

FCD CN: 30/2020
CN: 410/14

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

1. Lakshmi Yashna Benika SUBDHAN
2. Zafīrah Bibi GOULAMGHOSS

JUDGMENT

1. Both accused parties have been prosecuted for the offence of Money Laundering in breach of sections 3(1)(a) and (b) respectively, 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA).
2. Following a discontinuance of proceedings by the prosecution, the accused no.1 stands charged under Counts 13 and 14 of the Information, and the accused no.2 under Counts 26 and 27 of the Information. They both pleaded not guilty to the Information and were legally represented by their respective counsels throughout the proceedings.
3. It is noted that the matter has been started anew, which explains the re-marking of produced documents.

CASE FOR THE PROSECUTION

4. Witness no.1, Investigator Peerbocus, produced two defence statements of accused no.2 as **Docs AA** and **AA1**, and one edited defence statement of accused no.1 as **Doc AB**. The witness stated during cross-examination that he was the recording officer only. He did not enquire into the version or explanations given by the accused.



5. Witness no.2, Mr Vinai Geesawor, was working at the State Bank of Mauritius (SBM) at the material time in 2010. Two complaints were made by a customer of the bank, namely, Sugar Beach Hotel. The said hotel had an arrangement with the bank where security company 'Brinks' would transport money from the hotel to be deposited into the latter's bank account at SBM. The witness stated that on two occasions, money was sent through Brinks but money was not deposited in the bank as per instructions. He identified **Docs AC** and **AC1**, as two delivery notes from Brinks representing two parcels which were delivered to SBM. The first was dated 04.08.10 and contained as per the document, Rs103,127, 647 Euros, 170 USD, 320 GBP. Doc AC1 was dated 06.08.10 and allegedly contained Rs116,357, 820 Euros, 230 USD and 70 GBP.
6. Following a memory refreshing exercise, the witness confirmed that a representative from Brinks handed over the first parcel to the supervisor Mr Shafi Bunnoo on 05.08.10. The latter opened the safe bag and handed over Rs103,127 to the accused no.1. As for the second parcel, it was delivered to the supervisor, Mrs Tara Veerasawmy on 09.08.10. It contained a sum of Rs116,357 and some foreign currencies. The procedure is that the supervisor would keep the foreign currencies, but any amount in local currency is remitted to the teller to credit the amount to the appropriate bank account. These two amounts in local currency were not credited to the customer's account. The witness identified **Doc AD** which is the statement of account of the accused no.2. Following a ruling on the admissibility of a bundle of previously produced documents, the witness went on to identify two documents marked anew as **Docs AE1** and **AE2**. Both documents are SBM cash deposit vouchers of Rs100,000 to the name of the accused no.2, dated 05.08.10 and 09.08.10 respectively. The witness further identified **Docs AF** and **AF1** which are MACCS transfers which are effected by one bank to another. It is done by SWIFT transfer. At Doc AF, the ordering customer was one Zafiirah Bibi Goolamghoss, and dated 05.08.10. The account debited bore the number 00110100297374. An amount of Rs100,000 was transferred from the SBM to MCB account number 013284258 in the name of Zafiirah Goolamghoss. Doc AF1 was another MACCS transfer of Rs100,000 from the same to SBM account to the same MCB bank account, dated 09.08.10.
7. Under cross-examination on behalf of accused no.1, the witness confirmed that Doc AE (corrected as AE2) was titled as cash deposit receipt whereas Doc AE1 was rectified as cash deposit voucher. They are both proof that funds were



credited to the bank. During re-examination, he explained that the difference is that Doc AE is a receipt which is given to the customer. Doc AE1 is a voucher which is kept with the teller.

8. Witness no.5, Mr Raj Bulluck, worked at the security company, Brinks, in 2010. He was working as a transporter and his task was to collect and transport money of clients of the company. Sugar Beach Hotel was one of those clients. He identified Docs AC and AC1, and he confirmed that he collected money from Sugar Beach Hotel and delivered same to SBM. He followed the normal procedure, he verified the amount of money found in his bag, as written on the delivery note. He would hand over the bag to a teller at the bank after verification that it is properly sealed and signatures of both affixed. The procedure has been followed in the cases at Docs AC and AC1.
9. Witness no.12, Mr Kalyanjeet Gooranah, knew Mrs Yashna Subdhan as a teller, since June 2009 at SBM branch of Quatres-Bornes. He made cash deposits for a Hindu temple every two weeks at the branch. The witness denied that his signatures were on Docs AE and AE1 (corrected as Docs AE1 and AE2). The documents were of no significance to him. During cross-examination, the witness confirmed that he was prosecuted together with accused no.1 in another case and he alone was found guilty. The case concerned transactions at SBM at roughly the same time as this case. In re-examination, the witness confirmed that he was convicted for the same transaction as this case.
10. Witness no.6, Mr Mohammad Shaafee Bhunnoo, stated that, in 2010, he was the supervisor at SBM, Quatres-Bornes branch and was responsible for cash operations from businesses. When hotels are involved, a dispatching company such as Brinks would hand over a sealed bag full of cash to the officer of the bank. At the bank, the bag will be opened and the content tallied with the deposit voucher enclosed in the bag. If everything is in order, the cash will be deposited in the appropriate account. The sealed bag contains an envelope with a serial number containing the cash. Once the cash is verified, the agent of Brinks is signed off. The cash is then given to a teller to effect the cash deposit. The cash may consist of local and foreign currencies. In such case, one teller will deal with the local currency and another with foreign currencies. After having processed the cash, the teller will sign, affix a stamp on the deposit voucher and place it in the batch of deposit vouchers.



11. The witness identified his signature on Doc AC. He was the officer who took possession of the sealed bag with the cash, on 04.08.10. The employee from Brinks was one Mr Malgache, who transported the bag from Sugar Beach Hotel. After he verified the cash with the delivery note, he signed same and Mr Malgache left the bank. Thereafter, the bag was opened and the cash was tallied with the delivery note. The cash in local currency was separated from the foreign currencies and it was given to a teller, Miss Subdhan. The latter was supposed to deposit the cash and process it through the system on the same day. However, he had not been aware what the teller exactly did on the day. At the close of business, the supervisor would get a report from the system for all deposits of more than Rs100,000. He would check if all deposits have been credited to the customers' bank accounts. On the material day, the witness was the supervisor. He again identified his signature on Doc AC1 dated 06.08.10 and the same procedure was followed. The only difference was that, due to heavy workload, the bag was kept in the vault and it was processed on the next business day. On 09.08.10, the sealed bag was handed over to the supervisor, Mrs Taramatee Virasawmy. The witness then became aware that there had been a complaint from Sugar Beach hotel that the deposits as per both vouchers had not been effected in their bank account. Following the complaint, the bank verified same and it was found that the deposits had indeed not been credited into the account. The matter was referred to management for investigation.
12. Under cross-examination, the witness confirmed that any cash received by the supervisor from a customer like Sugar Beach hotel is remitted to a teller to credit the corresponding bank account. There was no documentary evidence to prove that the supervisor gave a specific sum of money to a specific teller. The supervisor does not follow up with the teller whether the latter does the job of crediting the account or not. No wrongdoing was seen by the bank until the complaint from Sugar Beach hotel was made.
13. Witness no.7, Mrs Taramatee Virah Sawmy, was the supervisor at SBM, Quatres-Bornes branch, in the year 2010. She confirmed that Doc AC1 was a delivery note dated 06.08.10. She was handed over the note by witness no.6. They both verified the content of the bag and the cash was remitted to a teller. The teller in question was Miss Yashna Subdhan. She was supposed to credit the account of Sugar Beach hotel with the cash given to her. The witness stated that she was not aware whether the teller did so. The supervisors would receive a listing at the end of business day to verify whether any amount of more than



Rs100,000 had been credited to the appropriate account, but they would not know any wrongdoing if it does not figure on the listing. We knew about the discrepancy only when the Sugar Beach hotel made a complaint. The witness confirmed that she handed over the money to Miss Subdhan. Under cross-examination, she stated that once the bag is delivered to a supervisor, the content is removed and handed over to the teller. But there is no prescribed document from the bank showing that that procedure of handing over was done.

14. Witness no.13, Senior Investigator Papin, was the main enquiring officer in the case. The then ICAC initiated an investigation following a dissemination report from the Financial Intelligence Unit (FIU) disclosing suspicious transactions which had taken place at SBM. It was reported that funds sent by Brinks and belonging to Sugar Beach Hotel, has not been credited to the its bank account. On the day, Rs100,000 was instead credited into the bank account of Mrs Goolamghoss. The transaction was processed by the teller named Miss Subdhan. The matter was investigated and statements were recorded from witnesses. It was revealed that money to the amount of approximately Rs103,000 had been sent by Sugar Beach Hotel through Brinks on 04.08.10. That amount was remitted to Miss Subdhan on the next working day. On 06.08.10 about Rs113,000 had again been sent to the bank by Sugar Beach Hotel through Brinks. On both occasions the cash contained local and foreign currencies. The foreign currencies have been properly credited into the bank accounts of the hotel. The cash in local currency had not been credited into the hotel's account. On each of those dates, a deposit of about Rs100,000 was credited in the bank account of Mrs Goolamghoss. Both deposits were processed by Miss Subdhan after office hours. Through a disclosure order, it was revealed that Mrs Goolamghoss transferred the Rs100,000 to her MCB account by internet transfer. The first transaction relates to Count 13 of the Information and the second to Count 14 of the Information. The two transactions involving accused no.2 relates to Counts 26 and 27 of the Information. As per the version of the accused no.1 in her defence statement, she stated that she processed the money which was brought and deposited in the account of Mrs Goolamghoss by witness no.10. The second transaction of Rs100,000 was deposited by witness no.12. Both individuals have denied having deposited Rs100,000 in the account of Mrs Goolamghoss. It was Miss Subdhan who processed the transactions. They were in fact in approached by Miss Subdhan to say that they have deposited the money in the account of Mrs Goolamghoss. Both accused parties were employees of SBM and had fixed

salaries. For the period from August 2009 to August 2010, there had been substantial deposits of money in the account of accused no.2, amounting to an aggregate sum of Rs806,400, including the two deposits of Rs100,000. The other deposits aside of the Rs100,000 ones were also withdrawn shortly after. There was no indication that there has been any refund from accused no.2 to accused no.1.

15. During cross-examination on behalf of accused no.1, he confirmed that the accused no.1 has denied most of the allegations in her defence statements. On the material dates, there is no documentary evidence to show that the supervisor, witness no.6, handed over the money to the accused no.1. There are only the statements of witness nos. 6 and 7. He did not see the teller's report at the end of business day, as the bank stated that it would contain confidential information of other clients, although they were ready same in court if required. Count 13 avers a sum of Rs100,000 whereas the allegation involves Rs103,127. The witness stated that there is a difference of Rs3,127 but the bank did not make a body search of the accused no.1 at the material time. The same explanation applies according to him for the difference under count 14.
16. On behalf of accused no.2, the witness was cross-examined and asked to confirm the out of court version of accused no.2 regarding the provenance of the deposits. He could not remember the accused's version on that point.
17. Witness no.4, Mr Louis Julio Malgache confirmed that he was a security officer working at Brinks and he explained the procedure to transport cash from a client to a bank. He identified Doc AC as a delivery note. On 04.08.10, he was remitted funds by Sugar Beach Hotel, in a parcel with the breakdown listed on Doc AC. They are in three copies, white, yellow and red. One is kept at Sugar Beach Hotel, one with Brinks and the last at the SBM.
18. Witness no.10, Mr Ravesh Lodeechurn, worked at Air Mauritius in the check-in department. He came to know Mrs Zafirah Bibi Goolamghoss at Air Mauritius, who was equally employed at Air Mauritius. The witness stated that he had suffered some kind of head injury and was seemingly unable to remember details related to this case or his personal life. He did state that the signature at the bottom of Doc AE1 was not his. Extracts were read to him in memory refreshing exercises. He responded that perhaps those extracts are true, but he could not say for certain. At one point he could not remember whether he has had a son with Mrs Zafirah Bibi Goolamghoss, he said that



other people have told him that that was the case. He stated with difficulty that the said Mrs Goolamghoss left Air Mauritius to work at SBM and thereafter they must have met once or twice.

19. During cross-examination on behalf of accused no.1, the witness was shown Doc AE and AE1 which displayed two transactions bearing two signatures each. He agreed that following his head injury in 2012, he could not remember much of those past events. His signature has changed since the accident that he had suffered.
20. The prosecution moved to adduce as evidence the out of court statement of witness no.3. Witness no.14 was called to show that the witness no.3 has been out of the country for a long period and her date of return was unknown. Witness no.13 was also called to satisfy the requirements under **section 188C(2)(c) of the Courts Act**. There was no objection from the defence and the out of court statement was produced as **Doc AG**.

CASE FOR DEFENCE

21. No evidence was adduced on behalf of both accused parties.

ASSESSMENT OF THE COURT

22. In summary, the case for the prosecution asserts that Sugar Beach Hotel was a customer of SBM. The security company, Brinks, as per practice, transports money from the hotel to be deposited at SBM. The money is verified by a supervisor at the bank and the cash is given to a teller to be credited in the bank account of the hotel. In this particular case, on two occasions, the teller being the accused no.1, did not credit the cash in rupees in hotel's bank account. Instead, the bank account of accused no.2 was credited with two sums of Rs100,000 on the same dates.
23. The tenor of the defence case is that there is no evidence from the prosecution to show that the two sums of Rs100,000, which were credited to the bank account of accused no.2, emanated from the monies which should have been credited to the bank account of Sugar Beach Hotel.



24. The version of accused no.1 in her defence statement (Doc AB) is as follows. She denied having been handed over a sum of Rs103,127 by witness no.6, the supervisor, on 05.08.10. On the other hand, she agreed that she processed the deposit of Rs100,000 to the account of accused no.2 on the same day. She alleged that witness no.10 came with the cash so as to be deposited in the account of accused no.2. Similarly, she denied having been remitted Rs116,357 by witness no.7 on 09.08.10 but agreed that she processed the deposit of another Rs100,000 on the same day in the account of accused no.2. She further alleged that it was witness no.12 who instructed her to deposit the said cash. She has a joint account with the accused no.2 at the MCB.
25. As per Docs AA and AA1, defence statements of accused no.2, the latter explained that the accused no.1 used to transfer numerous sums of money to her account. She was in financial difficulty and the accused no.1 would help her out. For the two cash deposits of Rs100,000 on 05.08.10 and 09.08.10, she stated that the accused no.1 told her that the money came from the father of her son, Mr Ravesh Lodeechurn, witness no.10, and other individuals who owed accused no.1 money.

The law

26. Both accused parties stand charged with the offence of Money Laundering in breach of sections 3(1)(a) and (b), respectively, 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA) which is reproduced below:

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.

27. The elements to be proved by the prosecution which are inspired from the pronouncement of the Supreme Court in **Audit v State 2016 SCJ 282**, and tailored for the current Information, are as follows:

- a. Accused no.1 engaged in a transaction involving, and Accused no.2 transferred, property, which
- b. in part and directly represents the proceeds of a crime, and
- c. both accused parties had reasonable grounds for suspecting that the property was derived, in part and directly from a crime.

28. Having perused the above evidence, it is construed that the following circumstances are not disputed:

- a. The witness nos. 4 and 5, the security officers from Brinks have not been cross-examined. It is understood that two deliveries of cash were effected by Brinks from Sugar Beach Hotel to SBM, on 04.08.10 and 06.08.10.
- b. It is also agreed from Docs AC and AC1 that a sum of Rs103,127 excluding foreign currencies, was remitted to the supervisor, witness no.6 on 04.08.10. Likewise, on 06.08.10, a sum of Rs116,357 was remitted to witness no.6, but ultimately taken over by witness no.7 on 09.08.10 due to heavy workload on the delivery date.
- c. It is not disputed from the defence statement of accused no.1 that she processed two deposits of Rs100,000 into the bank account of accused no.2 on 05.08.10 and 09.08.10 respectively.

29. The issue of whether the two deliveries from Sugar Beach Hotel was credited in the hotel's bank account was not overly contested by the defence. The two supervisors from SBM gave oral evidence in court to the effect that the two sums of money in local currency were not credited in the hotel's account, although those in foreign currencies were. The main enquiring officer, witness no.13 stated that the enquiry was triggered following a report from the FIU revealing that the said sums were not properly credited. The evidence from Sugar Beach Hotel has been adduced through the out of court statement of witness no.3, the accountant at the material time, by virtue of **section 188C of the Courts Act**. The statement is dated 22.11.11. The witness had stated that she signed both Docs AC and AC1. She stated that the two sums Rs103,127 and Rs116,357 were not credited to the hotel's bank account.



Following correspondences with SBM, such was confirmed by the bank and the amount due was credited thereafter. It can thus safely be taken as true that the two sums of money from Sugar Beach Hotel were not credited in the appropriate account following the remittance to SBM.

Case against Accused no.1

30. The averment chosen under counts 13 and 14 of the Information is that the accused no.1 must have engaged in a transaction involving property. Accused no.1 has processed the two deposits of Rs100,000 as per the dates in the Information. The first element of the offence of money laundering is thus satisfied.
31. The next issue is whether the property is *in part and directly represents the proceeds of a crime*. The prosecution elected to use the words in part and directly because the allegation is that the accused no.1 committed the crime, identified as embezzlement, and deposited part of the money embezzled into the bank account of accused no.2. A parenthesis has to be used here regarding the averment of embezzlement in the particulars section of the Information. The suggestion from the defence seems to be that, since it is averred it has to be proved by the prosecution. Proving the specific crime which generated the proceed is not an element of the offence of money laundering. The following extract from **DPP v Bholah 2010 PRV 59** illustrates the point:

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.

More pertinent to the point, the Privy Council went on to explain the possibility of giving particulars of the specific crime;

where it is possible to give particulars of the nature of the criminal activity that has generated the illicit proceeds, this should be done. Some of the cases appear to suggest that this is an indispensable requirement; others that it is merely required where it is feasible. All are agreed, however, that where it is possible

to give the accused notice of the type of criminal activity that produced the illegal proceeds, fairness demands that this information should be supplied.

The prosecution has given particulars of the specific crime which allegedly gave rise to the proceeds, as being embezzlement. Such is the nature of the criminal activity which has been identified to have produced the criminal property. There is however no requirement to prove it, in the context of a money laundering offence.

32. The case of Bholah (supra) dealt with the element of whether the property was *in whole or in part directly or indirectly represents the proceed of any crime*. A number of cases such as **R v Anwoir [2009] 1 WLR 980** and **R v W (N) [2009] 1 WLR 965** were cited and the relevant extracts are as follows:

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.

33. It is manifest that the prosecution has based its case on the assertion that the money was derived from conduct of a specific kind. The question is whether it has been able to prove the nexus between the two failed deposits from Sugar Beach Hotel and the two deposits made by the accused no.1 to the account of accused no.2.

34. Witness nos.6 and 7, the two supervisors of SBM have deposed in court in a clear and coherent manner. On 04.08.10, witness no.6 stated that he handed over the sum of Rs103,127 to the accused no.1 and on 09.08.10, witness no.7 hand over the sum of Rs116,357 to accused no.1. It was the established procedure at the bank. The two issues raised in cross-examination were that there was no documentation to keep a record of any handing over to any teller, and the fact that the bank was unaware of any wrongdoing at the material time. Both points have been explained by both witnesses to an acceptable degree as summarised at paragraphs 10, 11, 12 and 13 above. The accused no.1 flatly denied having been remitted the cash on the two material dates in her defence statement. On the other hand, the two witnesses have given a detailed account of the events on the two dates in question, depicting them as witnesses

of truth. The defence has relied on the defence statement of the accused no.1 when the prosecution had established a prima case on the point. The following extract from the case **Boyjoonauth v State 2017 SCJ 378** is of relevance:

In those circumstances, applying the well-known principle in the case of M. Andoo v The Queen [1989 SCJ 257] to the effect that the right to silence is exercised at the risks and perils of the accused once a strong prima facie case has been established by the prosecution against him, the learned Magistrate was entitled to come to the conclusion that the failure of the defence to adduce some evidence in order to buttress and add supporting strength to the unsworn version of the appellant meant that the sworn evidence adduced by the prosecution carried more weight.

The evidence thus points to the fact that the last person to be in possession of the two sums of money, not credited in the appropriate bank account, was the accused no.1. As an employee of the bank, she was trusted with the processing of the cash without supervision, once it was handed over.

35. The question to be addressed is whether the two deposits of Rs100,000 that the accused no.1 effected to the account of the accused no.2, emanate from the unprocessed sums of money. The version of the accused no.1 in her defence statement is that the first Rs100,000 on 05.08.10 was brought to the bank by witness no.10 and instructed her to deposit same to the account of accused no.2. On 09.08.10, witness no.12 brought another Rs100,000 to again be credited to the account of accused no.2.

36. The evidence of witness no.10 has been assessed at paragraphs 18 and 19 above. He had a child with the accused no.2. He had suffered an accident, causing head injuries leading to his inability to remember with clarity past events. The witness was shown Doc AE1 during his examination in chief, and he stated that the signature affixed by the customer was not his. During cross-examination, he did not retract his answer but stated that his signature has changed since his accident. Such evidence does not rebut his straightforward denial that it was his signature on Doc AE1. The weight of his evidence is therefore not severely affected to a point which might render it nugatory. Witness no.12 denied that his signatures were affixed on either Doc AE1 or AE2. He did not recognise any of the two transactions. The witness was prosecuted by the police together with accused no.1. He was convicted and the accused no.1 was acquitted. The police case was related to the same transaction

involved in the current case. I am alive to the fact that the witness no.12 was a convicted accomplice to the accused no.1 in a related case. However, his evidence does not rest in isolation in the prosecution's case. There is no evidence from the defence to show any connection the witness no.12 might have had with the accused no.2, for him to deposit Rs100,000 in her account. On the other hand, the connection with the accused no.1 was established. They knew each other over a period of time. When viewed as a whole, the two witnesses mentioned by the accused no.1 in her defence statement in the creation of her defence, did not support her version in court. Witness no.10 who had a clear connection with accused no.2 and thus it could have been argued to have an incentive to give the latter money, denied his signature on the relevant document. Witness no.12 who, albeit was a convicted accomplice in another related case, had no connection with accused no.2 to give her money, denied his signature on the said documents (Docs AE1 and AE2).

37. A holistic analysis of the evidence shows that the accused no.1 has deposited two sums of Rs100,000 into the account of accused no.2 at roughly the same time when two sums of Rs103,127 and Rs116,357 were given to her but not credited into the account of Sugar Beach Hotel. On the same dates, the two sums of Rs100,000 were transferred to an MCB account, by MACCS transfer. The circumstantial evidence therefore creates the irresistible inference that the accused no.1 did not credit the two sums remitted to her by her supervisors when she was mandated to do so. The monies became tainted, hence proceeds of crime, the moment she did not process the deposits. Thereafter the accused no.1 engaged in the transaction of depositing part of the proceeds, that is two sums of Rs100,000 on the material dates, into the account of accused no.2. The likelihood that the two sums of Rs100,000 emanate from the unprocessed sums from the Sugar Beach Hotel is very high, when all circumstantial evidence are pieced together.

38. Since the accused no.1 was the author of the criminal activity leading to the proceeds, I find that she had reasonable grounds for suspecting that the property was derived, in part and directly from a crime.

Case against accused no.2

39. Following the same above assessment, the accused no.2 has transferred the two sums of Rs100,000 from her SBM account into her MCB account, on 05.08.10 and 09.08.10, respectively.



40. When it comes to her mens rea, the prosecution had to prove that she had reasonable grounds for suspecting that the property was derived, in whole directly from a crime. Perusing Docs AA and AA1, the accused no.2 stated that the accused no.1 constantly transferred money to her as financial aid to her. The two transactions involved, as averred under counts 26 and 27 of the Information, were explained to her by accused no.1, as money from witness no.10, the father of her child, and money from other individuals who owed the latter money.
41. It settled from the pronouncements of the Supreme Court in **Antoine v The State 2009 SCJ 328** and **Manraj and Others v ICAC 2003 SCJ 75**, that the test for proving suspicion is an objective one. Furthermore, the following passage from Antoine (supra) was endorsed by Audit (supra):
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.
42. The concept of suspicion in money laundering cases was given some clarification by the English Court of Appeal case **R v Da Silva [2006] EWCA Crim 1654**:
The prosecution must prove that the defendant's acts of facilitating another person's retention or control of the proceeds of criminal conduct were done by a defendant who thought that there was a possibility, which was more than fanciful, that the other person was or had been engaged in or had benefited from criminal conduct. (Emphasis is mine)
43. The fact that the accused no.2 had transferred the two sums of Rs100,000 from one bank account to another on the same day, might appear unconventional but it would be a stretch to say that she must have had reasonable suspicion that the money was derived from a crime because of it. The prosecution has not adduced further evidence to show that the accused no.2 must have suspected that accused no.1 indulged in criminal activity and that the sums in question were proceeds of crime. From the defence statements, the accused parties, have established that there has been a long and close relationship between them. The fact that accused no.2 was led to believe over a period of time, as per her version, that the accused no.1 was her good benefactor,



disrupts the contention from the prosecution that she had the required mens rea.

44. I thus hold that the prosecution has failed to prove that the accused no.2 must have suspected that there was a possibility which was more than fanciful that the money deposited in her bank account by accused no.1 was proceeds of crime.

CONCLUSION

45. For the above reasons, I find accused no.1 guilty as charged under counts 13 and 14 of the Information.

46. For the above reasons, I find that the prosecution has failed to prove, beyond reasonable doubt, the case against the accused no.2. The counts 26 and 27 of the Information are consequently dismissed.



P K Rangasamy
Magistrate of the Intermediate Court

27.11.24

