

ICAC v M.I.I Patel Judgment

2025 INT 79

FCD CN: FR/L12/2024

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

In the matter of:

ICAC

(Now the Financial Crimes Commission pursuant to
section 168 (1) of the Financial Crimes Commission Act 2023)

V

Mohmed Imran Ibrahim PATEL

JUDGMENT

A. BACKGROUND

1. Accused is being prosecuted for the offence of Money laundering (1 Count) in breach of **sections 3 (1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act** (the 'FIAMLA'). He is an Indian National residing in Johannesburg, South Africa. He was found, on the 30th January 2019, at the SSRN International Airport, in possession of foreign currencies **(i) ZAR 4, 801, 350/-** (as amended) and **(ii) USD 200, 150/-** equivalent to approximately **Rs. 18, 776, 690/-**.
2. Accused has pleaded not guilty and was represented by Counsels, Mr. I. Mamoojee appearing together with Mr. Luximon and Miss. A. Luttoo.
3. The case for the prosecution was conducted by Mr. J. Muneesamy, Assistant DPP and Miss N. Pem, Senior State Counsel.

B. CASE FOR THE PROSECUTION

4. PS Moonisamy (witness no.2) produced two statements he had recorded from accused on the (i) 13th February 2019 and (ii) 14th February 2019 respectively – **Doc A and A1**. He explained that the two suitcases in which the cash money was found were check-in luggage from Johannesburg, in transit through Mauritius, to Dubai. Accused was in the transit section of the SSRN International Airport waiting for his flight to Dubai when he was brought by the customs officers for examination of the two suitcases. Accused has always maintained that the cash money belonged to his employer, one Mr. Yousouf Suleiman. PS Moonisamy (witness no.2) is not aware if the said Mr. Yousouf Suleiman came to Mauritius on the 03rd February 2019 and stayed for two days at Labourdonnais Waterfront Hotel. He is also not aware if a person has to declare cash money found in carry-on luggage only and not in checked-in luggage. He confirmed that accused filled the Customs Declaration Form and declared the cash money upon being asked by the customs officers.
5. Senior Investigator Chen Tse King (witness no.1), the main enquiring officer, produced five statements he had recorded from accused on the (i) 05th March 2019, (ii) 10th April 2019, (iii) 28th October 2019, (iv) 01st December 2023 and (v) 17th January 2024 respectively – **Doc A2, A3, A4, A5 and A6**. He explained that accused was only in transit in Mauritius and that Dubai was his final destination. The cash money was secured from his two-check-in suitcases. According to him, there are customs banners informing passengers in transit of the obligation to declare currencies in excess of Rs. 500,000/- in their check-in or carry-on luggage. However, photographs of banners were only taken in 2023 and not at the time accused was intercepted in January 2019. There is also a document showing that accused, during his previous visit to Dubai, declared currencies at the Customs thereat. An application for mutual legal assistance with South Africa was made but Shaheen Exchange of Dubai was not investigated into. Senior Investigator Chen Tse King (witness no.1) further explained that one Mr. Yousouf Suleiman came to Mauritius on the 03rd February 2019 to assist the Mauritius Revenue Authority. The said Mr. Yousouf Suleiman was later requested, by an official letter, to assist the ICAC. However, Mr. Yousouf Suleiman informed the ICAC that he will not come to Mauritius and that all questions should be channeled through his attorney Mr. Mungroo. Also, a search was carried at the place where accused was residing in Mauritius but no purchase order list was found.
6. Investigator Bhogun (witness no.3) stated that on the 13th February 2019, Mr. Rajiv Sanasee (witness no.5) and Mr. Ramsamy Asiriah (witness no.7) brought to the ICAC two sealed suitcases of make Samsonite and My Choice respectively. After accused had identified those two suitcases as being his, same were opened. The two suitcases contained ZAR 4, 798,250/- and USD 200, 150/-. He produced an annex of that cash money secured – **Doc B**. The cash money was produced as follows:
 - a. 1347 notes of USD 50 – **exhibit 1**;
 - b. 1328 notes of USD 100 – **exhibit 2**;
 - c. 1501 notes of ZAR 100 – **exhibit 3**;

- d. 1500 notes of ZAR 100 – **exhibit 4**;
- e. 1501 notes of ZAR 100 – **exhibit 5**;
- f. 1501 notes of ZAR 100 – **exhibit 6**;
- g. 1500 notes of ZAR 200 – **exhibit 7**;
- h. 1500 notes of ZAR 200 – **exhibit 8**;
- i. 1501 notes of ZAR 200 – **exhibit 9**;
- j. 1503 notes of ZAR 200 – **exhibit 10**;
- k. 1505 notes of ZAR 200 – **exhibit 11**;
- l. 1499 notes of ZAR 200 – **exhibit 12**;
- m. 1501 notes of ZAR 200 – **exhibit 13**;
- n. 1501 notes of ZAR 200 – **exhibit 14**;
- o. 1501 notes of ZAR 200 – **exhibit 15**;
- p. 1500 notes of ZAR 200 – **exhibit 16**;
- q. 1501 notes of ZAR 200 – **exhibit 17**;
- r. 1501 notes of ZAR 200 – **exhibit 18**;
- s. 1501 notes of ZAR 200 – **exhibit 19**; and
- t. 1491 notes of ZAR 200 and 1 note of ZAR 50 – **exhibit 20**.

7. Investigator Bhogun (witness no.3) also produced the suitcase of make Samsonite as **exhibit 21** and the suitcase of make My Choice as **exhibit 22**.
8. Mr. Rajiv Sanasee (witness no.5) was posted at the SSRN International Airport as customs officer since 2017. On the 30th January 2019, Mr. Mohamed Zubeir Chundoo (witness no.4) brought a suitcase belonging to accused. That suitcase came from Johannesburg and was transiting through Mauritius to Dubai. Upon scanning, that suitcase was found to be abnormal. It was suspected to contain currency notes. A second suitcase belonging to accused was brought and scanned. It was also suspected to contain currency notes. Accused was then brought to the Anti-Money Laundering Unit Office where, upon being questioned, he voluntarily stated that the two suitcases contained approximately ZAR 4.1 million and USD 200,000/-. Accused also filled in a Customs Declaration Form to that effect. Those two suitcases were check-in luggage. They need not go through immigration and customs at the SSRN International Airport and should go directly on the plane for Dubai. According to Mr. Rajiv Sanasee (witness no.5), any luggage, even in transit, can be retrieved, scanned and verified. Accused explained that the cash money belonged to one Mr. Yousouf Suleiman, his employer who is a big businessman in Johannesburg. The cash money was meant for the purchase of electric goods in Dubai. Accused did not personally declare the cash money in South Africa nor did he produce any document as to its source. The cash money was wrapped in 16 different paper parcels and plastic bags. Mr. Rajiv Sanasee (witness no.5) also explained that there is a banner at the transit area informing passengers in transit of their obligation to declare foreign currencies in excess of Rs. 500, 000/-. However, he could neither recollect the size and color of that banner nor could he confirm whether the word ‘transit’ is mentioned in it.

9. Mr. Mohamed Zubeir Chundoo (witness no.4) was working for the Ground to Air Company at the SSRN International Airport since the 27th September 2018. His job consisted of welcoming passengers and collecting documents, including Customs Declaration Forms. He explained that sometimes a luggage in transit is sent to the wrong belt and/or is left unattended. In the latter situation, he picks the unattended luggage, takes it to the Customs Office for scanning procedure to check for any prohibited item. Normally check-in luggage in transit should not come on the conveyor belt. It goes directly on the plane for final destination without going through immigration and customs. However, he explained that due to the strict time limit to offload all the luggage from a plane, it is common to get transit luggage on the conveyor belt. In fact, he does encounter such situation twice or thrice per week. On the 30th January 2019, a flight arrived from Johannesburg at 15.40 and at 16.45 he checked for unattended luggage. He found one unattended luggage on the conveyor belt with a tag name Patel, its final destination being Dubai. As per the procedure, he brought it to the Customs Office where he met with Mr. Ramsamy Asiriah (witness no.7) and Mr. Rajiv Sanassee (witness no.8). Upon a first scan, Mr. Ramsamy Asiriah (witness no.7) told him that the luggage needed further scanning and examination since it might contain something suspicious. Also, the details of the passenger for whom that luggage belonged was retrieved and it was found that he had another check-in luggage which was also retrieved and scanned by the customs.
10. Mr. Hemrajsingh Baichoo (witness no.6) was tendered for cross-examination. He was working as Customs Officer in the Customs and Anti-Narcotics (the "CANS") section at the SSRN International Airport. On the 30th January 2019, a person together with Mr. Ramsamy Asiriah (witness no.7) brought an unattended luggage found on the conveyor belt to the CANS office for scanning. The first scanning is done by the Customs officers. In case something abnormal is suspected, the CANS section is contacted for further scanning and examination since the CANS section is a specialized team. He further stated that there is a banner in the transit area informing passengers of their obligation to declare currency in excess of Rs. 500, 000/-. However, he cannot confirm whether such banner made mention of 'passengers in transit'. He could also not remember the exact size or color of that banner. He maintained that the duty to declare currency in excess of Rs. 500, 000/- applies to passengers in transit and their corresponding check-in luggage as well. He did not find it necessary to take a photograph of that banner in January 2019 since that banner was always there.

C. CASE FOR THE DEFENCE

11. Accused deposed under oath. He was born in India in 1988 and settled in South Africa in 2005. He initially worked as checker at Cash and Carry. In 2015, he opened a shop dealing in electronic goods in a village called Dundee. He closed down the shop in 2018. He afterwards met one Mr.

Yousuf Suleiman, a South African of Indian origin, who was in the business of electronic wholesale. Out of respect, he calls Mr. Yousuf Suleiman as 'bhai', meaning brother. His job consisted of travelling to Dubai to purchase electronic goods. He started to travel to Dubai in 2018 and has been there 15 times for that purpose. All travel arrangements are made by Mr. Yousuf Suleiman. However, he only once carried cash money in his check-in luggage in the beginning of 2019 to Dubai and which he declared at the Customs in Dubai. He dropped that cash money at Shaheen Exchange in Dubai. Accused also explained that once he has chosen the electronic goods, he informs Mr. Yousuf Suleiman and the payment is thereafter made by Shaheen Exchange. On the 28th January 2019 he received a phone call from Mr. Yousuf Suleiman informing him that he has to travel to Dubai via Mauritius on the 30th January 2019 to purchase electronic goods. Mr. Yousuf Suleiman also told him about the cash money in the two suitcases. Accused did not check the contents of the suitcases since he trusted Mr. Yousuf Suleiman. According to him, Mr. Yousuf Suleiman made the check-in process in Johannesburg. Accused was in transit in Mauritius for about 6 hours and had only his carry-on luggage with him containing his clothes and some pocket money. He did not go through immigration or customs and was waiting in the Lounge at SSRN International Airport since he had Sky Gold Membership for Emirates Airlines. He did not see any banner or display in the transit area. Whilst there, he was approached by three persons who introduced themselves as Customs officers and requested for his passport. They brought him to a small office where he was asked whether he was carrying money in his check-in luggage. He replied positively and even filled the Customs Declaration Form. He was taken to the arrival area where he was surprised to see his two-check-in suitcases which were supposed to go directly on the plane to Dubai. He further explained that the cash money is clean money and belongs to Mr. Yousuf Suleiman who is a rich businessman in Johannesburg. He had phoned Mr. Yousuf Suleiman following his arrest and latter came to Mauritius to cooperate with the Mauritian Authorities and explain the source of that money. He is in Mauritius for nearly six years now. He has lost his mother in the meantime and his wife gave birth to his first child.

12. During cross examination, accused stated that he had transported cash money to Dubai only once before, i.e., in beginning of January 2019 and the second time was on 30th January 2019. Normally he is given a list of electronic goods to be purchased either on paper or via phone by Mr. Yousuf Suleiman. He did not have any such list with him on the 30th January 2019 since Mr. Yousuf Suleiman told him he would send same once he arrived in Dubai. He normally stays two to three nights in Dubai to purchase electronic goods. He further explained that he would have declared the cash money once in Dubai. He maintained that he did not see any banner in the transit area with respect to declaration of money. He however conceded that he was given two return tickets by Mr. Yousuf Suleiman, one from Dubai to South Africa and the second one from Dubai to India. He further conceded that he did mention in his statement that he was given those two return tickets for the Mauritian authorities not to know about the money. He explained that he was confused and that he was in fact given those two return tickets due to costs and visa issues. Also, the last time he travelled to Dubai he transported the same amount of cash money. He however does not know

the cost of last purchase of electronic goods in Dubai in the beginning of January 2019. He also conceded that as a purchasing manager, his duty is to travel to Dubai to purchase electronic equipment and not to carry such a huge amount of cash money.

13. Mr. Hisham Oozeer, Barrister at Law, deposed on behalf of the accused. He stated that his services were retained on the 31st January 2019 by one Mr. Yousuf Suleiman, a South African, through attorney-at-law Miss. Sumodhee. The said Mr. Yousuf Suleiman came to Mauritius on the 03rd February 2019 to meet accused, who is his employee, and for a meeting at the Mauritius Revenue Authority. He also confirmed that he assisted accused in giving his statement to the ICAC on the 19th February 2019.
14. The defence also sought to adduce, through Mr. D. Seebarith, Court Manager, then posted at the Intermediate Court (Financial Crimes Division), to produce a case file which included the action entered by Mr. Yousuf Suleiman before the Judge in Chambers and documents purportedly showing the legality of the cash money. This course of action was objected to by the prosecution and in a Ruling dated the 27th November 2024, this Court, for the reasons explained in that Ruling, held that such case file was inadmissible.

D. SUBMISSIONS

15. Learned Counsel for the accused submissions were as follows:
 - a. as per the Information, accused is being prosecuted for being in possession of the cash money. However, since this cash money was in his check-in luggage and not in his carry-on luggage, he was not in physical possession of same and therefore the prosecution has not proved that accused was in possession of that cash money;
 - b. there was no obligation on accused to make any declaration of that cash money since he was only in transit and the two-check-in luggage were meant to do directly to the plane for Dubai;
 - c. there is no evidence that the cash money is derived from a crime since accused voluntarily declared it on being requested to do so. This shows that accused had no intention to conceal that cash money. Also, as per accused un rebutted testimony, the cash money belonged to his employer, one Mr. Yousuf Suleiman, and comes from latter's legitimate business in South Africa. As such, there is no evidence that the business of the said Mr. Yousuf Suleiman may be illegal; and
 - d. therefore, it is clear that accused did not know that such cash money was of tainted origin.

16. Learned Counsel for the prosecution submitted that the prosecution has adduced sufficient circumstantial evidence from which it may be reasonably inferred that the cash money had a criminal origin. This would include the amount of cash money, the way it was placed in the check-in luggage, the two return tickets in possession of accused, the significant planning which must have taken place for accused to travel and the absence of any order list. Also, based on those facts, accused must have reasonably suspected that the cash money was derived from a crime.

E. ANALYSIS

17. **Section 3 (1) of the FIAMLA** provides:

“(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) or 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.” (Underlining is mine)

18. In the present case, the prosecution has to prove that the:

- (i) accused was in possession of property;
- (ii) property is, in whole or in part directly or indirectly represents, the proceeds of any crime; and
- (iii) accused suspected or had reasonable grounds for suspecting that the property is derived, in whole or in part, directly or indirectly from a crime.

(i) the accused was in possession of property

19. As per the testimony of the prosecution witnesses and that of accused himself, it is undisputed that accused came to Mauritius from Johannesburg with two check-in suitcases and one carry-on bag. He was in transit in Mauritius and was waiting for his flight to Dubai, his final destination. His two-check-in suitcases were meant to go directly inside the plane to Dubai. At the time he was met with by the customs officers, he was in the transit area of the SSRN International Airport. His two-

check-in suitcases were examined and foreign currencies amounting to ZAR 4, 798,250/- and USD 200, 150/- were found. Accused, all throughout, admitted that those two check-in suitcases are his and were given to him in Johannesburg by his employer, one Mr. Yousuf Suleiman, to transport to Dubai for the purchase of electronic equipment. Accused did also admit that he knew about the amount of foreign currencies inside those two check-in suitcases since Mr. Yousuf Suleiman himself told him so prior to his departure from Johannesburg.

20. It is the submission of learned Counsel for accused that since those two-check-in suitcases containing the cash money were to go directly into the plane to Dubai, accused was therefore not in possession of same in accordance with **section 3 (1) of the FIMALA**. Now, it is trite law that possession is not limited to only physical possession but would also cover circumstances in which someone has sole or joint control over something. For example, someone who is being prosecuted for possession of property unlawfully obtained in breach of **section 40 of the Criminal Code**, it was held in **Prayag v The State (2004) SCJ 29** that:

“True it is that the possession contemplated by section 40 is not necessarily limited to actual physical possession but can also mean sole or joint control over the stolen property: Vide Ragoon v R [\[1952 MR 179\]](#) and Ramputh v R [\[1958 MR 145\]](#).”

21. In the present case, though the two-check-in suitcases containing the cash money were not in the physical possession of accused, he undoubtedly had the sole control over them. As such, he was in possession of the two suitcases, the more so when he has all throughout admitted that same belonged to him and never challenged the cash money found therein.
22. Learned Counsel for accused also submitted that the Mauritian authorities had no jurisdiction over the two-check-in suitcases since accused was in transit and was not required to pass through customs and immigration before boarding to Dubai. According to learned Counsel’s submissions, being check-in luggage in transit, the two suitcases were not inside the Mauritian territory and jurisdiction. The Court cannot accept this argument for the reasons to follow.

23. As per **section 3 of the Immigration Act 1970** (the “**Immigration Act**”):

“Subject to this Act, no person may be admitted to Mauritius or, being within Mauritius, remain therein.”

24. Mauritius, being a sovereign and democratic State, has the right to determine the persons or class of persons that may be admitted inside its territory. In that respect, a person passing through Mauritius in transit to another country may be admitted inside Mauritius by an Immigration Officer as per **section 7 (f) of the Immigration Act**. Now, a person who is in transit is undoubtedly admitted inside the Mauritian territory though different customs and immigration rules may apply

for such a person at the airport. This does not mean that such a person and any luggage in his possession are, de facto, excluded from Mauritian jurisdiction.

25. As was held in **Z.A. and Others v. Russia, ECtHR (28 March 2017)**:

“87. Turning to the circumstances of the case at hand, the Court takes note of the Government’s claim that the transit zone of Sheremetyevo Airport is not the territory of the Russian Federation. It observes that even if, in the Government’s understanding, the applicants were not within Russian territory, holding them in the international zone of Sheremetyevo Airport made them subject to Russian law (compare Amuur, cited above, § 52). Nothing in the Government’s argumentation allows the Court to consider the transit zone in question as having the status of extraterritoriality (see Shamsa, cited above, § 45). Accordingly, the Court cannot agree with the Government’s argument and rejects it.” (Underlining is mine)

26. That case was thereafter referred to the **Grand Chamber of the ECHR**. In a Judgment dated the 21st November 2016, the **ECHR** reaffirmed the above reasoning as follows:

129. The first issue to be addressed is whether the applicants fell within Russian jurisdiction within the meaning of Article 1 of the Convention. The Court notes in this connection that during the events at issue the applicants were physically present on the territory of Russia and found themselves under the control of the Russian authorities.

“130. The Court reiterates that an airport, including an international airport, located on the territory of a State is legally part of the territory of that State (see Amuur v. France, 25 June 1996, §§ 41 and 43-45, Reports of Judgments and Decisions 1996-III; Shamsa v. Poland, nos. 45355/99 and 45357/99, § 45, 27 November 2003; Riad and Idiab v. Belgium, nos. 29787/03 and 29810/03, § 68, 24 January 2008; Rashed v. the Czech Republic, no. 298/07, § 70, 27 November 2008; and Abou Amer v. Romania, no. 14521/03, § 39, 24 May 2011).

131. It is noteworthy that the Russian Government did not deny before the Grand Chamber that the transit zone of Sheremetyevo Airport was part of Russian territory; nor did they dispute that the applicants were under the control of the authorities throughout the relevant period (see paragraph 115 above).

132. The Court concludes that the applicants were within the jurisdiction of Russia during the events of the present case.” (Underlining is mine)

27. As such, the transit area of the SSRN International Airport does not offer the status of extraterritoriality to passengers in transit and their corresponding luggage if a criminal offence is committed within Mauritian territory.

28. Furthermore, it is noteworthy that **Recommendation 32 of the FATF Recommendations** provides:

“32. Cash couriers

Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration system and/or disclosure system.

Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing, money laundering or predicate offences, or that are falsely declared or disclosed.

Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing, money laundering or predicate offences, countries should also adopt measures, including legislative ones consistent with Recommendation 4, which would enable the confiscation of such currency or instruments.”

29. That recommendation has as main purpose to curb the practice of using cash couriers to launder money cross-border wise. In the **FATF Report on Money Laundering Through the Physical Transportation of Cash of October 2015** (the “**Report**”), it can be observed that:

“Criminal markets continue to generate large amounts of cash that pass up the supply chain for criminal goods or form the raw material that criminals and money launderers need to process.

Criminals frequently need to use a significant portion of the cash that they have acquired to pay for the illicit goods they have sold, to purchase further consignments, or to pay the various expenses incurred in transporting the merchandise to where it is required. Despite the advantages and disadvantages of dealing in cash (detailed earlier in this report), for criminal groups, there is often little choice. The criminal economy is still overwhelmingly cash based. This means that, whether they like it or not, criminals selling some form of illicit

product are likely to be paid in cash. The more successful the criminals are and the more of the commodity they sell, the more cash they will generate. This can cause criminals significant problems in using, storing and disposing of their proceeds. Yet despite these problems, cash is perceived to confer some significant benefits on them.

The principal benefit is often said to be that cash is anonymous and leaves no audit trail. The anonymity of cash is often quoted as one of the main reasons for its use in the criminal economy and there is no doubt that, up to a certain level, this is the case. Demonstrating the provenance of small amounts of cash can be problematical for law enforcement officials. For example, so the sale of dealer quantities of prohibited drugs for cash, can be harder to identify and prove when payment is received in cash. The dealer may be able to give an acceptable (or at least, non-disprovable) account of the wad of cash in his wallet. However the reality is that cash is only truly anonymous in smaller amounts. Criminals tend to be able to justify holding small to medium levels of cash when challenged. However, the possession or movement of large amounts of cash with no explanation of their origin or purpose becomes increasingly difficult for criminals and criminal groups.

Once the amount of cash exceeds these limits, there is a general expectation that the person in possession of it will be able to account for it if required. Even in cash-based economies, if a large transaction is undertaken there will generally be some record of it somewhere – a receipt, an entry in a ledger, the physical existence of the goods sold or purchased, evidence of withdrawal from a bank etc. Therefore, the inability of a criminal to adequately account for the large amount of cash in his possession – the fact that it is anonymous - can actually be a hindrance, rather than an advantage.

This absence of a legitimate explanation is a major drawback when trying to introduce funds into a bank or other financial institution. Thanks to the FATF Recommendations, and specifically Recommendations 10, 11 and 20 concerning customer due diligence and reporting suspicious transactions, most financial institutions across the world would now question the origin of a large amount of cash that someone was trying to pay into a bank account. Accordingly, criminals seek to avoid such issues by retaining the cash they have generated, and if it is required elsewhere, simply physically moving cash across international borders.

As AML measures are progressively tightened across the world, criminals will face ever increasing difficulties when attempting to place their cash into the legitimate financial system. It seems likely, therefore, that the phenomenon of money laundering through the physical transportation of cash is likely to progressively increase.

The way criminally derived cash moves will be covered in more detail later in this report, but based on the questionnaires and the case examples submitted, the most prevalent methods are as follows;

By cash courier. *In the context of this report, as cash courier is a person who has been recruited by a criminal organisation to transport criminally derived cash across an international border on their person. The courier may have the cash concealed within his clothing, on his body (for example in a money belt or similar), concealed in his luggage (either within his personal effects or within the structure of the luggage itself) or even concealed internally. Cash couriers may use air, sea or rail transport to cross an international border.” (Underlining is mine)*

30. Mauritius, in line with **Recommendation 32 of the FATF Recommendations**, amended the **Customs Act 1988** and added **section 131A on Physical Cross Border Transportation** through **Act 15 of 2006**. Physical Cross Border Transportation was defined as any in-bound or out-bound physical transportation of currency or bearer negotiable instruments from one country to another country and included physical transportation by a natural person, or in that person’s accompanying luggage. The Director General, on reasonable suspicion, could require a person, making a physical cross border transportation, to make a disclosure as to the amount of currency in his possession, including its origin. There was no automatic disclosure following a threshold having been exceeded. However, the matter should have been referred to the Police in case of reasonable suspicion of money laundering. A threshold of Rs. 500, 000/- was introduced by **Act 14 of 2009** whereby it was made mandatory for a person making a physical cross border transportation of currency above Rs. 500, 000/- to make a declaration to that effect. **Act 26 of 2012** further amended the definition of Physical Cross Border Transportation to include in transit physical transportation of currency by persons in transit in Mauritius. The definition of ‘person’ was further amended by **Act 10 of 2017** and later by **Act 11 of 2018** to include, amongst other, any passenger in transit in Mauritius. Furthermore, in case of reasonable suspicion of money laundering, the matter should also be referred to the ICAC, and now the Financial Crimes Commission.
31. At the time accused was intercepted on the 30th January 2019 at the SSRN International Airport, he was a passenger in transit and had the legal obligation to make a declaration even for the currency in his check-in luggage, i.e., the two suitcases. These two suitcases, albeit being check-in luggage, fell squarely within the meaning of accompanying luggage under **section 131A of the Customs Act 1988**. To interpret it otherwise would defeat the whole purpose of **Recommendation 32 of the FATF Recommendations** and **section 131A of the Customs Act 1988 on Physical Cross Border Transportation** if currencies above Rs. 500, 000/-, found in check-in luggage and in transit through Mauritius, could avoid such declaration and detection. Moreover, **section 131A of the Customs Act 1988** itself provides that, in case of reasonable

suspicion of money laundering, such matter should be referred to the ICAC for investigation. It is therefore abundantly clear that the ICAC did have jurisdiction to enquire over those two-check-in suitcases and the cash money found therein.

32. Now, “property” is defined in **section 2 of the FIAMLA** as:

“(a) means property of any kind, nature or description, whether moveable or immoveable, tangible or intangible...”

33. From that definition, it is undisputed that the cash money found in the two suitcases does fall under the definition of “property” for the purposes of **sections 2 and 3 (1) (a) & (b) of the FIAMLA**.

34. Therefore, the prosecution has proved, beyond reasonable doubt, that accused was in possession of the money as specified in the Information.

(ii) **the property is, in whole or in part directly or indirectly represents, the proceeds of any crime**

35. It is incumbent upon the prosecution to prove that the money, as specified in the Information, is, in whole or in part directly or indirectly represents, the proceeds of any crime. Since proof of a predicate offence is not an element of the offence of money laundering under **section 3 of the FIAMLA**, the prosecution need not aver or prove any crime – See **DPP v Bholah [2011] UKPC 44**.

36. In that respect, in **R v Anwoir [2009] 1 WLR 980**, it was held that:

“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.” (Underlining is mine)

37. It is also useful to refer to the case of **R v F, B (2008) EWCA Crim 1868** which bears some similarities with the present case. In that case, the two accused had checked in at Heathrow Airport to board an Iran Flight with four check-in suitcases registered on the name of F. Whilst those suitcases were being transported to the Iran Flight plane, a sniffer dog trained to detect currency, indicated to two of those suitcases. All the four suitcases were retrieved and the two accused were

stopped from boarding the plane. Upon same being searched, a cash amount of 1, 184, 670/- pound sterling was secured. **F** stated that they had been asked by a friend to carry the money. **F** also stated that he had carried currencies two or three times before but did not know about the source of that money. As for **B**, she stated that she was not aware about the money. The trial Judge concluded that there was no case to answer under counts 1 and 2 since the prosecution had not been able to establish what type of criminal conduct was involved. The Appellate Court disagreed with that reasoning and held:

“6. Since the ruling by the judge, this Court has given judgment in the case of R v Anwoir, McIntosh, Meghrabi and Elmghrabi [2008] EWCA Crim 1354, where in paragraph 21 of the judgment, I set out what the court considered to be the correct position in law:

“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.”

Prima facie it would appear that this case fell into category (b), in which the prosecution are entitled to ask the jury to consider the facts and to submit that the facts established without doubt that the property is criminal property from the circumstances that we have outlined in this judgment.” (Underlining is mine)

38. It is undisputed that in the present case, the prosecution has not pointed to any particular criminality and is relying on category (b) as per **Anwoir (supra)** and **F, B (supra)** to prove that the cash money, in whole or in part directly or indirectly represent, the proceeds of any crime.
39. As explained in the **Report**, large amount of cash is a predominant issue that preoccupies criminals. In an attempt to avoid detection, criminals would physically move that cash across borders. It goes without saying that such criminals would most likely not undertake that task themselves. They would use other persons to transport that cash across borders. As per the **Report**, persons who transport such illicit cash across borders are typically known as cash couriers. The **Report** also highlights the fact that when the cash being transported exceeds the limit authorized, the person who is making that transportation would be expected to explain the origin of such cash. In the present case, accused only explanation for the cash money is that it belongs to his employer, one Mr. Yousuf Suleiman, who is a businessman in electronic goods in Johannesburg and that the money is legitimate. That cash money was to be left at Shaheen Exchange in Dubai. Learned

Counsel for accused submitted that this explanation of accused has remained unrebutted in the absence of any enquiry on Mr. Yousuf Suleiman.

40. **ZAR 4, 801, 350/-** and **USD 200, 150/-** (equivalent to approximately **Rs. 18, 776, 690/-**) is the amount of cash money that was secured from accused's check-in luggage, i.e., two suitcases. It is not a small sum of cash money. Such a huge sum of allegedly legitimate cash money being transported, in different planes, cross border, from Johannesburg through Mauritius to Dubai, would have surely demanded some meticulous precautions. On the contrary here, the alleged owner, Mr. Yousuf Suleiman, was prepared to take the risk of putting such a huge sum of cash money in two suitcases, going through transit and hazards of air travel, and bowing to the risks of lost luggage. There was no special attention, in terms of security, being given to those two suitcases on the different planes. In fact, all was done to minimize the risk of detection by authorities especially when accused was not carrying any of that cash money in his carry-on luggage. Such risks do not stand at ease with the explanation that such cash money was legitimate.
41. Accused, in his statement to the ICAC (**Doc A**) and testimony in Court, stated that he did not make any declaration of the cash money in Johannesburg because Mr. Yousuf Suleiman told him that he had already declared the cash money. Accused believed Mr. Yousuf Suleiman despite no document to that effect was provided to him by the latter prior to his travel. He also did not open the two suitcases to check whether they in fact contained that cash money (**Doc A1**). Now, travelling with such a huge sum of money, de facto, would be a source of concern for any person especially when transiting through another country before reaching the final destination. It is difficult to believe that accused did not at least verify the contents of the two suitcases or at least requested a documentary proof from Mr. Yousuf Suleiman that the cash money had in fact been declared in Johannesburg. It is apposite that accused is only a purchasing manager and, as conceded by him, carrying such huge sum of cash money does not fall within his duties. He was not supposed to carry such a huge sum of cash money as a purchasing manager. He even could not say how much the previous purchase of electronic goods he had made in Dubai as recently as in January 2019, had cost.
42. Accused also stated that he did not see any banner in respect of declaration of money at the transit area of the SSRN International Airport. According to him, given that the money was legitimate, he would have made such declaration if there had been any banner to that effect. However, both Mr. Rajiv Sanasee (witness no.5) and Mr. Hemrajsingh Baichoo (witness no.6) were unwavering as to the fact that there was a banner in the transit area informing passengers that they should make a customs declaration if they are carrying currency in excess of Rs. 500, 000/-. It is true that neither of them could confirm whether 'transit' or 'passenger in transit' was mentioned in that banner nor could they remember the exact size and color of it. Also, no photograph of any such banner was taken when accused was intercepted in January 2019. However, both Mr. Rajiv Sanasee (witness no.5) and Mr. Hemrajsingh Baichoo (witness no.6) were customs officers posted at the SSRN

International Airport. They are persons that would be aware of what is present in the transit area of the SSRN International airport. The Court finds no reason to doubt their words as to the presence of such banner. Be it as it may, any person carrying with him such a huge sum of cash money and transiting through Mauritius, would be expected to verify all customs requirements in Mauritius beforehand and not merely rely on the presence or absence of banners to that effect. As already explained above, the law in that respect was very clear in January 2019. Ignorance of the law is of no excuse. It is unconceivable that, Mr. Yousuf Suleiman allegedly being such a big businessman and the cash money allegedly being legitimate, and accused being the person carrying that cash money, did not at least verify the customs requirement in Mauritius especially when accused was carrying cash money through Mauritius for the first time. Accused further endeavored to show his good faith and give legitimacy to that cash money by stating that as soon as he was asked if he had money in his check-in luggage, he said yes and made the customs declaration. In the present context and circumstances, this appears to be no more than a further ruse to deceive the customs by showing an imagery of good faith. Such deceit is even more glaring when it comes to the two return tickets that accused had in his possession (see **Doc A1**). The Court cannot but quote verbatim the explanation of accused in answer to **Question 5** in that statement:

*“I had two e-tickets that had been given to me by Mr. YOUSOUF SULEIMAN. As per the first e-ticket, my itinerary was to leave South Africa on the 30.01.2019 to reach Mauritius on the same date on transit. After six hours, I had to catch a plane for Dubai and to reach Dubai on the 31st of January and finally leaving Dubai for India. The second ticket was to leave Dubai on the 1st of February 2019 to proceed to Ethiopia on transit for final destination South Africa. I have to say that I was never supposed to go to India but I was **instructed** to say that India is my final destination if I am asked by the Mauritian authorities and not to show the other e-ticket which was the one I was supposed to use to return back. The reason which I think behind these two e-tickets is a way for the Mauritian authorities not to know about the money in the suitcases. Perhaps the Mauritian authorities whilst seeing only one way ticket to India would believe that I going back to my home country. I acted only upon the instructions of Mr. Yousouf SULEIMAN, who is my boss and a “brother”.” (Underlining is mine)*

43. During his testimony, accused conceded having stated that in **Doc A1** but explained that he was confused at that time and that he was in fact given those two return tickets because of costs and visa issues. It is apposite that a hesitating attitude could clearly be seen from the demeanor of accused at the time he was cross-examined on this particular issue. It is preposterous that Mr. Yousuf Suleiman, being such a rich businessman as claimed by accused and the amount of cash money being transported, would have been influenced by petty issues like air ticket costs and visa.

On the contrary, the above admission of accused clearly shows that the return ticket to India was part of a shrewd stratagem to deceive the Mauritian authorities, if need be, by showing that accused was returning to his native country. Indeed, if accused were returning to India, this would have helped to make the Mauritian authorities equally believe that his check-in luggage would most probably contain personal belongings and not exclusively, as is the case here, such a huge amount of cash money. This would also have minimized the risks of questions being asked about the contents of the two suitcases and thereby avoid detection of the cash money inside them. Seeking avoidance of detection of that cash money, by such a shrewd stratagem, does not connote well with that cash money being legitimate.

44. Senior Investigator Chen Tse King (witness no.1) explained that the ICAC, by an official letter, had requested Mr. Yousouf Suleiman to assist the ICAC during the enquiry. However, he replied that he will not come to Mauritius and that all questions should be channeled through his attorney Mr. Mungroo. Now, from the explanation of accused, it is only Mr. Yousuf Suleiman who can, in fact, prove that the cash money is legitimate money. He is someone respected by accused who calls him as ‘bhai’ meaning brother and for whom he travels and carries blindly, without asking any question, such a huge sum of cash money. True it is that Mr. Yousuf Suleiman came to Mauritius twice following the arrest of accused and assisted the Mauritius Revenue Authority. He however decided not to come to Mauritius when requested by the ICAC. As already explained by this Court in its Ruling dated the 27th November 2024, the issue of ‘mandat ad litem’ are Civil Law Procedures and instruments which cannot be imparted in Criminal Law and the criminal investigation on money laundering that was being conducted by the ICAC. Given accused explanation that the cash money was legitimate money which belonged to Mr. Yousuf Suleiman, the ICAC did contact Mr. Yousuf Suleiman and requested him to come to Mauritius to sustain whatever explanation accused had given. The ICAC went further and asked accused the following **(Doc A2)**:

“Q25: On 13/02/19, you stated that the money belonged to Mr Yousouf Suleiman, your employer and that he can produce all documents in relation to his business, did you contact Mr. Yousouf Suleiman since that date for the documents?

A: I will keep my right to silence.

Q: Did Mr Suleiman give you an indication as to when he is coming to Mauritius since you gave your statement to the ICAC on 13/02/19?

A: I will keep my right to silence.”

45. Given the explanation of accused as to the source of the cash money, the ICAC endeavored to secure the attendance of Mr. Yousuf Suleiman. Latter's voluntary refusal to come to Mauritius to explain the source of the cash money lies uneasily with the submissions of learned Counsel for accused to the effect that accused's explanation as to the source of the money has remained unrebutted. Indeed, as explained above, the circumstances in which that cash money was being transported do not, in themselves, concord with cross border transportation of **legitimate** cash money.

46. As was held in **Foollee v The State (2004) SCJ 251**:

"Whilst the burden of proof is always on the prosecution, it is clear that when evidence capable of proving the case against the accused and of disproving his defence is adduced by the prosecution, there is a kind of "tactical burden" which is borne by the accused in the sense that if he does not adduce evidence in rebuttal he may well find the case proved against him: in other words, the evidential burden shifts to the accused."

47. For the reasons explained above, the circumstances in which that cash money was handled and transported coupled with the absence of any explanation from Mr. Yousuf Suleiman, are such that they do give rise to the irresistible inference that such cash money can only be derived from crime (see **Anwoir (supra)**).

48. Therefore, the prosecution has proved, beyond reasonable doubt, that the cash money, as specified in the Information is, in whole or in part directly or indirectly represents, the proceeds of any crime.

(iii) **the accused suspected or had reasonable grounds for suspecting that the property is derived, in whole or in part, directly or indirectly from a crime**

49. The prosecution also has to prove that accused suspected or had reasonable grounds for suspecting that the property is derived, in whole or in part, directly or indirectly from a crime. As was explained in **Antoine v The State [2009] SCJ 328**:

"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."

50. First and foremost, accused is only the purchasing manager of Mr. Yousuf Suleiman. As he himself conceded, transporting such a huge amount of cash money is not one of his duties. Moreover, such huge amount of cash to be transported by plane, in two suitcases, in itself raises serious doubt about its legitimacy. The absence of security arrangement and the risks taken for such

transportation are glaring. Such a huge amount of cash money, in two check-in-suitcases catering exclusively for that money, is surely not innocuous. Everything was known to accused.

51. Moreover, the meticulous planning for that huge sum of cash money to go undetected was equally known to accused. He was aware that he had no document with him to the effect that the cash money had been declared in Johannesburg. He did not declare that cash money during transit in Mauritius using the feeble explanation that he had not seen any banner to that effect in the transit area of the SSRN International Airport. He was also aware of the purpose of the two return tickets that were given to him by Mr. Yousouf Suleiman. He knew that they were meant to deceive the Mauritian authorities as to the final country of destination to conceal that the two check-in-suitcases contained such a huge amount of cash money. He was also aware that carrying such a huge sum of cash money did not form part of his duties as purchasing manager.
52. Given that accused was well aware of all these facts and circumstances surrounding the transportation of that cash money, it can be inferred that he must have reasonably suspected that such cash money was proceeds of crime. As such, the prosecution has proved, beyond reasonable doubt, that accused suspected or had reasonable grounds for suspecting that the cash money, as specified in the Information, is derived, in whole or in part, directly or indirectly from a crime.

F. CONCLUSION

53. For the reasons explained above, the Court concludes that the prosecution has proved its case, beyond reasonable doubt, and accused is found guilty under the one count of the Information.

A.R.TAJOODEEN
Magistrate of the Intermediate Court (Financial Crimes Division)
13.03.2025