

ICAC v Jean Jacques Desire Constant

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FCD CN: 46/2020

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

In the matter of:

Independent Commission Against Corruption

v/s

- 1. Jean Jacques Desire CONSTANT**
- 2. Marie Gilberte Marjorie BAZERQUE**
(Now deceased)

JUDGMENT

1. Both accused parties have been prosecuted for the offence of Money Laundering in breach of sections 3(1)(a)(b), 6 & 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA). Counts 1 to 6, 8 and 9 of the Information were laid against accused no.1 and count 7 against accused no.2. During the course of trial, the accused no.2 passed away and count 7 was consequently dismissed for want of prosecution. Accused no.1 has pleaded not guilty to the Information and was legally represented by Mr U. Hurnauth. The prosecution was represented by Mr S. Jeeha.

CASE FOR THE PROSECUTION

2. Witness no.19, Mrs Mohungoo representative of the Registrar of Companies, stated that the company Lazio Co. Ltd was created on 28.08.00. It dealt in the

business of management consulting, including medical and para-medical services. The directors were accused no.1 and one Marie Corinne Constant, and they were respectively the majority and minority shareholders. The company is defunct and removed from the Registrar of Companies on 08.03.14, for failure to pay registration fees and the filing of annual returns. **Doc A** was produced to that effect.

3. Witness no.11, Mr Ah Cham was a compliance officer at the Mauritius Commercial Bank (MCB) had provided a number of documents to the then ICAC as a result of Judge's Order. He produced the following documents:
 - a. **Doc B:** A swift message dated 19.12.08 from MPCB to MCB for the transfer of Rs5M with beneficiary as Lazio Co. Ltd.
 - b. **Doc B1:** MACSS transfer form of Rs1.5M from Lazio Co. Ltd to the account of accused no.1 at Banque des Mascareignes, Purpose of payment was for buying of scrap metal.
 - c. **Doc B2:** Similar MACSS transfer form dated 21.11.08 of Rs1.5M to the account of accused no.1 at SBM.
 - d. **Doc B3:** Application for book transfer of Rs1M from Lazio Co. Ltd to MCB account of accused no.1, dated 21.11.08.
 - e. **Doc B4:** Application for book transfer of Rs350,000, dated 21.11.08, from Lazio Co. Ltd to MCB account of accused no.1.
 - f. **Doc B5:** Application for book transfer of Rs55,000, dated 21.11.08, from Lazio Co. Ltd to MCB account of accused no.1.
 - g. **Doc B6:** Application for MCB banker's cheque dated 24.11.08 to debit Rs618,000 from the accused's account to the benefit of Mr Doorgacharun Luchmun. Purpose of payment was buying of scrap metal. The attached second page was an invoice of Rs618,00 from Luchmun, dated 20.11.08, with description of services as consultancy and legal fees. Third page is a copy of the said cheque.
 - h. **Doc B7:** MCB statements of account of accused no.1 for the period 19.06.06 to 30.04.09.
 - i. **Doc B8:** MCB statements of account of Lazio Co. Ltd for the period 01.12.07 to 18.05.09.
 - j. **Doc B9:** Contract to open a bank account at the MCB for Lazio Co. Ltd, signed by the accused no.1 as director. The attached pages are copies of the accused's passport.
 - k. **Doc B10:** Application to open a personal savings account at the MCB for the accused no.1

4. Under cross-examination, the witness stated that there was a big transfer of Rs5M on 20.11.08 but nothing approaching that size before that date. Before the said transfer, the balance was Rs582,356.18. When asked whether the bank had a responsibility to enquire for the source of a sum of Rs5M, the witness stated, normally yes, but he could not answer for the bank. Upon re-examination, an extract from his out of court statement was read to him. He confirmed that the bank had asked for comments from the accused no.1 regarding the crediting of Rs5M to the account of Lazio Co. ltd. There was no response from the accused no.1 stating that the money did not belong to the said company.
5. Witness no.1, Investigator Daibee at the then ICAC produced five defence statements of the accused no.1, as **Docs C, C1 to C4**. The witness further produced **Docs D and D1** which were the statements of the accused, recorded by the police in another case allegedly involving the predicate offence. The said statements were referred to, in the accused's defence statements of the present matter. For completeness of the record, the five defence statements of the late accused no.2 were produced as **Docs E, E1 to E4**. The witness further produced **Doc F**, which was a compilation of the accused no.1's bank statements for the period 09.03.02 to 30.06.09 at the State Bank of Mauritius (SBM). **Docs G and G1** were loan application forms at the SBM made by accused no.1 and produced by the witness. Finally, the witness produced **Doc H**, named as a general ledger voucher. It shows the disbursement of the loan amount from one account to the crediting of another account.
6. The witness went on to explain the circumstances which triggered the enquiry into the present matter. An article was published in the press regarding a fraudulent transfer of Rs5M from SIT to MPCB and ultimately to the account of one Lazio Co Ltd at the MCB. Documents related to the transfer of Rs5M were secured from the premises of the ex-MPCB following a search. He interviewed the accountant of the SIT at the time, now witness no.2, who stated that there was a discrepancy of Rs5M following his monthly reconciliation exercise. The witness mentioned a fax regarding a transfer that he secured from the search. The enquiry revealed that the instructions for the said fax originated from the fax machine of a company, named Meem Co. Ltd. However, the said company provided services including photocopying and the sending of fax or facsimile copies. There was no record kept of the messages sent by customers.

7. According to the witness, the bank documents showed that on 20.11.08 a transfer of Rs5M was made from the SIT Property Development Ltd to MPCB. The said sum was thereafter transferred to the bank account of Lazio Co. Ltd. From the latter account, the accused as an authorised signatory of Lazio Co. Ltd, transferred Rs1.4M to his personal bank account. He debited sums of money from his account on a number of times, including an office cheque of Rs500,000 to the now deceased accused no.2. The witness described the ways the accused no.1 had withdrawn varying sums of money from his personal accounts. The version of accused no.1 regarding his business transactions, was that he had in his possession four wrecked ships and iron dust that he wished to sell. The accused no.2 was supposed to look for potential buyers and organise the sale in return for a commission. Those sales did not go ahead.
8. Under cross-examination, the witness stated that he informed the accused no.1 of the allegations made against him during the recording of his defence statements. The allegation was to the effect that the accused was involved in the laundering of Rs5M into his bank account. The money came from the bank account of SIT Property Development Ltd (SPDL) at the MPCB. The transfer was through a fax instruction which has been confirmed by SPDL to be a fraudulent one, i.e., the said fax was not sent by the SPDL. The fax was dated 20.11.08. Such allegation was confronted to the accused in his last defence statement. The root of the enquiry was the fax transfer instruction received by the bank, where a significant sum of Rs5M was transferred to the account of Lazio Co. Ltd, of which the accused no.1 was the majority shareholder and director. The instruction was sent from Meem Co. Ltd, a company providing such services and doing business at Sir Virgil Naz Street, Port-Louis. The said company did not keep any record of senders of fax instructions when using its machines.
9. In the defence statement (Doc C1) recorded by the then ICAC, reference was made to the defence statement recorded by the police in case CN349/17 at the Intermediate Court Criminal Division. The witness stated that the whole statement was shown and read to the accused no.1 together with all related documents. The accused gave his consent and additional questions were put to him by then ICAC. The accused indicated to the police that he wished to return the sum of Rs2.4M to the SPDL. When asked whether same was confronted to the accused, the witness stated that the return of the cash was not relevant to the enquiry for money laundering, and thus same was not confronted.

Furthermore, Mr Bholah, the then CEO of SIT, witness no.4, had stated during enquiry that the MPCB had already refunded the capital amount of Rs5M to the SIT. Such version was not confronted to the accused no.1 because the refund was made through insurance that the bank had as cover for such instances of irregular activities. The issue of insurance was equally not confronted to the accused since it was irrelevant to the offence of money laundering. When questioned, the witness explained that the subject of the enquiry was the fact that an instruction was sent to the bank to transfer money from an SPDL account to the Lazio Co. Ltd, and the said instruction has been confirmed by the SPDL not to emanate from them. There was no authorisation from SIT. The witness went on to state that the accused transferred the money from Lazio Co. Ltd to his own personal bank accounts. He used part of the money and he gave Rs2.4M to the now deceased Marjorie Bazerque, as per his version. Questions were asked about the overdraft facilities which were granted to the Lazio Co. Ltd by its bank. The amount of overdraft was approximately Rs582,000. The said outstanding amount was deducted from the Rs5M, as soon as same was credited in the account of Lazio Co. Ltd. At the time, the sum of Rs5M was credited to the latter account, not many transactions were recorded in the account.

10. As per the version of accused no.1 in his defence statement, he was informed by the accused no.2, the late Marjorie Bazerque, that Rs5M had been credited into the account of Lazio Co. Ltd. The latter had allegedly and mistakenly given the bank account number of Lazio Co. Ltd, instead of her own, to transfer the Rs5M. The accused no.1 thus remitted the money back to her. The accused no.1 gave the late Marjorie Bazerque money by office cheque to the amount of Rs500,000, not via bank transfers. Another office cheque of Rs618,000 was drawn to pay the accused's solicitor. The accused had transferred Rs1.35M from the account of Lazio Co. Ltd to his personal account at the MCB as soon as the sum of Rs5M was credited. He further transferred Rs1.5M to his account at the Banque des Mascareignes and another Rs1.5M to his SBM account. Questions were put to the witness as to the reason why there was no action taken against the solicitor and the bank having been made the payment of Rs582,000 for the outstanding overdraft balance of Lazio Co. Ltd, since the two payments were derived from the tainted Rs5M. The witness reiterated that the bank and the solicitor in question were neither aware nor involved in the criminal activity which had caused the transfer of Rs5M from SPDL.

11. During re-examination, the witness confirmed, through the accused's defence statements, that he transferred most of the Rs5M to his personal bank accounts. He reiterated his explanations regarding the Rs582,000 deduction as overdraft arrears and the R618,000 solicitor's fees.
12. Witness no.14, Mr Veeremdev Nem, the then head of compliance and MLRO at Banque des Mascareignes produced a copy of the bank statement of the accused no.1 as **Doc J**. The document shows a transfer of Rs1.5M crediting the accused's account. The witness under cross-examination stated that there were transactions crediting the account but nothing approaching the amount of Rs1.5M. There are controls in place at the bank whenever there are transactions involving significant amounts, but he could not say whether the bank took steps to enquire about the transfer of Rs1.5M.
13. Witness no.20, SI Dwarka at the FCC, stated that in 2008 he was posted at the Complaints Advice and Processing Unit (CAPU) of the then ICAC. It is the unit where complaints are received and exhibits stored in an exhibit room. On 04.11.11, the enquiring officer, witness no.1, handed to him an envelope containing three documents from the FSL. The said documents were kept under lock and key in the custody of the witness. He produced the three documents as **Exhibits 1, 2 and 3**, respectively.
14. Witness no.21, Mr Jalim Nitish Rai, Chief Forensic Technologist at FSL, produced a report made by the FSL with regards to the three documents produced as exhibits. The said report was marked as **Doc K**. The witness had identified Exhibit 1 and confirmed that it was the same document referred to under item 1 of paragraph 2 of the report. He was shown Exhibits 2 and 3, and he confirmed that those were used as control specimen. The examination was based on a number of factors which caused marked differences between the specimen (Exhibit 1) and the control specimen (Exhibits 2 and 3). The report concluded that the specimen could not have emanated from the same source as the control specimen.
15. Under cross-examination, the witness stated that he was not the maker of the report and did not examine the exhibits. The maker has now resigned from the FSL is no longer in Mauritius. He would not be able to comment on any mistake, if ever made by the maker, in the examination of the exhibits. As per the reading of the report by the witness, there was no examination of the signature found affixed on the specimen (Exhibit 1).

16. Witness no.4, Mr Premasagar Bholah, stated that in 2008, he was the CEO of SIT Group. He was responsible for the overall strategy, investment and management of the group of companies. SIT Property Development Ltd (SPDL) was a subsidiary of the parent company SIT Holdings. SPDL was the investment arm of the group and was mainly dealing with banks such as Maubank, then MPCB, SBM and MCB. The witness explained in general terms, that there can be transfers of money among companies within the group into the different bank accounts of the said companies. In case of transfers to external suppliers, there was a procedure in place, where authorisation should be obtained from mandated signatories to effect the transfer of money. The witness stated that normally, there would no payment made from the SPDL account at MPCB to external parties, outside the group of companies. But if ever, there was one such transfer, it would have been done cheque, and not by transfer through instruction. He was the CEO and there were nine directors, three or four were mandated by the board to authorise such payments. Regarding the current case, he could recall that there was a payment of Rs5M where the instruction sent to that effect was forged. The instruction was sent to the bank and the latter recognised that the instruction was forged, and thus refunded SIT the money. The witness was shown Exhibit 1. He explained that the format of the instruction resembled one normally used by SPDL. The signature on the document looked like his, but he never signed the said document. The beneficiary on the instruction, being Lazio Co. Ltd, was never a business party with the SIT group. The said company was unknown to the witness.

17. Under cross-examination, the witness confirmed that the Rs5M was refunded to the SIT by the bank, following discussions. He also confirmed that he did not sign on the document marked as Exhibit 1, although the signature resembled his. He added that following an investigation at the SIT, it was found that there were errors on the template used for the instruction. He personally came to know about the said FAX instruction when his attention was drawn by his accounting department. When the SIT sends a FAX instruction to the bank, the latter would execute unless, there is a suspicious element to the transaction. In such a case, the bank would normally contact the accounting department of the SIT to enquire. For the impugned transaction of Rs5M, the witness was not informed if the bank had contacted the SIT. There would be records for every company the SIT had dealt with, but Lazio Co. Ltd was not one of them.

18. Witness no.2, Mr Omduthsing Sookaye, was an accountant of the SIT group at the material time, and was the responsible officer of the accounting department. The business of SPDL was the purchase and sale of immoveable properties. The memory of the witness was refreshed for him to confirm that the SIT Group initiated transfers within the group with accounts from banks, namely, MCB, Barclays and MPCB. The MCB account was an operating account to effect payments from SPDL to suppliers, regarding projects and purchases. The MPCB account was normally used for inter company transfers within the SIT group, not to external suppliers. The procedure is that, when an invoice is received and reviewed by the financial controller, the CEO of SIT approves it. The documents are then sent to authorised signatories to affix their respective signatures. On some occasions, FAX instructions were sent to the bank to effect payment. In this case, when SPDL found that a sum of Rs5M was disbursed from its account, all relevant officers, including the CEO were queried. When it was confirmed that the required approvals were not granted for the said transfer, the bank (MPCB) was contacted for further investigation.
19. The witness identified Exhibit 1. He explained that the letterhead 'SIT Property Development Ltd' was not the same as the official one. The telephone number of SPDL was 4654747, not the 4657474 written on the document. As at the date of the document, the SPDL was not using electronic signatures. On the impugned document, it can be seen that the signatures have been cropped and pasted on it. It was confirmed by the directors that they did not affix their signatures on the said document. The witness further stated that, except for the inter-company transfers, any transfer with an outside party, a contract has to exist. The transfer of Rs5M to Lazio Co. Ltd was not an inter-company transfer within the group, and there was no contract between SIT and Lazio Co. Ltd, nor was there any dealing in the past.
20. Under cross-examination, multiple questions were asked on whether the money in the SPDL's bank account was tainted or not. It was clear that without definition of tainted, the witness could only give general answers which did not carry much weight. When asked whether he exerted pressure on the bank, for the money to be refunded to the SIT, the witness stated that there was pressure in the form of discussions. The bank agreed that the fault was at their end, and thus refunded the money. Ultimately there was no direct prejudice to the SIT.

21. Witness no.5, Mr Nundlall Basant Roi, stated that the purpose of SPDL was to acquire and dispose of properties held by the SIT. He was one of the directors of the company. He was one of the authorised signatories for disbursing cheques on behalf of the company. Whenever an invoice is received, the documents are vetted by the financial department and a report is sent to the CEO. The CEO of the SIT at the material time was Mr Premasagar Bollah. After approval and signature of the CEO, the witness would sign the cheque to disburse the payment. The witness identified exhibit 1 and he stated that Lazio Co. Ltd was not a client of SIT. With regards found the document, he stated that he has not signed the document and has never signed those types of documents. Under cross-examination, he stated that, as a director, he is not involved in the day to day running of the company.

CASE FOR THE DEFENCE

22. The accused adduced evidence under oath. He stated that he was the director of Lazio Co. Ltd. His testimony was to the effect that he was not initially aware of the crediting of Rs5M in his bank account. He was informed by the late Mrs Bazerque, the now deceased accused no.2, that there has been an error by her secretary, when the latter mistakenly gave his bank account number instead of the one of Mrs Bazerque. He was asked to transfer the money to the accused no.2. He did not have a cheque book, so he decided to make cash withdrawals from his account and gave the money in instalments to the accused no.2. There was an outstanding overdraft of Rs600,000 in the bank account of Lazio Co. Ltd and he stated to the Mrs Barzerque that the said amount had been deducted by the bank and thus he will not be able to refund he whole amount of Rs5M. The money had stayed in his bank account for some time. At no point in time, the bank informed him of the tainted origin of the money. The accused no.1 further stated that he had used a portion of the money and he told the accused no.2 that he would return same in the future. The accused no.2 was helping him in his business. He admitted that he never had any dealing with the SIT. During the enquiry, when he was made aware that the Rs5M did not belong Mrs Bazerque, he agreed to return the money to SIT but he was informed that the case has to go to court first.

23. Under cross-examination, the accused agreed that he has been a director of a company for a long time and is well versed in the commercial transactions involving banks. Lazio Co. Ltd had a bank account at MCB. The accused had

personal bank accounts at the MCB, SBM and Banque des Mascareignes. The accused agreed that he stated that the money stay on his account for weeks. Doc B8 was shown to the accused and he confirmed that Rs5M was credited on 20.11.08. He was the sole signatory of all his accounts, including the one of Lazio Co. Ltd. He admitted having transferred significant sums of money to his other personal bank accounts one day after the deposit of the Rs5M into the Lazio Co. Ltd. He explained that he did not transfer the whole amount the late Mrs Bazerque when pressured to do so, because he was asked for a cheque, and he did not have a cheque book at the time. He spent the money for various reasons and he was shown the documents showing same. He transferred some of the money to his SBM account to be used as security for a loan application. He stated that he came to know about the tainted origin of the money when he was interviewed by the police. By then, he had spent most of the money, but he expressed his wish in his defence statement at the CCID that he would reimburse the Rs2,432,000 left in his accounts to the SIT.

ASSESSMENT OF THE COURT

Elements of the offence of Money Laundering

24. The accused has been charged under 8 counts of the Information in breach of section **3(1)(a) & (b)** of the **Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA)**, which is reproduced below:

(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;

(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.

25. 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.*

26. The chosen offence being laid under s.3(1)(a) & (b) of FIAMLA, the prosecution had to prove that the accused;

- a. Was in possession of property (count 1), and engaged in a transaction (counts 2, 3, 4, 5, 6 and 8) 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.

27. The case of the defence was centred mainly on the third and fourth elements of the offence, that is, the mens rea of the accused. It is not disputed that there has been a transfer of Rs5M from the bank account of SPDL (subsidiary to the SIT Group) at the MPCB (now Maubank) to the MCB account of Lazio Co. Ltd on 20.11.08, as shown by the evidence of witness no.1 and Doc B. Doc A shows that the accused no.1 was one of two directors of Lazio Co. Ltd and the majority shareholder of the said company. Through the evidence of the accused in court, he has referred to the company's bank account as his account and he was the signatory for banking transactions of the company. From his defence statements, it is clear that he was the one managing the company at the material time. It can thus be safely construed that the accused was in possession of the Rs5M as laid under count 1 of the Information.

28. The accused has not denied having effected transfers from the bank account of Lazio Co. Ltd to his three personal bank accounts at Mauritius Commercial Bank (MCB), State Bank of Mauritius (SBM) and Banque des Mascareignes. The documentary evidence as summarised at paragraph 3 above and the evidence of the accused under oath, show that on 21.11.08, he transferred Rs1.5M to his Banque des Mascareignes account. On the same day, he transferred Rs1.5M to his SBM account and three sums of Rs1M, Rs350,000 and Rs55,000, respectively, to his MCB account. On 24.11.08 the accused applied for an office cheque to the amount of Rs618,000, and was issued same to the benefit of one Doorgacharun Luchmun (Doc B6). On 26.03.09, the accused transferred the sum of Rs910,862.66 from his SBM account as

settlement of a loan in another SBM account. The above transactions have not been denied by the accused no.1. The said transactions fall within the definition of transaction under section 2 of FIAMLA. The prosecution has thus established the first element of the offence, i.e., the accused has engaged in a transaction under counts 2 to 9, excluding count 7 of the Information.

29. All the above transactions originate from the initial transfer of Rs5M from the SPDL account at the then MPCB to the MCB account of Lazio Co. Ltd. The transaction was instigated through a fax instruction received by the MPCB. The said instruction was produced as Exhibit 1. On the face of it, the SPDL had issued instructions for the MPCB to transfer Rs5M from their account, to the account of Lazio Co. Ltd at the MCB. The expert evidence produced as Doc K concluded that Exhibit 1 could not have been sent from the same source as the control specimen, Exhibits 2 and 3. There were marked differences on Exhibit 1. The fax machine used to send the fax instruction was found at Meem Co. Ltd, which is a company providing facilities to the general public, to send fax documents. Witness no.4, the CEO of the SIT Group at the material time stated clearly that even though a signature resembling his was on Exhibit 1, he never signed the said document. The fax instruction did not originate from SPDL. There were discrepancies on the document, namely, the font used and the wrongly written telephone number. He added that the normal purpose of SPDL was to transact within the SIT group. If ever there was a payment to be made to an external party, the procedure would have been to pay by cheque, never by transfer through fax instructions. Neither the SIT Group, nor any of its subsidiaries, had any dealing with Lazio Co. Ltd. Witness no.5, one of the directors of SIT and an authorised signatory at the material time, confirmed the evidence of witness no.4. He denied having signed Exhibit 1. Witness no.2, the accountant of the SIT Group buttressed the evidence of the above two witnesses. His evidence was assessed at paragraphs 18 to 20 above. He confirmed that the required approvals were not granted for the disbursement of Rs5M. At the material time, the SIT did not use digital signatures, and it was apparent that the signatures affixed on Exhibit 1, were cropped and pasted on it.

30. It is settled that there is no requirement for the prosecution to identify or indeed prove the predicate offence leading to the proceeds of crime as long as it can be shown that they emanate from a criminal activity, vide **DPP v Bholah 2010 PRV 59**. The English case of **R v Anwoir [2009] 1 WLR 980**

and **R v W (N) [2009] 1 WLR 965** were cited in Bholah 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.

31. The clearly identifiable conduct here is that a transfer of property, namely Rs5M, has been made as a result of an unlawful fax instruction sent to the bank of the SIT. It is therefore established that the transfer itself is the criminal conduct and the Rs5M credited into the account of Lazio Co. Ltd are proceeds of crime. The fact that the SIT has been reimbursed of the money in total by the bank is a non-issue to the offence of money laundering.
32. The mens rea of the accused no.1, that is, whether he had *reasonable grounds for suspecting that the money credited in the account of Lazio Co. Ltd was derived or realised from a crime*, was the disputed issue by the defence. The mens rea of the accused can only be inferred from the surrounding circumstances of the case. The test for reasonable suspicion in money laundering cases has not been saddled with restrictive requirements so that it is adaptable to the varying circumstances of each case. Nevertheless, the Supreme Court has given some guidance as to the requirements to be satisfied in **Antoine v State 2009 SCJ 328** where extracts from **Manraj and Others v ICAC 2003 SCJ 75**, were endorsed:

“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.”

The Supreme Court thereafter held that the trial court has 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.*

33. The English Court of Appeal added some clarification to the concept of reasonable suspicion in the case **R v Da Silva [2006] EWCA Crim 1654**:

16. It seems to us that the essential element in the word 'suspect' and its affiliates, in this context is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.

17. The only possible qualification to this conclusion, is whether, in an appropriate case, a jury should also be directed that the suspicion must be of a settled nature; a case might, for example, arise in which a defendant did entertain a suspicion in the above sense but, on further thought, honestly dismissed it from his or her mind as being unworthy or as contrary to such evidence as existed or as being outweighed by other considerations.

Factual assessment of Mens Rea

34. The defence case theory for the accused no.1 is that the Rs5M belonged to the late accused no.2. The latter's secretary made a mistake in giving his bank account details instead of those of the accused no.2. He was pressured by the late Mrs Bazerque to return the money, which he allegedly did over time.

35. The accused no.1 was the one managing Lazio Co. Ltd since its inception as per the evidence on record. He was the signatory of the company for banking transactions. The transfer of Rs5M was from an SIT account to the company's account. The sum of Rs5M cannot be termed as a run-of-the-mill amount by any metric, even for a medium-sized company. As director and shareholder of Lazio Co. Ltd, the accused's business acumen should have put him on high alert. He should have contacted his bank to enquire as to the reason for the payment of SIT to Lazio Co. Ltd. There is no evidence on record to suggest that the accused was expecting such an amount from a known legitimate source. In fact, his version was that the money was mistakenly credited to his account. Conversely, the actions taken by the accused the day after the transfer would suggest that he might have expected the money in some ways.

36. It is on record that Lazio Co. Ltd did not usually deal with such high amounts of money until the moment the Rs5M was credited. The said amount was the sole transaction of that magnitude by a wide margin, up until that point. It was therefore not commensurate with the normal business of the company. It is clear that the accused no.1 should have suspected that something out of the ordinary course of business was afoot.
37. Five million rupees were credited into the account of Lazio Co. Ltd on 20.11.08. On 21.11.08, the following day, the accused no.1 made five transfers from the account of the company to his personal bank accounts in three different banks. The sum of all five transfers amounted to Rs4,405,000, vide paragraph 28 above. Nearly Rs600,000 were deducted by the bank as an outstanding overdraft payment. The accused made further withdrawals for various reasons from his personal accounts only a few days later. There is no evidence as to when exactly did the accused no.2 ask him to remit the Rs5M to her. The fact is that the accused no.1 transferred most of the money to his personal accounts one day after the initial transfer. Such actions are consonant to layering money through different bank accounts in an attempt to dissipate it and make it more difficult to trace. Any reasonable person in the place of the accused no.1, would never have acted in such a way, if an amount of Rs5M of unknown provenance, landed in the account of a company of which he or she had control. Even if, the late accused no.2 had told the accused no.1 to return the money on 20.11.08, when the initial transfer was made, there was no good reason for the latter to make several smaller transfers to his personal bank accounts, the following day.
38. All surrounding circumstances point to the fact that the accused no.1 had reasonable grounds to suspect that the transfer of Rs5M must have had a tainted origin. There was a clear possibility, which was more than fanciful, that the transaction was not legitimate or lawful.
39. For these reasons, I hold that the prosecution has proved its case beyond reasonable doubt and the accused is found guilty as charged under counts 1, 2, 3, 4, 5, 6, 8 and 9 of the Information.

P K Rangasamy
Magistrate of the Intermediate Court
27.03.25