay having mainly been caused before the Criminal Division of the Intermediate Court due to the two national lockdowns because of COVID 19.

the BAI after having made all necessary verifications, calculates the death proceeds which should be paid to the beneficiary of the insurance policy. The proceeds according to Mr Tong Sam are calculated as follows: if the client has subscribed Rs 100,000, the latter is entitled to an additional 10% insurance premium as life cover. And if the insured passes away before the maturity date, the beneficiary would be entitled to Rs 100,000 as insured money Rs 10,000 which is a 10% bonus as death proceed. Witness 4 then described the procedure how the money is paid to a beneficiary namely that the insurance company carries out a KYC (Know your client). That is the company carries out all verifications before the payment is made to the beneficiary. Subsequently Mr Tong Sam outlined the possibilities that are available to a client of an insurance policy when the policy reaches its maturity date. Mr Tong Sam laid emphasis on the procedure that is applicable whenever a customer of an insurance policy decides to “resubscribe” to a new insurance policy. Mr Tong Sam said to “resubscribe” *“la forme li simple, si li envie resubscribe.”*⁵ He added that all that the customer has to do is to sign an application and provide all his KYC in the form of his identity card, proof of residence and the element regarding underwriting of the policy. The manner in which the form to “resubscribe” is obtained according to Mr Tong Sam can be by post; the customer goes to one of the BAI’s outlets or the one of agents of the BAI goes to meet the client. Thereafter Mr Tong Sam told the court that at the time of maturity it is up to the client to decide on which bank account the money will be paid. This bank account number would have already been disclosed in advance by the client to the BAI. Mr Tong Sam said that the BAI usually adopts two ways in which payment is made. The first one is by bank transfer and the second one is by cheque.

11. Mr Tong Sam was shown a renewal encashment form by the prosecution. He testified that this form is applicable regarding renewal of policy. Mr Tong Sam said that in this form there are different sections. Section A caters for situations where the client decides to resubscribe. The client according to Witness 4 has to provide his previous insurance policy, his identity card, his

⁵ Page 7 of the Record of proceedings of Court Sitting of the 4th June 2021.

bank account number, a recent utility bill and a new application if this is a joint policy signed by both policy holders. Mr Tong Sam said that in the event the client does not want to resubscribe then the latter simply inserts “I do not wish to subscribe to my super cashback gold.” Mr Tong Sam also explained a particular section in the form whereby its written “office use only.” He said that this part is for internal use whereby the BAI agent certifies the payout instructions. In the particular situation Mr Tong Sam said that it is the accused’ agent code which is borne on that form. Mr Tong Sam told the court that this section is a means of control. Namely that the agent certifies having met with the client. Mr Tong Sam said that he does not personally know about the situation of Mr Richard Albert Rase but he recollects that Mr Richard Albert Rase was a customer of the BAI. During the examination in chief the prosecution also asked the witness to explain, identify and produce certain documents. These documents which form part of the court record are:

- A proposal form policy No 00207/002756 marked as DOC A.
- A policy holder marked as DOC B.
- The terms and conditions of the Super Cash Back Gold marked as DOC C.
- A proposal form 00207-0050835 marked as DOC D.
- An insurance policy schedule 00207-0050835 marked as DOC E.
- A proposal form 00207-0052714 marked as DOC F.
- An insurance policy schedule 00207-0052714 in the name of Mrs Marie Esmelda Raser marked as DOC G.
- A proposal form and insurance policy schedule 00207-0052698 marked as DOC H.
- Original of the policy holder form marked as DOC J.

12. Mr Tong Sam explained that all these documents were handed over to the ICAC at the enquiry stage and that these documents are essentially insurance policies subscribed by Richard Albert Rase and Marie Esmelda Rase. **DOC A**

B, C concerns the policy of Mr Richard Rase **DOC D, E, F, G, H, J** concern policies subscribed by Mrs Marie Esmelda Rase.

13. After Mr Tong Sam had deposed for the prosecution, he was cross-examined by the defence.
14. The salient points raised in the cross-examination are that Mr Tong Sam conceded firstly that he is not aware of the exact date when Mr Richard Albert Rase passed away but that the insurance policy which Mr Rase had subscribed reached its maturity in August 2014. Secondly, Mr Tong Sam agreed that when the BAI came to know that Mr Rase passed away, the BAI would normally abide with the instructions of Mr Rase. Namely the money that ought to be paid at the maturity date would be transferred to a designated bank account. And that is HSBC account 010013480091 at the Vacoas branch. Mr Tong Sam confirmed that the benefits of the insurance policy of Mr Rase were paid in that account.
15. In Re-examination Mr Tong Sam was requested by the prosecution about the physical presence of the policy holder who signs a form regarding the insurance policy. Mr Tong Sam's answer was that he could not answer for the person but that in theory it should be the case. As he says in his testimony: *"pour le principe oui."*
16. Subsequent to the testimony of Mr Tong Sam, Mrs Hamda Rumjeet witness 3 was examined in chief by the prosecution. The latter gave evidence to the effect that following a disclosure order no 112325 she gave to the ICAC certain documents. She confirmed that on the 11th January 2016 at 14:00 hrs she handed to the ICAC an original maturity encashment form bearing policy number 00207-0027569. Witness 3 identified that document it was produced marked as **DOC K** and filed. The prosecution also showed to Witness 3 a copy of passport and Identity Card. She confirmed that it is a proof of identity of Mr Richard Albert Rase namely it is a photocopy of latter's passport and identity card. This document was produced, marked as **DOC L** and filed. Thereafter Mrs Hamda Rumjeet identified a third document which she had handed to the ICAC. It was a proof of account number for Mr Richard Albert Rase bearing

customer No 010-013480. This proof of account number was produced, it was marked as **DOC M** and filed.

17. There was no cross-examination for Mrs Hamda Rumjeet.

18. Mrs Karishma Narayen Foolessur witness 1 was called by the prosecution. Witness 1 who is an ex-investigator at the ICAC confirmed that she is the recording officer in the present enquiry. Witness 1 gave evidence to the effect that she recorded the defence statement of the accused on the 23rd of February 2016 at the ICAC's premises. Mrs Foolessur told the court that on that day after having explained to the accused her constitutional rights, the latter voluntarily gave that statement. Witness 1 then identified, read and produced that out of court statement of the accused. The statement was marked as **DOC N**.

19. In cross-examination, Witness 1 confirmed that she is only the recording officer in the present case and that she only recorded in the statement the accused's version. Thereafter, defence counsel firstly confronted her with the fact that there was a confusion in the statement which she recorded from the accused regarding a certain date. She replied that she was unable to answer on that issue. Secondly, witness 1 was asked about whether the accused at any point in time said that she knew that Mr Richard Albert Rase had passed away. Witness 1 again said that she was unable to provide any explanation on that point. In re-examination witness 1 stated that witness 9 is the main enquiring officer. Witness 9 is investigator Haris Nohur⁶.

20. Mr Haris Nohur witness 9 was thereupon called by the prosecution to testify.

21. In examination in chief, witness 9 confirmed that he is the main enquiring officer in the present case. He identified, read and produced the out of court statement of the accused which he recorded on the 15th March 2016 at 14:30 hrs at the ICAC. The statement was marked as **DOC N1**. In his deposition investigator Nohur stated that the ICAC's enquiry revealed that on the 6th August 2014 Mrs Esmelda Rase met with the accused. Mrs Rase brought along a Policy Encashment Form and photocopies. The form was for his brother Mr

⁶ He was added as witness 9 on the 27th March 2018.

Richard Albert Rase who had passed away in Norway. The purpose of Mrs Rase's visit to the BAI was to encash Mr Richard Albert Rase's insurance policy which had reached maturity on the 13th August 2014. Mr Rase according to witness 9 had passed away on the 3rd of August 2014 and the accused backdated the form and inserted the 3rd of August. Witness 9 said that during her interview the accused could not explain the issue regarding the backdate. Furthermore, investigator Nohur told the court that the accused did not ask for the originals of the documents supplied. The accused triggered the procedure for the payment of the sum of money which had reached maturity in Mrs Rase's bank account. Investigator Nohur stated that the accused is the one who proposed Mrs Rase to reinvest that money in separate parts with the BAI.

22. Investigator Nohur testified that the ICAC became aware of these circumstances when Mrs Rase gave a statement to the ICAC. He also pointed out that the death of Mr Richard Albert Rase came to light only when Mrs Rase told the ICAC about it.

23. In cross-examination, however Mr Nohur told the court that Mrs Rase did not give any explanations to the ICAC. Because Mrs Rase had elected to keep silent.

24. In re-examination Investigator Nohur reiterated that the accused was aware Mr Rase had passed away.

25. Subsequently, Mr Jean Francois Lindsay Chan Kim Seng Ah Cham Senior Fraud Investigator at MCB witness 6 was called to testify. Witness 6 produced an account opening form and attached to it were KYC documents. It was marked as **DOC O** and filed. He explained that this form concerns a joint savings account at the Vacoas Mauritius Commercial Bank. The joint account holders are Ms Marie Anne Rase and Mr John Spencer Rase. Witness 6 thereafter produced bank statement for the period of 1st September 2008 to the 13th October 2015. The bank statement was marked as **DOC P** and filed. Witness thereafter produced evidence of two transactions that happened in the said bank account, the first transaction pertains to a transfer of Rs 6 million. Witness 6 said that this money came from the HSBC account

010013480-01 in the name of Mr Richard Albert Rase and Mrs Marie Anne Rase into account 082163839 in the name of Ms Marie Anne Esmelda Rase. The second transaction is an account to account transfer from account 082163839 to account 010252223 for the sum of Rs 5 million. Witness 6 added that from the record he could notice that its written from BAI Rs 5 million. The document was marked as **DOC Q**.

26. Witness 6 was not cross-examined.

27. Witness 5 and witness 8 were then called respectively. In examination in chief witness 5 Mrs Shazia Mamode who works as bank manager at HSBC produced five documents. The first one is a copy of bank statements marked as **DOC R**. The second one is an account opening form marked as **DOC S**. The third document are KYC documents marked as **DOC T**. Fourth she produced a swift message which was marked as **DOC U**. Fifth it was a customer transfer form marked as **DOC V** and sixth it was a certified copy of telegraphic transfer which was marked as **DOC W**. Witness 5 was not cross-examined.

28. Witness 8 Mrs Marie Stephanie Lim Sam who was called by the prosecution confirmed that in 2006 she was employed with the BAI. She was working as sales agent. She gave evidence to the effect that back in 2006 Mr Richard Albert Rase was one of her customers. After having taken into account **DOC A** Mrs Lim Sam confirmed that Mr Richard Albert Rase had subscribed to an insurance policy with the BAI. The total was Rs 8 million. Thereafter Mrs Lim Sam said that because she was no longer working at the BAI she had some difficulty to recollect all the formalities that were done regarding the renewal of that policy. Eventually, Mrs Lim Sam contended that regarding a renewal of a policy that anybody could come and submit an application form on behalf of the policy holder.

29. In cross-examination, Mrs Lim Sam was asked to give a family background of the Rase family. She said that on the day Mr Richard Albert Rase decided to subscribe to the policy this was done at his residence whereby his sister and father were present. The beneficiaries were his twin sons. Mrs Lim Sam confirmed that she was aware that Mr Rase was in Norway and that each time the latter would invest in the BAI schemes he would say that: “ca bizin reste

ene zafaire entre famille, dans lacaz.” That the investments or arrangements should be kept within the family. The only person who had been excluded from the scheme according to Mrs Lim Sam, was the wife of Mr Rase, Mrs Pramila Rase. Thereafter, Mrs Lim Sam upon being questioned about the procedure regarding renewal of policies told the court that since she had left the BAI in 2011 the procedural rules which applied had changed and that she could not clarify what had been told previously by Mr Tong Sam.

30. In re-examination Mrs Lim Sam reiterated that she was not familiar with the rules regarding renewal as these changed since she left the BAI.

31. On the 31st January when the matter came for continuation the prosecution called witness 11 Mr Burumdoyal who produced a handwriting report which he had put up. The CID Report No 03/2016 is dated 22 January 2016. The report was produced and marked as **DOC Z**. Mr Burumdoyal was not asked fully expatiate on his report.

32. In cross-examination, Mr Burumdoyal was asked about the conclusions in his report. The gist of the cross-examination was that according to the defence there were no dissimilarities between the sample handwritings and his conclusion. Mr Burumdoyal explained that the last signature he had obtained for comparison dates back to 2011 and that he was not in a position whether that person was still in good health or actually applying the same pressure when providing a signature.

33. After witness 11 had testified the prosecution called Mrs Coomaravadee Naraynan principal registration officer. The latter’s testimony was limited to the production of an affidavit de succession which was marked as **DOC AA**. In cross-examination witness 11 stated that as representative of the Registrar General’s office she could not give any evidence if someone had passed away.

34. After witness 11 had deposed the prosecution closed its case.

The Defence case and the submissions

35. The defence did not adduce any evidence and closed its case. Prosecution and defence made a joint motion that they would be providing the court with written submissions. On the 10th March 2022 learned counsel provided their written submission and made a very short oral submission in court.

The issue and the Applicable Law

42. In the present matter, the central issue which the court has to consider is whether at the material time by initiating the Super Cash Back Gold policies in favour of Mrs Mary Anne Esmelda Rase, the accused agreed with Mrs Rase to launder money which she knew were proceeds of crime. In fact, the prosecution's case is that the accused conspired with one Mrs Esmelda Rase to commit the offence of money laundering by having resort to the Super Cash Back Gold insurance policy. The money sought to be laundered according to the prosecution are the proceeds of an insurance policy which had been subscribed by one Mr Richard Albert Rase. According to the prosecution the said Richard Albert Raser has passed away in Norway and that her sister Mrs Esmelda Rase had siphoned that insurance money which has been invested with the help of the accused in the Super Cash Back Gold policy. The ultimate aim according to the prosecution is to launder that ill gotten money. In simple terms, this court has to consider whether the accused committed that offence as averred by the prosecution in the information. The accused stands charged under **Sections 4, 3 (1) & (2) of the FIAMLA** under all three counts.

36. **Section 4** of the **Financial Intelligence and Anti Money Laundering act** creates the offence of conspiracy to commit money laundering:

Without prejudice to section 109 of the Criminal Code (Supplementary) Act, any person who agrees with one or more other persons to commit an offence specified in section 3(1) and (2) shall commit an offence.

37. **Section 3 (1) and (2)** of the **FIAMLA** which is referred to in **Section 4** of the **FIAMLA** outline the money laundering offences that may become the subject matter of a conspiracy under the **FIAMLA**.

38. In other words, a literal reading of **Section 4** reveals that the offence of conspiracy to commit money laundering can materialise if the facts of the case falls within one of the different acts that Section 3 (1) and (2) enumerates.

3. Money Laundering

(1) Any person who –

(a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or

(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,

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.

(2) A bank, financial institution, cash dealer or member of a relevant profession or occupation that fails to take such measures as are reasonably necessary to ensure that neither it nor any service offered by it, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence or the financing of terrorism shall commit an offence.

(3) In this Act, reference to concealing or disguising property which is, or in whole or in part, directly or indirectly, represents, the proceeds of any crime, shall include concealing or disguising its true nature, source, location, disposition, movement or ownership of or rights with respect to it.

36. In the present case, a preliminary observation is that although the information makes mention of the sections of the FIAMLA under which the accused stands charged however a perusal of the information reveals that the particulars of that information do not specify which precise money laundering offence the accused has agreed to commit. That being said, which is more in terms of the manner in which the information has been couched and that the defence did not address this court upon, this court therefore went on to consider if the facts fell within the ambit of the legislation itself. Hence, this court decided to evaluate the applicable law and case law that pertains to cases of conspiracy to commit money laundering.

37. It is undisputed that in Mauritius the law regarding conspiracy finds its origins from the United Kingdom as outlined in **Deedaran v Queen 1981 SCJ 152** where it was held that:

.... The offence of conspiracy - the definition has been read out to you - consists in an agreement to do, among other things, an unlawful act. Under this definition three matters have to be considered by you. First, the agreement. That is the gist of the offence. It is not necessary that the conspirators should have accomplished what they agreed to do; the agreement to do it is sufficient to constitute the offence, but it is necessary to prove more than a mere intention on the part of each conspirator to carry out the design. It must be proved that there has been a communication of that intention by one accused to another and that that other one has approved of it. That communication, the approval of that intention which constitutes the offence is normally made apparent by some overt act (overt act is the technical word used in legal jargon, it is an act that can be seen by some other people), an act done by the accused. It can be proved by

word or deed or it may be inferred from the conduct of the accused. Once the agreement to carry out the object of a conspiracy is proved, it is immaterial whether the object is in fact carried out or not. The second matter to be considered is to object of the agreement; it must be one specified by law. Here the object is an unlawful act, the unlawful act being particularised.... The third matter to be considered under this charge is: the parties to the agreement. The collaboration of at least two persons is essential to the existence of a conspiracy. A person cannot conspire with himself....

38. From **Deedaran** the observation which can be made is that for the offence of conspiracy to materialise there are three aspects that need to be taken into account:

- (a) The agreement namely the communication of that intention by one accused to another and same being approved by word, deed or inferred from the conduct
- (b) The second matter to be considered is the object of the agreement; it must be one specified by law. Here the object is money laundering.
- (c) The third matter to be considered is the parties to the agreement. The collaboration of at least two persons is essential to the existence of a conspiracy. As the Supreme has succinctly put it “*a person cannot conspire with himself....*”

39. In spite of having Deedaran as a beacon light, this court noted that there are not many landmark judgments in Mauritius which have dealt with the law regarding the offence of conspiracy to commit laundering. Fortunately in the UK, the House of Lords had the opportunity of thoroughly analysing the offence of conspiracy to commit money laundering in **R v Saik [2006] UKHL 18** .

40. In **Saik** the House of Lords dealt with the legal conundrum that courts are faced with in cases of conspiracy to commit money laundering. In a very inspiring and succinct manner in its judgment the House of Lords stated that wherever someone is prosecuted for the offence of conspiracy to launder proceeds of crime,

the mens rea of conspiracy 'comprises the intention to pursue a course of conduct which will necessarily involve commission of the crime in question'.

40. The facts in **Saik** were that the accused operated a bureau-de-change at Marble Arch in London. He pleaded guilty to conspiracy to convert banknotes for the purpose of assisting another to avoid prosecution for a criminal offence. His basis of plea, accepted by the prosecution, was that he merely suspected that he was dealing with criminal property. He had no actual knowledge. The House of Lords quashed his conviction and held that mere suspicion, although sufficient mens rea to prove a substantive money laundering offence under the CJA 1988, s 93 was inadequate proof of conspiring to commit such an offence. Thus, the House of Lords in **Saik** set out the principle that for conspiracy to commit a money laundering offence requires proof of actual knowledge, not mere suspicion, that the property in question was the proceeds of crime. At paragraph 8 of the Judgment it was held that:

[8]

It follows from this requirement of intention or knowledge that proof of the mental element needed for the commission of a substantive offence will not always suffice on a charge of conspiracy to commit that offence. In respect of a material fact or circumstance conspiracy has its own mental element. In conspiracy this mental element is set as high as 'intend or know'. This subsumes any lesser mental element, such as suspicion, required by the substantive offence in respect of a material fact or circumstances. In this respect the mental element of conspiracy is distinct from and supersedes the mental element in the substantive offence. When this is so, the lesser mental element in the substantive offence becomes otiose on a charge of conspiracy. It is an immaterial averment. To include it in the particulars of the offence of conspiracy is potentially confusing and should be avoided.

41. In other words, the elements applicable to the offence of conspiracy subsumes the lesser mens rea which applies to money laundering.

42. In Thomas [2014] EWCA Crim 1958 at [15]—[16] Davis LJ explained and reaffirmed the principles outlined in **Saik** namely that:

16. Once one focuses on that, as one has to, the mistake then becomes clear. It is authoritatively been decided, some years ago now, by a decision of the House of Lords, in the case of **R v Saik** [2007] 1 AC 19 [2006] UKHL 18, that the mens rea applicable to the offence of conspiring to launder criminal proceeds is not to be equated with the mens rea applicable for the substantive offence. Further, so as far the actus reas of the substantive offence is concerned it is required that the property must in fact be the proceeds of crime.

17. Consequently, in a case of conspiracy in this context an alleged conspirator must be proved, having regard to the terms of section 1 of the Criminal Law Act 1977 as interpreted by the House of Lords, to have known that the proceeds were criminal proceeds where such proceeds existed, or to have intended that they be such proceeds, where the position was looking to the future. Suspicion alone would not suffice, as the House of Lords decided.

43. Thus the current position as highlighted in both **Saik** and **Thomas** is that in order for someone to be found guilty of money laundering the latter must have had the required mens rea. That mens rea is proof of actual knowledge, not mere suspicion, that the property in question was the proceeds of crime.

44. This court has applied those principles applicable to the offence of conspiracy to commit money laundering and assessed the facts and evidence on record. In fact, this court outright has to point out that there is not enough evidence to conclude how the accused could have had knowledge that the money was of illicit origin. The evidence on record even falls short of passing the test as outlined in **Deedaran** namely that:

- (a) There must be an agreement namely the communication of that intention by one accused to another and same being approved by word, deed or inferred from the conduct
- (b) The object of the agreement that it must be one specified by law.

- (c) The parties to the agreement. The collaboration of at least two persons is essential to the existence of a conspiracy.

Reasons underpinning the conclusion

43. In fact, the overall assessment of the prosecution's evidence upon being carried out in light of **Deedaran**, **Saik** and **Thomas** leads to the inevitable conclusion that it is very difficult to believe the prosecution's case.
44. Because firstly, the prosecution avers that the accused was well aware about the origins of the money as outlined by Investigator Nohur. However, as can be gathered from the evidence on record namely the cross-examination of Investigator Nohur, the latter unequivocally admitted that that Mrs Rase (the person with whom the accused is alleged having conspired) never provided any explanations to the ICAC. According to Investigator Nohur, Mrs Rase had elected to keep silent. Therefore, this court finds that it is very surprising that in the absence of the version of the other conspirator, how the prosecution was able to enquire from the accused regarding the alleged conspiracy and that there was any agreement between the parties.
45. Secondly, it is undisputed that the money which was obtained and which is the subject matter of the alleged offence originated from an insurance policy which was subscribed from the BAI itself. Mr Tong Sam on this aspect clearly explained that whenever a policy holder would pass away, the BAI would make the payment in a designated bank account which the policy holder would have already notified the BAI in which to make that payment.
46. In the present case, this bank account into which the money was paid was a joint account which Mrs Rase held with the policy holder Mr Richard Albert Rase. On this aspect, this court again finds it implausible that the accused could even have doubts about the origins of that money. Because that money was an insurance money which the BAI itself had paid in that

joint account which Mrs Rase was entitled to manage. Mrs Rase was somehow lawfully in possession of that money.

47. The third point concerns the handwriting examination report. This court has noted that the handwriting examiner was provided with a sample handwriting which was handed over to him by the ICAC. The person whose writing was under examination is Mr Richard Albert Rase. The latter to this court's understanding never gave his sample handwriting himself to the police. This court noted that the sample handwriting of Mr Rase emanates from some documents, upon which the expert based himself to put up the report dates back to 2011. The report is dated 2016. In other words, the expert was provided with a sample handwriting after six years had elapsed since that sample was obtained. It could therefore not be excluded (as per the contention of the defence) that the comparison with a handwriting which was not contemporaneous could well have some dissimilarities and still emanate from the very same person. In other words, the passage of time between the sample and its examination seriously diminishes the weight to attach to the handwriting expert's report.

48. To sum up, after having considered all the inconsistencies that have been highlighted regarding the prosecution's case and after having carefully weighed the credibility to attach to each of them. This court finds that it would be unsafe to convict the accused. For these reasons, the accused is given the benefit of doubt and the charge under all counts are accordingly dismissed.

A. Joypaul

Ag Intermediate Court Magistrate