JOOMUN M. Y. A. v THE DIRECTOR OF PUBLIC PROSECUTIONS & ANOR

2026 SCJ 290

SCR No: 9447-3/63/20

IN THE SUPREME COURT OF MAURITIUS

In the matter of: -

Mohamad Yousouf Ali Joomun

Appellant

v

1. **The Director of Public Prosecutions**
2. **Independent Commission against Corruption**

Respondents

JUDGMENT

1. This is an appeal against the decision of the learned Magistrate of the Intermediate Court of Mauritius for finding the appellant guilty on an offence of *"Limitation of payment in cash*" in breach of **sections 5(1)** and **8** of the **Financial Intelligence and Anti Money Laundering Act 2002 ("FIAMLA").**

2. On 20 October 2020, the appellant was sentenced to pay a fine of Rs 40, 000 and Rs 500 as costs. On 28th October 2020, the appellant appealed against the conviction.

3. The appellant was charged for having on the 19th of February 2009 made a payment in cash in excess of Rs 500, 000 to one Imtiaz Sakhawoth for the purchase of a plot of land contrary to **sections 5(1)** and **8** of the **FIAMLA**.

4. The appellant is appealing against the judgment of the learned Magistrate under the following grounds of appeal:

   1. The Learned Magistrate misdirected herself in finding that the version of the prosecution witnesses was corroborated, and by failing to state what were the corroborative aspects.

   2. The Learned Magistrate misdirected herself in finding that there was corroborating evidence in the case for the prosecution when no such corroboration existed at all.

3. *The Learned Magistrate misdirected herself in holding that the version of witness Sakhawoth was corroborated by that of witness Hussenbocus.*

4. *The Learned Magistrate erred in stating that the I.T. expert – P.C. Sivapragassen's evidence corroborated the version of the prosecution witnesses that GNU cash was used as a software in the education trust in 2009.*

5. *The Learned Magistrate misdirected herself in holding that witness Sakhawoth gave reliable evidence of print-out transactions from a computer as he himself testified that this exercise could be done by anybody, on top of the fact that his testimony was worthless.*

6. *The Learned Magistrate misdirected herself in never taking into consideration the essential fact that the computer print-out, Document D, was never contemporaneous to the alleged payment but made five years later, from a computer different from the one allegedly and initially used, at the specific request of witness Hussenbocus. Document D was not a computer print-out but a screenshot.*

7. *The Learned Magistrate misdirected herself, concerning Document D, in holding that the fact that entry numbers repeated themselves on it only showed that they were not unique identifiers, when in fact that showed the spuriousness of the said document.*

8. *The Learned Magistrate misdirected herself in her analysis of Document D, the computer screenshot, as it contained several unusual features which clearly showed that it was neither a primary nor a source document but an incomplete, uncertified and fabricated document. Document D, the computer screenshot, was not relevant for a criminal investigation by ICAC.*

9. *The Learned Magistrate misdirected herself in not giving weight to the testimony of defence witness Deemamode who stated that the accounting software system of the Education Trust was never the one used allegedly by witness Sakhawoth but another one, the more so as this was never challenged by the prosecution.*

10. *The Learned Magistrate erred in holding that the withholding of Document D, the computer screenshot, from the Appellant throughout the enquiry was*

immaterial, as it was part & parcel of the prosecution's case which should have been shown to the Appellant straightaway.

11. *The Learned Magistrate misdirected herself in holding that though a cheque of fifty thousand rupees allegedly given by the Appellant to witness Sakhawoth was never produced in the case, that did not affect the merits of the case, as that showed clearly that the witness was lying.*

12. *The Learned Magistrate misdirected herself in never taking into consideration the fact that though witness Sakhawoth had stated that he had given a receipt to the Appellant for the sums allegedly paid to him, he could neither produce its copy nor show its number on the computer screenshot.*

13. *The Learned Magistrate misdirected herself in holding that the bad blood existing between the Appellant and the two lay witnesses for the prosecution had no bearing upon the case, as this showed that they had an axe to grind against the Appellant.*

14. *The Learned Magistrate misdirected herself in finding that the Appellant, in his extra-judicial statement, agreed that he effected a cash deposit of Rs 750,000 for the purchase of a plot of land from the Education Trust, when in fact this is not borne out at all by the statement.*

15. *The Learned Magistrate erred in finding that full weight should be given to the Appellant's alleged confession.*

16. *The Learned Magistrate misdirected herself in holding that the Appellant did not dispute the veracity of his extra-judicial statement before coming to Court, as in fact he did so though an email sent by witness Deenmamode to the ICAC requesting for the opportunity to give a further statement.*

17. *The Learned Magistrate misdirected herself in finding first that the Appellant did ask that a further statement be taken from him through "a letter to the ICAC" sent by defence witness Deenmamode and then to further hold that "there is no evidence that the accused disputed the veracity of his statement prior to him coming to Court".*

18. *The Learned Magistrate misdirected herself on the issue of admissibility of the extra judicial statement and the weight to be given to it, since it was not the admissibility that was contested, but its weight.*

19. *The Learned Magistrate misdirected herself in holding that witness Hussenbocus confirmed that the software programme was used from 2008 to 2011 as the said witness only joined the Education Trust in 2013.*

20. *The Learned Magistrate misdirected herself in not finding that the document called "Transaction Report" made by witness Sakhawoth is very different from the one produced by the IT expert, thus indicating that "Doc. H" was a fabrication.*

21. *The Learned Magistrate erred in finding that the extrajudicial statement of the Appellant was voluntary as in fact he was trapped into giving it.*

22. *The Learned Magistrate misdirected herself in assessing the credibility of the IT expert as the latter deponed on accounting software utilization matters of which he himself stated that he had no knowledge.*

23. *The Learned Magistrate misdirected herself in holding that investigator Sookun's testimony was credible because he "spoke easily and fluently and without waiver", as this is not the test for the credibility of a witness.*

24. *The Learned Magistrate misdirected herself in believing the explanation of witness Sakhawoth concerning the transaction report, when in fact, that report clearly showed a ploy to link the Appellant with chosen false entries.*

25. *The Learned Magistrate misdirected herself in not holding that there was a clear plot against the Appellant as is established by the fact that Document D, the computer screenshot, was only made five years after the alleged payment and the fact that the lay witnesses were in bad terms with the Appellant.*

26. *The Learned Magistrate misdirected herself in making a finding on a computer system from the evidence of the IT expert, when the latter never examined the computer system itself but only a software.*

27. *The Learned Magistrate misdirected herself in holding that the Appellant, at all material times, was not acting as a trustee of the Education Trust but in his own private capacity in a commercial transaction.*

28. *The Learned Magistrate misdirected herself in holding that the Appellant, at all material times, was not acting as a trustee of the Education Trust but in his own private capacity in a commercial transaction*

29. *The Learned Magistrate misdirected herself in holding that there was only but one commercial transaction which was the purchase of the plot of land in lite and not different several payments to another party as explained by the Appellant in his testimony.*

30. *The Learned Magistrate misdirected herself in holding that the defence of exempt transaction did not apply in this case, as it had been established on a balance of probabilities.*

31. *The Learned Magistrate misdirected herself in her finding of guilt against the Appellant as the evidence against him was such that he should have been given the benefit of the doubt.*

32. *The Learned Magistrate failed to consider that there was no payment made as the Appellant acting as a trustee of the Education Trust, was, if the version of the prosecution is believed, remitting the money to an agent of the same Trust, to be banked.*

The cumulative effect of the grounds of appeal renders the judgment of the Honourable Magistrate unsafe for conviction.

5. On 11 November 2020, a motion was made by the appellant to add two additional grounds of appeal and since the respondents did not have any objections, the two additional grounds were allowed on 11 October 2021.

6. These additional grounds read as follows-

Additional ground 1

That the learned Magistrate showed bias when after holding that the appellant had made a payment beyond the prescribed amount to witness Sakhawoth, an accomplice without immunity, stated that she found no weight in the defence submissions that the said witness should have been prosecuted as well.

Additional ground 2

That the learned Magistrate misdirected herself in holding that there was a duty on the appellant to give a truthful statement to the ICAC as no such duty exists in law.

7. We note that on 8 and 11 January 2021, counsel for respondents Nos. 1 and 2 replied in relation to the two additional grounds of appeal and moved that the present application be set aside inasmuch as the two additional grounds relate to the assessment of findings of facts of the trial court, already subject matter of the thirty-two original grounds of

appeal which have already been raised in appellant's Notice of Appeal dated 29 October 2020.

8. On the Court sitting dated 11 October 2021, counsel for appellant moved that the additional grounds of appeal will be taken together on the merits of the case. Counsel for respondents Nos. 1 and 2 did not object to this course of action.

9. In relation to the first additional ground of appeal, the element of bias and the issue of whether Mr Sakhawoth was an accomplice will be dealt under **Grounds 2 and 3** below.

10. As for the second additional ground of appeal, we find that the learned Magistrate extensively dealt with the truthful statements of the appellant in her judgment under the heading "*Statement of Accused*" and after having analysed the evidence on record, the learned Magistrate averred the following: "*I find that the Accused was aware of the contents of his statement which he gave voluntarily*".

11. We further concur with the learned Magistrate that Investigator Sookun maintained that the appellant gave his statement voluntarily.

12. Therefore, we are of the view that this finding of fact cannot be disturbed by the appellate Court (vide **Grounds 23 and 24** below).

13. **Ground 1**

Ground 1 was dropped at the outset at the Court sitting dated 11 October 2021.

14. On the same day, the Grounds of Appeal were grouped under the following sub-headings:

Grounds 2 and 3 relate to the issue of Corroboration, Grounds 4, 9, 19, 22 and 26 deal with the software system, Grounds 5, 6, 7, 8, 10, 20 and 25 relate to Document D and the Transaction Report (Document H), Grounds 11, 12, and 14 relate to the payment of cash, Ground 13 concerns the issue of alleged bad blood and Grounds 15, 16, 17, 18 and 21 relate to the issue of Confession. The remaining grounds were dealt with separately. We shall adopt the same grouping when considering the grounds of appeal.

Grounds 2 and 3 on Corroboration.

15. We would like to observe that ground of appeal 2 as couched is vague and does not amount to a ground of appeal. However, taken together with ground of appeal 3 the appellant is challenging the finding of the learned Magistrate when she considered the defence case that the software was not used by the Education Trust, therefore, contending

that Document D was a fabrication and could not be used to corroborate the version of witness Sakhawoth that Document D recorded the remittance of money.

16. It is the submissions of learned Senior Counsel for the appellant that ground of appeal 2 deals with the definition of corroboration and ground of appeal 3 with its application. The submissions are that in this particular case, corroboration was needed as the only witness of the alleged act of payment was witness Sakhawoth, an accomplice, who received the payment. Further, witness Hussenbocus could not corroborate the version of Mr Sakhawoth because he gave evidence not as a fact to his personal knowledge but from what was obtained from the records. The record being referred to is Document D which was a print out of the transactions for the period of 19 February to 25 February 2009 as a proof of receipt of money. The appellant had challenged Document D at the trial.

17. It is well established that when corroboration is not required as a matter of law or practice, one credible witness is sufficient to secure a conviction: vide **The Director of Public Prosecutions v M.S. Subrattee [2010 SCJ 207]**.

18. As held in the case of **Mahadeo S v Independent Commission Against Commission (ICAC) & Anor [2017 SCJ 295]**, "*evidence, to be capable of being "corroboration" in the strict or technical sense, must be relevant, be credible, be independent (i.e. emanate from a source other than the witness requiring corroboration) and implicate the accused in a material particular".* Therefore, in the present matter, the learned Magistrate's appreciation of the reliability of the prosecution witness does not require the interference of the Appellate Court.

19. The learned Magistrate concluded the following in her judgment:

> *"The line of cross-examination of the defence hinted towards a manipulation of the documents produced by the prosecution witnesses. However, I find that Mr Sakhawoth clearly explained how the inserted entries and printed document (Document D) reflecting the transaction involving the accused with the education trust. His version was corroborated by the version of Mr Hussenboccus. The latter confirmed that the accused remitted the sum of Rs 750,000 in cash to Mr. Sakhawoth. He maintained that the purpose of the remittance of the money was for a sale transaction of a plot of land between the education trust and the accused''*
>
> *I find the version of the prosecution witnesses to be corroborated and stands against the version of the defence.''*

20. We are of the considered view that the learned Magistrate had the benefit of observing and assessing the demeanour of the prosecution witnesses. She found that

witness Sakhawoth gave evidence which was straightforward and reliable and that he had no difficulty to explain the procedure he used to record the transactions. Document D reflected the transaction involving the appellant with the Education Trust.

21. As submitted by learned counsel for the respondents, the evidence on record showed that witness Sakhawoth was a clerk of Doha Academy and was appointed by the Education Trust to receive money on its behalf.

22. Although witness Sakhawoth made the entries, **Document D** remains an independent record keeping of the financial transactions of the Education Trust found in a software, which belongs to the Trust and not to Mr. Sakhawoth. Further, the evidence of PC Sivapragassen on Document D was found to be an objective and independent version which corroborated the type and use of the software in the Education Trust. The evidence of witness Hussenbocus was to the effect that the DOHA Academy did use that software. There was no need for corroboration as the learned Magistrate considered all the other evidence on record and found witness Sakhawoth to be truthful and could be relied upon.

23. In **Edoo M B T v The State** [2015 SCJ 9], Fekna and Hamuth JJ., after referring to the oft-quoted case of **Benmax v Austin Motor Co. Ltd. (1955) 1 ALL E.R. 326**, cited the decision in **Mootaloo v The Queen** [1958 MR 333], where it was unequivocally stated that "*It is well settled that an appellate court should not lightly reverse a finding of the trial judge on a question of fact unless there are sufficient indications that on trial the facts have not been well appreciated*."

24. In the present case, the learned Magistrate has the irreplaceable advantage of seeing and hearing the witnesses testify in Court which cannot be reproduced for assessment on appeal. We do not find anything disturbing in the finding of the trial Magistrate after considering evidence on record and conclude that there is no perverse finding on her part.

25. Upon consideration of the above, we find no merit in grounds 2 and 3.

Grounds 5, 6, 7, 8, 10, 20 and 25 relating to (Document D) and the Transaction Report (Document H).

26. We shall now address the point raised by learned Senior Counsel for the appellant who averred that witness Sakhawoth's testimony cannot be relied upon on his ability to work on a computer as he was dealing with a very odd software which can be easily manipulated. Counsel submitted that the version of witness Deenmamode, an accountant with 50 years of experience is plausible as he stated that Document D is a mere fabrication as it was made

on purpose to give it to the ICAC as proof of payment, 5 years after the alleged input and without any explanation of the delay.

27. Learned Counsel for respondent No. 1 submitted that witness Sakhawoth showed in Court how he made entries pertaining to the record-keeping of the Trust in general on a laptop brought in Court for that purpose. Counsel stated that Document D was only a printout of entries made at the material time and therefore, whether that document was made five years after the alleged offence took place is immaterial. Counsel submitted that the learned Magistrate rightly concluded that there was "*anything sinister in the repetition of numbers in the printout Document D, as the software did not specify a mandatory requirement of a unique identifier*".

28. Learned Counsel for respondent No. 2 submitted that the learned Magistrate had the opportunity of seeing and hearing witness Sakhawoth in relation to the procedures to be adopted to record transactions in the GNU software. Counsel stated that the fact that Document D was printed five years after the alleged payment and from a different computer allegedly and initially used in 2009, do not affect the contemporaneity of the entry made by witness Sakhawoth on 19 February 2009 with respect to the cash deposit of Rs 750, 000 made by the appellant.

29. Learned Counsel for the respondent also submitted that the learned Magistrate made a thorough analysis of the testimony of witness PC Sivapragassen who impounded Document D and rightly found that witness PC Sivapragassen was a credit worthy witness who deponed in his capacity as an IT expert.

30. We find that the learned Magistrate carefully considered the explanation given by witness Sakhawoth in Court on how he inputted information on the GNU software. Based on that thorough analysis, we find that the learned Magistrate rightly concluded that witness Sakhawoth gave a clear and transparent picture of the procedure used to record the transaction in the GNU software and same constituted reliable evidence of printout of transactions effected and recorded by him.
Grounds 5, 6, 7, 8, 10, 20 and 25 are therefore dismissed.

Grounds 4, 9, 19, 22 and 26 in relation to the software system

31. Learned Senior Counsel for the appellant stated on the Court sitting dated 11 October 2021 that **Ground 26** would not be pressed. Counsel relied on the version of witness Deenmamode who deponed to the effect that he has gone through the accounts of Doha Academy and found that the only software used since 2005 was Quickbook and Document D was "*fabricated*." It is submitted that the version of witness Deenmamode on

the existence or not of the GNU software remained unchallenged as well as his opinion on the fact that it is a fabrication and that the learned Magistrate misdirected herself in not giving weight to his testimony.

32. The learned Magistrate had before her two versions of the type of software used in the Education Trust. The evidence of witness Sakhawoth is that the GNU software program was used whereas that of defence witness Deenmamode, this software program was never used. The learned Magistrate also had before her, the evidence of PC Sivapragassen who had retrieved the Document D which had been impounded. He testified as an independent IT expert that the GNU software could have been used to record cash transactions made in 2009 and that the GNU software, through which the cash transactions made by the appellant were recorded, was indeed used in 2009. The learned Magistrate found him to be a credible witness and that his version corroborated the version of witness Sakhawoth. We have gone through the analysis of the learned Magistrate and we find nothing wrong in the appreciation of the evidence before her.

33. Therefore, the learned Magistrate was right to find that the evidence of IT expert PC Sivapragassen was:

1. relevant as it established that GNU cash could have been used as a software in 2009,
2. credible as he deponed in his capacity as an expert in I.T and;
3. independent from the evidence of witness Sakhawoth.

34. The learned Magistrate had before her the unchallenged evidence of witness Hussenbocus that in May 2013 he was a trustee and was also the general manager of the Education Trust. When asked if the GNU program is used very commonly and whether it is suitable for businesses which have a huge turnover, his reply was that the DOHA Academy had been using the program for four to five years before changing it and that it had been used from 2008-2011. We are therefore unable to find that the learned Magistrate misdirected herself when the evidence remained unchallenged.

35. We find no merit in Grounds 4, 9, 19 and 22.

Grounds 11,12 and 14 relate to the Payment of cash

36. It is the case for the respondents that the appellant gave Rs. 800,000 out of which 750,000 cash and 50,000 as a cheque. Grounds of appeal 11 and 12 challenge the reasoning of the learned Magistrate that the production of the cheque of Rs 50,000 given by the appellant did not affect the merits of the case. It is the submission of learned Senior Counsel for the appellant that the learned Magistrate was wrong in her reasoning as the

giving of the Rs 50, 000 cheque is linked with the alleged payment as one transaction. The impossibility of producing the receipt shows that there was never any payment whether cash or cheque. Ground of appeal 14 challenges the finding of the learned Magistrate that the appellant had agreed in his extra judicial statement that he effected a cash deposit of Rs 750,000 for the purchase of a plot of land from the Education Trust when in fact this is not borne out at all by the statements.

37. The learned Magistrate stated the following in her judgment, "*I have noted that the cheque of Rs 50,000 given by the accused to buy the land has not been produced in this case but I find that this does not affect the merits of the present case which concerns the payment in cash by the accused of Rs 750,000 only. I find that the testimony of Mr Sakhawoth was straightforward and reliable and he had no difficulty to explain the procedure in which he recorded the transactions".*

38. We cannot but agree with the submissions of respondent No.1 that one of the elements of the offence under **section 5(1)** of the **FIAMLA** is payment of cash, which in the present case, amounts to Rs 750, 000. The production of the cheque did not form part of the case for the prosecution and there was no need for its production. Further the production of the cheque did neither concern any of the elements of the offence nor had any impact on the credibility of the prosecution witnesses.

39. Learned Counsel for respondent No. 2 submitted that the cheque of Rs 50, 000 was neither part of the particulars in the Information nor an element of the offence that the prosecution had the onus to prove.

40. In the present case, after properly analysing the evidence, we find that the learned Magistrate was right in finding that the deposit of Rs 750, 000 by the appellant constitutes a commercial transaction in the light of **Document J** (**Title Deed**) which established that the Education Trust has sold a portion of land to the appellant in consideration of sum of Rs 1 million which was '*hors vue du notaire'*.

41. We cannot but agree with the learned Magistrate when she stated as follows: "*I find that there was one transaction with one payment whereby the Accused paid Rs 750, 000 in cash to the education trust, representing purchase money for a portion of land from the education trust"*.

42. The learned Magistrate took into account the statement given by the appellant and his evidence given under oath regarding in what circumstances the statement was given. She took into consideration that the appellant gave the statement in the presence of his counsel and after considering the circumstances found that the appellant gave the statement

voluntarily and that the confession of the appellant constituted admissible evidence carrying the necessary weight since there is no evidence that same was given under the wrong circumstances and that the confession of the appellant was reliable evidence against him. We have considered the submissions of learned Senior Counsel and we find that the learned Magistrate cannot be faulted in her reasoning.
Grounds 11,12 and 14 are therefore set aside.

Grounds 13 - alleged existence of bad blood

43. Turning now to Ground 13, learned Senior Counsel for the appellant submitted that bad blood was an important consideration in the determination of the case as there was a sour relationship between the appellant and witnesses, Hussenbocus and Sakhawoth.

44. Counsel submitted that the source of this sour relationship was that the Qatari Government had sent money to the Education Trust through the appellant for the purpose of building a mosque. The money had been deposited in the accounts of the Education Trust. The appellant had asked witness Deenmamode to make an audit trail of the said accounts and had asked for information from witness Sakhawoth but he was prevented from giving the particulars of same by witness Hussenbaccus. The matter had been reported to the police.

45. The learned Magistrate considered the evidence on the relationship between the parties. We find that she rightly found that the witness Sakhawoth had an independent relationship from witness Hussenbocus and that despite incidents which occurred at the Education Trust between the parties, this had no bearing on the purport of the case against the appellant. The learned Magistrate had before her the evidence of the prosecution witnesses and the documents produced.
Grounds 13 therefore fails.

Grounds 15, 16, 17, 18 and 21 with regard to the issue of Confession

46. Learned Senior Counsel for the appellant submitted that the learned Magistrate misdirected herself when she considered that it was the admissibility of the out of court statement which was being challenged when it was the weight to be attributed to the confession, that she misdirected herself in holding that the appellant did not dispute the veracity of his statement before coming to Court and that the statement had been given voluntarily.

47. It is the submission of learned Counsel for respondent No.1 that the appellant had voluntarily affixed his signature to the statement. Had the appellant been duped into signing the statement without the content emanated from him, he ought not have affixed his signature.

48. According to learned Counsel for respondent No. 2, the learned Magistrate analysed the circumstances in which the confession was made. She considered whether the statement was made under any fear or influence.

49. The learned Magistrate did take into account the circumstances in which the statement was given. The evidence before her was that the appellant had voluntarily affixed his signature in the presence of his counsel. In Court he explained that he agreed to have given the sum of one million rupees to the Education Trust in cash for the purchase of the plot of land but he stated that it was in different amounts. He also stated that he had no documents. The learned Magistrate also found after considering all the circumstances that the statement was given voluntarily, the appellant gave the statement in the presence of his counsel and that the confession of the appellant constituted admissible evidence carrying the necessary weight since there is no evidence that same was given under the wrong circumstances. The learned Magistrate did not solely rely on the confession of the appellant but also had before her the version of the prosecution witnesses, the documents and the version of the appellant. We find no fault with her appreciation and reasoning.
Grounds 15, 16, 17, 18 and 21 are therefore devoid of merits.

Grounds 23 and 24 deal with witnesses

50. Ground of appeal 24 which challenges the appreciation of the learned Magistrate of the evidence of witness Sakhawoth concerning the transaction report, that is, document D, has already been addressed above. As for ground of appeal 23, learned Senior Counsel for the appellant submitted that the learned Magistrate's standard for assessing the credibility of Investigator Sookun was wrong and misconceived when she averred the following *'I further find that Investigator Sookun deposed well in Court. He spoke easily and fluently and stood up to cross-examination without waiver to maintain that the accused gave his statement voluntarily'.*

51. Learned Counsel for respondents Nos. 1 and 2 submitted that the learned Magistrate carefully assessed witness Sookun's testimony and demeanour and found that he withstood the lengthy cross-examination without any doubt or hesitation in his answers.

52. We find that the learned Magistrate was fully entitled to believe witness Sookun as she had the full benefit of seeing him testify in Court. We again reiterate the pronouncement in the case of **Goolamallee A v The State & Anor** [2015 SCJ 237] that *"It is well settled that an appellate Court should be loath to interfere with the findings of fact of a trial Court which has the undeniable advantage of seeing and hearing the witnesses and is, therefore, in a better position to assess their credibility".*
Grounds 23 and 24 are therefore set aside.

Grounds 27, 28, 29 and 31- with regard to Alleged Exempt Transaction

53. These grounds challenge the findings of the learned Magistrate that the appellant was acting in in his own private capacity in a commercial transaction rather than as a trustee of the Education Trust, that it was one commercial transaction and not different several payments, that the defence of exempt transaction did not apply and that no payment had been made as the appellant was acting as a trustee of the Education Trust.

54. It is the submissions of the appellant that the Education Trust was a charitable institution and the appellant is one of its trustee. He collected money on behalf of the Trust and gave it to Mr Polin another trustee in several amounts. Therefore, as an agent he paid the sum to another agent of the Trust in order that the money be banked, on behalf of the Trust again. Reliance was made on what the Privy Council had stated in in **Beezadhur v ICAC [2014 UKPC 27]** *"…. the Board sees no difficulty in treating money-raising activity by a charity as a 'business activity' in the ordinary meaning of that expression'. (as being an exempt transaction)*

55. According to the appellant, the learned Magistrate erred when she averred the following in her judgment namely, '*I do not find credence in the argument of the defence that there were two separate and distinct transactions that is, one where the accused remitted Rs 750,000 to the education trust for the education trust to acquire land and a second one where the accused bought a portion of land from the education trust.. I find that there was one transaction with one payment whereby the accused paid Rs 750,000 in cash to the education trust, representing purchase money for a portion of land from the education trust.'*

56. The learned Magistrate in her judgment considered the evidence of the prosecution witnesses and that of the defence. She then considered in the light of the charge and the definition of "*exempt transaction*" in **FIAMLA** that on the evidence adduced the remittance of Rs 750, 000 in cash was not an exempt transaction as it was not between (a) the Bank of Mauritius and any other person (b) a bank and another bank (c) a bank and a financial institution (d) a bank or a financial institution and a customer and (e) between such other persons as may be prescribed as per section.

57. In addition, the learned Magistrate having concluded that the sum Rs 750, 000 for the purpose of a sale of land is evidenced by the Deed of sale, (**Document J**), the learned Magistrate was not wrong in finding that there was a payment for the purpose of a commercial transaction.

58. In the case of **Briand G. S v The Independent Commission Against Corruption & Anor [2021 SCJ 336** the Court held as follows:

"We shall now delve into the second limb of section 2 (d) of the FIAMLA namely whether the transactions exceeded an amount that were commensurate with the lawful business activities of the customer.

As rightly pointed out by the learned Magistrate for a transaction to be an exempt one, it is imperative that the transaction does not exceed an amount which is commensurate with the lawful business activities of the customer. The settled jurisprudence is that the burden to prove, on a balance of probabilities that the transaction was an exempt transaction is on the accused party as set out in the case of Beezadhur (supra):

"In agreement with the Supreme Court in the cases to which reference has been made, the Board reads section 10(11)(a) as intended to give constitutional effect to the common law principle enunciated in cases such as R v Edwards. It applies whenever the relevant law ("the law in question"), interpreted in the light of that principle, has the effect of placing the burden of proof on the defendant. If that effect is clear from the form of the provision in issue, it does not need to be spelt out in express terms. In the present case, the structure and content of the statutory offence and of the specific exemptions are in the Board's view clearly designed to bring into play the Edwards principle. The Supreme Court was right to hold that, in accordance with section 10(11)(a), it was for the defendant to show that the transaction was within one of the exempt categories". (underlining is ours)

As such, the learned Magistrate rightly observed in her judgment that 'the burden was on the accused to show that the amount withdrawn and deposited did not exceed an amount which is commensurate with his lawful business activities".

59. Also, in the case of **Director of Public Prosecutions v Ramgoolam N. [2022 SCJ 296]**, the Court stated as follows:

"Limitation of payment in cash is an effective strategy for countering financial abuse and the policy of the legislator was clearly designed to achieve the objective of safeguarding the national and international financial system against money laundering which may adversely affect the social, economic and democratic set up. The burden lies on the prosecution to prove, beyond reasonable doubt, all the elements of the offence under section 5(1) of the FIAMLA. The evidential and legal burden rest upon the respondent to show, on a balance of probabilities, that the transaction falls within one of the exempt categories".

60. We find that the learned Magistrate came to the right conclusion when she concluded that the appellant did not carry out a transaction which is not an exempt one since the

appellant effected an individual commercial transaction when he purchased a portion of land from the Education Trust.

61. Grounds 27, 28, 29 and 31 therefore fail.

Grounds 30 and 32 - Vague grounds

62. Grounds 31 and 32 are as follows:

31. The Learned Magistrate misdirected herself in her finding of guilt against the Appellant as the evidence against him was such that he should have been given the benefit of the doubt.

32. The Learned Magistrate failed to consider that there was no payment made as the Appellant acting as a trustee of the Education Trust, was, if the version of the prosecution is believed, remitting the money to an agent of the same Trust, to be banked.

63. It is the submissions of learned Senior Counsel for the appellant that there were sufficient discrepancies in the testimonies of witness Sakhawoth and Hussenbocus coupled with the dubious **Document D** and an ambiguous alleged confession to allow the appellant the benefit of doubt.

64. Learned Counsel for respondent No. 1 submitted that both Grounds 30 and 32 are vague and relied on the case of **Maunthoora v State** [2021 SCJ 59].

65. Learned Counsel for respondent No. 2 submitted that on the compelling evidence on record namely (*i) the voluntary confession of appellant, (ii) the documents produced showing the cash transaction of Rs 750, 000 having been effected by appellant (iii) credible testimony of witness Sakhawoth,* the learned Magistrate rightly found that the appellant made a cash payment of Rs. 750, 000 to witness Sakhawoth for the purchase of a plot of land.

66. We find it relevant to cite the case of **Langue v The State** [2017 SCJ 55] that:

*"The basic rule is that grounds of appeal must be carefully drafted, that is in a clear and precise manner so as to indicate to the other side, and indeed the court, what specific issues are being raised and have to be considered (see **Joli v The State** [2015 SCJ 68]). Should the court consider that the ground is a mischief ground, that is through its vagueness and generality raised new issues not envisaged in the impugned ground, the court will not consider same. As was stated in the case of **Ramasamachetty v R** [1872 MR 15] and cited in the case of **Parahoo v The King** [1950 MR 66], on vague and general grounds of appeal –*

"If we were to sustain such an argument it is very clear that reasons of appeal would be so framed henceforth as to conceal the grounds as much as possible, and would lead to great abuses in practice"."

67. We have already addressed some of the issues raised under Ground 31 and we can only refer to what we have said above in that the learned Magistrate had the benefit to see and hear the witnesses, analysed the evidence before her and as rightly submitted by learned counsel for respondent No.2 that there was compelling evidence before her to find the charge proved against the appellant. As for ground 32, indeed we cannot but agree with the submission of both respondents Nos. 1 and 2 that the ground is vague. Both grounds fail.

68. All the grounds of appeal having failed, the appeal is set aside with costs.

M.E.S.J. Moutou-Leckning
Judge

C. Green-Jokhoo
Judge

8 July 2026

Judgment delivered by Hon. M.E.S.J. Moutou-Leckning, Judge

For Appellant : Mr O.D. Cowreea, Attorney-at-Law

: Mr J. Panglose, GOSK appears together with Mrs R. Umarkhan, of Counsel

For Respondent No. 1 : State Attorney

: State Counsel

For Respondent No. 2 : Miss N. Seetaram, Attorney-at-Law

: Mrs A. Rangasamy-Parsooramen, of Counsel appears together with Mr D. Gunesh, of Counsel