Cause Number:383/2018

IN THE INTERMEDIATE COURT OF MAURITIUS

In the matter of :-

POLICE

VS

BISSOONDATH TOYLOCCO

Judgment

1. Accused stands charged with Money Laundering in breach of section 3(1)(a), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 under 4 Counts .The accused pleaded not guilty to all four Counts and he was assisted by counsel.

2. Witness no.1, CI Mungur, produced four out of court statements of the accused which were marked as Doc A-Doc A1-Doc A2-Doc A3. He also produced the following documents :

(i)Certified Copy of Cheque bearing number 62684501 dated 30/04/11 showing the sum of Rs7,190 marked as Doc B;

(ii)Certified Copy of Cheque bearing number 68788611 from MCB dated 30/09/11 showing the sum of Rs23,750 marked as Doc B1;

(iii)Certified Copy of Cheque bearing number 68788615 from MCB dated 20/10/11 showing the sum of Rs21,000 marked as Doc B2;

(iv)Certified Copy of Cheque bearing number 32310119 from SBM dated 01/06/12 showing the sum of Rs100,000 marked as Doc B3;

(v)Certified Copy of Bank Statement from SBM for the period of 29/05/12 up to 23/07/12 showing a transaction of Rs100,000 marked as Doc C;

(vi)Certified Copy of Cheque Deposit Voucher marked as Doc D;

(vii)Certified Copy of Cheque bearing number 34462813 from SBM dated 09/10/12 showing the sum of Rs100,000 marked as Doc E.

ungur testified to the fact the director of Just Caps Ltd made a complaint of money ndering against the accused. As per the enquiry one of the client of Just Caps Ltd, Mr Seetaram, paid three cheques to the company for the purchase of materials. Accused deposited one of the cheque on his personal account, he cashed the other two cheques and deposited same on his personal account. The accused also took Rs100,000 from the Just Caps Ltd and invested same in Emidor Co Ltd. Emidor Ltd paid to the accused the sum of Rs100,000 and he deposited the money on his personal account. Then he justified the withdrawal of Rs100,00 from Just Caps Ltd as the expenses of the company.

In cross-examination CI Mungur confirmed that accused has justified the source of the money and he has invested the money in his company Prima Fashion Ltd. He confirmed that accused has submitted documents to show that his sister gave him Euro to deposit on his account. He explained that he did not justify all the money and he can't confirm whether accused is telling the truth.

CI Mungur stated that a cheque which is issued in his own name and is account payee it should be deposited in his own account. .He confirmed that accused has deposited the cheque which was received from Emidor in his personal account. He further explained that the money which was given to Emidor belongs to Just Caps Ltd but when Emidor returned the money a cheque was issued in the personal name of accused. He testified to the fact that on 10/10/12 he deposited the cheque in his account. As per the version of the accused he did not return the money as he was seriously ill. CI Mungur testified to the fact that the version of the accused is not correct because as per the bank statement on 13/10/12 accused withdrew money on four occasion in Montegames Ltd Vacoas which is a gaming house. In his statement accused stated that he returned the money to the company but he did not remember on which date he returned the money and he was not in possession of any documents to substantiate same. When he enquired from Just Caps Ltd the representative of the company stated that accused did not return the money. The accountant of the company stated that the money which the accused took from the company he gave instruction to the accountant to consider this amount as cost of sales and in the circumstances there is no need for accused to return the money to the

any. Counsel for the defence showed five Cash Deposits Receipts to CI Mungur . confirmed that each Cash deposit receipt tally with the bank statement of Just Caps Ltd The five Cash deposits Receipts were produced and marked as Doc F- Doc F4 and a Bank statement from SBM comprising of two sheets which was marked as Doc G.

He confirmed that there was a fraud of Rs 2 million and in 2011 Just Caps Ltd was in financial difficulties. He also confirmed that Mr Reetoo stated that he had to sell his land and borrowed from relatives for reimbursement. He stated that Mr Reetoo did not produce any documents to that effect. He stated that Sailesh Heeraman from Oregon company was the accountant of Just Caps Ltd . He stated that he recorded a statement from the officer who was deputed by Oregon company. Despite the fact that Mr Reetoo stated that Mr Heeraman was the accountant of Just Caps Ltd CI Mungur was sent another officer from Oregon company to give a statement.

He confirmed that as per the record of Registrar of Company Laksh Reetoo became the shareholder of Just Caps Ltd . Mr Naresh Reetoo bought 50 percent of the shares which belonged to the accused for Rs150,000 for his son Mr Laksh Reetoo who became the shareholder of the 50 percent shares. Mr Naresh paid these shares form his money for his son.. He stated that Mr Laksh Reetoo who made the complaint and there was an enquiry in respect of the accused.

3. Witness no.7, Mr Jeebhurrooa, the Fraud Investigator from MCB was shown the cheques which were produced before the Court . He identified the cheques and confirmed that these cheques (Doc B-Doc B2) were produced by MCB. He produced a letter from MCB dated 31/12/15 and the Bank Statement of the accused for the period 01/01/11 to 30/06/11 which was marked as Doc H and Doc J respectively. He confirmed that Cheques (Doc B-DocB1-Doc B2) were all signed by Mr Balram Seetaram and all these cheques were paid to the accused. He explained that at the back of each cheques it is written 'paid to' and the National Identity Card number.

Witness no.6, Doorgapersad Bhujun, bank supervisor at SBM identified the cheque (Doc B3), the Cheque Deposit Voucher (Doc D) and the Cheque Refund (Doc E) which were produced by SBM following a disclosure order for enquiry purposes. He stated that the Cheque Refund dated 09/10/12 from Emidor Trading Ltd for the sum of Rs100,000 was for the accused. He produced a bank statement of the accused for account number 03110100208530 for the period of 01/03/09 to 11/03/16 which was marked as Doc K.

He explained that for Doc B3 it is a cheque dated 01/06/12 and there are two authorized signatories and he identified accused as one of the authorized signatory . He stated that for the second authorized signatory he would not be in a position to identify it as he did not have a specimen of the signature. He further explained that the sum of Rs100,000 was paid by Just Caps Ltd to Emidor Trading Co Ltd. He stated that Doc D is a cheque of Rs100,000 and accused deposited this sum of money in his savings account. In respect of Doc E it was a cheque dated 10/10/12 issued in the name of accused for the sum of Rs100,000 by Emidor Trading Ltd. The sum of Rs100,000 was paid into the account of the accused. He confirmed that as per the bank statement (Doc K) there was a deposit of Rs100,000 paid into the account of the accused on 10/10/12.

In cross-examination he stated that if the cheque is an account payee cheque then he should pay it into his account

5. Witness Seetaram testified to the fact that he has been production manager of Victory Garments since September 1999. He stated that he has a side business for caps. In 2011 he ordered caps from Just Caps Ltd and he ordered the caps from the accused. The cheques (Doc B-Doc B1-Doc B2) were shown to the witness and he confirmed that he has issued these cheques. He identified the cheques and his signature on the cheques. He confirmed that he did not insert the name of the drawee.

In cross-examination he stated that since 2013 he has left Just Cap Ltd and he is still ordering caps from the accused. In his statement he gave the version that he issued cheque in the name of the accused and he did not insert the name of the drawee. He

ined that as a businessman he is aware that accused used these cheques to buy terials. He stated that he has a professional relationship with the accused and he still order caps from the accused.

6. Witness no.4, Mr Thacoor, testified to the fact that as compliance officer of Oregan Consulting Ltd he gave two statements at ICAC in 2015 and 2016. He stated that Oregan Consulting Ltd is an accountant firm but it's not an audit firm. He stated that Just Caps Ltd was a client of Oregan Consulting Ltd and the company was providing accounting services to Just Caps Ltd. He stated that he did not prepare the financial accounts of Just Caps Ltd. He stated that the financial accounts were prepared from Receipts, statements, receipts and also upon the instruction of the accused. He produced a Receipt dated 01/06/2012 issued by Emidor Ltd whereby a cheque payment of Rs100,000 was effected to the accused and in between brackets Just cap Ltd was inserted. The document was marked as Doc L. He stated that this transaction must have been either a purchase or cost of sales. He explained that costs of sales is the purchase of raw materials and this was considered as costs of sales upon the instructions of the clients. He stated that this was not an investment. He confirmed that accused was receiving a salary of less than Rs20,000. He stated that in 2013 accused was still an employee of Just Caps Ltd but in 2019 he has left Just Cap Ltd. He stated that he left the company in 2014 or 2015 and he did not owe anything to the company.

In cross-examination he stated that he did not deal with Just Caps Ltd file He confirmed that Mr Naresh Rittoo is one of the director of Just Caps Ltd and the accused is also a director of the company. He confirmed that each director was holder of 50% shares in the company and the signature of both directors were required on the cheques .He confirmed that the Oregon company was preparing the accounts based on the information given by the directors of the company. He stated that he went to ICAC upon the request of the company. In Court he stated that this Receipt (Doc L Refers) this was for Cost of sales however in his statement he stated that the accused was queried about the Receipt but he did not know the officer who queried the accused. After perusing Doc H he confirmed that these vouchers show that there have been five deposits on the Just caps Ltd . He

d that if there he is carrying out the deposits personally it means that he is refunding e money. He confirmed that Mr Heeramun from Oregan company Ltd is the one who deals with all the files of the company.

7. Witness no.3,Mr Rittoo, testified to the fact that Just Caps Ltd was created in 2005 and he was the director of the company . The company dealt in textiles such as caps and other accessories. In 2013 the accused joined the company as a director and he hold 50%of the shares of the company . He stated that he invested his money in the company. He was in charge of the marketing and delivery section whereas the accused was in charge of the production department, the payment of salary and the purchase of materials.

He confirmed that the company had two bank accounts at MCB and State Bank respectively and the signature of both directors were required on the cheque. He stated that the cheque books were in possession of the accused. As per the version of witness no.3 Emidor Co Ltd is not the client of Just Caps Ltd. He was shown the cheque dated 01/06/12 (Doc B3 Refers) and he stated that he was not aware of this transaction. He explained that he usually signed several cheques so that the work progressed in his absence. He stated that most of the time he was not present at the company so he would signed the cheques for the purchase of materials and for payment of salary. He denied the fact that this transaction with Emidor Co Ltd took place with his consent as Emidor Ltd is not in his line of business. He denied having given accused a loan for the sum of Rs100,000. He explained that payments for the purchase of materials are effected by cheques. He explained the receipts must tally with the cheques to allow the accountant to prepare the financial documents.

He confirmed that Mr Balraj Seetaram is a client of Just Caps Ltd and he purchased caps from Just Caps Ltd. He stated that he was not aware how Mr Seetaram effected payment for his order as he was not in charge of this department. He explained that accused was in charged of receiving payment, depositing of money and for effecting payment. The witness was shown the three cheques (Doc B-Doc B1-Doc B2) and he stated that he has

given his authorization for the two cheques (Doc B1and Doc B2 Refer) to be issued the name of the accused. He did not authorize that the cheque be cashed and to hand over the cash to him (Doc B Refers). He denied the fact that he gave instructions to the accused to deposit these cheques and to give him cash to purchase materials. He explained that it is not in the interest of the company to purchase material in cash as he would not receive the VAT Invoice which is tax deductible.

In cross-examination he maintained that the signature of both directors were required on the cheques of the company. He explained that he signed the cheques in advance as he trusted the accused and to make the work progressed. He admitted that it was not a good practice to sign the cheques in advance. He said he has never heard the name of Heeraman but later when the name of Sailesh was mentioned he explained that he knew his accountant as Sailesh and not as Heeraman. He admitted that his accountant all the information in respect of the suppliers as he was in possession of all the receipts. He was also aware of all the payments which were effected by the company for the purchase of materials. He stated that the accountant informed him about the status of the company but not in details.

Witness no.3 stated that he gave a declaration at ICAC as he has discovered a fraud of Rs2,500,000 in his company. In fact the Rs2,500,000 was never found. Witness no.3 explained that he owed the MRA the sum of Rs2,500,000 and he had to take a loan to pay the MRA. He stated that he used to sign 10 cheques in advance. He confirmed that when there are two signatures on the cheque the accused has green light to purchase the raw materials and to effect payment with the cheque. He denied the fact that he asked the accused to invest in Emidore Ltd. He confirmed that he was receiving a salary of Rs15,000 and the accused was also receiving the same salary. He explained that the cheques were cashed to effect payment for the salary. He maintained that most of the time he was not present at the company as he was dealing with the marketing department and delivery. However he admitted that he was aware when salary was being effected.

admitted that when he was giving salary to the employee accused was filling the pay ps. He admitted that for the salary for all the employee the accused issued only one cheque where there are both signatures and he inserted his name as drawee to be able to cash it. He stated that the accused was purchasing the raw materials and sometimes he would be purchasing the materials.

He confirmed that his son joined the company and he had a dispute with the accused. He admitted that he filed a case against accused at Vacoas police station and at ICAC after accused has left the company. He admitted that he gave accused 50 % shares in the company because he was an experienced person in this field. On 09/10/12 a cheque was issued in the name of the accused and deposited the amount on his account. He admitted that accused deposited the amount of money on three occasions in the account of Just Cap Ltd. He admitted that accused was unwell but he did not know when accused underwent surgery. He stated that Receipts and Invoice were sent to the accountant but there was no bookkeeping for the expenses of the company. He stated that for three years he did not notice that accused withdraw the sum of Rs100,000 from the company. He denied the fact that he was aware about the Rs100,000 cheque and he gave a declaration after three when the accused and his son had a dispute. He stated that he was not in charge of the purchase of raw materials , then he stated that on and off he was in charge and in his statement he stated that he was purchasing the materials .He denied the fact that when accused was receiving the cheques he cashed and bought materials for the company. He denied the fact that accused is a direct competitor for him and this is why he reported a case against the accused.

In re-examination witness no.3 stated that his son had a dispute with the accused as his son has found irregularities in his work. He stated that according to Doc F there is no indication why these transfer were made.

Case Closed for the Prosecution

sed did not adduce any evidence .

Case was Closed for the Defence.

DETERMINATION

8. The Court have considered all the evidence on record, the submission of state counsel and submission of defence counsel.

9. Section 3(1)(a) of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA)provides as follows:

"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;

where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence."

The prosecution must therefore establish the following elements of the offence of money laundering:

1. Transaction in which accused was engaged,
2. Involving property;
3. In part and directly the money represented the proceeds of crime;
4. Suspicion or Reasonable ground to believe that property was derived, in part, directly from a crime.

The legal burden lies on the prosecution to establish the guilt of the accused. Once the prosecution has established all the elements of the offence against the accused then the burden shifts on the accused to establish the lawful origins of the property. This was held in the case of **Abongo L.A. v The State [2009] SCJ 81:**

ghtly observed by the learned Magistrate the legal burden lies on the prosecution to stablish the guilt of the appellant in respect of the elements of an offence under section 5 of the Act. It is only following a conviction of the substantial charge that the burden shifts on the appellant to establish particular facts in respect of the lawful origins of her property before the Court decides whether the appropriate sentence may include a forfeiture order. In conformity with section 10(11)(a), the law in question i.e. section 8(2) of the Act imposes on the accused the burden of proving particular facts in respect of the lawful origins of the money failing which it would be deemed to be proceeds of crime. Such facts which relate to the source from which the money or property originates would, as in the present case, be facts which are eminently within the knowledge of the appellant herself. It would be extremely difficult, if not virtually impossible, for the prosecution to know about the origin and source of the 38,000 U.S.dollars and to fulfil the burden of proving that the 38,000 U.S. dollars were, in whole or in part, directly or indirectly, the proceeds of a crime."

- *COUNT 1*

(1) Transaction in which accused was engaged

As per the documentary evidence adduced before the Court and the version of the accused himself he deposited the sum of Rs7,190 into his bank account held at MCB . Thus he was engaged in a transaction involving money;

(2) Property is defined under Section 2 of FIAMLA as*: "property of any kind, nature or description, whether moveable or immoveable, tangible or intangible and includes - (a) any currency…."*. It is clear that Mauritian rupees subject matter of the present offences, fall within the definition of "property" as provided under the FIAMLA.

(3) In part and directly the proceeds of crime

It can be read in section 6(3) of the FIAMLA, that the prosecution does not have the burden of proving any particular crime from which the proceeds have been derived and

was held in the case of **The Director of Public Prosecutions v A. A. Bholah [2011] UKPC 44 at paragraph 33:**

"33. The Board has therefore concluded that proof of a specific offence was not required in order to establish guilt under section 17(1) of ECAMLA. It is sufficient for the purposes of that subsection that it be shown that the property possessed, concealed, disguised, or transferred etc represented the proceeds of any crime – in other words any criminal activity – and that it is not required of the prosecution to establish that it was the result of a particular crime or crimes. In light of this conclusion it follows that a failure to identify and prove a specific offence as the means by which the unlawful proceeds were produced is not a breach of section 10(2)(b) of the Constitution. In the Board's view, that section requires that the nature of the offence of which the accused person must be informed is that with which he is charged, in this case the offence of money laundering. Proof of a particular predicate crime is not an essential "element" of the offence of money laundering."

In the case of **Bholah [Supra]** at paragraph 21 the Board explained how to prove this element:

"The Court of Appeal addressed this question again in the case of R v Anwoir [2009] 1 WLR 980. It held that the decision in R v W (N) should not be taken as prescribing that it was always necessary to give particulars and prove the general type or class of the predicate offending. At para 21, Latham LJ said this:

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

In the present matter it is not disputed that Mr Balaram has issued a cheque in the name of the accused for the sum of Rs7,190. As per the unsworn version of the accused he deposited the money in his account as it is account payee and he gave the money to Mr Reetoo to purchase materials. Mr Balaram also explained that as a businessman he is

e that accused used these cheques to buy materials. These evidence have remained unchallenged As per the version of Mr Reetoo he never gave authorization for accused to deposit these cheques on his account and to give him cash to purchase materials. But the fact remained that he has signed the cheque and once this is done legally he has given green light to carry out this transaction. The version of Mr Reetoo is that he was not aware that these transactions were being carried out as he was not purchasing the materials . However Mr Reetoo gave three versions on this issue . At first he stated that he was not aware how Mr Seetaram was effecting payment as he was not dealing with the purchase of materials, then in court he said he dealt with the purchase of materials on and off and in his statement he said that "quand mo ti pe acheter bane matière premiere .." [At Page 45-46 of Transcript dated 16/01/20]. The Court is of the view that in light of the above inconsistencies the Court cannot safely rely on the version of Mr Reetoo

The Court is of the view that in light of the above evidence, which has remained unchallenged, shows that the Rs 7,190 was paid by Mr Seetaram, the cheque contained both signature of the directors , the cheque was issued in the name of the accused[Doc B Refers] , he deposited same on his bank account [Doc J Refers] and as per the version of the accused he has received instructions from Mr Reetoo to give him cash to purchase materials. After considering all the evidence it leaves doubts as to whether the proceeds were derived directly or indirectly of the crime

(4) Suspicion or Reasonable ground to believe that property is derived, in part, directly from a crime

In respect of this element it is apposite to refer to the case of **Jean Marc Dominik Janot Antoine v The State [2009] SCJ 328** where the Supreme Court held as follows:

"*In the present case, we equally feel that it would be absurd if an offence was committed under S 3 (1) (a) of the Act when the accused had suspicion or reasonable grounds for suspicion of the tainted nature of the property but no offence at all was committed when the accused knew of the tainted nature of the property. The mental element 'reasonable grounds to suspect' has been elaborated and explained in the Chambers case of* ***Manraj***

Others v ICAC 2003 SCJ 75. *We find it apt to quote an extract of the Learned Judge's judgment, which we find appropriate and relevant. It reads as follows;-*

...First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr.App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view..... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."

Since suspicion has to be based on facts, it is the duty of the Court to analyse the whole of the evidence on record in order to determine whether or not it can be inferred, from the facts and circumstances of the case, that the accused reasonably suspected that the proceeds were proceeds of crime. But in a case, like the present one, there was no need for the Court to embark on such an exercise as the accused had knowledge of the tainted origin of the property."

After having considered all the circumstances of the present case the Court is of the view that it cannot be inferred that accused had knowledge of the tainted origin of the property as it was the practice of this company and this was confirmed by Mr Seetaram who used the same practice for all three cheques.

- *COUNT 2*

(1) Transaction in which accused was engaged

As per the documentary evidence adduced before the Court there is a cheque in the name of the accused for the sum of Rs23,750 and as per the document the sum of Rs23,750 was paid to the accused [Doc B1 Refers]. Thus he was engaged in a transaction involving money.

Property is defined under Section 2 of FIAMLA as: *"property of any kind, nature or description, whether moveable or immoveable, tangible or intangible and includes - (a) any currency…."*. It is clear that Mauritian rupees subject matter of the present offences, fall within the definition of "property" as provided under the FIAMLA.

(3) In part and directly the proceeds of crime

It can be read in section 6(3) of the FIAMLA, that the prosecution does not have the burden of proving any particular crime from which the proceeds have been derived and this was held in the case of **The Director of Public Prosecutions v A. A. Bholah [2011] UKPC 44 at paragraph 33:**

"*33. The Board has therefore concluded that proof of a specific offence was not required in order to establish guilt under section 17(1) of ECAMLA. It is sufficient for the purposes of that subsection that it be shown that the property possessed, concealed, disguised, or transferred etc represented the proceeds of any crime – in other words any criminal activity – and that it is not required of the prosecution to establish that it was the result of a particular crime or crimes. In light of this conclusion it follows that a failure to identify and prove a specific offence as the means by which the unlawful proceeds were produced is not a breach of section 10(2)(b) of the Constitution. In the Board's view, that section requires that the nature of the offence of which the accused person must be informed is that with which he is charged, in this case the offence of money laundering. Proof of a particular predicate crime is not an essential "element" of the offence of money laundering."*

In the case of **Bholah [Supra]** at paragraph 21 the Board explained how to prove this element:

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"We consider that in the present case the Crown are correct in their submission that there are two ways in which the Crown can prove the property derives from crime, (a) by

wing that it derives from conduct of a specific kind or kinds and that conduct of that nd or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime.""

In the present matter it is not disputed that Mr Balaram has issued a cheque in the name of the accused for the sum of Rs23,750. As per the evidence on record accused cashed the money and gave it Mr Reetoo to purchase materials. Mr Balaram also explained that as a businessman he is aware that accused used these cheques to buy materials. These evidence have remained unchallenged. As per the version of Mr Reetoo he never gave authorization for accused to cash these cheques and to give him cash to purchase materials. But the fact remained that he has signed the cheque and once this is done legally he has given green light to carry out this transaction. The version of Mr Reetoo is that he was not aware that these transactions were being carried out as he was not purchasing the materials . However Mr Reetoo gave three versions on this issue . At first he stated that he was not aware how Mr Seetaram was effecting payment as he was not dealing with the purchase of materials, then in court he said he dealt with the purchase of materials on and off and in his statement he said that "quand mo ti pe acheter bane matière premiere .." [At Page 45-46 of Transcript dated 16/01/20]. The Court is of the view that in light of the above inconsistencies the Court cannot safely rely on the version of Mr Reetoo

The Court is of the view that in light of the above evidence, which has remained unchallenged, shows that the Rs 23,750 was paid by Mr Seetaram, the cheque contained both signature of the directors , the cheque was issued in the name of the accused[Doc B1 Refers] , he cashed the sum of Rs23,6750 [Doc B1 Refers] and as per the unchallenged evidence on record accused has received instructions from Mr Reetoo to give him cash to purchase materials. After considering all the evidence it leaves doubts as to whether the proceeds were derived directly or indirectly of the crime.

(4) Suspicion or Reasonable ground to believe that property is derived, in part, directly from a crime

In respect of this element it is apposite to refer to the case of **Jean Marc Dominik Janot Antoine v The State [2009] SCJ 328** where the Supreme Court held as follows:

"In the present case, we equally feel that it would be absurd if an offence was committed under S 3 (1) (a) of the Act when the accused had suspicion or reasonable grounds for suspicion of the tainted nature of the property but no offence at all was committed when the accused knew of the tainted nature of the property. The mental element 'reasonable grounds to suspect' has been elaborated and explained in the Chambers case of ***Manraj and Others v ICAC 2003 SCJ 75****. We find it apt to quote an extract of the Learned Judge's judgment, which we find appropriate and relevant. It reads as follows;-*

...First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr.App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view..... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."

Since suspicion has to be based on facts, it is the duty of the Court to analyse the whole of the evidence on record in order to determine whether or not it can be inferred, from the facts and circumstances of the case, that the accused reasonably suspected that the proceeds were proceeds of crime. But in a case, like the present one, there was no need for the Court to embark on such an exercise as the accused had knowledge of the tainted origin of the property."

After having considered all the circumstances of the present case the Court is of the view that it cannot be inferred that accused had knowledge of the tainted origin of the property as it was the practice of this company to carry out its transaction in that way and this was

irmed by the conduct of Mr Seetaram who used the same practice for all three neques.

- *COUNT 3*

(1) Transaction in which accused was engaged

As per the documentary evidence adduced before the Court there is a cheque in the name of the accused for the sum of Rs21,000 and as per the document the sum of Rs21,000 was paid to the accused [Doc B2 Refers]. Thus he was engaged in a transaction involving money.

(2) Property is defined under Section 2 of FIAMLA as*: "property of any kind, nature or description, whether moveable or immoveable, tangible or intangible and includes - (a) any currency…."*. It is clear that Mauritian rupees subject matter of the present offences, fall within the definition of "property" as provided under the FIAMLA.

(3) In part and directly the proceeds of crime

It can be read in section 6(3) of the FIAMLA, that the prosecution does not have the burden of proving any particular crime from which the proceeds have been derived and this was held in the case of **The Director of Public Prosecutions v A. A. Bholah [2011] UKPC 44 at paragraph 33:**

"*33. The Board has therefore concluded that proof of a specific offence was not required in order to establish guilt under section 17(1) of ECAMLA. It is sufficient for the purposes of that subsection that it be shown that the property possessed, concealed, disguised, or transferred etc represented the proceeds of any crime – in other words any criminal activity – and that it is not required of the prosecution to establish that it was the result of a particular crime or crimes. In light of this conclusion it follows that a failure to identify and prove a specific offence as the means by which the unlawful proceeds were produced is not a breach of section 10(2)(b) of the Constitution. In the Board's view, that section requires that the nature of the offence of which the accused person must be informed is that with which he is charged, in this case the offence of money laundering. Proof of a*

.icular predicate crime is not an essential "element" of the offence of money aundering."

In the case of **Bholah [Supra]** at paragraph 21 the Board explained how to prove this element:

"The Court of Appeal addressed this question again in the case of R v Anwoir [2009] 1 WLR 980. It held that the decision in R v W (N) should not be taken as prescribing that it was always necessary to give particulars and prove the general type or class of the predicate offending. At para 21, Latham LJ said this:

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

In the present matter it is not disputed that Mr Balaram has issued a cheque in the name of the accused for the sum of Rs21,000. As per the evidence on record accused cashed the money and gave it Mr Reetoo to purchase materials. Mr Balaram also explained that as a businessman he is aware that accused used these cheques to buy materials. These evidence have remained unchallenged. As per the version of Mr Reetoo he never gave authorization for accused to cash these cheques and to give him cash to purchase materials. But the fact remained that he has signed on the cheque and once this is done legally he has given green light to carry out this transaction. Mr Reetoo stated that he signed the cheques in advance as he trusted the accused but the fact remained that he voluntarily signed the cheques .The version of Mr Reetoo is that he was not aware that these transactions were being carried out as he was not purchasing the materials . However Mr Reetoo gave three versions on this issue . At first he stated that he was not aware how Mr Seetaram was effecting payment as he was not dealing with the purchase of materials, then in court he said he dealt with the purchase of materials on and off and in his statement he said that "quand mo ti pe acheter bane matière premiere .." [At Page

46 of Transcript dated 16/01/20]. The Court is of the view that in light of the above inconsistencies the Court cannot safely rely on the version of Mr Reetoo

The Court is of the view that in light of the above evidence, which has remained unchallenged, shows that the Rs 21,000 was paid by Mr Seetaram, the cheque contained both signature of the directors , the cheque was issued in the name of the accused[Doc B2 Refers] , the accused cashed the sum of Rs21,000 [Doc B2 Refers] and as per the unchallenged evidence on record accused has received instructions from Mr Reetoo to give him cash to purchase materials. After considering all the evidence it leaves doubts as to whether the proceeds were derived directly or indirectly of the crime.

(4) Suspicion or Reasonable ground to believe that property is derived, in part, directly from a crime

In respect of this element it is apposite to refer to the case of **Jean Marc Dominik Janot Antoine v The State [2009] SCJ 328** where the Supreme Court held as follows:

"*In the present case, we equally feel that it would be absurd if an offence was committed under S 3 (1) (a) of the Act when the accused had suspicion or reasonable grounds for suspicion of the tainted nature of the property but no offence at all was committed when the accused knew of the tainted nature of the property. The mental element 'reasonable grounds to suspect' has been elaborated and explained in the Chambers case of* ***Manraj and Others v ICAC 2003 SCJ 75****. We find it apt to quote an extract of the Learned Judge's judgment, which we find appropriate and relevant. It reads as follows;-*

...First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr.App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view..... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."

ce suspicion has to be based on facts, it is the duty of the Court to analyse the whole of the evidence on record in order to determine whether or not it can be inferred, from the facts and circumstances of the case, that the accused reasonably suspected that the proceeds were proceeds of crime. But in a case, like the present one, there was no need for the Court to embark on such an exercise as the accused had knowledge of the tainted origin of the property."

After having considered all the circumstances of the present case the Court is of the view that it cannot be inferred that accused had knowledge of the tainted origin of the property as it was the practice of this company to carry out its transaction in that way and this was confirmed by the conduct of Mr Seetaram who used the same practice for all three cheques.

- *COUNT 4*

(1) Transaction in which accused was engaged

As per the evidence adduced before the Court accused paid to Emidore Ltd a sum of Rs100,000 [Doc C Refers] and a cheque was issued to Emidore where both directors signed on it [Doc B 3] .Given that Emidore Co Ltd was not doing well Emidore paid back the sum of Rs100,000 to accused there is a cheque in the name of the accused for the sum of Rs100,000 [Doc E Refers] . Thus he was engaged in a transaction involving money.

(2) Property is defined under Section 2 of FIAMLA as*: "property of any kind, nature or description, whether moveable or immoveable, tangible or intangible and includes - (a) any currency…."*. It is clear that Mauritian rupees subject matter of the present offences, fall within the definition of "property" as provided under the FIAMLA.

(3) In part and directly the proceeds of crime

It can be read in section 6(3) of the FIAMLA, that the prosecution does not have the burden of proving any particular crime from which the proceeds have been derived and

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In the case of **Bholah [Supra]** at paragraph 21 the Board explained how to prove this element:

"The Court of Appeal addressed this question again in the case of R v Anwoir [2009] 1 WLR 980. It held that the decision in R v W (N) should not be taken as prescribing that it was always necessary to give particulars and prove the general type or class of the predicate offending. At para 21, Latham LJ said this:

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

In the present matter it is not disputed that Just caps Ltd has paid Emidore Co Ltd the sum of Rs100,000. On 9/10/12 Emidore has refunded the sum of Rs100,000 and has issued a cheque in the name of the accused for this sum. As per the evidence on record accused was not well, he was admitted in hospital and Mr Reetoo also visited him in

spital but he could not remember on which date and he did not return the money to Just Cap Ltd immediately. In November 2012 accused refunded all the money to Just Caps Ltd [Doc F-Doc F4 Refer]. As per the version of Mr Reetoo he was not aware of this transaction , the Court finds it odd that as a director of the company who has invested the capital he would not be aware about a transactions of Rs100,000 which took place in the company. As per the version of Mr Reetoo he never gave authorization for accused to carry out these transactions but the fact remained that he has signed on the cheque and once this is done legally he has given authorisation to carry out this transaction. The accused did not forge the signature of Mr Reetoo or he did not force Mr reetoo to sign on the cheque . Mr Reetoo stated that he signed the cheques in advance as he trusted the accused but the fact remained that he voluntarily signed the cheques. The Court is of the view that the Court cannot safely rely on the version of Mr Reetoo

In light of all the evidence on record it leaves doubts as to whether the proceeds were derived directly or indirectly of the crime.

(4) Suspicion or Reasonable ground to believe that property is derived, in part, directly from a crime

In respect of this element it is apposite to refer to the case of **Jean Marc Dominik Janot Antoine v The State [2009] SCJ 328** where the Supreme Court held as follows:

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Since suspicion has to be based on facts, it is the duty of the Court to analyse the whole of the evidence on record in order to determine whether or not it can be inferred, from the facts and circumstances of the case, that the accused reasonably suspected that the proceeds were proceeds of crime. But in a case, like the present one, there was no need for the Court to embark on such an exercise as the accused had knowledge of the tainted origin of the property."

After having considered all the circumstances of the present case the Court is of the view that it cannot be inferred that accused had knowledge of the tainted origin of the property as it was the practice to run its company in that way.

9After having considered the circumstances of the case the Court finds that the Prosecution has not proved the case against accused beyond reasonable doubt. In addition the bad blood between both parties and the fact they are in the same line of business may have caused W3 to concoct these charges especially when considering the fact that he gave a declaration after three years these transactions took place . Thus the Court finds that this is a fit and proper case where accused should be given benefit of doubt . The Court therefore dismisses all four Counts against the accused

[Delivered by Magistrate Intermediate Court : N DAUHOO]
[Delivered on 19th October 2020]