

JUDGMENTS
INTERMEDIATE COURT

ICAC v. Clairemont Builders CN No: 1595/12 - Judgment delivered on 23.01.15

The Accused Company, Clairemount Builders Ltd, was charged with the offence of Money Laundering in breach of sections 3 (1) (b), 6 (3) & 8 of FIAMLA coupled with Section 44 (2) of the Interpretation and General Clauses Act (IGCA). It was averred that on 28th December 2009, the Accused Company was in possession of the sum of Rs 235,000 in its bank account held at the Mauritius Post and Cooperative Bank (MPCB), transferred from the Mauritius Commercial Bank (MCB) bank account held by Super Construction Ltd.

Mr Wong Hee, director of Super Constructions Ltd reported a case of forgery to the effect that on 28.12.2009, there had been a transfer of money in the sum of Rs 235,000 from the bank account of Super Construction Ltd held at the MCB. Mr Wong Hee stated that his signature had been forged on the transfer form since at the time of the bank transfer, he was not in Mauritius. The enquiry revealed that the said bank transfer was made to the bank account of the Accused Company at the MPCB. The Accused Company had as sole director, Mr Stelio Lindsay Taylon Yong Shee. The enquiry further revealed that: (i) a false registered office address was given to the Registrar of Companies upon incorporation of Clairemount Builders Ltd; and (ii) the company had as bank signatory, one Hemant Kumar Beeharry, who had several previous convictions relating to forgery amongst others.

At the trial, Mr Wong Hee confirmed that he neither knew nor had any dealings with the Accused Company or with latter's representative, i.e., Mr Yong Shee. He also confirmed that the signature on the transfer form was not that of Super Construction Ltd. The case for the Prosecution rested on the undisputed evidence that on 28.12.2009, the Accused Company was in possession of the sum of Rs 235,000 which was transferred from the MCB bank account held by Super Construction Ltd into the bank account held by the Accused Company at the MPCB by way of forging the signature of Mr Wong Hee on the transfer form. It was also noted that the representative of the Accused Company had not denied in his unsworn statement that there had been a fraudulent money transaction.

In its judgment, the Court found the Accused Company guilty as charged and was sentenced to pay a fine of Rs 35,000 and Rs 500 as costs. The sum of Rs 235,000 in the bank account of the Accused Company was forfeited.

ICAC v. 1. Satyawan Kutwaroo 2. Iswaraj Ghallu CN No: 1377/06 – Judgment delivered on 29.01.2015

Accused No.1, a draughtsman at the Pamplemousses and Riviere du Rempart District Council (PRDC), was charged under two counts with the offence of Traffic D'influence in breach of section 10 (4) of PoCA. It was averred that Accused No.1 had under (i) Count I, obtained from one Gopal Krishna Appadoo the sum of Rs 2,500 out of Rs 5,000 to be remitted to Accused No.2, Inspector of Works at the District Council, to use his fictitious influence to obtain a benefit from a public body, i.e. the approval of a development permit by the District Council; and (ii) under Count II, solicited from one Gopal Krishna Appadoo the sum of Rs 50,000 to be remitted to Accused No. 2, to use his fictitious influence to obtain a benefit from a public body, i.e. the approval of a development permit by the District Council.

Accused No.2, an Inspector of Works at the PRDC, was charged under two counts for the offence of Public official taking gratification in breach of section 11 (a) of PoCA. It was averred under Count III that Accused No.2 accepted a sum of Rs 2,500 from Mr Appadoo and made him believe that he had approved his building permit, although as a fact such act did not form part of his duties; and under Count IV accepted a sum of Rs 12,000 from one Sylvain Nohar and made him believe that he could cause the development permit of his step son, one Pascal Noel Ombroisine, to be approved although as a fact such act did not form part of his duties. Both Accused parties pleaded not guilty and were assisted by Counsel.

A number of witnesses were called by the Prosecution in support of the charges. With respect to Counts I, II & III, the main witness was Mr Gopal Krishna Appadoo and the Court noted that the version of the latter was clearly inconsistent with the particulars averred under each count of the Information. Under Count IV, the main witness, Mr Sylvain Nohar, on the whole deposed in an inconsistent and unreliable manner.

In its judgment, the Court dismissed the case against both Accused parties. The Court found the evidence adduced for the Prosecution fraught with contradictions, rendering it unsafe to act on it.

ICAC v. R.K. Sumputh and Anor CN No: 116/13 - Sentence delivered on 13.02.2015

Accused No. 1 & No. 2 were charged with the offence of Limitation of payment in cash in breach of sections 5(1) & 8 of FIAMLA. They pleaded guilty. It was averred that on or about 05.08.11, Accused No.1 & Accused No. 2 respectively made/accepted a cash payment of Rs 600,000 for the purchase/sale of a car.

The Court found both Accused guilty and they were sentenced to be conditionally discharged and to be of good behaviour for a period of one year, failing which each

Accused would undergo one month imprisonment under each of their respective charges.

ICAC and the Director of Public Prosecutions appealed against the said judgment on the ground that the sentence of conditional discharge which was imposed on the Respondents was wrong in law and contrary to section 8(3) of the FIAMLA. In its judgment, the Supreme Court quashed the sentence and referred the case back to the Intermediate Court for a fresh hearing in relation to sentence and for the appropriate sentence to be passed.

On 13 February 2015, both Accused were sentenced to pay a fine of Rs.1, 000 under each count.

ICAC v. Cassam Sulliman CN No: 1197/11 – Sentence delivered on 20.02.15

The Accused was charged with the offence of Limitation of payment in cash in breach of sections 5(1) & 8 of FIAMLA. He pleaded guilty and was assisted by Counsel. It was averred in the Information that on or about 03.10.09, the Accused, a trader, did willfully and criminally make a payment in cash in excess of R 500,000, in that he made a cash deposit of Rs 604,800 into a Bank account held at Habib Bank Ltd.

On 20 February 2015, Accused was sentenced to pay a fine of Rs.10, 000.

ICAC v. Nazima Ruhomally CN No: 1295/2010 – Ruling delivered on 26.02.15

The Accused was charged under 27 Counts, with the offence of Money Laundering in breach of sections 3 (1) (b), 6 (3) & 8 of FIAMLA. She pleaded not guilty and was assisted by Counsel. It was averred in the Information that in the years 2005 to 2008, she willfully, unlawfully and criminally possessed/disposed of, property which, in part directly represented the proceeds of a crime, where she suspected that the property was derived in part, directly from a crime, to wit: Accused was in possession in/withdrew from, her bank account or that of her minor children, sums derived, in part directly from embezzlement.

At the trial, the Defence raised a motion of abuse of process to the effect that (i) the information was 'overloaded'; and (ii) Accused was being prosecuted for Money Laundering and Embezzlement before two different benches of the same Court. The Defence contended that both cases should have been taken before the same Magistrate to avoid conflicting verdicts. It was the case for the Prosecution that the ICAC can only prosecute corruption and money laundering offences and the practice is to prosecute for the predicate offence separately as is provided under Section 6(1)

(2) of FIAMLA. Section 6(1) and (2) of FIAMLA read as follows: (1) *"a person may be convicted of a money laundering offence notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered. (2) Any person may, upon single information or upon a separate information, be charged with and convicted of both the money laundering offence and of the offence which generated the proceeds alleged to have been laundered. "*

In its ruling, the Court set aside the motion of abuse of process and held that (i) under sections 6(1) & (2) of FIAMLA, the Director of Public Prosecutions could prosecute an Accused party for money laundering and for the 'predicate' offence simultaneously and on different Information; (ii) Irrespective of a conviction for the 'predicate' offence, the court could find the offence of money laundering proved; and (iii) The Court could find the offence of money laundering proved even if there was no conviction for the offence of embezzlement. The Court held that there was no necessity for the same bench to hear both cases.