CN: 135/2020

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

**In the matter of:**

**Independent Commission Against Corruption**

**v/s**

**Ismael Muhammad TAI**

**JUDGMENT**

1. The accused has been prosecuted under seven counts for the offence of Money Laundering in breach of sections 3(1)(a), 6 & 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA). He pleaded not guilty to the Information and was legally represented by Mr N. Ramburn SC. The prosecution was represented by Mr L. Nulliah.

**CASE FOR THE PROSECUTION**

2. Witness no.1, Investigator Dabee, stated that he was the main enquiring officer in the case. He produced five defence statements of the accused as **Docs A (A1 to A4)**. The investigation was triggered as a result of an anonymous complaint. Documents were requested from relevant authorities. The police confirmed that the accused was arrested for a case of illegal bookmaking in April 2018, and a sum of Rs645,000 was secured from the accused. Dangerous drugs were also secured from the accused's place of residence and he is now being prosecuted by the police for illegal bookmaking and drug trafficking. The accused was also arrested by the police in April 2011 for illegal bookmaking and Rs400,000 was secured from him. Enquiry from the Ministry of Social

Security confirmed that the accused was employed at Mamode Timol Co. Ltd from 1999 to 2007. There is no NPF record for him beyond 2007. The accused was never a director or shareholder of any company as per the Registrar of Companies. He did not hold any trade licence to operate a classified trade within the vicinity of Port-Louis, which is his place of residence, as per the records at the Municipality of Port-Louis. The witness stated that, after an analysis of the accused's bank account (MCB), there were substantial sums of money deposited, amounting to millions of rupees for the period from 2008 to 2015.

3. The accused was requested to give his explanation as to the sum of money sitting in his bank account for the period in question. He gave the following sources of income as per the enquiring officer:

   a. He was a part-time driver at S&H Ltd, a hardware shop (Quincaillerie) in Port-Louis and he earned a salary between Rs6000 and Rs8000 per month.
   b. He was a briani seller which he bought from one Zoro Elahee.
   c. He was in the business of selling of doormats which he bought from Timol Co. Ltd.
   d. He dealt in the sale of construction stones commonly known as 'roches couleurs', which he acquired from one Mr Savrimootoo and one Mr Mooken.
   e. He has provided winning tickets from horseracing and other gambling activities.

4. The witness stated that he recorded out-of-court statements from the owner of S&H hardware shop, Timol Co. Ltd, Mr Savrimootoo and Mr Mooken to verify the assertions of the accused with regards to his level of income. He did his analysis and found that the cash deposits in the former's bank account do not tally with the alleged earning capacity.

5. **Doc B** was cumulatively produced, consisting of two documents, namely the application for an attachment order and the order of the Supreme Court itself. **Doc C** was produced representing the out of court statement of the accused put up in response to the attachment order, explaining the accused's sources of income. The latter referred to a number of documents allegedly showing the transactions generating various income. The analysis made by the witness has allegedly revealed discrepancies by a wide margin between the cash deposits and the assertions made as to the accused's level of income. The witness produced the following documents as provided to the ICAC by the accused:

a. **Docs D (D1 to D3)** - Each marked document is a bundle of documents consisting of copies of winning tickets from gambling activities and the alleged corresponding entries (deposits) in the accused's bank account.
b. **Doc E** - Five receipts of credit sales (carpets and fabrics) with the corresponding entries in the accused's bank account.
c. **Doc E1** - Two receipts of credit sales (carpets and fabrics) with the corresponding entries in the accused's bank account.
d. **Doc E2** - One receipt of credit sales (carpets and fabrics) with the corresponding entries in the accused's bank account.
e. **Doc E4** - Two receipts of credit sales (carpets and fabrics) with the corresponding entries in the accused's bank account.
f. **Doc E5** - One receipt of credit sales (carpets and fabrics) with the corresponding entries in the accused's bank account.
g. **Doc E6** - One receipt of credit sales (carpets and fabrics) with the corresponding entries in the accused's bank account.
h. **Doc E7** - Two receipts of credit sales (carpets and fabrics) with the corresponding entries in the accused's bank account.
i. **Doc E8** - Three receipts of credit sales (carpets and fabrics) with the corresponding entries in the accused's bank account.
j. **Docs F (F1 to F7)** - Eight receipts from one Mr Ramoo Mooken regarding the purchase of coloured stones with corresponding deposits in the accused's bank accounts.
k. **Doc G** – Letter from the Mauritius Commercial Bank (MCB) listing the bank account numbers of all accounts associated to the accused or his close family members, from the period between September 2008 and October 2015.
l. **Doc H** – Bank statements of the accused at the MCB during period from September 2008 to October 2015 (196 pages).

The witness further stated that for the period Sept 2008 to Dec 2008, there were cash deposits amounting to Rs1,130,000 and only Rs36,000 could be accounted for by the explanations of the accused. Upon confrontation at enquiry stage, the accused could not provide a plausible explanation. The same exercise was carried out for the year 2009, an unexplained amount of Rs583,108 was found. For the year 2010, the amount unaccounted for reached Rs1,386,404. For the year 2011, the discrepancy in the accused's account amounted to Rs748,835. For the year 2012, the unexplained discrepancy amounted to Rs250,448. For the year 2013, the provided sources of income by

the accused exceeded the amount of cash deposits. For the year 2014, the unaccounted sum amounted to Rs63,054. For the year 2015, the difference which remained unexplained was Rs220,000. The witness gave evidence to the effect that the various unexplained cash deposits emanate from criminal activity because the accused was arrested by the police in April 2011 for a case of illegal bookmaking and a sum of Rs400,000 was secured from him. He was arrested anew for the same type of offence in April 2015 and an approximate sum of Rs645,000 was secured. The witness could not give further information as to the stage at which those cases of illegal bookmaking have reached.

6. During cross-examination, the witness denied having based the current case solely on the previous arrests of the accused. He carried out his investigation on the unaccounted sums of money as cash deposits in the accused's bank account. He agreed that an arrest does not mean that the accused was guilty of the offence for which he was arrested. The investigation started in around 2015 and the impugned cash was deposited as from the year 2008. When asked whether it was reasonable to ask the accused explanations for cash deposits that he effected seven years earlier, the witness replied that it was possible. Questions centred on whether the witness acted on mere summation, during his investigation, that the cash deposits were derived from illegal activity. The only circumstance that was relied upon, was the arrests of the accused. The replies of the witness were constantly along the lines that he had perused the accused's bank statements of the preceding seven years and found unaccounted cash deposits which have not been explained by the accused when prompted. The arrests were an additional component used in that conclusion.

7. The witness further stated that he was not a fully qualified accountant. He explained that, by simple mathematical deductions and the lack of explanations of the accused, he concluded that there were cash deposits which were unaccounted for. Doc H was shown to the witness. The latter confirmed that he used only the cash deposited in the accused's bank account in his analysis, not the opening balance in 2008. It was put to the witness that it might not reasonable to expect the accused to remember the source of these cash deposits when his statement was recorded about seven years earlier. The witness' response was to the effect that the cash deposits were for significant sums of money which the accused should have remembered or taken note of, even years later. The accused failed to give any explanation as to the source of the first cash deposits, except that he was an employee at a hardware shop.

8. In his analysis, the witness explained that he has lumped together the cash deposits on a yearly basis. However, he confronted each cash deposit to the accused. He constantly put to the assertion that there was no direct evidence to show that those cash deposits were derived from unlawful sources. The witness replied that the inference was from the fact that the accused could not give explanations as to the source of the cash deposits which would cover the whole amount and to the fact that the accused has been arrested for unlawful activities, generative of income. When asked whether he was convicted of those cases, the witness answered that for the 2011 arrest, the accused was prosecuted and convicted.

9. Witness no.2, Retired PS Vengatasamy, stated that he was the enquiring officer in the case OB1433/11 against the accused. The case was with regards to the offence of carrying an activity not regulated by the Gambling Regulatory Authority Act. The accused was arrested for that offence and money suspected to be derived from illegal betting activity was secured. The case has been lodged at the Intermediate Court, Criminal Division.

10. Witness no.8, PS Saminaden, stated that he was the enquiring officer in the case OB1323/15, which pertained to the offence of carrying an activity without licence under the GRAA. The case has been lodged at the District Court of Port-Louis. A sum of Rs600,000 was secured after a search was carried out.

11. Witness no.3, Mr Claude Vivian Adone, was the compliance officer at the Mauritius Commercial Bank (MCB) and he identified Doc H, the accused's bank statements. He then produced **Doc J**, the connected disclosure order. During cross-examination, the witness could not answer whether any of the accused's cash deposit was considered as suspicious transactions. But if there were, he would have flagged it when he put up his statement during the investigation. He did however caution that he gave his statement primarily with regards to the said disclosure order. He further stated that the normal procedure at the bank when there is a cash deposit, the customer would have to write on the cash deposit voucher, the source of the funds. Between the years 2011 and 2014, there were a few cash deposit vouchers from the accused, that the bank could not trace.

12. Witness no.10, Mr France Christian Savrimootoo, was a building contractor who owned the company 'Savritech'. He dealt in construction work and he came to know of the accused when the latter worked at the hardware shop 'Triangle'.

He used to buy construction materials and equipment from the hardware shop, including coloured construction stones. Whenever he could not effect payment upfront, the accused would grant him a credit facility. A previous inconsistent statement was put to the witness when asked about the time he first bought coloured stones from the accused at the hardware shop. He confirmed the year to be 2011. Following another previous inconsistent statement exercise, the witness confirmed that he bought 75 tonnes of demolition stones for Rs60,000 from the accused. His memory was refreshed, and the witness stated that in 2011, he bought another 40 tonnes of stones for Rs32,000. The witness had difficulty in remembering the specific weight and price of stones that he dealt in with the accused. His memory was refreshed and he confirmed that in 2012, he bought 30 tonnes of stones for Rs21,000. He also confirmed that in 2013, he bought 100 tonnes for Rs80,000. The accused provided the transport for the stone deliveries. They both worked on construction projects for the American embassy, the Australian embassy, 'Jumbo Riche Terre' and 'Jumbo Phoenix' for some time, including the year 2013. The accused would also provide construction materials from the said hardware shop, the witness paid by cheque or cash. He did not have any receipt for the said transactions with the accused.

13. Under cross-examination, the witness confirmed that he had a working relationship with the accused. He stated that he put up his statement at the then ICAC six years post the events in 2011. It was possible that he could have mistaken on the figures involved in the transactions. The construction stones are expensive and they were sold per piece. At the time of recording his out of court statement, he was not asked to bring receipts. He had a credit facility with the hardware shop. Following back and forth questions, he hinted that he was not asked about all his transactions with the accused. He spoke about some of the transactions in his out of court statement. He still had a working relationship with the accused.

14. In re-examination, the witness stated that he bought items from the accused whom he paid directly. The latter was working at 'Quincaillerie Triangle' but he was not entirely certain whether he was receiving a commission on the payments. He rectified his answer with regards to coloured stones, when he stated that he was asked for receipts during enquiry, but he did not have any. A previous inconsistent statement was confronted to the witness in relation to his answer on whether he was still transacting with the accused. The witness stated that he confirmed his out of court statement in that he did not have any

other working relations with the accused as at 2017, when he gave his statement.

15. Witness no.7, My Oomar Hossen Ellahee, stated that he was a 'briani' seller. He prepared his own 'briani' and sold it to customers. However, he was unaware whether the buyers would his 'briani' to be sold or for their own consumption. He knew the accused as a customer. He could order 'briani' three or four times during a year, each time for about twenty people. He has done so for a long time. The accused brought his meat, and the witness would cook the 'briani'. That was so, before 2017 and it cost Rs5000 per order.

16. During cross-examination, he could not confirm whether the accused would sell the 'briani' he had bought from him. He could not give the exact dates he effected the sale of 'briani' to the accused and he had no records of the sales.

17. Witness no.5, Mr Ibrahim Abdool Carrim Cassam was a manager at Timol Co. Ltd. The accused was a co-worker with him at Timol shop in Port-Louis during the period 2009 to 2011. The accused was an employee of Timol. At some point in time, he left the company and started a business relationship with Timol Co. Ltd. He bought carpets, office chairs and other items. He was shown the credit sales from Mamode Timol Co. Ltd at Docs E (E1 to E8). He confirmed that those were receipts regarding sales made to the accused. The latter did make other purchases which are not reflected in the credit sales. But those would have been for lesser amounts and at a much lower frequency. In those cases, only cash receipts would be given to the accused. The witness produced **Docs K** and **K1**. Those were the listings of purchases made on the name of one Bourville, but which was described as somebody who worked with the accused. The listings represent the majority of purchases made by the accused but not the entirety of purchases made by him.

18. During cross-examination, the witness stated that the accused was the cousin of the director of Timol Co. Ltd, namely, Mr Salim Timol. He agreed that there might private deals made between those two individuals which he would not be aware of, and not disclosed in documents of the company. He further stated that the accused bought office chairs from the company and such purchases were not found in the produced documents. He could not say the amount of commission the accused received from the sale of office chairs. Equally he was unaware of the percentage profit the accused made upon resale of the items he bought from Timol Co. Ltd. The witness added during re-examination that the

listings he produced as Docs K and K1 could represent less than 80% of the total sales effected to the accused by the company. He stated that the sale of office chairs was not part of the listings because the accused was receiving commissions in cash.

19. Witness no.11, Mr Ramoo Mooken stated that he had known the accused for more than 15 years. He was a building contractor and he knew the accused as a supplier of coloured construction stones. He bought such stones from the accused since the period 2009 to 2010. He confirmed Docs F (F1 to F8) as the receipts he issued for the purchases he effected from the accused. During cross-examination, he stated that he also bought other construction materials from the accused, but he did not provide any receipts for those. He was not asked to do so by the ICAC.

**CASE FOR THE DEFENCE**

20. No evidence was adduced on behalf of the defence.

**ASSESSMENT OF THE COURT**

21. The accused has been charged under 7 counts as per the Information. A perusal of the particulars under each count of the Information shows that the accused allegedly caused sums of money to be deposited into his bank account during calendar years 2008, 2009, 2010, 2011, 2012, 2014 and 2015. Each calendar year is couched under one count of the Information. Thus, each count is an aggregate sum of money from all deposits made during the year corresponding to that count. Such has been repeated seven times. Ex facie the Information, the case for the prosecution therefore suggests that the accused has committed seven offences, by engaging *in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime*; vide **section 3(1)(a) FIAMLA**. Whilst observing the strict letter of the law, under each count, the accused must have engaged in a transaction.

22. The contention from the defence is that each cash deposit made by the accused into his bank account represents one transaction. It is not disputed that each count of the Information covers a number of cash deposits which have been lumped together on a yearly basis. Thus, the proposition from the defence is that each count of the Information is defective for multiplicity, since each transaction would amount to one offence.

23. The prosecution's submission on this point is as follows; '*the rationale for choosing a yearly figure, is precisely because receipts were given by the accused.*' It went further, '*that is why the lumping cannot be unfair to the accused because he chose to come with receipts explaining the yearly deposit.*' Such contention is founded in the fact that the legislator enacted the words 'in whole or in part' and 'directly or indirectly', within the offence creating section. Since it would be almost impossible for the prosecution to pinpoint the exact quantum or percentage of a transaction which is derived from criminal activity, the law naturally did not create such requirement. What amounts to a transaction is thus the question which begs to be answered. The prosecution did submit that the offence crystallises as soon as a deposit is made in the bank account and conceded that multiplicity is a fundamental defect to any Information. However, the prosecution reiterated that the current Information is not multiplicitous, since it is a question of form rather than evidence. The other point offered by the prosecution as a rebuttal to the defence's submission of defective Information, was to treat the counts as omnibus counts. It is unclear whether the omnibus count idea is a corollary to the main 'question of form' argument, or is distinct and should be treated alternatively.

24. The principle of duplicity "*is a matter of form, independently of evidence*", vide **Choolun v R 1979 MR 290**. Thus, *in other words, whether an information is bad for duplicity is to be decided by looking solely at the wording of the information itself, in the light of the enactment creating the offence, such as to see if more than one offence is being charged in the same count*, vide **Mahamudally A R v The State 2011 SCJ 246**.

The counts have all been couched and paraphrased as follows:
*In the year 2008, the 'accused' did wilfully, unlawfully and criminally, engage in a transaction that involved property which, in whole or in part, directly or indirectly represented, proceeds of a crime.*
The corresponding count has then been particularised as follows:
*In the aforesaid year and place, the 'accused' caused the deposit of a total sum of Rs1,193,000 into his bank account.*

25. The definition of 'transaction' at **section 2 of FIAMLA** is reproduced below:
"transaction" includes -

(a) opening an account, issuing a passbook, renting a safe deposit box, entering into a fiduciary relationship or establishing any other business relationship, whether electronically or otherwise; and
(b) a proposed transaction.
It can be readily noted that the above definition is inclusive of the transactions listed at paragraphs (a) and (b), but does not exclude other descriptions of transactions.

26. As averred in the Information, the causing of cash deposits into a bank account would fall within the legal ambit of a transaction as defined above. The issue is whether the grouping of a number of cash deposits, can be termed as one transaction. The prosecution instigates and has carriage of proceedings, and thus is not restricted to the above listed transactions. In the current case, the prosecution elected to aver the aggregate sum of money deposited on a yearly basis as one transaction. Whether that approach is supported by the evidence, is consequently an evidential issue. However, as a matter of form, the body of each count of the Information has been worded as per the section of the law. The corresponding particulars section discloses the deposit of a total sum of money per year, and averred to be one transaction. This is not to suggest that the prosecution may have absolute latitude to devise categories of transactions which are either inconsistent with section 2 of FIAMLA or devoid of common sense. It is averred that a yearly transaction is made up of various cash deposits into a bank account. Those deposits are similar in nature and do not contain differing components which would categorise them as offences of a different class. The issue is if the accused had caused thousands of similar deposits into his bank account over a period of time, an Information lodged with thousands of counts would understandably be viewed with much skepticism. The solution of an omnibus count is aptly raised, but there are requirements to be satisfied.

27. The principle of the omnibus count was dealt with by the Supreme Court in **Cossigny v R 1988 MR 204**, although the circumstances were reversed, in that the defence raised the issue that the accused should have been prosecuted under one count with all transactions grouped together. The following extracts regarding the exceptions to the rule against duplicity are of relevance:

*First, an accused party may be charged in one count of an information with having misappropriated an aggregate sum of money although the evidence reveals that the sum of money has been or might have been*

*misappropriated on 2 or more occasions provided that the various misappropriations of money constitute one continuous and single transaction –vide* ***Bablee v R[1955 MR 423]****. Secondly, an accused party may be charged in one count of an information with having misappropriated over a period of time an aggregate sum of money found to be missing on a particular date where it is impossible to trace the individual misappropriations which may have taken place on specific dates –vide the so-called general deficiency cases, such as the English cases of* ***R v Tomlin (1954) 38 Cr. App. R. 82...***

28. The Information has been laid against the accused regarding the amounts of money which could not be explained by the accused or which allegedly had no legitimate source as per the enquiry. The offence of money laundering does not require the identification of a predicate crime, vide **DPP v Bholah 2010 PRV 59**, as long as there is evidence that the proceeds emanate from a crime. In the absence of a specific crime which would have generated identifiable proceeds, it is not feasible for the prosecution to pinpoint the exact deposits which represent the proceeds of crime. On the other hand, a general assessment of the accused's earnings would allegedly show that a number of those deposits could not have been derived from legitimate sources. The Mauritian caselaw is silent on the issue of duplicity in money laundering cases, although as considered above, the existing principles can be made applicable in such cases. However, the English caselaw, whilst not direct precedents, may offer valuable insight, as shown in the Court of Appeal decision **R v Clements (Paul) & Ors [2014] EWCA Crim 2936**, where the following was held:

*43. The point that is made is that in this case individual deposits could be traced via the Streamline card deposits and the evidence did not make it clear that the deposits were from fraudulent sales or legitimate sales. The real prejudice was that Clements was prevented from defending each withdrawal on its merits. Furthermore, what the prosecution had to prove was blurred to the point of total imprecision.*

*44. ... It was the Crown's case, and indeed in the event not disputed, that a large number of these transactions were cash transactions albeit the defendants who gave evidence did not speak with one voice as to what had happened to that cash and there were no company records. The money laundering counts therefore included money paid into the accounts and cash received, as the judge explained to the jury in his summing-up. In those circumstances, the sums could not be specified and individual counts could not have been drafted. The*

*indictment made clear what was charged and the period over which it was charged.*

*45. In our view, this case is analogous to that of R v Middleton and Rourke [2008] EWCA Crim 223, where a single count alleging money laundering in relation to thousands of different transactions large and small intermingled with similar transactions involving legitimate activity was held not to be bad for duplicity.*

29. I thus find that the Information is not defective on the ground of duplicity/multiplicity. The factual basis on which the counts have been drafted as omnibus counts is legally sound. It has been made clear the period of time for which the charges have been laid, and the amount which has allegedly been laundered.

30. The fact that the deposits forming one transaction has been divided into seven counts raises the issue whether such approach would be to the prejudice of the accused. The prosecution proposed the reason that it was an attempt to streamline the bulk of evidence so as to make it more digestible to the court. I am inclined to agree with such submission to that extent. Further support can be found in the fact that the bank statements have been provided on a yearly basis. The accused was aware of his own deposits on a yearly basis. Ex facie the Information, an omnibus count may be divided up for practical reasons as long as no prejudice accrues to the accused. The point that can be tenable from the defence, would be that the accused may be sentenced seven times for transactions of the same nature, if conviction ensues. Such may be catered for during sentencing. However, the issue will be canvassed further down since prejudice can only considered with the full facts of the case.

<u>Factual assessment</u>

31. The constitutive elements of the offence of money laundering have been set out by the Supreme Court in **Audit v State 2016 SCJ 282** as follows:
*The elements of the offence under section 3 of FIAMLA are:*

*(a) possession of property;*
*(b) in whole or in part directly or indirectly represents the proceed of any crime;*
*(c) has reasonable grounds for suspecting;*
*(d) the property is derived or realised;*
*(e) in whole or in part, directly or indirectly from any crime.*

32. Adapting the above elements to the facts of the present case, the prosecution had to prove that the accused;
    a. engaged in a transaction involving property, which
    b. in whole or in part directly or indirectly represents the proceed of any crime
    c. had reasonable grounds for suspecting that,
    d. the property was derived in whole or in part, directly or indirectly from any crime.

33. As per my above findings, the accused did engage in numerous transactions, vide, the deposits of money into his bank account, which were grouped together in omnibus counts.

34. With regards to the second element, the prosecution based its case on the premise that, firstly, the accused was arrested twice for cases of breaches of trade licence under the Gambling Regulatory Authority Act (GRAA) and, secondly, his income was not commensurate with the amounts of money deposited in his bank account.

35. The non-commensuration limb has been canvassed lengthily by both parties. The evidence from the prosecution witnesses have been summarised above. Paragraph 3 shows the undisputed sources of income of the accused, which have been loosely divided into 5 categories. The alleged sources of income as proposed by the accused were taken as true at enquiry stage. The witness no.1, the main enquiring officer, made simple subtractions of the proposed income from the total cash deposits roughly on a yearly basis.

36. The element of whether the property was *in whole or in part directly or indirectly represents the proceed of any crime*, was reviewed by the Privy Council in **Bholah v State 2010 PRV 59.** A number of cases were used as references, namely **R v Anwoir [2009] 1 WLR 980** and **R v W (N) [2009] 1 WLR 965** 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.*

The Court of Appeal in Anwoir (supra) endorsed the pronouncement in **R v El-Kurd [2001] Crim LR 234** which is reproduced below:

*"you will note from the definition of criminal conduct that you do not have to be satisfied what conduct it was that produced a financial benefit for the other person. While it could be the proceeds of theft or fraud it could equally be the proceeds of unlawful gambling, prostitution, revenue offences or any other kind of dishonesty. The useful test, you may think, is to ask yourselves whether the financial benefit was honestly derived from legitimate business or commercial activity."*

37. The above pronouncements give the court a wide-ranging room to manoeuvre. It is clear that there is no need for the prosecution to prove the criminal conduct generating the proceeds, but as long as the financial benefit could not have been honestly or legitimately acquired, the criminal conduct can be inferred. However, the ingredient of criminal conduct has to exist in the mix of all circumstantial evidence. The prosecution professed that the accused has been subject to two previous arrests dated April 2011 and April 2015, for breaches of the GRAA. The evidence of witness nos.2 and 8 above shows that a sum of Rs400,000 and Rs645,000 was secured for each arrest, respectively. The corresponding cases have been lodged at the Intermediate Court and the District Court, but there is no evidence as to any outcome of the said cases. The fact that the arrests post-date some of the counts of the Information, does not diminish their relevance since, an illegal activity may be ongoing before an arrest is effected, vide **Andrew Ryan Ferrell v The Queen [2010] UKPC 20.** It is therefore the case for the prosecution that the impugned sums of money in the bank account of the accused emanate from the criminal activity, as prohibited by the GRAA. The prosecution did not submit any other illicit source of funds for the accused. I am alive to the risk of relying on a previous arrest, without an ensuing conviction. Nonetheless, it is also understood that the lack of a conviction is no bar to establishing a money laundering offence. However, the prosecution did not adduce evidence of the circumstances in which the arrests were made. There is nothing on record to show what were the precise charges lodged against the accused under the GRAA. The pertinent circumstance regarding the seizure of two sizeable amounts of cash, namely, Rs400,000 and Rs645,000, from the accused should have been dealt with more comprehensively. The court is in the dark as to the manner in which the cash was kept. The hiding place, the general location, the means used to hide the cash or whether the cash was in small notes, are all relevant factors in deciding

whether the cash was tainted and a criminal activity was afoot. Was the cash in the accused's custody and how; are questions which were not answered by the prosecution. Bearing in mind that the presumption of innocence applies before any conviction, the lack of relevant evidence as shown above, significantly reduces the weight to be attached to the previous arrests.

38. The amounts of cash without an identifiable source, in the accused's bank account, with the corresponding periods are as follows:

a. From Sept 2008 to Dec 2008, the unexplained amount was Rs1,157,000.
b. For 2009, the unexplained amount was Rs583,108.
c. For 2010, the unexplained amount was Rs1,386,404.
d. For 2011, the unexplained amount was Rs748,835.
e. For 2012, the unexplained amount was Rs252,448.
f. For 2014, the unexplained amount was Rs63,054.
g. For 2015, the unexplained amount was Rs221,000.

39. The above figures were confronted to the accused at Doc A4, his defence statement, where he denied that the above amounts were proceeds of crime. Those sums are yearly totals which are unaccounted for, as per the explanations given by the accused during enquiry. The confrontation was made in a way so as to inform the accused that a reconciliation exercise was carried out and it has been found that the above sums were proceeds of illegal bookmaking (Folio 228556 of Doc A4).

40. Each count of the Information revealing the sums of money which represent, in whole or in part, the proceeds of crime are as follows:

Count 1 – Year 2008 – Rs1,193,000
Count 2 – Year 2009 – Rs1,019,200
Count 3 – Year 2010 – Rs1,834,625
Count 4 – Year 2011 – Rs1,104,000
Count 5 – Year 2012 – Rs1,265,000
Count 6 – Year 2014 – Rs896,000
Count 7 – Year 2015 – Rs251,000

41. Each count corresponds to the periods of time as confronted to the accused at enquiry stage. However, it is clear that the amounts of money have been inflated. The legal interpretation of 'in whole or in part' may provide the

prosecution with some flexibility so as it is not required for the prosecution to aver the exact amount of tainted money when it is very difficult to do so. In the current case, the amounts of allegedly tainted cash have been identified by the investigative authority and confronted as such to the accused. The issue raised by the defence regarding the division of the transaction into seven counts, is that, it is impossible for the accused to know exactly which amounts were the proceeds of crime and thus impossible to prepare a defence. Whilst the variance in quantum might be argued not to be fatal to the prosecution's case because of the 'in whole or in part' phrase, the level of prejudice to the accused escalates when several counts are laid. If it is unclear which quantum is tainted in every count, there is a real possibility that one or more counts may aver property which is wholly not the proceeds of crime. In such case, there would be no offence committed under that count. It would be impossible to know which count may fall under that qualification, hence creating an unresolvable uncertainty.

42. Furthermore, the accused put up his defence statements years after the first impugned deposits were made in 2008. The former was asked to provide explanations for the deposits ranging over seven years. Whilst some cash deposits were significant enough for a reasonable individual to have detailed recollections of the sources of funds, most deposits in this case may not be considered as striking when viewed in the commercial context. The deposits were made into bank accounts. Questions were put to the witness no.3, a compliance officer at the relevant bank. Purpose of cash deposits are normally written by the customer on the cash deposit vouchers. The said vouchers between 2011 and 2014 were not traceable at the bank due to the passage of time. The same justification if afforded to the prosecution must be given to the defence. The passage of time in such cases would benefit the accused when the complexity of the case requires precise recollection of events. The accused has provided numerous receipts, invoices and bank statements showing sources of income. A certain sum of money remains outstanding. It is however settled that the burden of proof rests with the prosecution. The evidential burden is reversed on the accused, only when a prima facie case has been established by the prosecution. The nexus between a criminal activity and the unaccounted sum of money had to be proved by the prosecution. The reliance placed on the previous arrests has moved the prosecution's case on shaky grounds. The evidence of prosecution witnesses from Timol Co Ltd, the one Ramoo Mooken (Wit no.11) and witness no.10, has left the door open as what percentage of profit the accused might have received from his business ventures with them.

They could not provide a reasonably accurate return from the accused's commercial enterprise with them. The possibility thus remains that the accused could have had more income than what has been alleged by the prosecution.

43. For the above reasons, I hold that the prosecution has failed to prove beyond reasonable doubt the second element of the offence under section 3(1)(a) FIAMLA and it would be unsafe to convict the accused as charged under the seven counts of the Information. The case against the accused is thus dismissed.

**P K Rangasamy**
**Magistrate of the Intermediate Court**
**22.01.25**