

ICAC v 1. Rakesh Rammessur 2. Indradeo Beechook CN: 1369/09 - Judgment delivered on 12.12.14

Accused No. 2, Mr. Beechook, was charged with the offence of Public Official using his office for gratification in breach of sections 7(1) and 83 of PoCA. It was averred that on or about 14 May 2009 at SSR International Airport, Accused made use of his position as a Customs Officer for a gratification for himself and obtained 50 Euros which he was not entitled to do. He pleaded not guilty and was assisted by Counsel.

On 14 May 2009 at around 06 00 hours, Insp. Appasamy was on duty at the SSR International Airport in company of PC Issuree. Upon arrival of flight MK 045 from Charles de Gaulle, the latter informed him that he had profiled an incoming passenger, Mr. Ramessur who was appearing anxious. PC Issuree and Inspector Appasamy followed him and at some point, Mr. Ramessur was diverted to the customs examination hall where Accused No. 2 called Mr. Ramessur to the X-ray machine to have his luggage scanned. Inspector Appasamy observed that after a brief conversation with Accused No. 2, Mr. Ramessur placed his luggage on the X-ray machine for scanning and Mr. Ramessur tendered a piece of paper which Accused No. 2 examined. Inspector Appasamy approached the X-Ray machine where he saw Mr. Ramessur removing a bank note from his pouch and placed same in his passport which he tendered to Accused No. 2. He saw Accused No. 2 removing the bank note and placed same in the pocket of his trousers. He then instructed PC Issuree to intercept Mr. Ramessur. Mr. Purmessur, the Customs Team Leader, was also called for enquiry. At a certain point, Accused No. 2 voluntarily stated to Mr. Purmessur the following "fini ca par la meme; mo pou retourne li so 50 Euros". Accused No. 2, then in presence of other officers, voluntarily showed him where he had thrown the money. Same was crushed in the form of a ball and was lying in the staff corridor.

At the trial, PC Issuree corroborated the version of Insp. Appasamy. He stated that when Mr. Ramessur was brought for questioning, he made an allegation against the Accused No. 2. Mr. Purmessur explained that for a first laptop there was no tax to pay but for a second one, VAT had to be paid. Accused No. 2 denied the allegation against him and also denied that the money belonged to him. The defence contended that Insp. Appasamy could not have seen any transactions as his field of vision was obstructed by the scanner at all times so that he could not have a clear sight of what was happening between Mr. Ramessur and Accused No. 2.

In its judgment, the Court gave Accused No. 2 the benefit of the doubt and dismissed the information against him. The Court took note of the fact that Insp. Appasamy was the sole witness of the transaction between the Accused No. 2 and Mr. Ramessur. The Court also noted the concession made by Insp. Appasamy to the fact that the scanner machine in the examination hall was about 2 metres high while

his height was 1.75 m and that Accused No. 2 was shorter than him. The Court found various irregularities with the plan put up by PC Poutou in relation to the present case which tended to undermine the credibility of Insp. Appasamy as to whether he had a clear view of the transaction and raised doubt as to the remittance. The Court noted the different versions given by the prosecution witnesses as to how the money was found. On that matter, the Court held that it had serious doubts as to whether it was Accused No. 2 who himself volunteered to show to the police the spot where the money was lying on the floor after he made a verbal confession.

With regard to Accused No.1, a discontinuance of proceedings was filed on 28 July 2010. Subsequently, he pleaded guilty to the charge of Bribery of Public Official in breach of section 5 of PoCA. On 29.07.10 he was sentenced to undergo 6 months imprisonment. However, on 13.08.10 the Court ordered him to perform community service at Gandhi Breed Ashram of Petit Raffray for 120 hours as from 14.08.10 from Mondays to Sundays.

#### ICAC v. Balram Tooree CN: 746/11 - Judgment delivered on 09.12.14

The Accused was charged with the offence of Traffic D'influence in breach of section 10(2) of PoCA. He pleaded not guilty and was assisted by Counsel. It was averred in the Information that under (i) Count I, on 28.01.08, Accused gave the sum of Rs 1,800 to one Georges Mootosamy to use his real influence, to obtain a driving license, without going through the normal procedure, from the Mauritius Police Force; and (ii) Count II, on 11.02.08, Accused gave the sum of Rs 2,500 to one Georges Mootosamy to use his real influence, to obtain a driving license for Mrs Sangitee Tooree, without going through the normal procedure, from the Mauritius Police Force.

At trial, it was established that the admissions made by the Accused in his out of court statements were valid and they clearly established the guilt of the accused in respect to the charges.

In its judgment, the Court found Accused guilty as charged. He was conditionally discharged upon his entering a recognizance and furnishing a security of Rs. 15,000 within 21 days and to be of good behavior for a period of three years failing which to undergo one year imprisonment.

ICAC v 1. Vidyanand Gajadhur 2. Pramanand Deelchand CN: 1845/10 - Judgment delivered on 02.12.14

The Accused parties were charged with the offence of Bribery by Public Official in breach of section 4(1) (a) & (2) and 83 of PoCA under 14 counts. They pleaded guilty. It was averred in the information that, accused parties whilst being officers at the Industry Section of the Customs and Excise Department, obtained various sums of money from Mr. Emmanuel Kenny to process various "Certificat De Circulation Des Marchandises" in relation to exportation of goods to France, Reunion Island and Spain, respectively.

In a judgment delivered on 2 December 2014, the Court found both Accused parties guilty as charged. Both accused were conditionally discharged upon furnishing a recognizance in the sum of Rs. 100, 000, a surety of Rs. 30, 000 and on being of good behavior for a period of 2 years failing which they would undergo 6 months imprisonment.

ICAC v Guinness & anor CN: 1379/2007- Ruling delivered on 21.10.14

The two accused parties, Ajay Guinness and Dhaneswar Soobrah were charged under Counts 1 and 2 respectively, with the offence of Public Official using office for gratification in breach of section 7(1) of PoCA. Both pleaded not guilty and were assisted by counsel.

At the trial, the Defence moved that proceedings against Accused No. 1 should be stayed on the following grounds: (i) the prosecution was harsh and there had been unconscionable delay in instituting the present proceedings; (ii) the present proceedings were entered as a result of the influence of certain ministers; (iii) accused is being deprived of a fair trial in as much as he was not given the facilities to put up his defence at the time of the enquiry; and (iv) the learned DPP was favoured with a one sided enquiry and therefore incomplete information was passed on to him.

The Defence submitted that there was a breach of section 72 of the Constitution which stipulates that: "(3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do to- (a) institute and undertake criminal proceedings before any Court of law ...". It is also provided that "(6) In the exercise of the powers conferred upon him by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.'

Section 47 of the Prevention of Corruption Act (PoCA) further provides: "(6) After receipt of the opinion of the Commission, the Director-General shall submit a report

to the Director of Public Prosecutions which shall include - (a) all the material, information, statements and other documents obtained in the course of the investigation; (b) a description of the articles of evidence which have remained in the custody of the Commission”

After disposing of grounds (i) and (ii) above which were devoid of any merits, the Court ordered that proceedings against the Accused parties be stayed. The Court in its assessment concluded that there was unfairness at the level of the enquiry which had a fatal impact on the conduct of the trial. Since the ICAC had not communicated the video tapes which contained the interview and interrogation of Accused No.1 to the Director of Public Prosecutions, the Court found that the DPP had been to tender the appropriate advice and therefore the requirement under section 47 of PoCA had not been complied with.

The prosecution gave notice of appeal.

ICAC v Sacheedanand Veeriah CN: 714/2009- Judgment delivered on 21.10.14

Accused was charged with the offence of Bribery by Public Official in breach of section 4 (1)(a) (2) of PoCA. It was averred in the information that whilst being a Police Sergeant in uniform performing vehicle check along Souillac Traffic Centre, the accused had solicited a sum of Rs. 500 for himself, from one Vayid Baukar, so as to avoid latter facing any legal consequences regarding his driving licence which according to accused appeared to be a fake one. The accused pleaded not guilty and was assisted by counsel.

The Prosecution's case rested on the testimony of the complainant and main witness, Mr. Vayid Baukar. It was alleged that on 29 November 2004, Mr. Vayid Baukar was driving his private car at Souillac when police officers stopped him. On verifying his licence, Accused told him that it was a fake one and that he was liable to be arrested. Accused then asked him for money. He asked how much and whether Rs. 50 would do. Accused replied that he would not get a bottle of wine with it. He then asked whether Rs. 500 would do and Accused nodded. The accused then kept his licence.

At trial, the validity of Mr. Baukar's licence was in issue. Mr. Baukar stated that he did not know if his licence had a false date of birth and national identity card number. Chief Inspector Ramphul, In-charge of the licensing section in 2005, was called to depose. He stated that whilst the licences of Mr. Vayid Baukar and Mr. A. A. Noursing were being processed at the Traffic Branch, they were interchanged so that the NIC of Mr. Vayid Baukar was written on Mr. A. A. Noursing and vice versa. He also stated that it was legitimate for the accused to have serious doubts about

the genuineness of Mr. Vayid Baukar's licence. The Accused denied in Court having solicited Rs. 500 from Mr. Vayid Baukar.

In a judgment delivered on 21 October 2014, the Court gave Accused the benefit of the doubt and dismissed the information against him. The Court found the evidence of Mr. Vayid Baukar, the main witness for Prosecution, doubtful; observing that all throughout his testimony, the latter was either inconsistent in relation to the events or claimed forgetfulness when he was pressed for answers. The manner in which the witness deposed and the numerous inconsistencies in his testimony adversely affected his credibility.

ICAC v Vijay Raamsahye C/N: 555/09- Judgment delivered on 08.09.14

The accused was charged with the offence of Bribery by Public Official in breach of sections 4(1) (b) and (2) of the PoCA. He pleaded not guilty and was assisted by counsel.

At the trial, the complainant Mr. P.H.S.H.H Kim Fai stated that he is the director of Origin Investment Ltd. On 19 July 2009, he got his development permit for his business. Subsequently, he received a letter from the Municipality of Curepipe requesting him to call at the Municipality to pay a trade fee. He proceeded to the Municipality where he was referred to the accused, Mr. Raamsahye, the Head of the Planning Department. The latter fixed an appointment to visit his premises. On the day of the appointment, accused claimed that the building was not painted properly and the parking should be tarred and this would cost around Rs. 40, 000 to Rs. 50, 000. Accused then asked for Rs. 5000 to sign the clearance for his trade licence. Mr Kim Fai made a complaint to the police on the same day.

The accused admitted having visited the site of complainant and has said that the parking should be tarred but denied that he solicited Rs. 5000 to sign the clearance certificate.

The Court found accused guilty as charged. The main witness for the prosecution, Mr. P.H.S.H.H Kim Fai, deposed in a clear and coherent manner. He explained how and why the accused solicited Rs. 5000 from him. His version stood unrebutted and was corroborated to some extent by Mr. L.J.B Mathurin, his employee, who confirmed having heard accused soliciting Rs. 5000. The Court held that Mr. P.H.S.H.H Kim Fai and Mr. L.J.B Mathurin were witnesses of truth and the Court could safely act on their respective testimony.

All elements of the offence having been proved by the prosecution, the Court held that the prosecution proved its case beyond reasonable doubt. On 22 September 2014, the accused was sentenced to undergo 6 months imprisonment plus Rs. 500 as costs.

The accused gave notice of appeal.

ICAC v Shoshimala Jukhoop C/N: 903/2011- Judgment delivered on 18.09.14

The accused was charged with the offence of (i) Money Laundering in breach of sections 3(1) (a), 6(3) and 8 of FIAMLA under counts I to V; and (ii) Money Laundering in breach of sections 3(1)(b), 6(3) and 8 of the FIAMLA under counts VI to VIII. She pleaded not guilty and was assisted by counsel.

The accused was a maid and planter earning a monthly salary of Rs 3000. It was averred in the information that in the period 07 March 2008 to 15 January 2009, the accused made bank deposits and possessed sums of money where she had reasonable grounds for suspecting that the property/sums were derived, in part directly from a crime, to wit: drug dealing.

She contended that all the money deposited in her bank account were from the sales of vegetables and gifts from relatives. Her son, Mr. D. Sunnotah was detained at Beau Bassin prison for a drug case.

The Court found Accused guilty as charged under all counts. The Court noted that Mr. D. Sunnotah, the son of the accused was convicted for drug dealing by the Intermediate Court and was sentenced to imprisonment on 20 June 2007. He was released on bail on 22 June 2007. His appeal against sentence was dismissed and he started serving his sentence on 12 January 2009. The period of 20 June 2007 to 11 January 2009 encompassed the dates on which accused allegedly laundered money. It was noted that as the son of accused was convicted for offences of 'offering Cannabis for sale' and 'possession of Cannabis for the purpose of selling', there was an ongoing business with an element of profit.

The Court also found that although the accused received money from the sale of vegetables and as gift from her relatives, the total amount she credited to her account in the period December 2008 to January 2009 remained unexplained. Also the fact that her son was convicted for drug dealing in 2007 entitled the Court to safely infer that part of the money she credited to/possessed in her accounts was directly the proceeds of crime.

After analyzing the whole of the evidence on record, the Court found that the explanations given by the accused as to the origin of the money she credited in her accounts were not plausible and not supported by evidence. The Court inferred from the failure of accused to give a valid explanation for the large sums of money that she credited to her accounts that she knew of the tainted source of the said money.

The Court held that the prosecution has proved its case against the accused beyond reasonable doubt. On 01 October 2014, the accused was sentenced to pay a fine of

Rs. 60, 000 under each of the 8 counts plus Rs. 500 as costs. The sum found in the bank account of the accused amounting to Rs 531,000 was forfeited.

ICAC v Pravind Kumar Jugnauth C/N: 265/2014- Ruling delivered on 05.09.14

The accused was charged with the offence of Conflict of Interests in breach of section 13(2) & (3) of PoCA. Section 13 (2) PoCA reads as follows: "Where a public official or a relative or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision."

The accused pleaded not guilty and was assisted by counsel. It was averred in the information that the accused, whilst being then a public official, whose relative had a personal interest in a decision which a public body had to take, wilfully, unlawfully and criminally took part in the proceedings of that public body relating to such decision, to wit: in his capacity as Vice Prime Minister and Minister of Finance and Economic Development, he approved the reallocation of funds amounting to Rs. 144, 701, 300 to pay to Med point, in which company his sister, Mrs. Malhotra held 86, 983 out of 368, 683 shares.

The Defence argued that (i) the information does not reveal any offence known to law & (ii) the Prosecution is time barred under section 4 of the Public Officers Protection Act (POPA).

Regarding the first argument, Defence contended that the accused cannot plead to an information which does not reflect the exact wording of the law as per section 125 of the District & Intermediate Courts Act. The variance between the words "is to take" as per section 13 (2) PoCA and the words "had to take" as per the information is such that the offence as per the information does not reflect the words or the offence created by the enactment. The Defence also contended that "approval of the reallocation of funds" as per the information could not possibly mean the "the actual decision" or "the proceedings in relation to such decision" as per PoCA.

Regarding the second argument, the Defence contended that the present prosecution is not a prosecution by the State. The prosecution has been brought by the ICAC under section 82 of the PoCA with the consent of the DPP and the matter has been referred to the Intermediate Court pursuant to section 112 of the Courts Act. The Defence argued that the ICAC is "a person, other than the State" as per



section 4 of the POPA and since the offence allegedly occurred in 2010 and the case was lodged in 2014, the matter is time barred and could not be proceeded with.

After hearing arguments, the Court held the tense of the verb used i.e. the words "had to take" as per the information as opposed to using the words "is to take" as per the enactment was immaterial in relation to the sequence of events. Such choice of words could not be a contentious issue and did not create a departure from the words or offence created by the enactment and therefore did not render the offence as one "unknown to law" and/or to which the accused could not plead.

Further the Court agreed with the argument of the Prosecution, that the ICAC could not, by virtue of its very purpose, be other than an emanation of the State. The Commission brought the prosecution under the PoCA and as there was a Reference from the DPP accompanying the information, the Court endowed the case with the characteristics of a Prosecution by the State. The Court was of the opinion that the ICAC could not therefore be considered as a person, other than the State. Also, the Court held that in view of the manner that ICAC's Director General was appointed coupled with the public funding for the Commission, there could not be any dispute that ICAC was an integral part of the State.

The Arguments of the Defence were therefore set aside by the Court.

#### ICAC v Balram Tooree C/N: 746/11- Ruling delivered on 09.09.14

The accused was charged with the offence "Traffic d'influence" in breach of section 10(2) of the PoCA under 2 counts. He pleaded not guilty and was assisted by counsel.

Prosecution moved to amend the information at the close of its case. The Defence objected to the said amendment.

It was the case for the Prosecution that the proposed amendment, namely by substituting the words "real influence" by the words "influence, real or fictitious", would not change the nature of the offence but only to qualify the word influence. The accused knew of the charge of "Traffic d'influence" at the outset when he was being prosecuted.

The Defence contended that the proposed amendment will cause prejudice to the accused in view of the fact that it came at a late stage.

After hearing arguments, the Court allowed the amendments suggested. The ratio of the decision was based on section 73 of the District & Intermediate Courts

(Criminal Jurisdiction) Act and on the case of Rahiman M.I.A.A. v The State 2009 SCJ 340. The Court held in the present case that the proposed amendment would not change the nature of the offence. The Court did not find any prejudice likely to be caused to the accused. It is to be noted that the Prosecution undertook to call and tender any witness which the Defence might require.

ICAC v Mohammad Shafi Nunhuck C/N: 349/2013- Ruling delivered on 25.09.14

The accused was charged with the offence of Bribery by Public Official in breach of sections 4(1) (a) (2) and 83 of PoCA. He pleaded not guilty and was assisted by counsel.

The Defence moved that the proceedings be stayed on the ground of the essential departure from the prescribed rules regarding identification exercise which has caused a miscarriage of justice.

The Defence contended that the process of direct confrontation was wrongly conducted on the ground that the person who participated in the investigation organized the confrontation and this rendered the process null and void.

It was the case for the prosecution that the ultimate test in a case of abuse of process was one of fairness. PC Sookaram said he was present when accused was arrested and that he conducted the direct confrontation. The identification was not disputed and accused did not have any complaint about the said exercise.

After hearing arguments, the Court declined to stay proceedings against the accused. The Court found that the accused would not be prejudiced by the fact that a 'confrontation' was carried out and that the complainant had identified him in presence of PC Sookaram. The Court noted that the complainant did not yet depose and the defence would have full latitude to cross-examine him on such 'identification exercise' . which took place, following the arrest of the accused.

The motion of defence was set aside.

Beezadhur (Appellant) v The ICAC and another (Respondents) [2014] UKPC 27- Privy Council Appeal No 0083 of 2013 -Judgment delivered on 07.08.14

On 25 November 2010, the Appellant was convicted by the Intermediate Court of Mauritius for breach of sections 5(1) and 8 of FIAMLA under 5 counts. Section 5(1) of the FIAMLA reads as follows: "... any person who makes or accepts any payment in cash in excess of 500,000 rupees or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence". Section 5(2) of FIAMLA reads as follows: "Subsection (1) shall not apply to an exempt transaction". It is to be noted that "exempt transaction" as defined by section 2 of the FIAMLA has been amended with effect from 12 December 2013 by the Economic and Financial Measures (Miscellaneous Provisions) Act (Act 27 of 2013).

The Appellant had been sentenced to pay a fine of Rs. 10,000 under each count and Rs. 500 costs. His appeal against conviction and sentence were dismissed by the Supreme Court on 28 June 2013. The Appellant was granted leave to appeal to the Judicial Committee of the Privy Council ("JCPC") on 29 October 2013.

On 7 August 2014, the Board of the JCPC upheld the decision of the lower court. Two issues were raised namely (i) On which party did the onus of proof lie regarding the application of exemptions under section 5(2) of FIAMLA? ; and (ii) What were meant by the words "lawful business activities" in the definition of "exempt transaction" in section 2 of FIAMLA?

In relation to the first issue , the Board considered section 10 of the Constitution. Section 10(2) (a) reads as follows: "Every person who is charged with a criminal offence-(a) shall be presumed to be innocent until he is proved or has pleaded guilty; ...". Section 10(11) (a) reads as follows: "(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 10(2)(a), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts; ...". The Board noted that section 10 gives expression to a fundamental rule of the common law, namely that the general burden of proof in criminal cases lies on the prosecution. However, that rule is subject to well established exception.

The Appellant contended that (i) in light of the case of *Police v Moorbannoo* [1972] MR 22, section 10(11)(a) above should be treated as placing the burden of proof on the defendant only in respect of matters "peculiarly or exclusively within his knowledge"; (ii) section 10(11)(a) only applies where the "law in question" expressly imposes upon the person charged the burden of proof. In relation to the first contention, the Board did not accept the submission of the Appellant. The Board held that exclusivity of knowledge is not an essential requirement for the application of the exception. In relation to the second contention, the Board held in essence

that the relevant law when interpreted in light of the common law principle as enunciated in *R v Edwards* (1975) Q.B. 27, 39-40, has the effect of placing the burden of proof on the defendant and if that effect is clear from the form of the provision in issue, it does not need to be spelt out in express terms. The Board held that 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.

In relation to the second issue, the Board of the JCPC agreed with the Supreme Court that, the Appellant's activities could not be construed within the ordinary meaning of "business activities". The Board held that the wording of the exemption must be looked at as a whole. It is concerned with "business activities" not just business in a loose general sense. The Board held that the emphasis is on the nature and amount of the cash transactions, which must be "commensurate" with the activities of that business which tend to support the Supreme Court's view that exemption is directed at businesses, typically in the retail trade, in which substantial cash transactions are a routine activity as compared to the transactions in the present matter.

Further, the Board held that "Strict control of cash transactions was clearly seen as an important part of the strategy for countering financial abuse. The exemptions were narrowly defined, being directed principally at transactions under the control of the central bank, or between recognized banks and financial institutions. The last category extends the exemption more widely, while still subject to some control by the banks, but it is not surprising to find it limited to businesses with a pattern of cash transactions, as opposed to the public at large." On this issue, the appeal therefore failed.

The Appeal was dismissed.

#### Icac v Rajen Velvindron and anor C/N: 626/07-Ruling delivered on 08.08.14

The accused parties were charged with the offence of Money Laundering in breach of sections 17(1)(a) and 19 of the Economic Crime and Anti Money Laundering Act under 23 counts.

Accused No 1 was charged under counts 1 to 20. He pleaded not guilty and was assisted by counsel. On 25 July 2013, during the course of proceedings, he changed his plea to guilty to on all charges against him.

Accused No 2 was charged under counts 8 to 19 and 21. She pleaded not guilty and was assisted by counsel.

Accused No 3 was charged under counts 20, 22 and 23. She pleaded not guilty and was assisted by counsel.

During the course of the proceedings, the Conservator of Mortgages, a witness for the prosecution, was called. The defence objected to any evidence from the said witness regarding properties held by the accused parties. The defence contended that the properties of the accused parties were not the subject matter of any count against them. The evidence, according to defence, would therefore be irrelevant and the prejudicial value would exceed the probative value.

The Court noted that initially, when the case was lodged, there were 7 witnesses for the prosecution. On 02.10.08, an additional list was filed by the latter to include among others the Conservator of Mortgages. The Conservator of Mortgages appeared on the additional list as a witness for the prosecution with the following remarks: "Conservator of Mortgages or other officer as deputed to produce certified copy of extract from reg of repertory Vol Rep 575 no 904 (ii) VolRep 625 no 190 (iii) Vol Rep 901 no 493 (iv) Rep 977 no 247". The Court found it most unfair to prevent the prosecution to call the said witness to adduce evidence in support of its case since there was no objection to add the said witness at the outset.

In its Ruling, the Court held that the prosecution had a duty to lay the substratum before the Court to allow for the inference that the accused should have suspected that the various sums of money were proceeds of crime. In order to do so, the prosecution was willing to call the Conservator of Mortgages to adduce evidence which would have shown the financial profile of the accused parties. The Court further could not see how producing information which was available to the public at large would have caused prejudice to the accused parties.

The Court held that the motion of the defence was devoid of any merit and was set aside.

Icac v 1. Peerthum Sheilendra 2. Abdool Said Jaumally C/N: 602/09-  
Ruling delivered on 08.08.14

The accused parties were charged with the offence of Public official using office for gratification in breach of section 7(1) of PoCA. They pleaded not guilty and were assisted by counsels.

Prosecution intimated to the Court that it intended to produce the followings:

(1) Minutes of Finance Committee held on 29.09.03;

(2) Minutes of Welfare Subcommittees held on 12.08.03, 23.07.03, 08.08.03 and 18.08.03;

(3) Minutes of Sports Committee held on 20.08.03.

Inspector Soodagur of ICAC, a witness for the prosecution, explained in Court that during the course of the investigation, the above Minutes were produced to the ICAC by Mr. Peerthum, Accused No. 1, the then secretary of the PRDC. Inspector Soodagur explained that in relation to Minutes dated:-

- i. 23.07.03, 08.08.03 and 18.08.03, there were no mention in the Minutes as to who took same;
- ii 12. 08.03, the maker namely the Head Clerk, Mr. Mudhoo had passed away;
- iii 29.09.03 and 20.08.03, the prosecution intended to call Ms. Chabilall as its witness to produce same.

Inspector Soodagur also explained that the said Minutes contained the decision of different Committees in relation to tenders for the purchase of national flag for the Indian Ocean Island Game.

The defence then objected to the production of the said Minutes on the ground they were confidential documents within the meaning of the Local Government Act and the Council of the defunct PRDC had not voted for any resolution to make the said Minutes public.

It was the case for the prosecution that the arguments of the defence could not stand as the defence did not hold the right to assert the right to confidentiality of the document nor could it waive it. According to the prosecution, 'the privilege is personal to the party or witness and he alone can waive it'.

In its Ruling, the Court considered the Local Government Act 1989 (LGA). The Court noted that the District Council had duly deputed Mr. Nursing, the acting Deputy Chief Executive of the PRDC, who was the custodian of the documents of the defunct PRDC, to produce these documents in Court and the latter had not chosen to invoke the issue of confidentiality under the provisions of the LGA. As well, at no time did Mr. Nursing invoke public interest immunity to prevent the materials being disclosed. The Court also noted that the documents were already in the public domain as same had already been produced to the defence and by Accused No. 1, the then secretary of the PRDC, during the course of the enquiry. Therefore, the issue of confidentiality does not arise.

The Court held that the arguments of the defence cannot stand.

The Court also considered the admissibility of the Minutes. It was the case for the prosecution that it would insist on the admissibility of the Minutes as public documents and as an exception to the hearsay rule.

In relation to admissibility of the Minutes, the issue before the Court was whether the makers of these Minutes of proceedings need to be called to produce same. The Court referred to Part II par B section 5 of the Fourth Schedule of the LGA and held that the Minutes of proceedings were official minutes taken according to law. The Minutes were what occurred during the Committee and taken by officers who were under the direction and control of the Chief Executive. As per section 167 of the LGA and section 170 of the Courts Act, certified copies of any document in the custody of any local authority are admissible.

The Court found that the objection of the defence for certified copies of the Minutes to be produced by Mr. Nursing cannot stand and was therefore set aside.

ICAC v T. Moossun C/N: 488/13-Ruling delivered on 24.07.14

The accused was charged with the offence of Conflict of interests in breach of section 13(2) and (3) of PoCA. It was averred in the information that the accused, whilst being a public official whose relation had a personal interest in a decision which a public body had to take, wilfully, unlawfully and criminally took part in a proceedings of that public body relating to such decision, to wit: whilst being the Lord Mayor of the Municipal Council of Port Louis, he took part in the proceedings of the Public Health Committee with regard to a decision to allocate a stall in the new market of Port Louis to his sister, Mrs. Vimla Callichurn.

The defence moved that proceedings against the accused be stayed on the ground of abuse of process namely 'in view of the fact that this is a second prosecution which has been brought after the alleged offence in 2004 and after a full blown trial and a conviction nullified by Supreme Court on appeal on a point of law and procedure'.

It was the case for the defence that it would be an abuse of the process of the Court if the accused was allowed to stand trial for the same offence and on the same set of facts as in 2004. According to the defence, it would be oppressive and unfair for the accused to be prosecuted again after the Supreme Court had on 14.02.13 quashed the conviction and sentence of the lower Court and had not ordered any new trial or fresh hearing. The defence contended that as witnesses have deposed and the line of defence of the accused is known, the accused would not benefit from a fair trial under section 10(1) of the Constitution.

In a gist, it was the case for the prosecution that when proceedings have been nullified after conviction and the accused has not been punished, and there has been no autrefois acquit or autrefois convict, the accused can be brought again on charges arising out of the same fact.

The Court on an assessment of the existence of abuse, held that it would be unfair to allow the trial to proceed. The Court was of the view that even if the trial before the lower court was declared null by the Supreme Court on 14.02.13, it none the less remains that (i) prosecution witnesses and a defence witness were examined in chief, cross-examined and re-examined; (ii) submissions were offered; and (iii) the defence had already disclosed its line of defence.



ICAC v Bimla Ramloll C/N: 1180/2009-Judgment delivered on 24.07.14

The accused was charged with the offence of Traffic D'influence in breach of section 10(5) and 83 of PoCA. She pleaded not guilty and was assisted by counsel. It was averred in the information that the accused, the then Councilor at Municipal Council of Quatre Bornes (MCQB) did wilfully, unlawfully and criminally obtain a gratification from any other person for any other person in order to use her influence, real or fictitious, to obtain a benefit from a public body, to wit: she obtained the sum of Rs. 259, 500/ from Messrs Viraj Poorun and Mohamed Izaac Domah for Health Inspectors of the said Municipal Council, to use her influence, real or fictitious, to obtain stalls from the MCQB.

At trial, CI Gungadin of Petite Rivière Police Station, a witness for the prosecution produced (i) several documents which were secured from the accused, including various receipts; and (ii) the sum of Rs. 259, 500 and a mobile phone. Accused did not deny that same had been in her possession.

The main witness for the prosecution, Mr. Viraj Poorun, Hawker explained in Court that he knew the accused since the year 2007 through one Mr. Domah, an estate agent. He told Mr. Domah about various problems he was having as a street hawker, namely that inspectors would seize his goods and he wanted to have a fix place of business. Subsequently, Mr. Domah had fixed an appointment for him with the accused. Accused at first meeting told him that there were vacant stalls at the Quatre Bornes fair and advised him to write to the MCQB in that respect.

Mr. Viraj Poorun stated that on 27.10.07, police arrested him and accused. He had no money with him. However, police arrested accused with a sum of Rs. 259, 500. Mr. Viraj Poorun explained that the money was collected from 13 hawkers as the accused had said that there were 13 stalls available at the Quatre Bornes fair and the said money would be used to settle outstanding fees of existing tenants etc. He also added that the stall would cost Rs. 30,000 each and the said money would be used to pay for permits and patents etc. He explained that he arranged for the money and gave accused an appointment at Orchard, Quatre Bornes to remit same. All these arrangements were done in presence of Mr. Domah. Mr. Viraj Poorun also confirmed in Court that part of the money were to be given to inspectors of the MCQB 'pou faire demarches'.

Mr. Viraj Poorun also positively identified the names of the persons mentioned on the various receipts produced by CI Gungadin above, whom he had contacted to take the stalls. On 27.10.07, he remitted the money to the accused in presence of Mr. Domah.

PC Laval, a witness for the prosecution stated in Court that on the material date at Wolmar Flic en Flac he and other officers intercepted private car bearing registration number 8212. The said car was being driven by Mr. Viraj Poorun. The accused was seated at the back. A search was carried out whereby he secured from accused various documents and the sum of Rs. 259, 500 from her handbag.

Mr. Jean Francois Dorestan, Chief Executive of the Municipal Council of Port Louis, another witness for the prosecution explained in Court that the Public Health Committee and the subcommittees of the said Committee were responsible for the allocation of stalls. The Committee had delegated powers by the Council and public health inspectors decided to whom stalls should be allocated.

Accused in her unsworn statement gave a detailed account as to how the sum Rs. 259, 500 had been collected by Mr. Viraj Poorun and remitted to her.

The Court considered all the evidence and the unsworn version of the accused and found that the prosecution has proved its case beyond reasonable doubt.

The Court noted the explanation given by Mr. Viraj Poorun namely that the said sum of money was meant (i) for permits and patents etc.; (ii) to settle outstanding fees of existing tenants etc.; and (iii) to be partly given to inspectors of the MCQB 'pou faire demarches'. The Court also noted the version of the accused namely that the money was to be remitted to Mr. Pursun, the chairman of the Public Health Committee, as stated by the accused in her statement. However, the Court found, in light of the evidence on record, that inspectors were involved in the procedure of allocation of stalls and they also played an administrative role in this regard. The Court considered the version of DPS Jugroop of ICAC, a witness for the prosecution, who stated that Mr. Pursun had denied the allegations made against him and also that there was no conversation between the latter and accused. The Court further noted that the accused stated the followings when arrested by the police 'En fait mo tipeailequittesal'argent avec inspectriceMunicipalite qui appelleSobha ....'. Accused also never mentioned to Mr. Viraj Poorun that the money was meant for Mr. Pursun. The Court found that the prosecution had established that the gratification had been meant for inspectors of the MCQB.

Further, the Court found that the accused had used or abused her 'credit dont elle jouit (ou pretend de jouir) de par ses fonctions dans l'administration" and "use et

outrépasseici de saqualite". The Court held that it is clear from the facts of the case that accused had portrayed herself as an intermediary to exert her influence over the inspectors of the Council in relation to the allocation stalls. The Court found accused guilty as charged.

Accused has given notice of appeal.

#### ICAC v Tupsy C/N: 1617/10-Judgment delivered on 23.07.14

The accused was charged with the offence of Public official using his office for gratification in breach of section 7(1) and 83 of PoCA. He pleaded not guilty and was assisted by counsel.

It was averred in the information that the accused, whilst being an Agricultural Clerk posted at the Veterinary Services Division, obtained for himself the sum of Rs. 10,000 from one Mrs. Lutchmee Appadoo to have the latter's cow declared dead and to arrange for the State to compensate her with another cow.

The case for the prosecution rested upon the version of Mrs. Lutchmee Appadoo which was persistently inconsistent with her previous out of court statement. The latter stated in Court that she is an animal breeder. She went to Reduit where she met the accused who registered her complaint which is to the effect that she had given her cow to a lady for a year who had not returned same. She added that the accused called her and informed her that she should give him Rs. 10, 000 for paper works so that the government would financially compensate her for her alleged dead cow. In her out of court statement, Mrs. Lutchmee Appadoo stated that the accused told her that he could get her a cow from the government if she would give him Rs. 10,000 and that he would declare her cow dead.

The Court found that in light of the evidence on record which is in material contradiction with the particulars as averred in the information, the accused cannot be found guilty as charged. The Court further found it impossible to amend the information so as to make it accord with the evidence on record since the evidence 'is in a state of uncertainty and confusion as to whether the accused obtained the Rs. 10, 000 so as to arrange to compensate [Mrs. Lutchmee Appadoo] by another cow or financially'. Therefore, the Court held that the prosecution has not proved its case as charged under the information against the accused beyond reasonable doubt. The charge against the accused was dismissed.

ICAC v Pursun & 2 Ors C/N: 126/08-Ruling delivered on 18.07.14

The accused parties were charged with the offence of Conflict of interests in breach of section 13(2) and (3) of PoCA under 7 counts.

The defence moved that all documents which have been submitted by Mr. Vineshsingh Seeparsad, to the ICAC in November 2007 be disregarded by the Court. The said documents included minutes of proceedings of the Public Health Committee prior to January 2008 and all application forms given by Mr. Vineshsingh Seeparsad to the ICAC. The defence contended that the said documents have only been made public during the quarterly council meeting held in January 2008 and were therefore confidential.

The Court considered the documentary evidence and concluded that the minutes of proceedings were no longer confidential when they were handed over to ICAC for investigation.

In its Ruling, the Court found that the evidence on record failed to reveal that the documents were confidential. The Court noted that the said documents were not removed by ICAC for its investigation pursuant to section 52 of the PoCA, but rather by voluntary disclosure by Mr. Vineshsingh Seeparsad upon mere application made by ICAC by way of letter dated 15.11.07. The Court referred to section 52 (5) (a) of the Local Government Act 2003 whereby the person acting in the capacity of Chief Executive officer has the overall responsibility for the administration of the local authority whose officers shall be responsible to him. The Court found that Mr. Vineshsingh Seeparsad, in his capacity as then Deputy Chief Executive Officer, was the holder of such statutory powers when he handed over the documents to ICAC. The Court was of the view in its ruling that the voluntary disclosure by the Deputy Chief Executive of the Municipal Council of Quatre Bornes in itself amounts to a waiver on the part of the Council to claim that the documents were confidential in nature.

The Court held that the minutes of proceedings and the application forms which Mr. Vineshsingh Seeparsad remitted to the ICAC cannot be disregarded.

The Motion of the defence was therefore set aside.

ICAC v Vishnu Paidigadu C/N: 113/13-Judgment delivered on 10.07.14

Accused was charged with the offence of Money Laundering in breach of sections 3(1) (a), 6(3) & 8 of FIAMLA under 24 counts. He pleaded guilty.

It was averred in the information under each count that accused did wilfully, unlawfully and criminally engage in a transaction that involved property (i.e. a total of Rs. 105,771 approximately) which in whole directly represented the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived, in whole directly from a crime.

The particulars of the offence were that accused effected various deposits/transfers in his bank accounts at Barclays where he had reasonable grounds for suspecting that the sums of money were derived in whole directly from a crime to wit 'Embezzlement by person in service receiving wages to the prejudice of his master'.

Accused was found guilty and on 10.07.14 he was sentenced to pay a fine of Rs. 7,000 on each count plus Rs. 500 as costs. The total fine amounted to Rs. 168,500.

ICAC v Bheekhy Nasser Osman C/N: 1620/12-Judgment delivered on 18.06.14

The accused was charged with the offence of 'Limitation of payment in cash' in breach of sections 5(1) & 8 of the FIAMLA. It was averred in the information that the accused accepted a sum of Rs. 1.3 M. in cash from one Mrs. Gilberte Marjorie Bazerque so as to pay back Biosphere Trading Ltd. He pleaded not guilty and was assisted by counsel.

The defence in a gist contended that Mrs. Gilberte Marjorie Bazerque is only fabricating a story and made a false allegation against the accused.

In a gist, the case for the prosecution was that on 28 November 2011, Mrs. Gilberte Marjorie Bazerque was convicted by the Intermediate Court for the offence of 'Limitation of payment in cash' in breach of sections 5(1) & 8 of the FIAMLA. It was averred that she made a payment of Rs. 1.3 M. in cash to the accused.

However, when the Case came for Trial on 12 September 2013, Mrs. Gilbert Marjorie Bazerque, who is the main witness for the Prosecution, stated that the money was not remitted to the accused but to one Mr. Ismael Badat. The latter is a Reunionese. When her previous inconsistent statement was put to her, she maintained what she stated in court was the truth and that the payment was for Mr. Ismael Badat.

Mr. M J Bazerque, the husband of Mrs. Gilberte Marjorie Bazerque, stated that he did not recall that his wife did a transaction of Rs. 1.3 M. when in fact he stated in a statement to the ICAC that his wife remitted the sum of Rs. 1.3 M. to the accused which the latter

immediately kept in his safe. His memory had to be refreshed in this regard to which he stated he could not recall anything.

According to the prosecution, it is incumbent on the prosecution to prove that there was a transaction above the prescribed limit between the accused and Mrs. Gilberte Marjorie Bazerque. As per the information as mentioned above, the accused accepted a sum of Rs. 1.3 M. in cash from one Mrs. Gilberte Marjorie Bazerque so as to pay back Biosphere Trading Ltd. Therefore, the burden is on the prosecution to prove beyond reasonable doubt that Mrs. Marjorie Bazerque made a payment of R1.3 M. to the accused.

It was also the case for the prosecution that the explanation under oath of Mrs. Marjorie Bazerque could not be believed and she might have committed perjury.

The Court considered all the evidence and noted that Mrs. Marjorie Bazerque, the main witness for the prosecution, was a difficult witness who in court departed from her out of court statement. The Court was of the view that a Court of Law cannot act on the out of court statement given by a prosecution's witness and discard the latter's testimony under oath. The Court was also of the view that the manner in which the accused deposed left the Court in the doubt as to whether there was indeed any transaction above the prescribed limit as averred in the information. The Court dismissed the information and granted the benefit of the doubt to the accused.

ICAC v Win Young Chin TAM SEN C/N: 237/14-Judgment delivered on 29.05.14

The accused was charged with the offence of 'Limitation of payment in cash' in breach of sections 5(1) & 8 of the FIAMLA under two counts. He pleaded guilty.

It was averred in the information under count 1 that the accused did wilfully, unlawfully and criminally accept a payment in cash in excess of Rs. 350,000, to wit he accepted a sum of Rs 1,000,000 in cash from one Mr. Hassen Khan Taher.

It was averred in the information under count 2 that the accused did wilfully, unlawfully and criminally make a payment in cash in excess of Rs. 350, 000, to wit he made a cash deposit of Rs 1,000,000 in his a/c no. 03410100049003.

The Court found him guilty as charged and sentenced him to pay a fine of Rs. 25,000 on each of the two counts plus Rs. 500 as costs.

ICAC v Noor Ajum Woozeer C/N: 1234/2012-Ruling delivered on 23.05.14

The Accused was charged with the offence of 'Limitation of payment in cash' in breach of sections 5(1) & 8 of the FIAMLA as per the information which was lodged before the Intermediate Court on the 23 August 2011. The particulars of the information was that the accused had on 13 March 2003 made a payment in cash in excess of Rs. 350,000. The Accused pleaded not guilty and was assisted by counsel.

On 20 July 2012, the defence made a motion on the ground that the unreasonable and inordinate delay of 8 years was an abuse of process.

After hearing arguments, the Court held that the defence has not proved on a balance of probabilities that the trial will be unfair and/or the Accused will be irretrievably prejudiced in the presentation of his defence. The Court further held that there does not appear (i) to be any abuse of process of the Court or manipulation/misappropriation of powers on the part of the prosecution; (ii) that the proceedings were vexatious or oppressive and or (iii) that the defence would be prejudiced. The Court set aside the Motion for stay of proceedings made by the defence.

ICAC v Devika Dhunoo C/N: 1945/10-Judgment delivered on 22.05.14

The accused, a Notary's clerk, was charged with the offence of 'Money Laundering' in breach of sections 3(1) (a), 6(3) & 8 of the FIAMLA under 17 counts. She pleaded guilty.

It was averred in the information that the accused wilfully, unlawfully and criminally engaged in a transaction that involved property which in part directly represented the proceeds of a crime, where she had reasonable grounds for suspecting that the property was derived, in part, directly from a crime. The particulars of the charge were that on several occasions from May 2006 to July 2007 the accused deposited into her bank account bearing no. 001 123058 091 and 202921093 respectively various sums of money which sums she had reasonable grounds for suspecting to have been derived from a crime, to wit: Conspiracy to do an act which was unlawful, that is, illegal booking.

The court found her guilty as charged and sentenced her to pay a fine of Rs. 10,000 on each of the 17 counts plus Rs. 500 as costs.

ICAC v 1. Janmejay Ujoodha 2. Rajwantee Ujoodha C/N: 1485/10-Judgment delivered on 08.05.14

Accused No. 1 was charged with the offence of 'Money Laundering' in breach of sections 3(1) (a), 6(3) & 8 of the FIAMLA under counts 1 to 4 and Accused No. 2 was charged with the offence of 'Money Laundering' in breach of (i) sections 3(1) (a), 6(3) & 8 of the FIAMLA under counts 6 to 15 and (ii) sections 3(1) (b), 6(3) & 8 of the FIAMLA under count 5. Both Accused pleaded guilty.

It was averred in the information under count 1 to 4 that Accused No. 1 wilfully, unlawfully, and criminally engaged in a transaction that involved property which in part directly represented the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived, in part directly from a crime. The particulars as per the information was that Accused No. 1 had on several occasions made a withdrawal of different sums of money from his bank account bearing No. 0110000766200010 at the Mauritius Post Commercial, Lallmatie where he had reasonable grounds for suspecting that the said sums were derived, in part directly from a crime, to wit 'Drug Dealing'.

It was averred in the information under count 5 that Accused No. 2 was wilfully, unlawfully and criminally in possession of property which in part directly represented the proceeds of a crime, where she had reasonable grounds for suspecting that the property was derived, in part, directly from a crime. The particulars as per the information was that Accused No. 2 possessed a sum of Rs. 850,000/ in her bank account bearing No. 0110004119500010 at the Mauritius Post and Cooperative Bank, Lallmatie and which said sum she had reasonable grounds for suspecting to have been derived in part directly from a crime, to wit 'Drug Dealing'.

It was averred in the information under counts 6 to 15 that Accused No. 2 did wilfully, unlawfully and criminally engage in a transaction that involved property which in part directly represented the proceeds of a crime where she had reasonable grounds for suspecting that the property was derived, in part directly from a crime. The particulars as per the information was that on several occasions Accused No. 2 made withdrawals of different sums of money from her bank account 0110004119500010 at the Mauritius Post Commercial, Lallmatie where she had reasonable grounds for suspecting that the said sums were derived, in part directly from a crime, to wit 'Drug Dealing'.

The Court found both Accused guilty as charged. Accused No. 1 was sentenced to undergo 3 years penal servitude under counts 1 to 4. Accused No. 2 was sentenced to pay a fine of (i) Rs. 100,000 under count 5; (ii) Rs. 50,000 under count 15; (iii) Rs. 15,000 under each of counts 6 to 12; and (iv) Rs. 10,000 under each of counts 13 and



14 plus each Accused to pay Rs. 500 as costs. A sum of Rs. 170, 000 found on Accused No. 2 bank account was also forfeited.

ICAC v I. Mohungur C/N: 1179/09-Judgment delivered on 06.05.14

The Accused was charged with the offence of 'Trafic d'influence' in breach of section 10(4) of POCA. He pleaded not guilty and was assisted by counsel. It was averred in the information that the accused willfully, unlawfully and criminally solicited a gratification from another person, for himself, in order to make use of his fictitious influence to obtain a benefit from a public body. The particulars of the information was that whilst being the Secretary of the General Merchandise Association (GMA), the Accused solicited money from one Sakeeroodeen Moonien, in order to make use of his fictitious influence with the Pamplemousses & Rivière du Rempart District Council (PRDC) in connection with the allocation of a stall in the new Pamplemousses market to the said Sakeeroodeen Moonien.

In a gist, the case for the defence was that the accused was the secretary of the GMA since 1996. He averred that he does not know Mr. Sakeeroodeen Moonien and denied the allegations made against him.

The Court considered all the evidence and found Mr. Sakeeroodeen Moonien, the main witness for the prosecution to be most unreliable and held that no weight can be attached to his evidence. The Court also noted that his testimony consisted in his memory being refreshed and previous inconsistent statements being put to him, during the whole of examination-in-chief. The Court therefore dismissed the case against the Accused.

ICAC v Dharamveer Soodhoo C/N: 1884/10-Judgment delivered on 05.05.14

Mr. Joao Pedro Rodriguez Da Costa Murithas (Mr. Murithas), of German nationality, travelled to Mauritius in November 2010. He explained in Court that on Saturday 20.11.2010, his wife, his two friends and himself were travelling in a car driven by one of his two friends when he was stopped by a police officer who asked him for a payment of Rs. 500 as fine for not wearing his seat belt. Mr. Murithas stated that he found it normal as it is a practice to pay a fine on the street in his country. One of his two friends gave a Rs. 500 note to the police officer. Upon request for a receipt, the police officer stated that it was not the practice to give a receipt on the road. In Court,

Mr. Murithas further stated that he believed that the accused was the officer who took the money but was not sure because of the passage of time. However, when he identified the police officer at the ICAC, he was sure it was him. Subsequently, when he was informed that it was a corruption case, he asked for the refund of his money which the police officer refunded.

The police officer, Mr. Soodhooa, a police constable was convicted for breach of sections 7(1) and 83 of the Prevention of Corruption Act (POCA). Section 7(1) of the POCA reads as follows: "Subject to subsection (3), any public official who makes use of his office or position for gratification for himself or another person shall commit an offence and shall, on conviction be liable to penal servitude for a term not exceeding 10 years." The Court found that Mr.Soodhooa was not a witness of truth but the version of Mr. Murithas was clear, coherent and stood unrebutted. The Court held that the prosecution has proved its case beyond reasonable doubt. On 05.05.14, Mr.Soodhooa was sentenced to undergo 6 months imprisonment plus Rs.500 as costs. He has given notice of appeal on the same day.

ICAC v Louis Kersley Antonio Caliste C/N: 295/13-Judgment delivered on 29.04.14

The accused, Mr. Louis Kersley Antonio CALISTE was found guilty as charged for the offence of Money Laundering in breach of sections 3(1) (a), 6(3) & 8 of the Financial Intelligence and Anti Money Laundering Act under 46 counts and on 29.04.12 he was sentenced to undergo 3 years penal servitude under each count plus Rs.500 as costs.

The accused had pleaded guilty. It was averred that on several occasions, the accused did wilfully, unlawfully and criminally engage in a transaction that involved property which, in part directly represented, the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived, in part, directly from a crime, to wit: accused on several occasions deposited into (i) his Joint Savings Account No. 014658526; and (ii) Bank account No. 014990903 and No. 1010000430700015 of Soladis Ltd different sums of money, which sums he had reasonable grounds for suspecting to have been derived, in part, directly from a crime : Drug related offences. The total sum of the money laundered under all counts of the information amounted to a sum of Rs 1, 813, 000.

ICAC v (i) Zainool Abedeen Moraby & (ii) Nazeemuddin Moraby C/N:  
1153/09-Judgment delivered on 10.03.14

Accused No. 1, a pharmacist and Accused No.2, a Human Resources Officer, two brothers, were charged with the offence of Money Laundering in breach of section 3(1) (b), 6(3) & 8 of the FIAMLA under 6 counts. They pleaded not guilty and were assisted by counsel.

According to the prosecution the predicate crime was 'conspiracy to conceal funds that should have been subject to a tax assessment under the law'. Those funds which at all material times belonged to Accused No. 1 were transferred, mainly via bank cheques, from accounts initially held by Accused No.2 to other new bank accounts held by Accused No.2 himself and the mother/sister of both Accused in their capacity as prête noms. Those bank accounts were mainly operated by Accused No.1 in his capacity as proxy. The gist of the case for the prosecution was that the Accused No. 1 conspired to evade the paying of tax by concealing his taxable income in various bank accounts of his family member/s name and consequently the funds subject to such conspiracy were said to have been transformed into "proceeds of crime". Also, according to the prosecution, Accused No. 1 could not plead in the teeth of sections 19, 146 to 149 of the Income Tax Act that he had been granted immunity from prosecution for any offence under the law after he had made a full disclosure under the Voluntary Disclosure Incentive Scheme (VDIS) under section 161A(1) of the Income Tax Act.

Accused No. 1 conceded that he had not paid tax on the funds in the bank accounts.

At trial it was not disputed (i) by Accused No. 1 that he effected those transfers from 2003 to 2007; (ii) by Accused No.2 that he was the holder of bank accounts opened with Accused No.1's funds; (iii) by the prosecution that the funds placed in the various bank accounts as per the information were legitimate proceeds from Accused No. 1's pharmacy and rental of his bungalow; and (iv) that the same legitimate funds were flowing in and out of the accounts and there was no injection of fresh funds.

After considering the evidence and the law, the Court held that Accused's No. 1 legitimate money could not be considered as "proceeds of crime" since it had not yet transformed itself into "proceeds of crime" which could only occur after Accused No. 1 "benefitted" from same and at the time of the transfer Accused No. 1 had not benefitted from same as he would have benefitted only after the relevant financial year's Tax Assessment.

With regard immunity granted under the Income Tax Act, the Court was under the considered opinion that section 161A(19) of the Income Tax Act was limited to the

Income Tax Act (as buttressed by the testimony of one witness from the MRA) and could not have offered an all encompassing immunity against ANY future prosecution-if there was an enactment under which the Accused parties could have been prosecuted.

In light of the above, the Court dismissed Counts 1, 3, 5 & 6 against Accused No.1 and dismissed Count 2 & 4 against Accused No. 2.

ICAC v Nadrajah Pillay Chedumbrum C/N 1686/13 -Judgment delivered on 06.03.14

Accused was charged with the offence of 'Limitation of payment in cash' in breach of sections 5(1) & 8 of the FIAMLA under one count. He pleaded guilty.

It was averred in the information that accused did wilfully, unlawfully and criminally accept a payment in cash in excess of Rs. 500, 000/-, to wit he accepted the sum of Rs. 700,000/- in cash from one Sada Curpen for the sale of a plot of land comprising of a concrete building at Ste Croix.

The Court found him guilty and sentenced him to pay a fine of Rs. 25,000 plus Rs. 500 as costs.

ICAC v Dan Chummun C/N 1662/12 -Judgment delivered on 04.03.14

Accused was charged with the offence of 'Traffic d'influence' in breach of sections 10(2) of the PoCA under three counts. He pleaded guilty.

It was averred in the information that accused did wilfully, unlawfully and criminally gave a gratification to another person to use his real influence, to obtain a benefit from a public body, to wit he gave the sum of Rs. 1,800/- to one Georges Ferdinand to obtain a driving licence without going through the normal procedure from the Mauritius Police Force.

The Court found him guilty as charged and on 08.02.14 he was sentenced to undergo one year imprisonment on each of the three counts plus Rs. 500 as costs. However, his sentence was suspended and on 04.03.14, he was ordered (i) to perform 180 hours of Community Service Order at Cite Coeur Immaculee Community Centre, Rivière du Rempart on Tuesdays and Fridays from 09.00 to 15.00 hours as from 11.03.14; and (ii) to attend monthly counselling at Piton Probation Office.

ICAC v Anderson Ross & ors C/N: 210-2012-Ruling delivered on 30.01.14

Defence counsels objected to the production of statements and documents by the prosecution on various grounds. After disposing of the grounds of objection that were devoid of any merits the Court exercised its discretion to stay the proceedings against accused no.1 under counts 1, 2 and 3 respectively as well as against accused no.2 under counts 4, 5 and 6 respectively. The accused concerned were charged with the offence of Money Laundering in breach of section 3(2) of the FIAMLA. Section 3(2) of the FIAMLA reads as follows: "A bank, financial institution, cash dealer or member of a relevant profession or occupation that fails to take such measures as are reasonably necessary to ensure that neither it nor any service offered by it, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence or the financing of terrorism shall commit an offence". The word 'measures' under the above section is not defined under the FIAMLA and it was the case of the prosecution that the source of those measures was the FSC Code. Hence the Court found it important to consider the nature and extent of the FSC Code.

The Court found that the FSC Code was issued under the aegis of section 7(1) of the Financial Services Development Act ('FSDA') and section 18 of the FIAMLA, which empowers the FSC to issue guidelines as a supervisory authority. After interpreting the above sections, the Court found that the extent of non compliance with measures stipulated in the FSC Code is merely regulatory and administrative. Therefore non compliance with the measures under the FSC Code may only lead to a direction to comply and to regulatory actions but not to a criminal sanction outright. In this regard, the Court noted that only in the event of non compliance with a direction from the FSC that a person may incur criminal liability under section 43(1) of the FSDA Act. The Court referred to article 7(1) of the ECHR which is to the effect that no person shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. The Court also referred to section 10(4) to the Constitution which is almost identical to section 7(1) of the ECHR.

The Court ordered that proceedings under the other counts against the accused parties should proceed.

ICAC v NG SUI WA DICK CHRISTOPHE C/N: 1854/10-Ruling delivered on 21.01.14

The accused was charged with the offence of 'Public official using his office for gratification' in breach of section 7(1) of the PoCA. The defence moved that the proceedings against the accused be permanently stayed as the continuance of such proceedings would amount to an abuse of process of the Court and would be in breach of the rights of the accused to a fair trial under Article 10 of the Constitution on the grounds that (i) the investigation involved designated police officers, posted at the ICAC who have acted in breach of Article 71 and 91 of the Constitution in as much as (a) the police force is under the command of the Commissioner of Police as per section 71 of the Constitution, whereas the designated police officers were instructed by and operated under the Director of the ICAC as per section 47(1) of the PoCA and (b) the designated police officers, posted at the ICAC under section 24(5) (b) of the PoCA, investigated and gathered evidence against the accused for a body corporate which is not a disciplined force, in breach of sections 91, 111 and 118 of the Constitution and which amounts to a direct interference with the powers of the Disciplined Forces Service Commission; (ii) the accused has been denied a hearing in breach of section 47 of the PoCA; (iii) written statements have been recorded from the accused in breach of section 50(1) (d) of the PoCA; and (iv) there has been harsh and unconscionable delay in instituting the proceedings against the accused.

The Intermediate Court after hearing arguments and submissions of the prosecution and the defence set aside ground iv of the defence's motion for a permanent stay of proceedings. The Court noted that it was not disputed that eight years had elapsed since the commission of the alleged offence in 2002 and the lodging of the information against the accused in 2010. However, in light of the affidavit produced by the prosecution explaining the chronology of the events culminating into the lodging of the information against the accused, the Court found that the delay had been reasonably and satisfactorily explained by the prosecution. Therefore the Court did not consider the delay of eight years to be an inordinate delay which would have caused the accused prejudice in the preparation of his defence and which would have deprived the latter of a fair hearing.

Further, the Court also set aside grounds (ii) and (iii) of the motion of the defence for abuse of process. The issue before the Court was whether failure on the part of the ICAC to carry out a hearing under section 47(3) would amount to a procedural impropriety so as to constitute an abuse of process which would deprive the accused the protection provided under the PoCA. The Court after interpreting section 47(3) of the PoCA found that the Commission was not bound to hold such a hearing as it is clearly stated under the section that "the Commission may conduct such hearings as it considers appropriate.....". As regards to ground (iii) the Court found that same was not

relevant to the present matter as section 50 prescribed a series of orders where there has been failure on the part of a person to respond to section 47 of the PoCA.

The defence did not press on ground (i)(b) above and the Court set aside Ground (i)(b) of the defence motion. The defence contented in relation to Ground (i)(b) that the police officers who were posted at the ICAC under section 24(5) (b) participated in the investigative process which amounts to a direct interference with the powers of the Commissioner of Police under Article 71 of the Constitution. The Court found that the services of the police officers were required for the purposes of the PoCA, namely to combat fraud and corruption and therefore the services of the police officers are not restricted only to 'investigative powers'. The Court found that there was no breach of Article 71 of the Constitution.

#### ICAC v Mohammad Jalill Foondun C/N: 359/2010-Ruling delivered on 13.01.14

The accused was charge with the offence of Bribery by Public Official in breach of section 4(1) (a) (2) of the PoCA. On 05.09.13, witness No. 3 was called by the prosecution who started to testify in court in the present matter. He was examined in chief and was cross examined and the case was adjourned and fixed for continuation on the 18.11.13. On 18.11.13, he was tendered for cross examination to be continued. During the cross-examination, it came to light that, following a request from the said witness between the 05.09.13 to 18.11.13, the witness was remitted a copy of his statements and he had refreshed his memory. The defence moved that proceedings should be stayed on the ground that there had been a miscarriage of justice as the ICAC had committed a breach of the law.

In a ruling delivered on 13.01.14, the Magistrate of the Intermediate Court, taking into account the fact that the witness had already started to depose when he was given a copy of his statement by the ICAC during an adjournment, found there had been a breach of the principle of refreshing memory. The Court did not order a stay of proceedings but held that it would be for the Court to assess the evidence which would henceforth be given by this witness and to give it the appropriate weight.

#### ICAC v Louis Marie Clifford Thisbe C/N: 845/13-Judgment delivered on 28.02.14

Accused was charged with the offence of Money Laundering in breach of sections 3(1) (a), 6(3) and 8 of the FIAMLA under 10 counts, to all of which he pleaded guilty.

It was averred in the information that the accused on 10 occasions did wilfully, unlawfully and criminally engage in a transaction that involved property which, in part directly represented, the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived, in part, directly from a crime. The particulars were that he withdrew from the Bank Account of one Mrs Christina Ramsamy, sums of money which he had reasonable grounds for suspecting to have been derived, in part, directly from a crime, to wit: Swindling.

The Court found him guilty as charged and sentenced him to pay a fine of Rs. 30,000 on each of the 10 counts plus Rs. 500 as costs.

#### ICAC v Audit C/N:314-2010-Judgment delivered on 25.02.14

The accused was charged with the offence of Money Laundering under five counts in breach of sections 3(1) (b), 6(3) and 8 of the FIAMLA. She pleaded not guilty and was assisted by counsel. It was averred in the information that the accused was wilfully, unlawfully and criminally in possession of properties which in part directly represented the proceeds of a crime, where she had reasonable grounds for suspecting that the properties were derived in part directly from a crime....".

At trial, it was not disputed that the accused was in possession of the property under each count. In a judgment delivered on 25 February 2014, the Court looked at the predicate offence which as averred under count 1 of the information was to the effect that the crime was 'larceny by [the accused's late husband] whilst he was an employee of the Development Bank of Mauritius' whereas under the remaining four counts, it was averred that the crime was 'larceny by the [accused's late husband] whilst he was an employee of Ivy Leathers Ltd'. The contention of the defence with regard to the predicate offence was that the five counts were defective as the prosecution had not averred that the property belonged to the accused's late husband's employer. Further, the defence contended that there was no evidence of larceny under all the five counts as the constitutive element of 'soustraction' had not be proved but there was evidence of forgery and making use of forged documents. According to the defence, these were two distinct offences and therefore the information could not be amended. The Court held that section 3(1) of the FIAMLA has only stipulated 'any crime' and therefore the prosecution has to prove that the property represented proceeds of any crime. The Court noted that larceny, forgery or making use of forged documents are crimes as per



section 2 of the FIAMLA and are all punishable by penal servitude and further as per section 6(3) of the FIAMLA, the prosecution does not need to aver and prove any particular crime. Thus, the prosecution is only required to aver 'a crime' and it is for the Court to reasonably infer whether the proceeds were proceeds of a crime in the light of the evidence. After considering the evidence, the Court inferred that the property under all five counts were derived from crimes. The Court further held that the prosecution had established beyond reasonable doubt that a sum of Rs 612, 350 was derived from a crime under count 1. As regards to count 2, 3, 4 and 5 respectively, the Court held that the prosecution had also proved beyond reasonable doubt that there had been a crime committed by the accused's late husband to the prejudice of Ivy Leather Company Limited from which a sum of Rs 2 million was derived.

With regard to count 1, 2 and 3 of the information, the Court found that the evidence on record were in variance with the averment under the said counts in as much as the properties did not directly represent the proceeds of crime as averred but in fact were indirect proceeds of crime. In light of section 73 of District and Intermediate Courts (Criminal Jurisdiction) Act, the Court used its discretion to amend the information under the said counts. The Court held that the amendments were without prejudice to the accused 'since the latter knew since day one the case she had to meet under all five counts'.

With regard to Count 1 of the information, the Court found that in or about November 2003, the accused and her late husband were in possession of a land to the extent of 423 m<sup>2</sup> and a concrete house situated at St Antoine Goodlands, which they could not account for in the light of their legal financial means. The Court noted that the fact that the accused was in possession of a well constructed modern house in a good area in itself was sufficient to have reasonable grounds to suspect that the said property was in part indirectly proceeds of a crime. The Court held that the prosecution had proved its case beyond reasonable doubt against the accused under Count 1 and found accused guilty as charged under the said count. As regards to count 2, the Court asked the question of whether "it is possible for a person earning between 7,500 rupees to 20,000 rupees with household expenses and a loan to pay every month to express his love to his wife by giving her a car valued at 345,000 rupees as gift?". The Court concluded that the answer would be in the negative and held that the prosecution had proved its case beyond reasonable doubt under the said count. The accused was therefore found guilty as charged. In respect of counts 3,4 and 5 respectively, the Court considered all evidence and found that the main witness for the prosecution was a witness of truth who confirmed that the accused was aware throughout that her late husband was involved in fraudulent actions at the company where he was working. The Court found

that the accused was aware and had reasonable grounds to suspect that the properties under counts 3, 4 and 5 respectively were in part derived from proceeds of crime. The Court held that the prosecution had proved its case against the accused under count 3, 4 and 5 respectively. Accused was found guilty as charged under the said counts.

Sentence was passed on 26 March 2014. The Court ordered that the accused be fined (i) Rs. 100, 000 under count 1; (ii) Rs. 50,000 under counts 2 and 3 respectively; (iii) Rs. 25,000 under count 4 and (iv) Rs. 10,000 under count 5 respectively. The Court further ordered that the property under counts 1 to 5 respectively be forfeited.

ICAC V Issack Deelun Somauroo C/N: 1722/13-Judgment delivered on 14.02.14

The accused was charged with the offence of 'Limitation of payment in cash' in breach of section 5(1) & 8 of the FIAMLA under two counts. He pleaded guilty.

It was averred in the information under count 1 that on or about 03.01.2003 the accused wilfully, unlawfully and criminally make a payment in cash in excess of Rs. 350,000, to wit he made a cash deposit of Rs. 358,000 in the fixed deposit account of his daughter.

It was averred in the information under count 2 that on or about 27.01.04 the accused wilfully, unlawfully and criminally accepted a payment in cash in excess of Rs. 350,000, to wit he accepted the sum of Rs. 1,036,000 in cash.

The court found him guilty as charged and sentenced him to pay a fine of Rs. 30,000 under each of the two counts plus Rs.500 as costs.

ICAC v Kramchand Seenauth & Anor C/N:1636/13- Judgment delivered on 29.01.14

The two accused parties were charged with the offence of 'Limitation of payment in cash' in breach of sections 5(1) & 8 of the FIAMLA under 2 counts. They pleaded guilty.

It was averred in the information under count 1 that accused No 1. wilfully, unlawfully and criminally make a payment in cash in excess of Rs. 500,000, to wit he made a cash payment for the sum of Rs. 1 million to Accused No 2. for the purchase of a plot of land at Chantenay, Moka.

It was averred in the information under count 2 that accused No 2. wilfully, unlawfully and criminally accepted a payment in cash in excess of Rs. 500, 000, to wit he accepted a payment for the sum of Rs. 1 million from Accused No 1. for the sale of a plot of land at Chantenay, Moka.

The court found the accused parties guilty as charged and sentence each accused to pay a fine of Rs. 20,000 plus Rs. 500 each as costs.

ICAC v Hing Yan Wong Man Wan C/N: 1/2011- Judgment delivered on 23.01.14

The accused, the Marketing Manager of the National Housing Development Company ('NHDC') was charged with the offence of Conflict of Interests in breach of section 13(2) & (3) of the PoCA. He pleaded not guilty and was assisted by counsel. It was averred in the information that the accused whilst being a public official whose relative had a personal interest in a decision which a public body had to take, took part in the proceedings of that public body relating to such decision, to wit: on or about 03.06.05, he took part in the NHDC's Credit Committee where the application for his minor daughter to buy flat E-16 at the Exim Housing project at Mont Choisy was approved.

At trial it was not disputed that on 03.06.05 a Special Credit Committee was held as regards to prospective purchase of 11 Housing units at Mont Choisy by NHDC staff and staff's minor children. It was not disputed as well that the NHDC was a "public body" and the accused was a "public official". However, according to the notes of the secretary to the Credit Committee, the accused was present as a member of the Credit Committee and his daughter had pending applications before the Committee. Several other witnesses deposed to the effect that the accused was present at the Credit Committee and all members of the Credit Committee, including the accused, approved the 11 applications before the Committee.

The contention of the defence was that criminal statutes should be strictly interpreted and as such the prosecution should have adduced expert evidence to show that the definition of 'relative' included a 'child adopted by way of Adoption Simple'. Further, according to the defence, the Credit Committee is an administrative organ taking administrative decisions which are not final, binding and non reviewable. The defence further contended that all the applications before the Credit Committee were in some manner 'conflicted' and everyone present at the Credit Committee was aware of same.

The Court after considering all the evidence dismissed the case against the accused. The Court favoured a strict interpretation of the PoCA and held that the daughter of the accused who has been adopted by the accused is not a 'relative' of the accused within the definition given under the PoCA. The ratio of the decision of the Court was based on Article 357 alinea 1 of the Code Civil which reads as follows "...l'adopté reste dans sa famille d'origine et y conserve tous ses droits, notamment ses droit héréditaires.....". Also Article 363 of the Code Civil provides that "...l'adoption peut être révoquée à la demande de l'adoptant ou de l'adopté...".

#### ICAC v Santa Vaitilingon C/N: 1661/12-Judgment delivered on 21.01.14

The accused was charged with the offence of 'Limitation of payment in cash' in breach of section 5(1) & 8 of the FIAMLA under one count. He pleaded guilty.

It was averred in the information, that in or about 26.04.06, the accused wilfully, unlawfully and criminally make a payment in cash in foreign currency, whose equivalent amount was in excess of Rs. 350,000.

The court found him guilty as charged and sentenced him to pay a fine of Rs. 15,000 plus Rs. 500 as costs.