IN THE INTERMEDIATE COURT (FINANCIAL CRIMES DIVISION)

CN 47/20

In the matter of:

INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

V

1. **NOORHOSSEN RAMOLY**
2. **ZAHEDA BIBI RAMOLY**
3. **BEEBEE NOORJAHAN FOKUN**
4. **SHABEER AHMAD GOLAMGOUSE**
5. **MAHMAD ESHAN CHUMMUN**

RULING

Arguments

1. The accused parties stand charged before this court for the offence of money laundering under Section 3 (1) (a) (b), 6 (3) and 8 of the Financial Intelligence and Anti Money Laundering Act. There are nineteen counts in the information which is dated 11th February 2016. Count 20 has been discontinued against Salim Raza Roodur (who was formerly accused No 6). All accused have pleaded not guilty and retained the services of counsel. The trial has already started. During the trial, prosecution called witness 4 Senior Investigator Papain. During her testimony, the prosecution asked her in examination in chief about "60 other accidents" that have been investigated into by the ICAC. Counsel for Accused No 4 objected to this question because that question according to defence counsel is highly prejudicial inasmuch as this would open the door to prejudicial and inadmissible hearsay evidence being adduced. The defence and the prosecution argued on the same day and submitted their respective

contentions on whether mentioning the "60 accidents" which are the not the subject matter of the present trial; would amount to similar fact evidence being adduced, the impact on the fairness of the trial and what would be the importance of such facts being brought in by Senior Investigator Papain. This court has carefully considered the submissions made.

Analysis and applicable law

2. This court outright must point out that the prosecution's case is based on the information it lodges. These are the facts in issue which must be proved by admissible and relevant evidence beyond reasonable doubt. And this evidence is directly concerned with the guilt of the accused. However, the Court has powers to control the admissibility of that evidence.

3. In **Blackstone's Criminal Practice 2025 > PART F EVIDENCE > Section F2 Evidence Unlawfully, Improperly or Unfairly Obtained and the Discretion to Exclude Evidence > Discretion to Exclude at Common Law** the Court has a common law discretion to exclude prejudicial evidence:

Discretion to Exclude at Common Law

Nature of Discretion

F2.36

Although there is no common-law authority to suggest that a criminal court has any power to admit as a matter of discretion evidence which is inadmissible under an exclusionary rule of law, it is well established that a judge, as part of his or her inherent power and overriding duty in every case to ensure that the accused receives a fair trial, always has a discretion to exclude otherwise admissible prosecution evidence if, in the judge's opinion, its prejudicial effect on the minds of the jury outweighs its true probative value. The classic description of the discretion is that of Lord du Parcq, delivering the reasons of the Board in Noor Mohamed v The King [1949] AC 182. Referring to cases in which the prosecution seek to admit similar-fact evidence, his lordship said (at p. 192):

... in all such cases the judge ought to consider whether the evidence which it is proposed to adduce is sufficiently substantial, having regard to the purpose to which it is professedly directed, to make it desirable in the interest of justice that it should be admitted. If, so far as that purpose is concerned, it can in the circumstances of the case have only trifling weight, the judge will be right to exclude it. To say this is not to confuse weight with admissibility. The distinction is plain, but cases must occur in which it would be unjust to admit evidence of a character gravely prejudicial to the accused even though there may be some tenuous ground for holding it technically admissible.

F2.37

The discretion developed on a case-by-case basis in relation to particular and different types of otherwise admissible evidence. In relation to similar-fact evidence, for example, see Harris v DPP [1952] AC 694, at p. 707 (in which Viscount Simon cited and applied the passage from Noor Mohamed v The King set out above) and DPP v Boardman [1975] AC 421, at pp. 438, 441, 453, and 463. In relation to evidence otherwise admissible under the Theft Act 1968, s. 27(3), see List [1966] 3 All ER 710; Herron [1967] 1 QB 107; Perry [1984] Crim LR 680; and generally ***F13.96 et seq****. Concerning exercise of the discretion in relation to identification evidence, see* ***F19****. See also Eatough [1989] Crim LR 289.*

F2.38

In Sang [1980] AC 402, the House of Lords was firmly of the opinion that, notwithstanding its case-by-case development, the discretion is a general one. The cases, therefore, are not to be treated as a closed list of the situations in which the discretion may be exercised (see Viscount Dilhorne and Lord Salmon, at pp. 438 and 445 respectively). The cases are nothing more than examples of a single discretion founded on the duty of the judge to ensure that every accused person has a fair trial (per Lords Scarman and Fraser, at pp. 452 and 447 respectively).

4. In the present matter, applying those principles it can be observed that although there are external facts which may have formed part of the enquiry as pointed out by the prosecution nevertheless the danger remains that hearsay and inadmissible evidence may seep in unless there are valid reasons (in interests of justice for example) for bringing that evidence. In fact, one of the ways which would have permitted the prosecution to admit such evidence would have been if there had been "gateways" created to that effect by the legislator. This Court is convinced that unless there is a legislation or authority to substantiate that those "60 accidents" fall within an exception; which allows extraneous evidence being similar in character to be brought in a trial of the present accidents, this Court cannot admit this evidence. In fact, the practical dangers that this Court is alive and will confronted with is that: should evidence be adduced of "60 accidents" and as pointed out by defence counsel if such evidence do not form part of the defence instructions, the defence would not be in a position to countervail and cross-examine on these facts. Furthermore, the relevance of all those accidents is unclear and the main consideration that this Court has to bear in mind is the overall effects of admitting such evidence and if such evidence if found later on to be prejudicial, this would inevitably have disastrous consequences on the fairness of the trial. A simple example would be that the defence may be called upon to rebut that evidence factually which the defence states they have "no instructions about." Thus, allowing the "60 accidents" will place an undue burden on the defence to disprove that evidence and which the defence presently is unaware of. In fact, the bigger picture that the prosecution needs to have is that a Court does not have the power to make evidence which is inadmissible become admissible. On the contrary as underscored

Decision

5. On the whole, as these sixty accidents are extraneous facts that do not fall within the facts in issue under the counts of the present information, similar fact cannot be adduced, the motion of the defence is upheld.

Prosecution way forward

6. That being said, the prosecution on the other hand is not precluded from referring to the accidents which are the subject matter of the information and which have been joined together in the information as stipulated in **Blackstone's Criminal Practice 2025 > PART D PROCEDURE > Section D11 The Indictment > Joinder of Counts in an Indictment**

D11.70

The circumstances in which two or more offences may be said to amount to a series of offences of the same or similar character within the meaning of the second limb of what is now CrimPR 3.29(4) were considered by the House of Lords in Ludlow v Metropolitan Police Commissioner [1971] AC 29. The indictment against D contained counts for (a) attempted theft at a public house in Acton on 20 August and (b) robbery at a different public house in Acton on 5 September. The trial judge refused an application that the two charges should be tried separately, and D was convicted on both counts. The case was considered by the House of Lords, where Lord Pearson delivered the leading opinion. The main points emerging from this opinion are as follows.

(a) Two offences are capable of constituting a 'series' for the purposes of the Indictment Rules 1971, r. 9 (see p. 38E-G confirming the Court of Appeal decision in Kray [1970] 1 QB 125).

(b) In deciding whether offences exhibit the similarity demanded by the rule, the court should take into account both their legal and their factual characteristics (at p. 39B). The prosecution submission (that the phrase 'a similar character' means

exclusively of a similar legal character) and the defence submission (that the phrase means exclusively of a similar factual character) were each rejected.

(c) To show the existence of a series of offences, the prosecution must be able to point to some nexus between them. This means 'a feature of similarity which in all the circumstances of the case enables the offences to be described as a series' (at p. 39D). A nexus is clearly established if the offences are so connected that the evidence of one would be admissible to prove the commission of the other in accordance with the rules on similar-fact evidence, but this is not essential (at p. 39D–F, quoting with approval from Kray and Clayton-Wright [1948] 2 All ER 763, and see observations to the same effect in Toner [2019] EWCA Crim 447).

(d) On the facts of Ludlow, the offences were similar in law in that they each had the ingredient of actual or attempted theft. They were also similar in fact because they involved stealing or attempting to steal in neighbouring public houses at a time interval of only 16 days. A sufficient nexus was therefore present to make the offences a series of a similar character within the meaning of r. 9, even though the similarity was not nearly striking enough to bring them within the similar-fact evidence rule (at p. 39H).

D11.71

Application of the Principles in Ludlow *The following cases are decisions on whether the degree of similarity between offences justified joinder under r. 9 of the Indictment Rules 1971, and thus by implication CrimPR 3.29(4):*

(a) Mansfield [1977] 1 All ER 134, where three counts for arson were held to be properly joined since the offences were committed within a short space of time, and related to premises in the same geographical area, with each of which D had some connection.

(b) Harward (1981) 73 Cr App R 168, where it was held that an allegation relating to the handling of stolen goods could not be joined to an offence of conspiring to defraud banks by the use of stolen cheques and cheque cards. The only possible nexus between the charges, there being no factual similarity, was the element of dishonesty. However, the dishonesty in the conspiracy count related to D's involvement in fraudulent practices, whereas that in the handling count related to his state of mind when he received the goods. This was therefore insufficient.

(c) McGlinchey (1983) 78 Cr App R 282, where two counts for handling stolen goods were held to be properly joined. The only factual similarity between the offences seems to have been their closeness in time. (McGlinchey was applied in Mariou [1992] Crim LR 511.)

(d) Marsh (1985) 83 Cr App R 165, where the indictment included two pairs of counts for criminal damage and reckless driving and a fifth count of assault occasioning actual bodily harm, relating to a wholly separate incident. The joinder was held to be improper because (i) there was no legal similarity between criminal damage and reckless driving on the one hand and assault on the other, and (ii) the common factual element of violence was insufficient by itself to provide a nexus.

(e) Baird [1993] Crim LR 778, where the indictment alleged two counts of indecent assault against two boys, the incidents having taken place nine years apart. Although there was no coincidence in time or place, there were similarities in the offences which, their lordships said, 'were truly remarkable'. They concluded that the judge was entitled to hold that the various counts could properly be joined under r. 9, and was justified in refusing to exercise his discretion to sever under the Indictments Act 1915, s. 5(3) (see D11.76).

(f) C (1993) The Times, 4 February 1993, where D was charged with rape and attempted rape. Although the counts were separated in time by 11 years, the victim in each case was D's daughter. It was held that the counts were properly joined.

(g) Williams (Royston) [1993] Crim LR 533, where it was alleged that D had falsely imprisoned a girl of 13, having indecently assaulted her five days earlier. The Court of Appeal held that these were two separate incidents and the two offences were not of a similar character, despite an evidential nexus.

(h) Ferrell [2010] UKPC 20, where it was held that offences of supplying drugs and money laundering were correctly joined, even where the laundering offences pre-dated the possession of the drugs that were the subject of the supply counts, because it was proper for the jury to infer that the money that was laundered was the proceeds of drugs.

7. *(i) Williams (Malachi Lloyd) [2017] EWCA Crim 281, where D was charged with assault on one former girlfriend and the rape of another. The Court of Appeal*

was required to consider the wider characteristics of the offence, including the fact that both offences involved violence against a particular category of person

A.Joypaul 19.3.25

Intermediate Court Magistrate

[Financial Crimes Division]