

## ICAC v Yong Shee & Anor - Ruling

2024 INT 16

FCD CN: 45/2020

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### IN THE INTERMEDIATE COURT OF MAURITIUS (FINANCIAL CRIMES DIVISION)

In the matter of:

**Independent Commission Against Corruption**

v/s

- 1. Marie Shirley Yong Shee**
- 2. Mahmad Iqbal Maleck Russool**

#### **RULING**

Both accused parties are being prosecuted for the offence of Money Laundering in breach of sections 3(1)(b), 6 & 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA). They pleaded not guilty to the Information and were represented by their respective counsels. Counts 1 to 4, and 18 are laid against accused no.1 and Counts 5 to 17 and 19 to 42 are laid against accused no.2.

During the course of trial, objection was raised by the accused no.2, in relation to the production of a Diary Book Entry (DB entry), which was inserted during the enquiry of the alleged predicate offence to the current offence of Money Laundering. The prosecution proposed to adduce the evidence since it allegedly contains an admission by the accused no.2 to the commission of the predicate offence. The content of the DB entry is denied and contested.

PC Chummun, witness no.6, adduced evidence for the purposes of the argument to the effect that he was posted at the CID Port-Louis in 2011. One Kushal Mewasing Ramlakhan, assistant manager at Le Casino de Maurice in 2009, reported a case to the police bearing OB 71/95. The witness investigated the matter and as a result arrested the two accused parties. Accused no.2, Mr Russool, was interviewed in

relation to the said case, after the latter was duly cautioned and informed of his constitutional rights. Mr Russool's statements were recorded as an entry in the Diary Book. The Diary Book entry dated 25.01.11 was then produced to the ICAC when enquiry had started for the offence of Money Laundering.

Under cross-examination, the witness confirmed that he was not involved in the enquiry carried out by the ICAC. When questions were asked on behalf of accused no.2, the witness stated that he also recorded a defence statement from the said accused for the alleged predicate offence where his caution and constitutional rights were more comprehensively recorded as opposed to the said Diary Book entry. The witness further stated that the accused's version in the Diary Book (DB) entry was different to that of his defence statement. In his latter version, he denied having made the reply recorded in the said DB entry. The accused allegedly inserted the DB entry on the day of his arrest when he was assisted by a legal representative. On the other hand, he had such legal assistance when he put up his defence statement.

During re-examination, the witness clarified that the accused opted not to be assisted by counsel at the time he recorded the DB entry. Furthermore, he stated that the version that the accused put up in his defence statement was completely different to the one he initially gave in the form of the DB entry.

In connection to the present charge of Money Laundering, the defence statement of accused no.2 was produced as **Doc K**. The relevant part to the argument is found at Folio 126355 which is reproduced below:

*Le 25.01.11 quand la police ti arrete moi, mo rappelle qui mo ti dire qui sa croupière Shirley Yong Shee la ti mo voisine et qui moi ek li ti déjà causé avant et chaque fois qui li pou donne moi cash sans qui mo donne li l'argent so lendemain, nous partage cash ki nous fine gagné et ca fine arrivé ene trentaine de fois. Mo ti aussi signe ene l'entrée qui la police ti meter dans ene livre. Aster la mo pe dire qui li pas vrai, c'est la police qui fine faire moi dire ca.'*

It is clear that reference was made to the DB entry in question at Doc K. There seems to be some sort of factual statements made by the accused which might be construed as an admission. Such has been the view of counsels both, for the prosecution and the defence. However, it is also clear that the accused no.2 has denied the content of the DB entry in the same defence statement. Additionally, from the evidence of the witness no.6 above, the said accused had equally denied the content of the DB entry in his defence statement for the alleged predicate offence.

The defence has objected to the production of the said Diary Book entry on the ground that its prejudicial effect would outweigh its probative value. The prosecution's stand in rebutting the objection, contended that the purpose of the DB entry was to show that the accused was involved in criminal activity resulting in proceeds for which he is being prosecuted in the present matter. The proposed case for the prosecution is therefore to use the DB entry to show the accused's criminal acts, and not merely that an investigation has been carried out, with an ensuing prosecution.

A DB entry recorded during the enquiry of an alleged predicate offence naturally raises questions of admissibility at a different trial even if it is for the derivative offence of Money Laundering. The points raised by the defence are indeed pertinent. However, the content of the DB entry is already on record through the defence statement of the accused no.2 (Doc K). The said accused was thus informed of the DB entry in question and had the opportunity to respond to it, which he did by denying the content of the DB entry. The prejudicial effect that the entry, as a document, might carry is therefore negated to a large extent by the mere fact that its content is already before Court.

Nevertheless, the weight of the said DB entry may be considerably affected. The main issue is that the DB entry is a piece of evidence obtained from a different enquiry which is not presented before this Court. It is therefore construed that such evidence cannot be tested by the defence, unless the whole case for the alleged predicate offence is retried before this Court. Had the DB entry been adduced by the prosecution to only show that there has been an enquiry into the predicate offence, there would most likely have been no contention from the defence. The proposed use of the apparent admission of the accused no.2 in the DB entry is a different matter. However, the circumstances of this case are such that the accused no.2 had already denied the content of the DB entry, hence the admission, in his defence statement.

The issue is therefore not one of admissibility, but of weight. I therefore hold that the DB entry dated 25.01.11 is admissible, and the weight to be attached will be assessed during the course of trial, for the reasons given above.

**P K Rangasamy**  
**Magistrate of the Intermediate Court**  
**30.01.24**