ICAC v Jean Serge Alleemudder

2026 INT 33

CN: 14/21

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

Jean Serge ALLEEMUDDER

JUDGMENT

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

CASE FOR THE PROSECUTION

2. Witness no.5, Mr Bhye Farad Ghoora, stated that he was a director of the company FB Ghoora Ltée from 2010 to 2012. The company was in the business of importing and selling of cars. As an added service, the company did the paperwork for the registration and fitness of vehicles. The witness produced **Doc A** which is the registration book of vehicle of make Toyota Dyna with registration mark 104ZX04. The owner was Jean Serge Alleemudder, the accused party. **Doc B** was also produced, which was a contract of sale between

the witness and the accused, where the said vehicle was purchased by the accused at a monthly payment of Rs25,000 for 12 months. The accused bought the vehicle from the showroom of the company at an agreed price of Rs625,000. A part payment of Rs300,000 was initially made by the accused. All payments were effected in cash and a corresponding receipt was made by the witness. The latter did not keep the said receipts and could not provide same during the enquiry.

3. Witness no.1, CI Jokhoo, was one of the enquiring officers in the case. He produced **Doc C**, a disclosure order. He further produced **Docs D** and **D1**. The first is a covering letter from the Mauritius Commercial Bank (MCB), attached with the bank statements as per the disclosure order. The witness further stated that the vehicle of make Toyota Dyna was subject to an attachment order. Furthermore, the witness stated that the accused was interviewed at Beau Bassin prison on 11.10.17 for a defence statement. Questions were put to him and he was informed of the nature of the case and the broad circumstances of the potential offences against him. He elected to remain mute and refused to sign the statement. At a subsequent sitting, the witness identified the said defence statement (Doc F) as produced by witness no.2.

4. Under cross-examination, the witness stated that the impugned vehicle was in the custody of the accused, but he could not dispose of same due to the restraining order imposed. For the period from December 2011 to December 2012, the accused had been effecting monthly payments for the said vehicle. Docs D and E were shown to the witness. He produced **Doc G** which showed that the accused had a classified trade licence from the City Council of Port-Louis. The nature of business was distributor of general merchandise. During re-examination, the witness clarified that, from the documents shown, no transactions were accounted for, for various periods from January 2009 to July 2012.

5. Witness no.4, Mr Navindranath Mokhool, team leader at the Mauritius Revenue Authority (MRA), stated that the MRA provided documents to the then ICAC, following a request. He produced **Docs E** and **E1**. The first document showed that the accused was a registered tax payer and was not under investigation by the MRA at the time, namely, on 25.11.16. The second was the tax return of the accused for the year 2012 to 2013. It showed a yearly net income of Rs490,000.

6. Witness no.2, SI Sonahee, produced as **Doc F**, the edited statement where the accused was cautioned and informed of the circumstances of the case and the nature of offence he might have committed. The latter refused to sign same. Under cross-examination, he confirmed that the statement was recorded on 11.10.17 and the impugned acquisition of vehicle made by the accused is dated during the years 2011 and 2012.

7. Witness no.3, PS Conhyedoss of ADSU, stated that on 27.03.17, he executed a search warrant together with other police officers, at a garage in St-Croix, Port-Louis, belonging to the accused. The search was effected in the accused's presence. Officers found in a cupboard; a plastic bag containing a large amount of money. The accused was in possession of two car keys. The search party proceeded to one vehicle with registration number 5987ZT04. It was parked by the side of the garage. Found concealed under the front passenger seat, drug parcels, Clonazepam solution and a large sum of money amounting to Rs180,000 approximately. The accused admitted those were found in his car, and he was arrested and provisionally charged.

8. Under cross-examination, the witness stated that the accused did not admit anything to him personally, but to other officers on the spot. He did not mention in his out-of-court statement that the accused were in possession of the car keys. Nothing incriminating was found in the second car and same was returned the accused's nephew. The drug case against the accused has been lodged and not completed. The premises searched was occupied by the accused and his family members. During re-examination, the witness stated that he did not mention all the details in the statement recorded at the ICAC, but those were mentioned in the statements given at the ADSU. He produced **Doc H**, an extract of the ADSU-HQ occurrence book dated 27.03.17. The Doc H was subsequently identified by the witness no.6.

9. Witness no.7, Mr Choytun, Court Manager at the Financial Crimes Division of the Intermediate Court produced; Court file of the Intermediate Court, Criminal Division with CN162/06 and title Police v Jean Serge Alleemudder as **Doc J**, the enclosed Information as **Doc J1** and the corresponding Judgment as **Doc J2**.

10. Witness no.8, Inspector Murden, was deputed by the Commissioner of Police to give evidence with regards to an arrest effected on 16.11.21. The accused was arrested and brought to Port-Louis District Court where a provisional

charge of drug dealing was lodged against the accused. The witness was the enquiring officer for the drug case. Under cross-examination, the witness stated that there was no judgment yet in the drug case.

CASE FOR THE DEFENCE

11. The defence put questions to the prosecutor assisting counsel for the prosecution. He stated that the current Information was lodged in 2021. The consent of the Director of Public Prosecutions was obtained before the Information was lodged.

ASSESSMENT OF THE COURT

12. The Information is laid under section 3(1)(a) of FIAMLA, for the offence of Money Laundering. The transaction allegedly involved property, particularised as the acquisition of a lorry bearing registration 104ZX04, make Toyota Dyna for the aggregate sum of Rs625,000.

13. It was not disputed by the defence that the accused purchased the said vehicle of make Toyota Dyna with the above registration number on 10.12.11. The vehicle was purchased from FB Ghoora Co. Ltd, a company dealing in the purchase and sale of motor vehicles. Witness no.5, representative of the said company, deposed in court to that effect and stated that the accused made an initial part-payment of Rs300,000, and a monthly payment of Rs25,000 for the following 12 months. The final agreed price was Rs625,000. All payments were made in cash. It is noted that the contract of sale at Doc B shows an initial payment of Rs213,740, exclusive of road charges, registration fees and VAT.

The law

14. **Section 3(1)(a)** of **FIAMLA**:

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,

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.

15. The elements to be proved by the prosecution are adaptively reproduced from **Audit v State 2016 SCJ 282:**
(a) engaged in a transaction that involves property;
(b) in whole or in part directly or indirectly represents the proceed of any crime;
(c) has reasonable grounds for suspecting;
(d) the property is derived or realised;
(e) in whole or in part, directly or indirectly from any crime.

16. The first element, is thus considered proved from the evidence adduced at the trial, as seen at paragraph 13 above.

17. The element of whether the property was *in whole or in part directly or indirectly represents the proceed of any crime*, was reviewed by the English Court of Appeal in **R v Anwoir & Ors [2009] 1 WLR 980**. The case was cited in the Privy Council decision of **Bholah v State 2010 PRV 59**, on the issue of; the lack of requirement to identify the crime and the nuanced requirement to particularise the criminal conduct.

18. In discussing the divergent authorities on whether; the prosecution must prove the link between the impugned property and a type of criminal conduct, or that it would be sufficient to show a visible lack of financial support leading to the conclusion that there could be no other reasonable explanation of the presence of the property than it was derived from a crime; the court recognised that both instances could exist. The following extract from **Anwoir (supra)** was to that effect:

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.

19. In further supporting its decision, the court endorsed the pronouncement in **R**

v El-Kurd [2001] Crim LR 234:
"you will note from the definition of criminal conduct that you do not have to be satisfied what conduct it was that produced a financial benefit for the other person. While it could be the proceeds of theft or fraud it could equally be the proceeds of unlawful gambling, prostitution, revenue offences or any other kind of dishonesty. The useful test, you may think, is to ask yourselves whether the financial benefit was honestly derived from legitimate business or commercial activity."

20. The earning capacity of the accused was enquired into. Doc C is the disclosure order granted by the Supreme Court. The investigation covered all domestic banks, non-bank deposit taking institutions and foreign exchange dealers. Doc D was the bank account produced from the Mauritius Commercial Bank, for the period starting 01.12.09 and ending 18.07.12. It was a dormant account where the balance brought forward was Rs89.03, and it has remained unchanged until the account was closed in 2012. It is clear that the accused did not go through the financial system in its broadest sense, to save his earnings.

21. Doc G shows that the accused was issued a classified trade licence by the City Council of Port-Louis, with the nature of business as distributor of general merchandise. The licence was issued on 06.01.12 and was valid until 30.06.16. There is no other evidence on record, regarding the accused's lawful source of income or employment history.

22. Docs E and E1 are the tax return of the accused party for the year starting 01.01.12 and ending 31.12.12. The accused filled in the trade and business section. The turnover/sales were declared as Rs642,000 and the net income was Rs490,000. The accused was required to pay taxes to the amount of Rs1500. If the legal requirement of declaration of income at the Mauritius Revenue Authority is to retain any of its purpose and significance, the tax return is the yardstick to be relied upon in assessing the earning capacity of any individual. The court cannot consider the possibility of undeclared income, even more so when such was not made an issue by the defence. The accused had been making monthly payments of Rs25,000 for the vehicle in question during the year 2012. He had made an initial payment of Rs300,000. On the face of the documentary evidence, the acquisition of the said vehicle was not commensurate with the earning capacity of the accused.

23. The accused elected not to put up any out-of-court defence statement at enquiry stage. The accused also chose not to give evidence under oath at trial, and the defence did not adduce evidence from witnesses for the defence case. The right of silence of an accused party is enshrined in the Constitution and the legal burden of proof rests on the prosecution. However, the evidential burden shifts on the defence whenever the prosecution establishes a prima facie case. The case of **Andoo v The Queen 1989 SCJ 257** was endorsed in the more recent decision of the Supreme Court in **Boyjoonauth v State 2017 SCJ 378** as follows:

In those circumstances, applying the well-known principle in the case of M. Andoo v The Queen [1989 SCJ 257]to the effect that the right to silence is exercised at the risks and perils of the accused once a strong prima facie case has been established by the prosecution against him, the learned Magistrate was entitled to come to the conclusion that the failure of the defence to adduce some evidence in order to buttress and add supporting strength to the unsworn version of the appellant meant that the sworn evidence adduced by the prosecution carried more weight.

The prosecution's case on the issue of commensuration of the accused's earning capacity and the acquisition of the said vehicle at the material time, has remained largely unrebutted.

24. In the light of a ruling delivered on 18.09.24, the previous conviction of the accused dated 29.03.06 for the offence of drug dealing was adduced as evidence. The offence was committed as per the Information (Doc J1) on 15.10.05. Furthermore, the accused has been subject to an arrest on 27.03.17 for an offence involving dangerous drugs, vide evidence of witness no.3 at paragraphs 7 and 8 above. Doc H, extract of occurrence book, detailed the search at the premises of the accused and, the drugs and money seized from the accused's properties. The main case has been lodged in court, but is yet to be completed. I am alive to the fact that there is no pronouncement by a court on the evidence adduced by the prosecution yet.

25. The fact that an arrest or conviction post-dates the offence of Money Laundering, was discussed in the Privy Council case of **Ferrell v The Queen 2010 UKPC 20**. The arrest for a drug dealing offence of the accused was subsequent to the commission of the money laundering offence. The joinder of counts of money laundering and the drug dealing offence was approved by the

court. It was evidence of the accused being a drug dealer, and the tainted money was considered as drug money.

26. The accused party has a previous conviction for drug dealing and a subsequent arrest for drug related offences, from which a main case has been lodged. The impugned acquisition of the vehicle in question stands in the middle of the period; from the previous conviction to the arrest. It is evidence that the accused had been involved in drug related activities over a period of time. When such is coupled with the non-commensuration of the accused's earning capacity, there is no reasonable doubt that the money used for the payment of the vehicle in question, emanates from a drug related crime.

27. The prosecution had to prove that the accused had *reasonable grounds for suspecting that the sum of Rs625,000 was derived, in whole or in part, directly or indirectly from a crime*. The mens rea of the offence can only be inferred from the surrounding circumstances of the case, as held by the Supreme Court in **Antoine v State 2009 SCJ 328**: the trial court has to *analyse the whole of the evidence on record in order to determine whether or not it can be inferred, from the facts and circumstances of the case, that the accused reasonably suspected that the proceeds were proceeds of crime.* The test seems to be an objective one, vide **Manraj and Others v ICAC 2003 SCJ 75**.

28. Further clarification was given to the concept of reasonable suspicion by the Court of Appeal of England and Wales, in the case of **R v Da Silva [2006] EWCA Crim 1654**:

16.It seems to us that the essential element in the word 'suspect' and its affiliates, in this context is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.
17.The only possible qualification to this conclusion, is whether, in an appropriate case, a jury should also be directed that the suspicion must be of a settled nature; a case might, for example, arise in which a defendant did entertain a suspicion in the above sense but, on further thought, honestly dismissed it from his or her mind as being unworthy or as contrary to such evidence as existed or as being outweighed by other considerations.

29. Having made the finding that the money used for the acquisition of the vehicle in question was proceeds of a crime, it is a natural correlation that the accused was aware that the said money was derived from a crime.

30. Furthermore, the fact that the accused had not been using the banking or other financial system to collect his earnings, in itself, does not carry any legal impediment. On the other hand, it shows the accused's willingness to stay outside the recognised avenues designed for financial storage and safety. In isolation, it would be a stretch to imply the intention of the accused to avoid monitoring of his source of funds. However, when viewed together with all the circumstances of the case, I hold that the accused had suspiciously left undeclared his earnings and stayed outside the system of checks offered by financial institutions.

CONCLUSION

31. For these reasons, I hold that the prosecution has proved its case beyond reasonable doubt and I consequently find the accused guilty as charged.

P K Rangasamy
Magistrate of the Intermediate Court
12.02.26