

**Police v Navinchandra Ramgoolam -Ruling**

**2026 INT 141**

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

**FR/L34/2022**  
**(CN 977/2017)**

**In the matter of:**

**Police**

**V**

**Navinchandra RAMGOOLAM**

**RULING**

1. The accused stands charged, on an amended information, with wilfully and unlawfully accepting a payment in cash in excess of an amount equivalent to 500,000 rupees in foreign currency (Counts 1 to 17) and accepting a payment in cash in excess of 500,000 rupees (Counts 18 to 23) in breach of **Sections 5 and 7 of the Financial Intelligence and Anti-Money Laundering Act 2002** (hereinafter referred to as the 'FIAMLA').
2. The accused is represented by Mr. N. Ramburn, SC, Mr. S. Oozeer SC, Miss Y. Moonshiram SC, Mr. H. Oozeer, Miss S. Ramburn and Mr. G. Unrodee. The Case for the prosecution is being conducted by Mr. J. Muneesamy, Assistant DPP, Mrs. Paupoo-Nallee, Senior State Counsel, and Mr. Y. Bujun, State Counsel.
3. The defence is now seeking for a stay of proceedings on the ground of an abuse of process of the Court and the criminal justice system. The motion of the defence initially contained various limbs but they ultimately relied mainly on the following limbs in support of their motion:

*“3.1. These proceedings were instituted in pursuance of a political vendetta. The failure of the police to investigate whether the initiation of these proceedings was or might have been politically motivated is yet further evidence that this is politically motivated investigation.*

*3.2. The failure of the officer to retain any records with respect to his contact with the informant who provided the so called reliable and credible information prohibits the Court from conducting an ex parte PII hearing and*

*consequently prohibits the Defendant from having a fair voir dire on the issue as to whether this investigation was politically motivated. There cannot now be a fair trial.*

*3.3. As a result of the inordinate delay in these proceedings and the number of different attacks made against the Defendant in the form of legal proceedings over eleven years, the Defendant has suffered prejudice and oppression.”*

4. The contention by the defence that there was a political vendetta basically came from the manner in which the accused was treated from the time of his arrest, the abusive prosecutions and the numerous investigations not having been initiated pursuant to the exercise of independent and objective professional judgment but rather through political pressure, referring to **Brown-Antoine v Sharma [2006] UKPC 57**<sup>1</sup>.
5. The prosecution’s objection relates to the fact that the motion is entirely misconceived, essentially because of the well-established judicial and prosecutorial mechanisms existing to safeguard citizens from arbitrary prosecution including those based on political vendetta, that there is no concrete evidence on record of an abuse of process and that the integrity of the criminal justice system will be harmed should these proceedings be stayed, given the nature and gravity of the offences.
6. It is their submission that since all the evidence have not been heard, the question of whether the defendant has a realistic prospect of a fair trial is best to be determined after some or all evidence has been heard – **R v F [2011] EWCA Crim 726** and **The Director of Public Prosecutions v Chetty V S (2023) SCJ 245**.
7. A Statement of Facts (**Document A1**) was produced by the defence, mostly agreed by the prosecution, except for four paragraphs. Those paragraphs relate to (i) whether at the time of the accused’s arrest in 2015, the Central Criminal Investigation Department (CCID) headed by the Assistant Commissioner of Police, H. Jangi, reported to the Commissioner of Police, who in turn reported to the Prime Minister<sup>2</sup>; (ii) Mr Gooljaury’s version that he knew Mr Bhadain very well<sup>3</sup>; (iii) the Dufry incident and its reporting by the US Department of State’ Mauritius 2015 Human Rights Report<sup>4</sup>.
8. Equally, three statements recorded from the accused are contained in the **Bundle of Supporting Documents (Document B)**<sup>5</sup> and were produced as part of the Agreed Statement of Facts.

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<sup>1</sup> Paragraph 9 of Defence written Submissions;

<sup>2</sup> Paragraph 14 of **Document B**;

<sup>3</sup> Paragraph 25 of **Document B**;

<sup>4</sup> Paragraphs 47 and 48 of **Document B**;

<sup>5</sup> Pages 214 to 236;

9. Inspector Ramdoo (Witness 7), one of the enquiry officers, was called for the purpose of the present argument. Following the police enquiry, it was found that the accused admitted being in possession of the money. His version is that the money came from contributions for his political party, his own funds and per diem allowances. It is the case for the prosecution that none of the explanations provided by the accused justified him having accepted the monies in cash, i.e., above the legal requirement of 500,000 rupees.
10. Following the December 2014 National Assembly Elections which saw the defeat of the Labour Party (PTR)<sup>6</sup>, led by the accused, it was the opposing MSM party<sup>7</sup>, under the leadership of late Sir Anerood Jugnauth which won.
11. When on the 7<sup>th</sup> of February 2015, the accused's house was searched, a substantial amount of money was secured from his safe. What unfolded from then has been largely exposed and became public scrutiny and widely known as the "*coffres-forts*" case, leading ultimately to the lodging of the present offences. It can be seen, from the information as particularised, that we are concerned with much less that the Rs 200 million secured from the accused's place as mentioned in the provisional case CN 210/2015<sup>8</sup>.
12. The present case concerns only:
  - (i) 17 plastic packs each containing 1000 notes of USD 100 (totaling 1,700,000 USD); and
  - (ii) 6 bundles of Rs 1,000,000<sup>9</sup> (Rs 6,000,000).
13. Both the prosecution and the defence addressed us on the issues raised. Oral and written submissions were extensively and comprehensively made and we have taken into account respective commendable submissions and bundle of authorities. The principles on the various issues are not in dispute and we do not intend to go lengthily on the law, which are settled, but will instead deal with the following specific matters separately.

#### **A. Delay**

14. In the determination of his criminal charge, an accused party must be tried within a reasonable time. **Section 10 (1) of our Constitution** relating to a trial within a reasonable time echoed the same right enshrined in **article 5(3)**<sup>10</sup>, but more particularly

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<sup>6</sup> In alliance with another party;

<sup>7</sup> In alliance with other parties, known as L'Alliance Lepep;

<sup>8</sup> Page 10 – **Document A1**;

<sup>9</sup> See Affidavit of Inspector Ramdoo- **Document B**;

<sup>10</sup> Reasonable detention provision;

**article 6(1)<sup>11</sup> of the European Convention on Human Rights (the ECHR).** Over the years, there has been a strand of cases emphasizing the need for justice to be delivered within a time frame that preserves its effectiveness and credibility.

15. When considering whether there has been a breach of this fundamental right, the first aspect to take into account is the period of time which has elapsed: as per Lord Bingham in **Dyer v Watson [2002] UKPC D1 at paras 52-5**. If that period gives ground for real concern, it is almost unnecessary to go further, “*since the convention is directed not to departures from the ideal but to infringements of basic human rights*”. He opined that the threshold of proving such a breach is a high one, not easily crossed. But if that threshold is passed, then the Court should consider the detailed facts and circumstances of the case and thereafter look into whether any excessive lapse of time can be explained and justified. The time frame starts when a person is officially notified of the likelihood of criminal proceedings against him. The delay must be assessed from the moment the enquiry commenced, not merely from arrest or prosecution<sup>12</sup>, and includes pretrial, trial and post-conviction stages.

16. Three areas call for further inquiry. The Court should look at the complexity of the case. A more complex case with a large number of witnesses, a heavier burden of documentation and requiring a longer time for adequate preparation for trial and appeal are relevant considerations. The conduct of the accused is another aspect which should be taken into account. An accused party cannot complain of delay where he is the one creating it, by raising superfluous applications, exploiting procedural technicalities, changing legal advisers, not attending Court. And then there is the manner in which the case has been dealt with by the administrative and judicial authorities. The reasonable time requirement should be honored. Whilst bearing in mind any practical realities of the Court system, unacceptable delays cannot be laid on aspects like general want of prosecutors or Judges or Courthouses or even on chronic under-funding of the legal system.

17. In **Boolell v The State [2006] UKPC 46<sup>13</sup>**, the Board held the following propositions be regarded as correct in the law of Mauritius:

*“(i) If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of section 10(1) of the Constitution, whether or not the defendant has been prejudiced by the delay.*

*(ii) An appropriate remedy should be afforded for such breach, but the hearing should not be stayed or a conviction quashed on account of delay alone, unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all.”*

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<sup>11</sup> Reasonable time requirement;

<sup>12</sup> **Dahall v The state (1993) SCJ 42 and The State v Bissessur (2001) SCJ 50;**

<sup>13</sup> Paragraph 32;

18. It is the submission of the defence that the procedural history of the present case, spanning over 11 years, reveals a pattern of delay attributable to the prosecution, the Court, the defence raising numerous points of law and administrative processes, cumulatively rendering a fair trial impossible. Given the effect of the protracted proceedings on the accused's life and liberty, the delays fall outside what the Constitution contemplates as "*reasonable time*" and prejudice is presumed after such an excessive lapse of time. But there is more. Because of the delay, the defence further argues that police officers have lost their notebooks containing contemporaneous notes of the investigation, and specifically relating to the informant. This has resulted in the inability of the defence to test the credibility of the police officers, to challenge inconsistencies, to verify investigative steps and to reconstruct the factual matrix in respect of one of the most important issues in the case: might the informant have given information in pursuance of the new government's political agenda? The outcome is that it would be unfair to try the accused at all.
19. The prosecution highlighted that the non-retention of the information relating to the informant or loss of the notebook does not affect the defence. Since the case is based on real evidence (securing of monies and documentary evidence), it is less likely to deteriorate with the passage of time alone. With regard to lodging of the case, there was no excessive delay, in view of investigative measures that had to be taken. Once the case started, the bulk of delay is explained by the fact that the Court had to rule on 6 sequential legal objections made by the defence, plus a period of 3 years where appellate proceedings were pending. As such the delay cannot be said to be 'unconscionable' on behalf of the prosecution.
20. For the purpose of the pre-trial delay, the Court has taken into consideration the affidavit of Inspector Ramdoo (**Document C**).
21. A summary form of the chronology goes as follows:
  - (i) The accused was arrested on the 6<sup>th</sup> of February 2015 and subsequently brought to Court;
  - (ii) Following the completion of the enquiry and advice from the Director of Public Prosecutions, the information was lodged on the 20<sup>th</sup> of October 2017 before the Criminal Division of the Intermediate Court. The accused pleaded not guilty to all counts in November 2017. The trial date was set for May 2018;
  - (iii) Two points were raised and argued, the second ruling was delivered in November 2019, dismissing the case;

- (iv) The Director of Public Prosecutions appealed and the Supreme Court delivered its judgment on the 30<sup>th</sup> of August 2022 allowing the appeal and ordering that the case be heard on the merits before a differently constituted Bench;
- (v) The case was transferred from the Criminal Division to the Financial Crimes Division of the Intermediate Court and fixed Pro Forma in September 2022. The Supreme Court had stayed the proceedings pending an application for conditional leave and special leave to the Judicial Committee of the Privy Council. In July 2023, the Court was informed that the application for special leave was not granted and set the case for September 2023; and
- (vi) From September 2023 to now, the Court has heard 4 arguments and delivered 3 rulings.

22. It can be gleaned from the above that delay there has been, but once the case has been lodged in 2017, the trial process has been ongoing. The defence is on its 6<sup>th</sup> motion and the case has not yet started on the merits. The police enquiry took 2 years, which is not excessive, given the nature of investigation that required various Judges' Orders, requests from foreign jurisdictions and source of the monies secured had to be analysed. Also, 40 witnesses were interviewed and 19 officers gave their statements in the course of the investigation. The bulk of documentation scrutinised during the investigation spanned over 13 volumes constituting of used and unused materials.<sup>14</sup>
23. The present case has its complication when taking into account the nature of the investigation and various issues in law raised by the defence and upon which the Court had to adjudicate. The number of witnesses on the list of witnesses, including an additional list of witnesses amounts to 38. Both parties exhausted all avenues available to them (the prosecution by appealing to the Supreme Court and the defence by appealing to the Judicial Committee of the Privy Council), all within the process of the law, the delay cannot be laid solely at the door of one party.
24. But the fact remains that 11 years have elapsed since the start of the enquiry. As stated in **Bell v Director of Public Prosecutions [1985] AC 937**, the longer the delay in any particular case the less likely it is that the accused can still be afforded a fair trial. We are however of the view that this, in itself, does not warrant a stay of the present proceedings on the ground that the accused cannot benefit from a fair trial. Bearing in mind the facts and circumstances of the case and that the delay can be explained and justified, we do not believe that the delay is of such an order as to make it unfair for the proceedings to continue.

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<sup>14</sup> Paragraph 11 of **Document C**;

25. The right to be tried within a reasonable time is not a right not to be tried after undue delay, inevitably leading to a stay or discontinuance of proceedings<sup>15</sup>. The breach, when it occurs, can still be cured by expedition of proceedings or reduction in sentence following a conviction. We are here in the former situation where the Court has already placed on record the need to complete the trial expeditiously, including hearing the case *de die in diem*, amongst other measures.
26. The Court therefore concludes that a stay of proceedings on the ground of delay is not warranted.

### **B. Section 188C of the Courts Act/ Dufry Affidavit**

27. As part of documents produced, the defence has included an affidavit dated the 26<sup>th</sup> of February 2015 (**pages 334-339 of the Bundle of Supporting Documents – Document B**) sworn by one Mr. Simo Carevic and one Mr. Thomas Galet (herein referred to as the “Dufry Affidavit”), following an incident involving members of the MSM government which took place on the 16<sup>th</sup> February 2015. The defence are relying on this affidavit to prove the truth of what is stated therein in absence of the makers of the affidavit under **Section 188C of the Courts Act**. The prosecution is objecting to the admissibility of the document proving the truth of the contents, but does not challenge the fact that such an affidavit was made.
28. It is the contention of the defence that the criteria in **Section 188C (2) (c) of the Courts Act** has been satisfied since it has been established that the persons who made the affidavit are outside Mauritius and it is not reasonably practicable to secure their attendance. To that effect, the Defence called Mr. Salman Sobha, a Barrister at law, who deposed to the effect that he tried to contact Mr. Simo Carevic and Mr. Thomas Galet. He proceeded by conducting a search on the website RocketReachIO, obtained multiple email addresses for each of them and proceeded to contact each one of them. In his emails, he explained the nature of the present proceedings and invited them to confirm whether they will be willing to attend Court and give evidence. There was no substantive reply from Mr. Thomas Galet, but only a “Read” receipt. Mr. Sobha was able to speak to a colleague of Mr. Simo Carevic through phone, but with no further interaction.
29. In that context, the defence submitted that given the efforts made to contact each deponent and their lack of meaningful response, it would not be reasonably practicable to secure their attendance. Against this, the Dufry Affidavit contains crucial evidence in support of the defence case that the present proceedings are politically motivated as it connects Mr. Gooljaury with three then senior ministers in the MSM government who were apparently threatening the deponents by preventing them from leaving the country unless they provide evidence of bribery against the accused.

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<sup>15</sup> The aphorism of Hardie Boys J in the New Zealand case of **Martin v Tauranga District Court [1995] 2 NZLR 419 at 432** referred in **Boolell (supra)**;

30. The defence is therefore asking to be “permitted to rely on the Affidavit as evidence in these proceedings”.
31. We do not agree. The defence is in fact seeking to rely on the truth of whatever has been stated in that affidavit as an exception to the hearsay rule provided for in **Section 188C of the Courts Act**, which admissibility has not been challenged to the effect that an affidavit was made and which already forms part of **Document B** on record.
32. For **Section 188C of the Courts Act** to become operational, the first stage to be satisfied is that of leave.
33. **Section 188C of the Courts Act** reads as follows:

*“(1) In any criminal proceedings, a statement made out of Court shall be admissible as evidence, with leave of the Court, of any matter stated when –*

*(a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;*

*(b) the person who made the statement is identified to the Court’s satisfaction; and*

*(c) one of the 5 conditions specified in subsection (2) is satisfied.*

*(2) The conditions referred to in subsection (1)(c) are that the person who made the statement –*

*(a) is dead;*

*(b) is unfit to be a witness because of his bodily or mental condition;*

*(c) is outside Mauritius and it is not reasonably practicable to secure his attendance;*

*(d) cannot be found although such steps as is reasonably practicable to take to find him have been undertaken; or*

*(e) through fear, does not give or does not continue to give oral evidence in the proceedings, either at all or in connection with the subject matter of the statement.*

*(3) Where a statement is admitted in evidence under subsection (1) any evidence which, if that person had been called as a witness, could have been admissible for the purpose of impeaching or supporting his credibility, shall be admissible for that purpose.*

*(4) In assessing the weight, if any, to be attached to a statement admitted in evidence under subsection (1), the Court shall have regard*

*to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.” (underlining is ours)*

34. **Section 188C of the Courts Act** comes as an exception to the hearsay rule. Initially provided for proceedings under the **Piracy and Maritime Violence Act** and for a financial crime offence, its scope was later extended to all criminal proceedings. But this is no blanket authority given to produce the statement of any witness who cannot attend Court. The safeguards are provided in its subsection (3) and (4) pertaining to admissibility of evidence in respect of the credibility of the witness and the weight to be attached to such statement admitted in evidence before drawing any inference as its accuracy.

35. The principles and safeguards to be applied when a witness does not attend a trial were clarified in the case of **Simon Price v The United Kingdom [2017] ECHRR 17** at page 24, referring to **Al-Khawaja and Tahery v The United Kingdom 54 EHRR 23** in the following (we are referring to what is relevant here):

*“i. The Court should first examine the preliminary question of whether there was a good reason for admitting the evidence of an absent witness, keeping in mind that witnesses should as a general rule give evidence during the trial and that all reasonable efforts should be made to secure their attendance.*

*ii. Typical reasons for non-attendance are, as in the case of **Al-Khawaja and Tahery** (cited above), the death of the witness or the fear of retaliation. There are, however, other legitimate reasons why a witness may not attend trial.*

*iii. When a witness has not been examined at any prior stage of the proceedings, allowing the admission of a witness statement in lieu of live evidence at trial must be a measure of last resort.*

*iv. The admission as evidence of statements of absent witnesses results in a potential disadvantage for the defendant, who, in principle, in a criminal trial should have an effective opportunity to challenge the evidence against him. In particular, he should be able to test the truthfulness and reliability of the evidence given by the witnesses, by having them orally examined in his presence, either at the time the witness was making the statement or at some later stage of the proceedings.*

*...”*

36. When deciding whether, it is or not, reasonably practicable to secure the attendance of a witness, the Court should first consider the normal steps that have been taken to arrange for the attendance of that witness: **R v Castillo and Ors [1996] 1 Cr App Rep 438; R v Yu and anor [2006] EWCA Crim 349.**

37. Although it remains a very important factor weighing in the balance when assessing the overall fairness, the absence of good reason for the non-attendance of a witness could not on its own, be conclusive of the lack of fairness in a trial: **Schatschaschwili v. Germany [GC], no. 9154/10, 15 December 2015.**
38. The efforts put in by Mr. Salman Sobha in trying to contact Mr. Simo Carevic and Mr. Thomas Galet are not what can be qualified as reasonable/normal steps. He chose to use an open-source platform to get their emails and phone numbers. He stopped there. He knew that they had a local attorney whom he could have contacted. He could also have reached out to a representative of Dufry. In our minds, there are still other avenues which could have been exhausted before concluding that all normal steps were taken.
39. We therefore find that there is no sufficient “*good reason*” given that the defence has not shown that it is “*not reasonably practicable to secure their attendance*”. As such, the defence has not reached the threshold for us to determine positively on the preliminary question. **Section 188C of the Courts Act** cannot therefore become operative as an exception to the hearsay rule in respect of the Dufry Affidavit. As stated earlier, the affidavit sworn by Mr. Simo Carevic and Mr. Thomas Galet is already on record. Since the prosecution has objected that we go to the truth of what has been stated therein, we shall only limit our consideration to the effect that such an affidavit was made and analyse its implication accordingly.

### **C. Abuse of Process**

40. The general and inherent power of a Court to stay proceedings in order to protect its process from being abused and to ensure fair treatment of the accused is well established. A two-limb test was recognised in **R v Horseferry Road Magistrates’ Court, Ex parte Bennett [1994] 1 A.C. 42** in the following:
- (i) where it will be impossible to give the accused a fair trial (First limb).
  - (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case (Second Limb).
41. For the purpose of assessing whether the Court should stay the proceedings, the second limb becomes important.
42. Dr Jonathan Rogers, Associate Professor, Co-Deputy Director of Cambridge Centre for Criminal Justice, in his article published in the Criminal Law Review of UK titled ‘**Reclaiming the Essence of ‘second limb’ Abuse of Process’ [2022] Crim.L.R. 659-678** (the “Article”) explained, through a review of relevant authorities, how the second limb of abuse of process developed:

*“The formula for “second limb” abuse in **Exp Bennett** applies to a range of cases. The court’s “sense of justice and propriety” might be sufficiently “offended” by such diverse activities as breaches of promises not to prosecute, wrongful entrapment, “disguised extradition” or a wider “abuse of power by the executive”. But in all cases, the ultimate test is one of offence to that same “sense of justice and propriety”, with no category of failure or misconduct leading to an automatic stay.*

...

*But by a 4-1 majority their Lordships thought that Bennett’s case (if the facts were made out) could properly be stayed. Lord Griffiths said:*

*“Your Lordships are now invited to extend the concept of abuse of process a stage further... My Lords, I have no doubt that the judiciary should accept this responsibility in the field of criminal law. The great growth of administrative law during the latter half of this century has occurred because of the recognition by the judiciary and Parliament alike that it is the function of the High Court to ensure that executive action is exercised responsibly and as Parliament intended. So also should it be in the field of criminal law and if it comes to the attention of the court that there has been a serious abuse of power it should, in my view, express its disapproval by refusing to act upon it.” (underlining is ours)*

43. The Article (supra) also explains the caution to be exercised when this second limb of abuse of process is being contemplated:

*“A judge must keep out of the arena. He should not have or appear to have any responsibility for the institution of a prosecution. The functions of prosecutors and of judges must not be blurred. If the judge has a power to decline a case because he does not think it should be brought, then it may soon be thought that the cases he allows to proceed are cases brought with his consent or approval.”<sup>16</sup>*

*This dictum encourages us to consider the proper role of the judge when staying proceedings. It is only too easy to agree or disagree with decisions to prosecute and to forget to ask why the trial judge’s views should be preferred to that of the prosecutor. Thinking in terms of breaches of rights plays a crucial role in explaining from where the judge derives his authority to stay cases; for he or she is doing much more than disagreeing with the decision to prosecute if he or she can identify a breach of the defendant’s rights to boot. But the dictum goes further, for it also encourages judicial restraint; for even the perception that he or she might*

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<sup>16</sup> Citing Viscount Dilhorne in *Humphrys* case;

*be staying the case mainly on grounds of personal disapproval, and that consequently a potentially guilty defendant escapes trial, is damaging. These institutional restraints of authority and restraint, it would seem, were instinctively understood in the late twentieth century.”* (underlining is ours)

44. As to the test to be applied, Dr Jonathan Rogers explains in the Article (supra) that:

*“But indeed, a convincing rationale for permitting courts the jurisdiction to stay proceedings on account of police misconduct remains elusive. The leading explanation, for the courts at any rate, is the integrity principle which holds that courts have a role in upholding the integrity of the criminal process, including staying proceedings where this would be the effect. This was the reasoning preferred by Lord Steyn in Latif:*

*“The speeches in Ex parte Bennett conclusively establish that proceedings may be stayed in the exercise of the judge's discretion not only where a fair trial is impossible but also where it would be contrary to the public interest in the integrity of the criminal justice system that a trial should take place....it is possible to say that in a case such as the present the judge must weigh in the balance the public interest in ensuring that those that are charged with grave crimes should be tried and the competing public interest in not conveying the impression that the court will adopt the approach that the end justifies any means.”* (emphasis is ours)

45. Interestingly, following the Article (supra), the Court of Appeal (Criminal Division) in **R v BKR [2023] EWCA Crim 903** made a review of relevant authorities on the second limb abuse of process. The Court cannot but quote extensively an extract from that judgment which succinctly explains this second limb abuse of process:

***“Abuse of Process***

*34. The power of a criminal court to stay a prosecution as an abuse of the process of the court is an important one, but it is not unlimited. Its existence and scope was the subject of disagreement between the judges in Humphrys, but that was settled in Ex p. Bennett subsequently. It has since been developed and refined by the Privy Council and the Supreme Court. Ex p. Bennett explains that there are two species of abuse of process (or “limbs”) which justify a court ordering a stay of criminal proceedings. The first is that a fair trial is not possible. There is little that needs to be said about that. If the court concludes that the trial under consideration will not be fair, then it will prevent it from happening. The second limb therefore does not arise unless the defendant, charged with a criminal offence, will receive a fair trial. It seems clear that something out of the*

ordinary must have occurred before a criminal court may refuse to try a defendant charged with a criminal offence when that trial will be fair.

35. In *R v. Norman (Robert)* [2016] EWCA Crim 1564 Lord Thomas of Cwmgiedd, giving the judgment of the court, summarised the position in this way: -

22 Within the second category fall cases where the police or prosecuting authorities have been engaged in misconduct in bringing the accused before the court for trial. In such cases the court is concerned to protect the integrity of the criminal justice system. A stay will be granted where the court concludes that in all the circumstances a trial will offend the court's sense of propriety and justice (per Lord Lowry in *R v Horseferry Road Magistrates' Court, Ex p Bennett* [1994] 1 AC 42, 74G) or will undermine confidence in the criminal justice system and bring it into disrepute (per Lord Steyn in *R v Latif* [1996] 1 WLR 104, 112F).

23 This involves a two-stage approach. First it must be determined whether and in what respects the prosecutorial authorities have been guilty of misconduct. Secondly it must be determined whether such misconduct justifies staying the proceedings as an abuse. This second stage requires an evaluation which weighs in the balance the public interest in ensuring that those charged with crimes should be tried against the competing public interest in maintaining confidence in the criminal justice system and not giving the impression that the end will always be treated as justifying any means. How the discretion will be exercised will depend upon the particular circumstances of each case, including such factors as the seriousness of the violation of the accused's rights; whether the police have acted in bad faith or maliciously; whether the misconduct was committed in circumstances of urgency, emergency or necessity; the availability of a sanction against the person(s) responsible for the misconduct; and the seriousness of the offence with which the accused is charged. These are merely examples of factors which may be relevant. Each case is fact specific. These principles were reaffirmed by the Privy Council in *Warren v Attorney General for Jersey* [2011] UKPC 10; [2012] 1 AC 22, in which the Board upheld a refusal to stay a prosecution for serious drugs offences where the police had acted unlawfully in foreign jurisdictions and deliberately lied to the foreign authorities, the Attorney General and Chief of Police, in order to obtain incriminating recordings of conversations in a car without which no prosecution would have been possible.

36. It will be noted that four decisions of the House of Lords, Privy Council or Supreme Court are cited as authority for these propositions. The then

*Lord Chief Justice was not seeking to develop the law: he was stating it. The court decided that the Metropolitan Police had not misconducted themselves in the way alleged, but that even if they had the level of seriousness of such misconduct fell short of what would require the proceedings to be stayed. Describing the balance which the law requires a court to draw in determining an application for a stay in an Ex p. Bennett second limb case, Lord Thomas said this at paragraph [40]: -*

*The sole ground for a stay is that despite his ability to have a fair trial, despite the powerful public interest in serious crime being prosecuted and public officials standing trial for corruption, and despite the public harm caused by his conduct which is an ingredient of this offence, the conduct of the police was so egregious that his prosecution offends the court's sense of propriety and justice or undermines confidence in the criminal justice system so as to bring it into disrepute. The conduct of the MPS in this case comes nowhere near justifying such a conclusion.*

...

*39. The Privy Council in Warren and others v. Attorney General for Jersey [2012] 1 AC 22 carried out an important analysis of this jurisdiction, relying on and developing the analysis in Maxwell. Lord Dyson gave the judgment of the Board with which all the justices agreed. This involved a decision about whether the second limb requires some unfairness to the defendant. It does not. Lord Dyson said:-*

*35. The Board does not accept this criticism of R v Grant. The second category of case where the court has the power to stay proceedings as an abuse of process is, as already stated, one where the court's sense of justice and propriety is offended if it is asked to try the accused in the particular circumstances of the case. It is unhelpful and confusing to say that this category is founded on the imperative of avoiding unfairness to the accused. It is unhelpful because it focuses attention on what is fair to the accused, rather than on whether the court's sense of justice and propriety is offended or public confidence in the criminal justice system would be undermined by the trial. It is confusing because fairness to the accused should be the focus of the first category of case. The two categories are distinct and should be considered separately. (underlining is ours)*

46. The case of **BKR (supra)** is seen as a pivotal moment in criminal law. The judgment referred extensively to cases that have shaped the understanding of the second limb abuse of process within the criminal justice system. The Court of Appeal highlighted that the second limb concerns cases, amongst others, where the police or prosecuting authorities have been engaged in misconduct in bringing the accused before the Court for trial.

47. It is only in exceptional circumstances that the Court will exercise its power to stay proceedings. In **R v Latif [1996] WLR 104**, Lord Steyn referred to the application of this power in relation to the second limb, observing that general guidance as to how this discretion should be exercised in particular circumstances is of no use:

*“The law is settled. Weighing countervailing considerations of policy and justice, it is for the judge in the exercise of his discretion to decide whether there has been an abuse of process, which amounts to an affront to the public conscience and requires the criminal proceedings to be stayed: **Reg. v. Horseferry Road Magistrates’ Court, Ex parte Bennett [1994] 1 A.C. 42. Ex Parte Bennett** was a case where a stay was appropriate because a defendant had been forcibly abducted and brought to this country to face trial in disregard of extradition laws. The speeches in **Ex parte Bennett** conclusively establish that proceedings may be stayed in the exercise of the judge’s discretion not only where a fair trial is impossible but also where it would be contrary to the public interest in the integrity of the criminal justice system that a trial should take place. An infinite variety of cases could arise. General guidance as to how the discretion should be exercised in particular circumstances will not be useful. But it is possible to say that in a case such as the present the judge must weigh in the balance the public interest in ensuring that those that are charged with grave crimes should be tried and the competing public interest in not conveying the impression that the court will adopt the approach that the end justifies any means.”*

48. Recently, in **The Director of Public Prosecutions v Innodis Limited (2026) SCJ 53**, the Supreme Court pronounced on the two-stage approach whilst dealing with the second limb and referred to an article by *Finn Lowery “Abuse of Process: The need for Structure”*, Vol 20, (2014) *Auckland University Law Review*, laying down a set of principles as a meaningful point of departure for any Court considering abuse of process pleadings.

49. When considering the balancing exercise, factors such as the gravity of the offence and the purpose of the legislation need to be borne in mind. In that respect, the prosecution has referred to two cases namely **Maxwell v R [2010] UKSC 48** and **R v M, R v Kerr and R v H [2001] EWCA Crim 2024**<sup>17</sup>.

50. The more the offence is grave, the greater the interest in having an accused retried than it is for a relatively minor one: **Maxwell v R (Supra)** at paragraph 22.

51. In **R v M (Supra)**, the court referred to **R. Director of Public Prosecutions, ex p. Kebilene [2000] 1 Cr. App. R 275** as follows:

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<sup>17</sup> At page 21 of prosecution’s written submission;

*“There is also the question of balance, as to the interests of the individual as against those of society. The Convention jurisprudence and that which is to be found from cases decided in other jurisdictions suggests that account may legitimately be taken, in striking the right balance, of the problems which the legislation was designed to address...As a matter of general principle therefore a fair balance must be struck between the demands of the general interest of the community and the protection of the fundamental rights on the individual: see also **Sporrong and Lonroth v Sweden (1982)5 E.H.R.R. 35, 52, para.69**”. (underlining is ours)*

52. There have been various pronouncements on the need and importance of combatting money laundering offences and their adverse effect on the financial set up. In **Beezadhur v ICAC and Anor [2014] UKPC 27**<sup>18</sup>, the Judicial Committee of the Privy Council whilst emphasizing that, since the 1990s, the Financial Action Task Force has drawn attention to the risks posed by large cash transactions in the economy, highlighted that aspect in the following:

*“...By enacting sections 5,6 and 8 of the Act, the policy of the legislator was clearly designed to achieve the compelling objective of safeguarding the national and international financial system against any disruptive intrusion which may be caused by the perpetrators of certain criminal activities...”.*

53. Bearing in mind the above principles, the Court will hereunder proceed to determine whether, on a balance of probabilities, the accused has satisfied the second limb of abuse of process.
54. The prosecution, on this particular issue, submitted that, as per accused own version during the enquiry, it is undisputed that the money was found at his premises. The prosecution also emphasized on the gravity of the offences having regards to the sentence provided at the time of the offence of a fine of Rs. 2 million and penal servitude of up to 10 years. It was also submitted that the present case has an international dimension given that the packs of foreign currency are alleged to have come from abroad. Since accused was the Prime Minister of the Country at the time of the offences, he was also a Politically Exposed Person. The prosecution further submitted that there is no evidence that ACP H. Jangi was influenced by the former government to arrest accused. The present prosecution was lodged by the Director of Public Prosecutions after being satisfied that the evidential and public interest tests are met. The prosecution finally submitted that the test in **Innodis (supra)** has not been met and therefore, moved that the motion for abuse of process should be set aside.

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<sup>18</sup> Referring to **Abongo v The State [2009] SCJ 81**;

55. The defence submitted that, based on the evidence of Inspector Ramdoo, it has been proved, on a balance of probabilities, that a stay of proceedings is justified, given the political vendetta the accused was subjected to and the failure of the police to investigate on this aspect. The defence further referred to the role of the police which should be independent of the executive, not a tool to be deployed to damage or destroy political opponents, referring to Lord Denning in **Regina v Commissioner of Police of the Metropolis Ex parte Blackburn [1968] 2 QB 118**:

*“I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that. Nor can any police authority tell him so...”*

56. Now, the chain of events, as per the testimony of Inspector Ramdoo, is important in the present case. He conceded having come across the would-be Prime Minister saying, before the general elections of 2014 that: *“Bon dieu beni si mo vin Premier Ministre, zot na pas pou sapper depuis mo la main. Si mo pas fou sa Premier Ministre endans, mo change mo nom.”*<sup>19</sup>. The Court bears in mind the context in which the words were uttered and the concern of the future government, if elected, to ensure that crimes are detected and criminals are brought to justice and therefore finds it insufficient to conclude that this is where the seed plot was sown.

57. It is undisputed that following the general elections of 2014, on the 06<sup>th</sup> February 2015 and the 07<sup>th</sup> February 2015, the CCID obtained search warrants which led to the seizure of an amount of approximately Rs. 200 million (in local and foreign currency) at accused place on the ground that the police had reasonable grounds to believe that an offence of money laundering under **Section 3 (b) of the FIAMLA** had been committed and that the money represented proceeds of crime<sup>20</sup>.

58. Following the seizure of that amount, the accused was also arrested on not less than ten provisional charges (see **Statement of Facts pages 10-12 – Document A1**). These provisional charges are as follows:

(i) money laundering of Rs. 200 million allegedly being proceeds of “corruption and bribe” (CN: 210/2015 dated the 09<sup>th</sup> February 2015);

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<sup>19</sup> Page 5 of **Document A1**;

<sup>20</sup> See pages 73, 74, 75 and 76 of the Bundle of Supporting Documents – **Document B**;

- (ii) conspiracy (CN: 172/15 dated the 09<sup>th</sup> February 2015);
- (iii) forgery (CN: 7580/15 dated the 18<sup>th</sup> May 2015);
- (iv) money laundering of Rs. 40 million (CN:822/15 dated the 18<sup>th</sup> May 2015);
- (v) conspiracy to defraud Rs. 105 million (CN: 823/15 dated the 18<sup>th</sup> May 2015);
- (vi) using office for gratification (CN: 7688/15 dated the 27<sup>th</sup> May 2015);
- (vii) using office for gratification (CN: 7689/15 dated the 27<sup>th</sup> May 2015);
- (viii) using office for gratification (CN: 7690/15 dated the 27<sup>th</sup> May 2015);
- (ix) bribery and conspiracy to commit money laundering (CN: 960/15 dated the 04<sup>th</sup> June 2015);
- (x) influencing a public official (CN: 7941/15 dated the 24<sup>th</sup> June 2015); and
- (xi) conspiracy (CN:7942/15 dated the 24<sup>th</sup> June 2015).

59. It is also undisputed that the enquiry against the accused, in all those cases, was being conducted by the CCID. The CCID, at that time, was being headed by the Assistant Commissioner of Police, Mr. H. Jangi.
60. The number of provisional charges, as mentioned above, is witness to the fact that no stone was left unturned, through the numerous arrests and police enquiries against accused, to further attach criminality to the Rs. 200 million secured in support of the reasonable suspicion (as per the search warrants and provisional charges) that this money was proceeds of crime and therefore subject to money laundering offences. All the above cases, except for the present prosecution, have been either withdrawn by the Director of Public Prosecutions or dismissed by the Courts. Accused is not being prosecuted for any money laundering offence requiring criminality attached to the money. Instead, accused is being prosecuted for Limitation of Payment in Cash offences which does not require any such criminality.
61. Three statements of accused dated the 28<sup>th</sup> April 2015, the 16<sup>th</sup> January 2017 and the 12<sup>th</sup> October 2017 respectively were produced as part of the **Bundle of Supporting Documents (Document B)**. From the statement dated the 28<sup>th</sup> April 2015, it can be noted that the accused was initially interviewed for money laundering in respect of the money secured at his place. Accused explained that most of the money were contributions made by sympathizers of the Labour Party and that the rest came from his own funds and per diem allowances that he received for official missions. Accused also,

as from that time, questioned the impartiality and independence of the police enquiry. In his second statement dated the 16<sup>th</sup> January 2017, the accused again put in question the integrity of the police enquiry as being one sided. Accused went further to even state that he had information on a member of the then Cabinet who was influencing the police enquiry. The relevant extract from that statement is hereunder reproduced:

*“I maintain that this police enquiry is one side. I hold information that a member of the present cabinet has been actively following and advising the police in this matter. That Cabinet minister has been with the Prime Minister, the principal instigators of this biased police enquiry to eliminate me from the political scene in order that the present government has a free ride.”*<sup>21</sup> (underlining is ours)

62. Accused reiterated, in his statement dated the 12<sup>th</sup> October 2017, that the police enquiry is not impartial and is politically motivated.
63. From the above, it is clear that the independence and impartiality of the police enquiry was put into question by accused since his arrest by the police. Now, it does not suffice that an accused makes allegations against the impartiality and independence of a police enquiry simpliciter and requests an investigation thereto. That would be a too easy way to cloak and delay investigations. There must be attached, to the allegations, sufficient disturbing facts warranting an investigation into allegations against the impartiality and independence of the police enquiry. Anything less would lead the Court to conclude the allegations as being unfounded, vague and vexatious.
64. In the present case, Inspector Ramdoo conceded that it was known that Mr. Simo Carevic and Mr. Thomas Galet, both of Dufry Group, were brought to the flat of the then Attorney General with two other Ministers also present. The occurrence of the meeting was equally the basis of a parliamentary question by the Leader of the Opposition to the Prime Minister on the 5<sup>th</sup> March 2015 and was not denied<sup>22</sup>. The question put was in the following:

*“Madam Speaker, is the hon. Prime Minister seriously telling us that it was proper for three Ministers in the middle of the night and until 2.00 a.m. to respond to a request from Mr Gooljaury for him to bring these two gentlemen to the Attorney General’s residence in Quatres Bornes, whereas Mr Gooljaury should himself have been arrested, as we all know, in the Roches Noires bungalow case. Is the hon. Prime Minister telling us that this was proper?”*

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<sup>21</sup> Folio number 489552 at page 219 of **Document B**;

<sup>22</sup> Page 362 of the Bundle of Supporting Documents – **Document B**;

65. It was also public knowledge that Mr. Simo Carevic and Mr. Thomas Galet had sworn an affidavit<sup>23</sup>, i.e., the Dufry Affidavit, in which they made serious allegations against the persons present at that meeting.
66. Ex-Facie the Dufry Affidavit (which is admissible for the fact that it was made), Mr. Simo Carevic and Mr. Thomas Galet made serious allegations against two Ministers in office, the Attorney-General and one Mr. Rakesh Gooljaury as to how they were threatened to implicate and provide proof of bribery against the accused. Those allegations were not loosely made. Mr. Simo Carevic and Mr. Thomas Galet were persons holding important positions at that time. Mr. Simo Carevic was the Chief Executive Officer of the Mauritius Duty Free Paradise Company Limited whilst Mr. Thomas Galet was the Deputy Chief Operating Officer of the Dufry Group. Moreover, those allegations were made in an affidavit, drawn by an attorney-at-law, sworn and signed by both of them before the Supreme Court. Those allegations had a direct link with the monies secured at accused premises. Indeed, as per provisional charge CN: 210/2015, the accused was provisionally charged, on the 09<sup>th</sup> February 2015, for an offence of money laundering of around Rs. 200 million suspected to be proceeds of corruption and bribe (**page 131 of Bundle of Supporting Documents – Document B**). Accused was also provisionally charged for Bribery for Procuring Contracts as per provisional charge CN: 960/2015 (**page 200 of Bundle of Supporting Documents – Document B**) whereby accused was suspected to have solicited from Dufry AG based in Switzerland a sum of around Rs. 100 million in relation to a contract with Mauritius Duty Free Paradise. It is agreed and undisputed that no prosecution followed the investigation into provisional charge CN: 960/2015.
67. As per the affidavit sworn by Inspector Ramdoo (**Document C**), there is no mention whether the allegations as to the integrity of the police enquiry or allegations of Mr. Simo Carevic and Mr. Thomas Galet were ever investigated into. **Paragraph 16 of Document C** is as follows:
- “The accused gave 7 defence statements in the present case, and Police evidence is to the effect that all the explanations given by the Accused could not justify, in a legitimate manner, the source of the monies, subject matter to the present charge. All explanations and/or justifications provided by the Accused were verified and found to be inaccurate and inconsistent. None of the explanations given justified the Accused accepting USD and Mauritian Rupees above Rs 500,000/-.”*
68. It is clear from the affidavit (**Document C**) that the focus was only on the amount of money secured and the explanations of the accused justifying same. No enquiry was made into the serious allegations that Mr. Simo Carevic and Mr. Thomas Galet made in

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<sup>23</sup> At pages 334-339 of the Bundle of Supporting Documents – **Document B**;

the Dufry Affidavit against two Ministers, an Attorney-General and one Mr. Rakesh Gooljaury as to how they were threatened to implicate and provide proof of bribery against the accused<sup>24</sup>. There was also no enquiry into the allegations made by the accused to the effect that he held information that a member of the cabinet was actively following and advising the police in respect of the Rs. 200 million.

69. The more so, that the same Mr. Rakesh Gooljaury was behind the re-opening of the Roches Noires case, when he came forward to explain that he had lied and was brought in as a prosecution witness.<sup>25</sup> It is a fact that in his statement dated the 11<sup>th</sup> January 2015, he claimed that he was allegedly coerced by the accused (then Prime Minister) and others to make a false statement when in truth it was the accused who was the victim of the larceny at Roches Noires whilst he was in company of a lady.

70. Inspector Ramdoo also conceded that the then Attorney General was present during the counting of the Rs. 200 million but that upon objection raised by accused legal representatives, he did not eventually attend that counting. Clearly, the allegations that accused was making since the inception of the cascade of arrests, provisional charges and enquiries against him, putting into cause the impartiality and independence of the police enquiry, were no fanciful thoughts. There were sufficiently disturbing facts, as highlighted earlier, which clearly warranted an enquiry especially when no stone was left unturned to investigate into the criminality of the Rs. 200 million secured at accused's place. The allegations, ex-facie the Dufry Affidavit dated the 26<sup>th</sup> February 2015, were of a grave nature. They concerned directly three members of the Executive allegedly seeking, in effect, to attach criminality to the Rs. 200 million and consequently, potentially influencing the police enquiry to that effect. Such a non-enquiry, by the police, into those serious allegations cannot be condoned by the Court especially when these allegations are directly linked with the present case.

71. The duties to pursue reasonable lines of inquiry and to record and retain material which may be relevant to the investigation are common law duties. In **R (Ebrahim) v Feltham Magistrates's Court [2001] EWHC 130**, this investigative duty is summarised as follows:

*“...in conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether those point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances.”*

72. The Court is much wary of its role in keeping itself outside the arena. The Court is not here to discipline the police nor express disapproval of the present prosecution lodged. We are reminded of the words of Lord Salmon that:

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<sup>24</sup> Page 31 of proceedings 2<sup>nd</sup> April 2026;

<sup>25</sup> Paragraphs 17, 18, 19 of Document A1, statement of facts as agreed by the prosecution;

*“...a judge has not and should not appear to have any responsibility for the institution of proceedings; nor has he any power to refuse to allow a prosecution to proceed merely because he considers that, as a matter of policy, it ought not to have been brought.”<sup>26</sup>*

73. Rather, the Court’s role here is to determine whether, in the circumstances of the present case where there exist serious deficiencies in the police’s approach to investigate, it would be against the Court’s sense of justice and propriety to continue the present proceedings against the accused. The cascade of arrests, provisional charges and enquiries against the accused were no less than *“to get the man at all costs and by all means”*. Coupled with that, there is the failure of the police to inquire into the serious allegations found in the Dufry Affidavit. Furthermore, there is the non-investigation, by the police, into information that accused stated that he had against a member of the then Cabinet who was actively following and advising the police in respect of the Rs. 200 million and the leaks of sensitive materials and information relating to the investigation to the press probably calculated to attack the accused’s reputation. These are all sufficient grounds for the Court to conclude that it would be against its sense of justice and propriety to continue with the trial of accused in the circumstances of the present case.
74. The Court has further taken into consideration the balancing exercise to be effected (see **Innodis (supra)**), that is, grave crimes should be tried against the competing public interest in not conveying the impression that the end justifies any means - See **Maxwell v R (supra)**; **R. Director of Public Prosecutions, ex p. Kebilene (supra)** relating to the problems which the legislation was designed to address. The charges against the accused, in the present case, is one of Limitation of Payment in Cash in breach of **Section 5 (1) of the FIAMLA**, found under **Part II**. At the time of the offences, the penalty provided under the **FIAMLA** was a fine not exceeding Rs. 2 million and penal servitude for a term not exceeding 10 years. This was increased by **Act 9 of 2019** to a fine not exceeding Rs. 10 million and to penal servitude not exceeding 20 years. Under the current **Financial Crimes Commission Act 2023<sup>27</sup>**, Limitation of Payment in Cash is still found under **Sub-Part II- Money Laundering Offences**. However, **section 37** now provides for a fine not exceeding Rs. 20 million and penal servitude not exceeding 10 years. This shows that, whilst in 2019, the intention of the legislator was geared towards an increased bracket for potential custodial sentence for this offence, that intention shifted, in the **Financial Crimes Commission Act 2023**, towards a lower bracket for custodial sentence but a much higher bracket of up to Rs. 20 million for the fine.

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<sup>26</sup> **Director of Public Prosecutions v Humphrys (1976) 2 All.E.R. 497;**

<sup>27</sup> This Act came into operation on the 29<sup>th</sup> of March 2024, amending the FIAMLA by repealing Part II;

75. To limit the use of cash, through the imposition of a threshold, is one of the means to combat money laundering. However, this offence though found under the heading of money laundering offences is not a money laundering offence proper. It does not require any criminality attached to the money contrary to a money laundering offence (where a predicate crime/criminal activity should prevail). The mere fact that a person has made or accepted any payment in cash in excess of 500,000 rupees or an equivalent amount in foreign currency triggers that offence even though that money may be of perfectly legitimate source.
76. This difference can further be observed with the Court's power of forfeiture. **Section 8 (2) of the FIAMLA** originally provided that following a conviction for Limitation of Payment in Cash, the money is deemed to be derived from a crime and in addition to the penalty for that offence, that money may be forfeited by the Court. With the coming into force of the **Financial Crimes Commission Act 2023**, the legislator, by not putting in its **Section 37** the presumption that existed in **Section (8) (2) of the FIAMLA** had the intention of distinguishing between the two offences. The power of forfeiture has, however, been re-introduced, by **Act 3 of 2026**, but only in relation to money laundering offences under **Section 36 of the Financial Crimes Commission Act 2023** and not for Limitation of Payment in Cash under **Section 37** of that Act.
77. It is undisputed that there is no criminality attached to the money for which accused is being prosecuted. The present prosecution does not concern any offence involving fraud, dishonesty or corruption. The Court has also no power of forfeiture for the present offences compared to a money laundering offence since the presumption of criminality does not operate following a conviction for Limitation of Payment in Cash. Sentencing for an offence of Limitation of Payment in Cash compared to an offence of money laundering proper, will invariably vary based on those precincts.
78. Having regards to the nature of the present offence in contradiction to that of a money laundering offence proper; the amount of money involved but to which there is no criminality attached as opposed to the cascade of arrests, provisional charges and enquiries against the accused; coupled with the non-investigation by the police into the serious allegations found in the Dufry Affidavit against three members of the Executive and their alleged endeavour to attach criminality to the Rs. 200 million; the participation of Mr. Rakesh Gooljaury in that alleged endeavour when latter's role was pivotal into the re-opening of the Roches Noires case; and the further non-investigation by the police into information that accused stated that he had against a member of the Cabinet who was actively following and advising the police in respect of the Rs. 200 million, the Court is of the view that it would be against its sense of justice and propriety to proceed with the present proceedings against the accused in those circumstances.
79. The Court has also borne in mind the contention of the prosecution that the motion for the stay of proceedings is premature and that some or all the evidence have to be heard. The issue of timing of a stay order was addressed in **R v F (S) [2011] 2 Cr App.R 28**,

CA which decided that, unless there is a specific reason to defer an application for stay because the issues can better be determined at a later stage, ordinarily, this ought to be determined at the outset of the case. The following at paragraph 45 is relevant:

*“...The contention is that the trial should not take place at all. If it is to be made, notice should be given before the trial begins. In the end of course the time when it should be dealt with by argument and ruling is a matter for the trial judge. Although we can envisage cases in which, for example, the application is based on prejudice resulting from the absence of long lost-evidence, such as institutional records, and where the evaluation of the significance of the absence of such evidence may best be undertaken at the close of the Crown’s case, in general the question whether the trial should proceed at all should take place before evidence is called. If the ruling is deferred, there is, as this case demonstrates and as Lord Lane CJ envisaged, a significant danger that the submissions to the judge would conflate R v Galbraith principles with the issue of abuse of process. If the application succeeds, it will almost inevitably appear that the judge has usurped the function of the jury. Moreover, if the issue is not dealt with before the evidence is heard, the complainant, whose account may, notwithstanding the long delay, be a truthful one, will have been through the ordeal of giving evidence within and as part of a trial process which, afterwards, will then be held to have been an abuse of that very process. That is hardly fair. We do not propose to be prescriptive. However, unless there is a specific reason for deferment, an application to stay on abuse of process grounds is preliminary to the trial, and ought normally to be dealt with at the outset.” (underlining is ours)*

80. In the present case, we find no reason to defer the determination of the stay application to the merits stage. The present offence is a straight forward one, with its elements being simple<sup>28</sup>. We took cognizance of the affidavit of Inspector Ramdoo<sup>29</sup> and his deposition in Court; the bundle of supporting documents<sup>30</sup> containing the version of the accused in which he agreed being in possession of the monies and his explanation given therein; and the statement of facts which have been largely agreed upon, and consider that there is sufficient evidence before this Court upon which we can rely to decide on the present motion.

81. Whilst the Court is aware that the offences are straightforward and their elements simple, but given the evidence before it, public interest dictates that every citizen of this country sees that allegations against the impartiality and independence of the police enquiry, supported by quite disturbing facts and directly linked with the present offences be fully

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<sup>28</sup> **The State v N Ramgoolam (2022) SCJ 296** - page 19;

<sup>29</sup> **Document C**; and

<sup>30</sup> **Document B**.

investigated, the more so, as submitted by the prosecution, the present case has an international dimension and the accused was a politically exposed person. Public confidence cannot but be upheld by the Court in not allowing such a prosecution to proceed further thereby giving a strong signal that it will not adopt the approach that the end justifies any means. Giving such a strong signal will not undermine the integrity of the criminal justice system and bring it into disrepute. Rather, public confidence will be upheld in seeing that every citizen of this country enjoys from an independent and impartial police enquiry.

82. We are far from the situation in **R v Latif [1996] WLR 104** whereby the seriousness of the offence involved the importation of 20kg of Diamorphine and in which the involvement of a customs officer to collect packages of heroin to the UK from Pakistan as part of the surveillance exercise, though not warranted, was venial compared to the nature of the offence. Likewise, in **Maxwell v R [2010] UKSC 48**, the public interests in convicting those of grave crimes such as a heinous murder and two robberies tilted the balance in favour of a new trial despite the lies of the police to the CPS, Prosecuting Counsel and Defence Counsel. In **Innodis (supra)**, the nature of the grounds upon which a permanent stay of proceeding was asked related to delay, whilst the Court on appeal did not find any putative misconduct which would render the trial an abuse of process.
83. The Court is further of the view that, given the grave nature of the failure by the police to investigate as highlighted above, the Court can only dissociate itself from such a failure through a stay of proceedings in favour of accused. Anything less will undermine public confidence in seeing that such serious allegations are fully investigated.
84. From the above finding and in view of our determination with regard to disclosure in our Ruling dated the 27<sup>th</sup> of November 2025, we do not find the need to address the second point raised at paragraph 3.2 by the defence.
85. Therefore, the Court is satisfied, on a balance of probabilities, that the continuation of present proceedings will amount to an abuse of process because it offends its sense of justice and propriety to be asked to try the accused in the circumstances of a particular case.
86. The present proceedings against the accused are accordingly stayed.

**B.R. Jannoo-Jaubocus (Mrs.)**

**A.R.Tajoodeen (Mr.)**

**President, Intermediate Court  
(Financial Crimes Division)**

**Magistrate, Intermediate Court  
(Financial Crimes Division)**

**This 8th June 2026**