

NADAN A. v THE FINANCIAL CRIMES COMMISSION

2025 SCJ 586

Record No. 124946

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Arvina Nadan (born Matabadul)

Applicant

v

The Financial Crimes Commission

Respondent

JUDGMENT

The applicant is moving in an amended motion paper dated 1 July 2024 for –

- (a) a Compensation Order under **section 105(2) of the Financial Crimes Commission Act 2023** (“the FCC Act”), ordering the respondent to pay to her the amount of Rs 10 million, representing damages and prejudice suffered as a result of “*the wrongful application and maintenance of a Restraining Order*” issued by a Judge in Chambers on 21 February 2022 in proceedings bearing SN 228/2022 *quoad* her; and
- (b) any other Order which this Court may deem fit and proper in the circumstances of this case.

In the original motion paper dated 9 August 2023, the same application had been made, except that it was for a Compensation Order under **section 60(3) of the Asset Recovery Act** (“ARA”) and was directed at the Financial Intelligence Unit (“FIU”) which was then the Enforcement Authority under the **ARA**.

Two affidavits each had been filed by the applicant and on behalf of the FIU before the amended motion paper was filed.

In her first affidavit, the applicant stated that –

- (a) she is a housewife and her bank accounts (one of which is held jointly with her husband) at the Mauritius Commercial Bank (MCB) are used for payment of household and personal expenses and are “*exclusively funded*” by her husband. She has also been issued debit and credit cards by the MCB. She is not involved in her husband’s professional dealings with third parties;
- (b) on or about 13 December 2021, her bank accounts, and debit and credit cards, were frozen as a result of a Court Order made in application bearing SN 1983/2021;
- (c)
 - (i) on or about 7 January 2022, she and her husband applied¹ to the Judge in Chambers under **sections 12 and 13 of the ARA** for disclosure and for revocation of the said Court Order. The application was resisted;
 - (ii) the FIU, acting “*behind her back*”, applied² on or about 18 February 2022 to the Judge in Chambers for and obtained on 21 February 2022 –
 - (A) an order revoking the Restraining Order dated 13 December 2021; and
 - (B) a new Restraining Order against the applicant and her husband (“the impugned Restraining Order”);
 - (iii) she was served with the impugned Restraining Order on 22 February 2022 and had no other alternative than to withdraw application bearing SN18/2022 on 23 February 2022;
- (d)
 - (i) on or about 25 February 2022, she and her husband made an application, bearing SN 268/2022, for disclosure of proceedings in application bearing SN 228/2022, revocation of the impugned Restraining Order, or, in the alternative, excluding from the impugned Restraining Order certain bank

¹ Application bearing SN 18/2022

² Application bearing SN 228/2022

accounts held by her husband and herself; and in the further alternative, authorising them to open a new bank account under the supervision of the Judge in Chambers for the purpose of running their business activities and household;

- (ii) in an affidavit dated 11 April 2022 filed in application bearing SN 268/2022, the Commissioner of Police stated that the applicant has not been called upon to give a statement to the police in relation to any criminal activity and, as such, the bank accounts of the applicant have been wrongly restrained³;
 - (iii) in an affidavit dated 13 April 2022 filed in application bearing SN 268/2022, the FIU stated *inter alia* that it had no objection to the prayer for an order authorising the applicants to open a new bank account with MCB for the purpose of running their business activities and household;
 - (iv) when the matter came for arguments on 28 February 2023, her Counsel questioned the validity of the impugned Restraining Order 12 months after its issue and the FIU informed the Judge in Chambers that the impugned Restraining Order had been extended for one more year. The matter was then put to 10 March 2023 for additional submissions;
 - (v) in the intervening period, the applicant was served with a Rule dated 23 February 2023 in application bearing SN 228/2023 (see **Annex 4** to the applicant's first affidavit), confirming the extension of the impugned Restraining Order for a further period of one year. The applicant then withdrew application bearing SN 268/2022 on 24 March 2023;
- (e)
- (i) the applicant applied anew on 12 May 2023 for the revocation⁴ of the impugned Restraining Order in application bearing SN 703/2023;
 - (ii) at the sitting of 27 June 2023 in case bearing SN 703/2023, the FIU stated that it had no objection to the application. The Judge in Chambers then granted the application⁵.

³ The affidavit of the Commissioner of Police in fact does not state that the applicant's bank accounts have been wrongly restrained.

⁴ The application bearing SN 703/2023 was for a variation and exclusion from the impugned Restraining Order of the applicant's bank accounts and cards (**Annex 8**).

The applicant stated that the money in her bank accounts did not amount to proceeds of any criminal or unlawful activity; that the “*blanket Restraining Order*” was plainly oppressive; that she had never been called upon to give any statement, nor been questioned by the police; that there is no criminal enquiry against her and no provisional charge has been lodged by the police against her; that the FIU had full knowledge of these facts, especially in the light of the affidavits filed by the Commissioner of Police in case bearing SN 268/2022 (**Annexes 6 and 7**), but proceeded in bad faith with the renewal of the impugned Restraining Order on 23 February 2023. The FIU was therefore guilty of serious default, gross negligence and intentional misconduct to her prejudice, amounting to a serious default in law, since 20 February 2023 or around that date, “*in applying for the renewal of the Restraining Order and in conducting the alleged criminal investigation*”.

The wrongful acts and doings have caused prejudice to her and her family from December 2021, when the FIU first applied for the Restraining Order on spurious grounds, until June 2023 when the FIU finally realised that it had no leg to stand on in resisting the revocation of the impugned Restraining Order. As a result of the serious default of the respondent, she has suffered and is still suffering considerable “*damages, financial losses and prejudice*” quantified by her to be in the sum of Rs 10 million.

In its first affidavit dated 25 September 2023 in the present application, the FIU raised the following preliminary objections in law –

- “(a) *the application has been made outside delay and is therefore time-barred pursuant to **section 60(4) of the ARA**. The Compensation Order sought is in relation to the Restraining Order dated 21 February 2022 (bearing SN 228/2022) and the present application has been filed on 09 August 2023 (with notice thereof given to the respondent) outside the statutory delay of 6 months;*
- (b) *any alleged circumstances on which the applicant has relied in an attempt to justify an element of default pertain to a renewal of the Restraining Order dated 23 February 2023 - such a renewal is effected given the fact the investigation has not yet been completed, and as such, a renewal cannot amount to a serious default;*
- (c) *(...) the applicant, at the very outset, is debarred from pursuing the present matter which ought to be set aside with costs”.*

⁵ The Judge in Chambers in her Order excluded from the impugned Restraining Order the bank accounts and cards in the applicant’s name (**Annex 9**)

It further stated on the merits that –

- (a) the applicant's husband is the subject of a criminal enquiry at the level of the police, as well as of an investigation by the FIU for money laundering activities and/or related offences, as a result of his dealings with and through Digitus Holdings Ltd, Sept Consulting Ltd and one Ghislain Jean H. Emonts. There is strong suspicion that the applicant's husband's bank accounts are funded by tainted money obtained from the sale of alleged Bitcoins;
- (b) the applicant is therefore directly concerned insofar as the source of those funds is concerned, irrespective of whether she is involved in her husband's professional dealings with third parties;
- (c) given the stage which the investigation had reached, the FIU did not object to application bearing SN 703/2023 and *"decided that a Restraining Order was no longer suitable"* and that *"another course of action would be more appropriate"*;
- (d) the FIU had and still has reasonable belief or suspicion that the property of the applicant may be tainted and amounted to proceeds and/or benefit of an offence, being given that her bank accounts were exclusively funded by her husband and the investigations by the police and FIU against her husband were still ongoing;
- (e) there was a need to maintain the *status quo* in order to prevent dissipation of assets at the material time. It is the Judge in Chambers who decides whether to grant the renewal. As the investigation unfolded, the FIU, acting professionally and in good faith, had no objection that the impugned Restraining Order against the applicant be *"rescinded"*;
- (f) all legal proceedings instituted or resisted by the FIU are validly and lawfully grounded; the FIU has always acted in strict compliance with the **ARA** and discharged its duties professionally and in utter good faith and therefore has, pursuant to **section 62 of the ARA**, immunity from liability;
- (g) the applicant has failed to establish any act of default, bad faith and/or gross negligence on the part of the FIU or any of its agents, and failed to justify the quantum of her claim, and in any event, the FIU is not

bound to provide any compensation as it has acted in accordance with the **ARA** in good faith at all times;

(h) the application is vexatious and devoid of merit.

In her second affidavit, the applicant stated *inter alia* that the default on the part of the respondent consisted of its act of applying on or about 20 February 2023 in SN 228/2023 for the renewal of the impugned Restraining Order *quoad* her, having full knowledge and information that there was no police investigation nor any police case against her.

The respondent replied in its second affidavit that the criminal inquiry in respect of the applicant's husband and the respondent's investigation regarding potential money laundering offences against the applicant and her husband are still ongoing. Reference was made to **section 20(1)(a) of the ARA** which allows the Court to consider "*any money received by the defendant, or by another person at the request or by the direction of the defendant*", when considering the value of benefit derived or likely to be derived by a defendant. It was stated that the application for renewal of the impugned Restraining Order does not and cannot amount to any kind of default.

The matter came before me for hearing on the preliminary objections and on merits.

Analysis

I have carefully considered the affidavit evidence and the submissions of learned Counsel. I shall briefly dispose of the two preliminary objections being insisted upon, before dealing with the merits.

Preliminary objections

Application misconceived in law

As stated above, this application for a Compensation Order was made on 9 August 2023 under **section 60(3) of the ARA** against the FIU, which was then the Enforcement Authority under the **ARA**, in respect of "*the wrongful application and maintenance of a Restraining Order*" issued on 21 February 2022 under the **ARA** in proceedings bearing SN 228/2022. After the coming into operation of the **FCC Act**,

the motion paper was amended so that the application is now being made for a Compensation Order under **section 105(2) of the FCC Act** against the respondent.

A preliminary objection was raised on behalf of the respondent shortly before the hearing to the effect that the present application is misconceived in law inasmuch as the amended application has been wrongly grounded under **section 105(4) of the FCC Act**. It was submitted that there was no live or valid Restraining Order against the applicant when the **FCC Act** came into operation on 29 March 2024, and the impugned Restraining Order has never been “*deemed*” to be a Criminal Attachment Order under **section 168(5)(a) of the FCC Act**.

Now the **ARA** was repealed by the **FCC Act**, which came into operation on 29 March 2024 and which *inter alia* establishes the Financial Crimes Commission (“FCC”). **Part V of the FCC Act** deals with asset recovery and replicates in substance **Parts III and IV of the ARA**, save that it is now the FCC which is responsible for asset recovery, in lieu of the FIU⁶ under the **ARA**.

The relevant provisions of **section 168 of the FCC Act** read as follows –

“168. Other savings and transitional provisions

- (1) *Any proceedings, whether judicial or extra-judicial, started by or against ICAC, ARID or IRSA and pending on the commencement of this Act shall be deemed to have been started by or against the Commission.*
- (2) *Any investigation or enquiry started by ICAC, ARID or IRSA and pending on the commencement of this Act shall be taken over and continued by the Commission.*
- (2A)-(3) (...)
- (4) (a) *Any Order issued by a Judge or Court under the repealed enactments and valid on the commencement of this Act shall be deemed to have been issued by a Judge or Court under this Act.*
- (b) *Any application for an Order made under the repealed enactments and pending on the commencement of this Act shall be deemed to have been made under this Act and shall be dealt with in accordance with this Act.*
- (5) (a) *A Restraining Order, Confiscation Order, Restriction Order or Recovery Order issued under the repealed*

⁶ The FIU was conducting investigations through its Asset Recovery Investigation Division (ARID) (see **section 5 of the ARA**).

Asset Recovery Act and valid on the commencement of this Act shall be deemed to be a Criminal Attachment Order, Criminal Confiscation Order, Civil Attachment Order or Civil Confiscation Order, respectively, issued under this Act.

- (b) *An application for a Restraining Order, Confiscation Order, Restriction Order or Recovery Order made under the repealed Asset Recovery Act and pending on the commencement of this Act shall be deemed to be an application made under this Act for a Criminal Attachment Order, Criminal Confiscation Order, Civil Attachment Order or Civil Confiscation Order, respectively, and shall be dealt with in accordance with this Act.*
- (6) *All rights, obligations and liabilities subsisting in favour of or against ICAC, ARID or IRSA shall, on the commencement of this Act, continue to exist under the same terms and conditions in favour of or against the Commission.*
- (7)-(8) (...)
- (9) *Any act done by ICAC, ARID or IRSA shall, on the commencement of this Act, be deemed to have been done, and shall continue to be done, by the Commission.*
- (10) (...).

Now, contrary to what was stated by the applicant at paragraph 31 of her first affidavit and by her Counsel in submission at the hearing, the impugned Restraining Order was not revoked *quoad* her on 27 June 2023, but her bank accounts and cards were excluded from same by order of the Judge in Chambers. The impugned Restraining Order, *albeit* in its modified form, is therefore deemed to be a Criminal Attachment Order issued under the **FCC Act** pursuant to **section 168(5)(a) of the FCC Act**.

In any case, pursuant to **section 168(4)(b) of the FCC Act**, the application for a Compensation Order, which was made on 9 August 2023 and was pending upon the commencement of the **FCC Act**, is deemed to have been made under, and is to be dealt with in accordance with, the **FCC Act**. As noted above, an amended motion paper was filed on 1 July 2024 against the FCC under **section 105(2) of the FCC Act**.

I therefore over-rule the preliminary objection to the effect that this application is misconceived. The FCC is still liable, as successor to the ARID of the FIU, for acts

committed by the latter and the present application is therefore to be treated as an application for a Compensation Order under **section 105(2) of the FCC Act**.

Time-bar

Learned Counsel for the respondent has also raised a preliminary objection to the effect that the application for a Compensation Order, filed on 09 August 2023, was made outside the delay of 6 months prescribed under **section 60(4) of the ARA**, since the impugned Restraining Order is dated 21 February 2022. Preliminary objections (a) and (b) were dealt with together.

In his submission, the applicant is “*plainly wrong*” to contend that the alleged serious default, or gross negligence or intentional misconduct, **under section 105(2)(c) of the FCC Act** occurred when the respondent applied for the extension of the impugned Restraining Order on 22 February 2023. The applicant’s amended motion paper and affidavit clearly show that her complaint is about the “*application and maintenance*” of the Restraining Order so that the time can only start ticking, if ever there was a serious default, as from the date of issue of the impugned Restraining Order, that is, 21 February 2022, and the application was therefore made outside delay.

Learned Counsel for the applicant submitted in reply that the application for the Compensation Order relates to the “*wrongful renewal*” of the impugned Restraining Order on or about 23 February 2023 in case bearing SN 228/2023 despite the fact that the respondent (the FIU) had full knowledge that there was no police investigation of whatsoever nature against the applicant (see paragraphs 28 to 31 of the applicant’s first affidavit). The delay should therefore run as from the application for the wrongful renewal of the Restraining Order on or about 23 February 2023, which constituted in law the serious default on part of the respondent.

Now **Sub-Part IV of Part V of the FCC Act on Asset Recovery** reads as follows –

“Sub-Part IV – Compensation Order

104. Application for Compensation Order

The Court may, on application made to it, issue a Compensation Order where, in its opinion, it would be in the interests of justice, to do so and –

- (a) a Civil Attachment Order had been issued; or*
- (b) an application for a Civil Confiscation Order was not issued and the Civil Attachment Order was revoked; and*
- (c) the applicant suffered a loss as a result of the operation of the Civil Attachment Order.*

105. Issue of Compensation Order

- (1) The Court may, if it is of the opinion that to do so would be in the interests of justice, issue a Compensation Order on application by a person where –*

- (a) a Civil Confiscation Order relating to an instrumentality was issued that affects property in which the person had an interest before the making of the Order; or*
- (b) in the opinion of the Court, the value of the person's recovered interest in the property is disproportionate to its value to the offence in question; and*
- (c) the person suffered a loss as a result of the operation of the Civil Confiscation Order.*

- (2) The Court may issue a Compensation Order on application made to it where –*

- (a) a Criminal Attachment Order was issued;*
- (b) an application for a Criminal Confiscation Order was not issued or was withdrawn and the Criminal Attachment Order was revoked, or an application for such a Criminal Confiscation Order was never issued because the defendant was acquitted; or*
- (c) there was a serious default consisting of gross negligence or intentional misconduct on the part of a person involved in a criminal enquiry or prosecution and the enquiry would not have continued or the proceedings would not have started or continued, if the default had not occurred; and*
- (d) the person suffered a loss as a result of the operation of the Criminal Attachment Order or the default.*

- (3) *The amount of compensation to be paid under this section shall be such amount as the Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.*
- (4) *An application under this section shall be made not later than 6 months after the date of the Criminal Attachment Order or Civil Attachment Order or of the default and notice of the application shall be given to the Commission.”*

The present application is governed by **subsections (2)(3)(4) of section 105 of the FCC Act** as it does not involve a Civil Confiscation Order under **subsection (1)**. A reading of **section 105(2)** shows that its paragraphs (b) and (c), being separated by the word “or”, are in the alternative. It is clear from the affidavit in support of the application and the submissions of Counsel that the applicant is invoking an alleged “*serious default*” on the part of the respondent, so that in the present matter –

- (a) the conditions in **section 105(2)(a)(c) and (d)** will have to be satisfied for a Compensation Order to be made;
- (b) the delay of 6 months referred to in **section 105(4)** will have to run as from the alleged serious default.

The crux of the matter then is when the alleged serious default being complained of took place. True it is that the *proecipe*, very confusingly, refers to “*the wrongful application and maintenance of the Restraining Order*”, but the affidavit in support of the *proecipe* does particularise, at paragraph 30, “*the serious default, gross negligence and intentional misconduct*” “*since on or around 20 February 2023*” as “*applying for the renewal of the Restraining Order and (...) conducting the alleged criminal investigation*”⁷. At the hearing, it was finally clarified by learned Counsel for the applicant that it is the application, on or around 20 February 2023, for the extension of the impugned Restraining Order which was claimed to constitute the serious default on part of the respondent. The extension itself, which was also at times loosely referred to by learned Counsel for the applicant as constituting the serious default, cannot be laid at the door of the respondent, as the order for the extension was made by a Judge in Chambers and not the respondent.

I find that the application for a Compensation Order, made on 9 August 2023,

⁷ See also applicant’s second affidavit

was made within 6 months of the alleged serious default, that is, the application by the FIU for extension of the impugned Restraining Order on or about 21⁸ February 2023. Preliminary objections (a) and (b) raised on behalf of the respondent are therefore over-ruled.

Merits

The basic chronology of events in this matter purports to be set out in the applicant's first affidavit (see summary of same above).

I must observe however that the said chronology of events set out in the text⁹ of the applicant's first affidavit is selective, not to say misleading, and does not include the following important matters stated by the FIU in its affidavit dated 13 April 2022 which was filed in application bearing SN 268/2022 (see **Annex 6** to the applicant's first affidavit) –

- (a) the FIU had applied for a Restraining Order on 13 December 2021 following the referral to it as Enforcement Authority by the Commissioner of Police of three cases involving the applicant's husband, including a complaint of swindling made against him in connection with his failure to transfer 80 units of Bitcoins, USD 469,000 and a computer for mining purposes to a Belgian national;
- (b) the FIU had been informed by the Commissioner of Police that the criminal enquiry into the matter was ongoing so that it was necessary that a restraining order be issued to protect property reasonably believed to be proceeds, a benefit or an instrumentality of the criminal offences;
- (c) when the applicant and her husband made an *ex parte* application bearing SN 362/2022 on 18 March 2022, the FIU did not object to the sum of Rs 500,000 being withdrawn by them on a monthly basis as from the end of March 2022 pending determination of that application;
- (d) the FIU also had no objection to the applicant and her husband being authorised to open a new bank account for their business activities and household expenses, *“provided the funds therein are neither*

⁸ See Rule dated 23 February 2023 (**Annex 4** to applicant's first affidavit).

⁹ As opposed to the annexes

tainted nor emanating from illegal activities”.

The Commissioner of Police has also averred in an affidavit dated 11 April 2022 (see **Annex 7** to the applicant’s first affidavit) that a criminal investigation has been instituted on 2 December 2021 following an allegation of swindling against the applicant’s husband; that he was called on 20 January 2022 to give a statement; and that the applicant has not been called upon to give a statement to the police in relation to any criminal activity.

Now the Compensation Order was not really known to our law until it was introduced by the **ARA** (see **section 60 of the then ARA**). I have taken note that **sections 281 to 283 of the UK Proceeds of Crime Act 2002** provide for circumstances in which the Court may require the Enforcement Authority to pay compensation to an applicant who has suffered loss as a result of a property freezing order or interim receiving order (see **Halsbury’s Laws of England (Fifth Ed, 2021), Vol 92A: Sentencing and Offender Management, Recovery of Criminal Proceeds, para 679, Compensation**).

Care appears to have been taken by the legislator to ensure that a Compensation Order is only to be made under the **ARA** or **FCC Act** where there is a serious default (consisting of gross negligence or intentional misconduct) on the part of a person involved in the investigation or prosecution- presumably to prevent a “chilling effect” on law enforcement and applications for Compensation Orders.

I have found helpful in that regard the Drafting Note for **section 65 of the Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime**, published by the Commonwealth Secretariat¹⁰, in view of the fact that **section 60(3) of the ARA** and **section 105(2)(c) of the FCC Act** bear a close resemblance to **section 65(1)(d) of the Model Legislative Provisions**. The Drafting Note reads as follows –

*“**Compensation.** Section 65 addresses the situations in which compensation or damages should be provided if no final order issues and a restraint order is revoked. Such compensation would be in favour of persons whose property had been restrained and who suffered a consequential loss. Many states (for*

¹⁰ <https://www.thecommonwealth-library.org/index.php/comsec/catalog/book/798>

instance the United Kingdom, Singapore and Canada) limit this to situations in which there was a serious default on the part of a person involved in the investigation or prosecution. The theory is that such restraints are a usual part of a criminal investigation or proceeding, and in the normal case there is no obligation on the part of the authorities to provide compensation for losses except in case of bad faith, intentional misconduct, etc.

Section 65(1)(d) sets out a serious default standard that is reflected in the United Kingdom's legislation (Section 72, Proceeds of Crime Act), with the explanation that such default must consist of gross negligence or intentional misconduct."

(the underlining is mine).

In determining whether there has been “*serious default*” in this case, I have considered **sections 9 and 10 of the then ARA** and **sections 69 and 70 of the FCC Act**, both of which provide that a Restraining Order or a Criminal Attachment Order can be applied for and obtained where “*a person is charged with, or convicted of, an offence or a criminal enquiry is ongoing*” (the underlining is mine). It follows that, under Mauritian law, there is no need for the person to be actually charged with, or convicted of, an offence before a Restraining Order or a Criminal Attachment Order can be applied for. The existence of an ongoing criminal enquiry involving that person, or his property, may, in a fit case, justify an application for a Restraining Order or a Criminal Attachment Order.

The fact that the applicant had not been charged, provisionally or otherwise, is therefore neither here nor there, since there was, at the time of the application for extension of the impugned Restraining Order, a criminal enquiry ongoing into the commission of serious offences involving Bitcoins by the applicant's husband. Further it is not disputed that the applicant and her husband held a joint bank account, and that she had no independent funds. It was reasonably believed by the FIU at the time that the money in that account amounted to proceeds, which had to be restrained with a view to eventual confiscation.

Although learned Counsel for the applicant used interchangeably the words “*maintenance*” and “*renewal*” when referring to the application said to constitute serious default in the present matter, he agreed in Court that he was in fact referring to the application made by the FIU on or about 22 February 2023 in case bearing SN

228/2023 for extension of the impugned Restraining Order. An Order was then made by Chan Kan Cheong J. in Chambers on 22 February 2023 extending the operation of the impugned Restraining Order “*against Keshwarsingh Nadan & Ors*” for a further period of one year, save for the monthly withdrawal of Rs 500,000 from an MCB account which had been previously authorised by another Judge in Chambers (see copy of Rule dated 23 February 2023 at **Annex 4** to the applicant’s first affidavit).

It is worth reproducing *in extenso* **section 16 of the then ARA** which applied to the duration of Restraining Orders at the time of the application for extension¹¹ –

“16. Duration of Order

(1) *Subject to subsection (3), where a Restraining Order was made on the basis that the alleged offender was the subject of a criminal enquiry, a Judge shall, on application made to him pursuant to subsection (2), discharge the Order if the alleged offender is not charged with that offence, or an offence arising from the same conduct or course of conduct, within 12 months of the date on which the Order was made.*

(2) (a) *Where subsection (1) applies, the Enforcement Authority shall make the necessary application to a Judge as soon as reasonably practicable.*

(b) *Where no application pursuant to paragraph (a) is made by the Enforcement Authority within 7 days of the expiry of the period referred to in subsection (1), any person affected by the Order may apply under this subsection for the discharge of the Order.*

(3) *Where an Order is likely to be discharged by reason of the operation of subsection (1), a Judge may, on the application of the Enforcement Authority, extend the operation of the Order for a specified additional period not exceeding 3 years if he is satisfied that it is in the interests of justice to do so.*

(4) (...)”

(the underlining is mine).

It is not correct to say, as learned Counsel for the applicant sought to argue, that a person subject of an enquiry may have Restraining Orders, continuously and abusively, extended upon application by the Enforcement Authority without him or her being charged with an offence.

Section 16 of the then ARA in fact provided for a judicial overview of the

¹¹ See now **section 76 of the FCC Act** which provides in substantially similar terms for the extension of the operation of Criminal Attachment Orders.

process by the Judge in Chambers. It applied specifically where a Restraining Order had been issued on the ground that an alleged offender is the “*subject of a criminal enquiry*” as in the present case, as opposed to being charged with or convicted of an offence as also envisaged under **section 9(1) of the then ARA**.

The combined effect of **section 16(1)(2)(3) of the then ARA** is that, even if the person was not charged with a criminal offence within 12 months of the issue of the Order, a Judge in Chambers could, on the application of the Enforcement Authority, still extend the operation of the Order where he was satisfied that it is “*in the interests of justice*” to do so. In the absence of such an application and extension, the Restraining Order would, upon application of the person affected, be discharged by the Judge in Chambers pursuant to **section 16(1)(2) of the then ARA**.

It goes without saying therefore that a Judge in Chambers, dealing with an *ex parte* application for the extension of a Restraining Order which necessarily has the effect of depriving the applicant of the enjoyment of her property, does not act as a mere rubber-stamp by automatically granting the application for extension of the Order.

I have further taken note of the letter dated 16 October 2023 from the Commissioner of Police to the Director of the FIU (**Annex 2** to the respondent’s second affidavit, dated 3 November 2023), stating that the Central Criminal Investigation Department (CCID) investigation into the cases involving the applicant’s husband, which is a complex one and strongly suspected to have international ramifications, was as at that date “*very much alive*”. It is further stated at paragraph 10.7 of the respondent’s second affidavit that there is strong suspicion that the applicant’s bank accounts are funded by tainted money obtained by her husband from the sale of Bitcoins and that the Bitcoin wallets which he claimed to own are listed on the Dark Net.

I am unable, in the light of the above, to find evidence of any serious default, whether consisting of gross negligence or of intentional misconduct, on the part of the FIU, and more particularly of any ARID officer involved in the investigation, when it applied for extension of the impugned Restraining Order. If anything, as rightly highlighted by learned Counsel for the respondent, it appears that the FIU, from the start, acted fairly towards the applicant in not objecting to the opening of a new bank account by her and her husband; nor to the withdrawal of a monthly amount of

Rs 500,000 for expenses; nor to the variation of the impugned Restraining Order to exclude her bank accounts and cards; and generally acted in compliance with the law in applying for extension of the impugned Restraining Order. There was, in particular, no requirement under the law that she be charged with an offence for her to be the subject of a Restraining Order or for the Order to be extended. More importantly, as noted above, the learned Judge in Chambers did grant the respondent's application for extension of the impugned Restraining Order.

This application for a Compensation Order is therefore without merit and is set aside. With costs.

**A.D. Narain
Judge**

29 December 2025

**For Applicant : Mr B. Ramlochud, Attorney at Law
Mr S. Hossany, of Counsel**

**For Respondent : Mrs B. M. Chatoo, Attorney at Law
Mr F. Arzamkhan, of Counsel**