

ICAC v Sheik Mohammad Jaulim CN: 1562/11 – Ruling delivered on 08.11.12

The accused was charged for having committed the offence of 'Limitation of payment in cash' in breach of sections 5 (1) and 8 of the FIAMLA.

He pleaded not guilty to the charge and was assisted by counsel.

Counsel for the defence raised a point in law namely to the effect that "the information was defective as an essential element of the offence as required by section 6(3) of the FIAMLA was lacking. There was no averment that the amount of money handled, in whole or in part, was directly or indirectly the proceeds of a crime".

For the defence it was argued in a gist that section 5 of the Act should be read in conjunction with section 6(3) of the same Act and as such the requirement that the money should be the proceeds of a crime should be an element of the offence, although there was no need to specify the particular crime. The failure of the prosecution to aver that the money was the proceeds of crime rendered the information defective.

Counsel for ICAC counter-argued that there was no requirement under section 5 of the Act for the prosecution to aver and to prove that the money was the proceeds of crime and S 6(3) was of no relevance. Counsel for ICAC also argued that the information was not defective and was in line with section 125 of the District and Intermediate Court (Criminal Jurisdiction) Act.

The court agreed with the prosecution that an offence under section 5 of FIAMLA can exist irrespective of the fact that the cash is not proceeds of a crime. The court found that the information was not defective in law and set aside the point in law raised by defence.

ICAC v Dharmanand GROODOYAL CN: 1342/07 – Judgment delivered on 09.11.12

Accused was charged under two counts of “Bribery by a public official” in breach of Section 4(1)(a)(2) of the PoCA before the Intermediate Court of Mauritius. It was averred in the information that on 23rd December 2002 and 26th December 2003 the accused solicited from one VeekramParboteah, the sums of Rs 20,000 and Rs 10,000 in order to approve two applications for the grant of two trade licenses for a place of amusement and poultry pen. He pleaded not guilty and was assisted by counsel at the trial.

Several witnesses came and deposed but the main witness for the prosecution gave a different version in court as to what he had given in his statement to ICAC.

After considering the evidence, the court reached the conclusion that it would be unsafe to rely on the versions of the witnesses for the prosecution to convict the accused, and therefore dismissed both charges against the accused.

ICAC v Jennifer Mookan CN: 830/08 – Judgment delivered on 14.11.12

The accused was prosecuted for the offence of money laundering under 21 counts in breach of section 3(1)(b), 6 and 8 of the FIAMLA before the Intermediate Court of Mauritius. She pleaded not guilty and was assisted by counsel.

The charge of money laundering under each count of the information averred that the accused willfully, unlawfully and criminally possess a property which is in part directly represented the proceeds of a crime where the accused had reasonable grounds for suspecting that the property was derived in part directly from a crime. The prosecution furnished the particulars of such crime as being drug dealing.

The defence did not dispute that the money as averred under each count of the information was credited to the account of the accused. The unsworn version of the accused was that the money in her bank account came from a family business of pig breeding run mainly by her brother Richard Mookan, and that the latter used her account to credit and debit sums of money from that account at his own will. The accused did not therefore dispute the averment of the information that she did 'possess a property'. What is in dispute is whether she had reasonable grounds for suspecting that the property was derived in part, directly from a crime.

The Court concluded that the accused was unemployed and the pig breeding business has been found not to generate enough money to explain the substantial amounts credited in her bank account. The accused's conviction for later drug dealing, which was subject of an appeal, was taken to be evidence on which the court could rely to infer beyond reasonable doubt that the moneys deposited in accused bank account on 3rd, 6th and 23rd of January 2003, as per the 21 counts of the information, were the proceeds of criminal activity. The accused was found to have had reasonable grounds to suspect that the property she possessed in the form of money credited to her bank account was the proceeds of crime.

The magistrate held that the prosecution has proved its case beyond reasonable doubt against the accused. Hence, found accused guilty as charged under all the counts of the information. Accused was sentenced to pay Rs10,000 on each of the 21 counts and Rs 500 as to costs.

ICAC v/s Dick Christophe NG SUI WA C/N: 1854/10 - Ruling delivered on 27.11.12

The accused was charged under 3 counts in breach of Section 7(1) and 83 of the PoCA. He pleaded not guilty and was assisted by counsel.

The defence made a motion to have the present proceedings stayed for abuse of process. Whilst this motion was being argued, defence moved for communication and disclosure of two documents, namely:

1. An executive summary which is a communication between the Commission and the Commissioner Police, and
2. A letter of complaint which triggered the investigation against accused.

The said motion was resisted by the ICAC on grounds that they are privileged information under section 48 of the PoCA and secondly that they attract public interest immunity.

Arguments were thus offered on the above motion by both the ICAC and the defence.

The court held that it had to perform a balancing exercise which was only possible after being given an opportunity to inspect and examine the documents prayed for by the defence so as to decide whether the claim for public interest immunity may be upheld. The court ruled that those two documents be made available for the Court's perusal such that a decision be taken as to whether they may be disclosed or not.

ICAC v/s Davindra TUPSY C/N: 1617/10 - Ruling delivered on 29.11.12

The accused was charged in breach of Section 7(1) and 83 of the PoCA. He pleaded not guilty and was assisted by counsel.

The defence moved that the present proceedings be stayed in as much as section 83 of the PoCA creates a presumption of guilt and is therefore unconstitutional.

The said motion was resisted by the ICAC. Both counsels for the ICAC and defence argued and made submission in law.

The general rule is that the prosecution has to prove all the above elements, which may be generally termed as being the actus reus of the offence so as to establish a prima facie case against the accused. It is only then that by way of application of section 83 of the Act, that there is presumption that the accused knew he received the said gratification for a corrupt purpose. The court made emphasise that the said presumption was a rebuttable one and the defence was requested to prove only a particular fact, namely the mens rea of the offence which the more so could only be within his exclusive knowledge.

The court referred to the European Commission conclusion in the case of X v United Kingdom 1972 42 CD 135 and held that sections 7 and 83 of the PoCA are not in breach of sections 10(2)(a), 10(11) of the Constitution and motion of the defence was set aside.

ICAC v (1) OugendraDevSunkur, (2) Sheik Mohammad Afzal Jownally CN: 1175/09 – Judgment delivered on 23.10.12

Accused No. 1 was charged under count I with the offence of “traffic d’influence”, in breach of section 10(4) and 83 of the PoCA and Accused No. 2 was charged under count II with bribery by public official, in breach of sections 4(1)(b), 4(2) and 83 of PoCA. Both accused pleaded not guilty.

The case of the prosecution was that at the material time Mr GorobhaiMadeenaSaeb, main witness, was trying to clear a consignment of shoes which had been detained by Customs. Accused No. 1 asked him a sum of Rs 2000 to give to Accused No. 2, a custom officer, as a bribe to get the shoes released.

The court found that the main witness was not a very convincing witness and that he was inconsistent under cross-examination.

Prosecution submitted that under section 83 of PoCA, there is a presumption that the money was given to Accused No. 1 for a corrupt purpose, but in view of the state of the evidence the Prosecution failed to establish beyond reasonable doubt that there was such a remittance.

Both Accused were given the benefit of doubt and the case against them were dismissed.

ICAC v VasooChinnarassen CN: 250/11 - Judgment delivered on 18.10.12

The accused was charged with the offence of 'Bribery by public official' in breach of section 4(1) (b)(2) of the PoCA under Count II. It was averred that on or about 23rd March 2005 the accused whilst being a public official, wilfully, unlawfully and criminally, solicited, from another person, for himself, a gratification for doing an act which is facilitated by his duties. The particulars were that whilst being the enquiry officer in a case, he solicited the sum of Rs25,000/- from one Madan Mohun TeewareeJaggeshar so as to gear the investigation in such a way for Madan Mohun TeewareeJaggeshar not to be prosecuted.

A Discontinuance of Proceedings was filed in respect of Count I. The accused pleaded not guilty to Count II.

Madan M. T. Jaggeshar (W.7) deposed to the effect that he was arrested on 24th February 2005 by a team of officers with PS Chinnarassen, the accused, in relation to a case of 'issuing cheque without provision', and he was afterwards released on bail. The accused was the officer in charge of the case and recorded a statement from him. On 23rd March 2005 he made a complaint at the ICAC as the accused had phoned him several times about the complainant wanting to settle the case and that he must pay the latter Rs100,000/- immediately and Rs25,000/- for "cost".

It was the contention of the accused that he did not know W.7 and that he could not recollect having been involved in the enquiry against W.7. The DB Entries of Barkly PS for 25.02.05, 26.02.05, 28.02.05, 02.03.05, 09.03.05 and 10.03.05 showed that the accused was part of the team involved in the arrest and enquiry pertaining to W.7.

In the light of the entries aforementioned the court found that the accused's categorical unsworn denial of any knowledge of W.7 could not be believed.

Another issue to canvas was whether the accused solicited money – a gratification – from W.7. The court had no hesitation in believing the testimony of W.7 that the accused solicited money from him and phoned him several times and that their phone conversations were about that solicitation. W.7 might have appeared vague at times and inconsistent, but he maintained all throughout that the accused asked him for Rs100,000 as Rummun's share and Rs25,000 as "costs" and court found him credible.

Court found that the prosecution has proved the case against the accused beyond reasonable doubt and accordingly found the accused guilty as charged. He was sentenced to undergo 12 months imprisonment and to pay Rs500 as costs. A notice of appeal was filed on the same day.

ICAC v Mrs Audrey Cindy Lauren Li Tung Sang CN: 1218/12 – Judgment delivered on 16.10.12

Accused was charged for breach of Section 5(1) & 8 of the FIAMLA.

It was averred in the information that on or about 26th day of July 2007 at the Office of Notary Public Stephen, in the District of Port Louis, the accused, a trader, did wilfully, unlawfully and criminally, accept a payment in cash in foreign currency, namely USD 30,000 whose equivalence was in excess of Rs. 500,000, from Wong Korten Property Trust being represented by one Mr Jean Michel Dario Adolphe, for the sale of a plot of land.

Accused pleaded guilty and she was sentenced to pay a fine of Rs. 10,000 and Rs. 500 as costs.

ICAC v Mohamud Malik Mauthoor CN:1611/11 – Judgment delivered on 10.10.12

Accused was charged for the offence of bribery of public official in breach of sections 5(1)(a) and (2) of PoCA to wit that he offered a sum of Rs 200 to PC Cotte so as not to establish a Road Traffic offence which the accused had committed. He pleaded not guilty and was assisted by counsel.

The prosecution case was that on 23rd September 2009 PC Cotte was motoring along Remy Ollier Street and when reaching the junction with Barbot Street he found a private van K 80 badly parked on the right side of the road and the front left nearside part was obstructing the free passage of the vehicle coming from the direction of the Municipality of Port-Louis. When PC Cotte started taking particulars of the vehicle the driver approached him and offered him a sum of Rs 200. However, there was no DB entry made by PC Cotte to that effect.

The defence conceded that he wrongly parked his vehicle but never offered money to PC Cotte. The accused called his wife as a witness.

After duly assessing the evidence the court gave the accused the benefit of the doubt and dismissed the case against him.

ICAC v 1.Mrs Marie Cindy Laval, 2.Cyril Pierrot Laval and 3.Antonio Nevil Rome CN: 1324/09 - Judgment delivered on 01.10.12

All three Accused parties were charged for breaches for section 3(1)(b), 6(3) and 8 of the FIAMLA, in as much as they either possessed in their respective Bank Accounts sum

which they have reasonable grounds in suspecting were derived, in part directly from a crime, or transferred or converted such sums of money.

All three Accused parties pleaded guilty.

The court sentenced them as follows:

- Accused No. 1, who was in possession of a total sum of Rs 772,600 was fined Rs.30,000 on each of 13 counts (total fine Rs 390,000) and pay Rs500 as costs. A house purchased in her name was also forfeited.

- Accused No. 2 who was in possession of Rs 340,000 and who had used part of the money received from a crime to purchase a property for the sum of Rs 450,000 in the name of his daughter was fined Rs 30,000 on each of the 8 counts he stood charged (total fine Rs 240,000) and pay Rs 500 as costs.

Both Accused No. 1 and 2 gave notice of appeal on 8th October 2012.

- Accused No.3 who transferred a certain sum of money derived in part directly from a crime was sentenced to undergo 3 years Penal Servitude and pay Rs. 500 as costs.

Accused No.3 gave notice on 2nd October 2012.

ICAC v Robert Jandoo CN: 86/11 - Ruling delivered on 25.09.12

The accused is 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.

During the cross-examination of a witness, the defence asked to be communicated the anonymous letter of complaint which prompted the investigation.

Counsel for the prosecution objected to the motion and referred to section 48 of the Act and said letter was privileged.

Defence counsel referred to section 5 and 10 of the constitution, and argued that all used and unused material in the possession of the prosecution should be communicated to the defence. And it was also argued that defence was not asking for disclosure to the court or for information to obtain the identity of the informer, but communication to the defence.

Prosecution objected on four grounds namely, that such a document cannot be material to the defence, that non-disclosure will not impair on equality of arms, that document is privileged and that the interest for not disclosing outweighs the interest for disclosure.

However, court was of view that the prosecution would have an advantage which destroyed the equality of arms to the detriment of the defence, in that it had at its disposal documents which the defence has not inspected. And the court also added that the anonymous letter could not be said to be of a class of documents that its communication to the defence would outweigh public interest.

Hence, court ordered that a copy of the anonymous letter be communicated to the defence and also ordered that the copy of the anonymous letter be properly edited as far as to avoid any disclosure of the identity of the person of any indication thereof.

ICAC v Roussety J. 2012 INT 199, CN: 1915/2010, Judgment delivered on 19.09.12

The accused, the then Chief Commissioner of the Rodrigues Regional Assembly was charged with the offence of "Influencing public official" in breach of Section 9 of the Prevention of Corruption Act 2002. He pleaded not guilty and he was represented by counsel.

According to the Information, the accused on 7th of November 2009 at his office in Port-Mathurin, Rodrigues, threatened Mr. Jean Claude Pierre Louis, the Island Chief Executive (ICE) of the Rodrigues Regional Assembly. The threat was to the effect that if the ICE fails to comply with the directives of Mr Roussety to set up a Selection Board consisting of members which the said Johnson Roussety will nominate in relation to the appointment of 250 General Workers, the ICE will have to tender his resignation by 9th of November 2009 or else the said Johnson Roussety will request the Prime Minister to sack the ICE from service.

Both the prosecution and the defence called several witnesses and produced several documents. Mr Jean Claude Pierre Louis (the complainant) and the accused also gave evidence under oath. Both counsel for the prosecution and the defence submitted that there is no dispute as to the fact that the accused and the complainant did meet on 7th November 2009 in the office of the then Chief Commissioner (CC) and that nobody heard the conversation between the accused and the complainant.

The accused denied having addressed the issue of the recruitment of the trainees /General Workers with the complainant on 7th November 2009, but the court found that his version cannot be believed on this score. Indeed all the events surrounding the meeting between the complainant and the accused on that date showed that the recruitment of the trainees/General Workers was a very live issue which was being given priority.

The complainant's version in court was consistent with the letter dated 9th of November 2009 addressed by him to the Secretary to Cabinet and Head of the Civil Service on the first working day following the incident with the Chief Commissioner in his office. The letter was produced.

After having assessed the whole evidence on record the court had no difficulty in finding that the accused whilst being the Chief Commissioner of the Rodrigues Regional Assembly did exercise pressure by means of threat upon the complainant with a view to

the performance by the complainant of an act in the execution of his duties. Furthermore, the court also found that the evidence adduced do not lead to the conclusion that the complainant has concocted a false allegation against the accused.

The accused was convicted to undergo 3 months imprisonment and to pay Rs. 500 as costs. However, a notice of appeal was filed on the same day.

ICAC v Dharmanand JOTTEE CN: 205/09 - Ruling delivered on 04.09.12

Counsel for defence moved that the prosecution communicate the further investigation report which ICAC, as part of its statutory duty, must send to the DPP. The motion was resisted.

Counsel for the defence referred to section 10 of the Constitution as well as the practice in Enland and Wales and added that "the general principle on the duty of the prosecution to disclose 'unused materials' is that the prosecution is obliged to make available to the defence materials not led in evidence by them and which may assist the accused". It was also argued that the defence would be assisted in conducting its case if it had the report of ICAC because it would be in a position to know if all the procedures had been followed and if all the materials had been communicated.

Counsel for the prosecution argued that the report sent by ICAC to the DPP comes within the scope of public interest immunity for investigators. It was also argued that the opinion of the ICAC in its report is not relevant to the defence.

The court considered that the prosecution is not obliged to communicate the further investigation report sent by ICAC to the DPP for the following reasons. Firstly, the common law cases in England and Wales are persuasive authority and not binding. Secondly, the disclosure of materials in England and Wales is set within a statutory framework which is not the case here. Thirdly, the report of ICAC contains a legal opinion by the Director General of ICAC regarding contemplated proceedings. This

opinion may be relevant to the defence but it would be protected by public interest immunity which attaches to investigating officer's report. Fourthly, it was argued that the defence needs to have the report so as to know whether all the unused materials have been disclosed. However, court found that it was not necessarily so since the issue may be probed in cross-examination, and there is a constitutional duty on the prosecution to make the necessary disclosure.

Therefore, motion of the defence counsel was set aside.

Icac v ShoshimalaJukhoop CN: 903/2011 Ruling delivered on 02.08.12

The accused is charged with the offence of 'Money Laundering' in breach of sections 3(1)(a)(b), 6(3) and 8 of the FIAMLA under 8 counts. It is averred that she willfully, unlawfully and criminally engaged into transactions that involved property was in possession of property which in part directly represented the proceeds of crime, where there was reasonable grounds to suspect that the property was derived, in part directly from a crime. The particulars are that she effected cash deposits/possessed money in her savings account where there were reasonable grounds to suspect that the sums were derived in part directly from drug dealing.

Defence counsel moved for particulars of the part of the property mentioned in each count which directly represented the proceeds of crime.

Prosecution submitted that the information indicates the nature of the criminal activity, which is 'drug dealing' and the words 'in part' constitute surplusage. It is for the court to look at the evidence to infer if the property is derived in whole or in part from the proceeds of crime and that the test to be applied is whether the particulars provided make clear the case which accused must meet.

In the present case, the court held that prosecution has not reproduced the words of section 3(1)(a) and (b), but has chosen to aver that the property was derived " in part"

directly from a crime. Even though particulars have been given in the information and the defence is aware of the charges against the accused, court found that those particulars are not clear enough to enable the defence to meet the case properly. Hence, ordered particulars of the "in part" of the property allegedly derived from crime be given to the defence.

ICAC v I. Buddoo CN:.392/2011 - Judgment Delivered on 02.08.2012

The accused was charged with the offence of 'Traffic d'influence' in breach of sections 10(4) and 83 of the Prevention of Corruption Act ("POCA"). It was averred that on or about 31 January 2009 the accused wilfully, unlawfully and criminally obtained Rs1200/- from one Ahmad JilaniCheergally, to be remitted to someone at the Vehicle Examination Centre, Forest Side, in view of obtaining a Certificate of Fitness for taxi lorry A 1133 from the National Transport Authority without the said vehicle being examined physically.

The accused pleaded not guilty to the charge.

The prosecution has to prove (i) that the accused obtained a gratification from another person; (ii) that the gratification was for another person and (iii) that it was for the purpose of making use of his real or fictitious influence to obtain a benefit from a public body.

On the first issue, whether the accused obtained a gratification, since it was averred that money was remitted to the accused, it would constitute a gratification, but only if it is established that there was such remittance. The accused admitted that W.4 gave him Rs300/- to pay for the fitness test, but he denied that the latter also gave him Rs1200/- to be remitted to someone at the NTA.

On the second issue, it is averred in the information that the Rs1200/- was "to be remitted to someone at the Vehicle Examination Centre". Counsel for the prosecution

submitted that the Rs1200/- was for the person working at the NTA and counsel for the defence counter-argued that there was no evidence of who that person was, part of the evidence for the prosecution with regard to that other person is inadmissible being hearsay evidence, that although the influence may be real or fictitious, the same has not been said with regard to the person and that the prosecution led evidence that it is impossible to obtain a fitness certificate from one person at the NTA and without a physical examination.

The only evidence that the Rs1200/- was to be remitted to a person at the NTA comes from W.4 and such evidence is of a tenuous character in that W.4 said that he did not know if anyone at the NTA would have taken money to give him a fitness certificate.

The evidence on record, court found that Prosecution has failed to prove its case against the accused beyond reasonable doubt and dismissed the charge.

Icac v Shibani Finance Co. Ltd CN1589/2011 – Judgment delivered on 02.08.2012

The accused company as represented is charged with the offence of 'Limitation of payment in cash' under three counts, in breach of sections 5(1) and 8 of the Financial Intelligence and AntiMoney Laundering Act coupled with section 44(2) of the Independent and General Clauses Act.

The accused company as represented pleaded not guilty to the three counts.

There is no dispute that the accused company, a duly licensed Foreign Exchange Dealer, carried out the transactions averred in the information, namely exchanged GBP60,000, GBP30,000 and GBP15,000 for Mauritian rupees which were remitted to Mr Y. Meeajun.

The contention of the prosecution was that the three sum accepted by the accused company from Mr Y. Meeajun do not fall within the category of exempt transaction under section 2 of the FIAMLA and also Mr Meeajun did not hold any account with the financial institution. while the defence point was that the accused company regarded the transactions as exempt ones.

The issue is whether those transactions fall within the definition of 'exempt transactions', more specifically as provided in subsection (d)(i) or (e) of FIAMLA.

The accused company is licensed by the BOM and there is no evidence that it holds a licence issued or is regulated under any of the Acts mentioned. Therefore, it does not fall within the definition of 'financial institution' in the FIAMLA as it was in 2004.

The term 'financial institution' includes a cash dealer according to the Banking Act, which includes a person licensed to carry on foreign exchange dealings, but such interpretation is for the purpose of the Banking Act and cannot be imported into the FIAMLA, which already has its own definition of 'financial institution'.

Therefore, the foreign exchange transaction cannot be construed as an 'exempt transaction' within the meaning in section 2 of the FIAMLA.

After analyzing the evidence on record, the court found that even the accused company made all verifications, since it is does not fall within the definition of 'financial institution' as provided by section 2 of the FIAMLA, the transactions are not 'exempt transactions' within the meaning at section 2 of the FIAMLA.

Court held that the prosecution has proved its case against the accused company as represented beyond reasonable doubt on all three count found the accused company as represented guilty as charged on all three counts.

Accused company was sentenced to pay a fine of Rs. 30,000 on each of the 3 counts + Rs. 500 as costs. However case is on appeal (notice was filed on 16.08.12).

Icac v HareeshAnandBhurtuncn: 869/10 Sentenced delivered on 24.07.2012

Accused was charged for Bribery by Public Official in breach of section 4(1)(a) (2) & 83 the PoCA.

It was averred in the Information that accused whilst being a Principal Customs and Excise Officer, solicit from Mrs Basantee Engutsamy, Director of Divali Productions Ltd through one Ambar Kumar Joymungul, Customs and Excise Officer, the sum of Rs. 200,000 for Mr. Belle Etoile, Assistant Comptroller of Customs, for abstaining to establish a Customs Offence Report (COR) against the said company under the Customs Act.

The court found the Accused guilty after he entered a plea of guilty. He was subsequently sentenced to undergo 6 months imprisonment and to pay Rs 500 as to costs.

Icac v 1. Fauzee Bros represented by ABdoolMuryoodeenFauzee, 2. SalaudinFauzee
CN: 1847/2010 Sentence delivered on 24.07.2012

Both the accused company No.1 and accused No. 2 were charged under section 5(1) & 8 of The Financial Intelligence and Anti Money Laundering Act and coupled with Section 44 (2) of the Interpretation and General Clauses Act on 18 counts each.

It is averred in the information that the accused company No. 1 and accused No.2 effected several cash deposit in cash in excess of Rs 350,000, on 18 occasions each.

Both accused pleaded guilty to all the counts.

The court sentenced both the accused company No. 1 and accused no 2 to pay a fine of Rs 30,000 on each of the 18 counts, respectively, plus Rs 500 as costs each.

Police v 1. Muhammad Hussein Afraan Bin Siddiqui, 2.

BebeeFatmaRadhakisssen CN:127/12 Judgment delivered on 16.07.2012

The Accused No. 1 stood charged under 10 counts of the Information for the offence Money Laundering in breach of Sections 3(1) (b), 6 & 8 of the Financial Intelligence and Anti Money Laundering Act. Whereas Accused No. 2 stood charged under 1 count of the Information for the same offence.

Accused No. 1 pleaded not guilty and was not assisted by counsel. Accused No. 2 pleaded guilty and was assisted by counsel.

Accused No. 1 pretended to have a licensed company under the name of "One Sky Company", to recruit people to go for studies or work abroad. He took money from several persons, making them believe that he is going to help them to migrate to Australia.

The prosecution had to prove three core issues:-

1. Accused has received the different sums of money as per the charges;
2. The different sums were received in Mauritius;
3. The different sums were the proceeds of crime.

First issue:

The victims in respect of all the charges had deposed and clearly explained how they remitted money to both accused. There were bank statements and deposit vouchers which were filed in court and support the version of the prosecution. Both accused admitted having received the money as per the charges in the information.

Second issue:

The deposits, the transfer and the cheque were made into bank account of both accused in Mauritius; therefore property was received in Mauritius.

Third issue:

All witnesses clearly explained how the accused parties swindled them out of their money by using fraudulent pretences. Evidence on record clearly shows that accused parties never had a license to recruit people to go abroad.

Court held that the prosecution has proved its case beyond reasonable doubt, and found accused No. 1 guilty under all counts and since accused no 2 pleaded guilty, she was found guilty accordingly.

Accused No. 1 was sentenced to pay a fine of Rs 100,000 on each count and Accused No. 2 was sentenced to pay Rs 60,000 and Rs 50,000 held in her bank account at the Banque des Mascareignes to be forfeited, plus Rs 500 costs each.

Icac v Bimla Ramloll - Ruling delivered on: 03.07.2012

The accused in the present case is being charged with the offence of 'traffic d'influence' in breach of section 10 (5) and section 83 of the PoCA.

Counsel for defence moved that the names of the 'other person' for whom the alleged gratification was allegedly obtained be communicated to which prosecution stated they were officers of the Municipal Council of Quatre-Bornes and that prosecution was not aware of their names. Counsel for the defence submitted that 'for any person' must be a definite person because a gratification could not be obtained in the void and if that 'other person' was not known, then there is no case. He also submitted that the information was bad for duplicity and uncertainty in as much as if the accused had

influence, it had to be 'real' or 'fictitious' one but it could not be both. Therefore, the prosecution had to choose as to whether the influence was a real or fictitious one and this was an element of offence.

The prosecution submitted that the alleged gratification was for Inspectors of the Municipal Council and evidence would be adduced to that effect and that whether the influence was 'real' or 'fictitious' was mere surplusage and it is not element of the offence and it did not go towards making the law uncertain.

The court refers to section 10(2)(b) of the constitution which provides that "every person who is charged with a criminal offence...(b) shall be informed as soon as reasonably practicable, in a language that he understands and, in detail, of the nature of the offence;...". The court also refers to the case of *Police v Kuderbux and ors* (1994) SCJ 424 and it was observed that particulars must be distinguished from matters of evidence.

According to Blackstone's Criminal Practice 1999 Ed Par D.9.8, the particulars of an offence is described as "such particulars as may be necessary for giving reasonable information as to the nature of the charge". All essential elements of the offence should be disclosed. Modern practice is to keep even the particulars of the offence very short."

Moreover, in the case of *Muhammad Feizal Ramburn v The State*, the learned Judges of the Supreme Court made the following pertinent observations: "When particulars of an offence are pressed for by the defence, the giving or withholding of such particulars does not depend on the frame of mind in which prosecuting counsel finds himself. Particulars are given as a matter of law when the offence is not sufficiently clear or particularized in the information.... Modern practice is to keep even the particulars of offence very short...."

The court was satisfied that Information was in accordance with section 125 (1) of the District and Intermediate Court (Criminal Jurisdiction) Act.

Motion of defence counsel was set aside.

ICAC v/s BeejayekumarJaulim and Ors C/N:835/11

Ruling delivered on 18.06.12

The accused parties were prosecuted in breach of section 7(1) and (83) of the PoCA and section 3(1)(b), 6(3) and 8 of the FIAMLA.

During the course of proceedings, counsel for one accused party moved for communication of the report made under section 47 (6) of the PoCA which contained an opinion of the Commission. The Prosecution objected and both counsels offered submissions in law.

Defence counsel asserted the report which is sent to the DPP is a statutory report and the defence should be communicated with a copy of it and that the report under section 47 (6), is not of a confidential nature and has no immunity.

The Prosecution submitted that according to section 47 (6) of the PoCA, the full brief together with a report containing the recommendations of the Commission is sent to the DPP for his consent to prosecute. A copy of the full brief was communicated to the defence. That report does not contain elements of evidential value but only ensures the communication to the DPP and the communication is of a confidential nature. He relied on section 81 of the PoCA which cover the Confidentiality aspect.

The court held in favor of the prosecution and state communication of a complete brief is enough for defence to uphold his constitutional rights.

Further section 81 (3) clearly provides for confidentiality and secrecy of any matter, document, report and other information relating to the administration of this Act. Patently the request for the opinion of the commission and the advice of the DPP fall within the administration of PoCA. There should be freedom of communication between the DPP and the ICAC as an investigatory authority and this without fear that such report be inspected and used in proceedings.

The motion for the defence was accordingly set aside.

ICAC v BhyeMamed SEEDEER CN: - 313/2010

Judgment delivered on 21.05.12

The Accused stood charged with the offence of Bribery by Public Official in breach of section 4(1)(a) and (2) of the Prevention of Corruption Act 2002.

It was averred in the Information that, on 15 May 2009, the Accused whilst being a Road Transport Inspector, solicited the sum of Rs 200/- from another person for himself for abstaining to do an act in the execution of his duties, that is, not to book the latter for a Road Traffic Offence.

The Accused pleaded guilty and was assisted by Counsel.

Prosecution's Case

It was not denied that the Accused was a public official at the material time. The case of the Prosecution rested mainly on the evidence of the complainant who stated in court that at the material time, he was driving a borrowed van belonging to his friend and that he was stopped by the Accused and a Traffic Warden. He was asked to present the Agreed Statement of Fact form as required by the Road Traffic Act and he showed a copy of the said document to the Accused. He averred that the Accused told him that the photocopy of an Agreed Statement of Fact is not a valid one and that it

was a contravention for not having the original one. The Complainant thereafter stated that the Accused asked him for Rs 200/- in order not to book him for this contravention, which proposition he refused upon which the Accused booked him by way of Fixed Penalty Notice.

Defence Case

The Accused gave evidence under solemn affirmation to the effect that he did stop the vehicle driven by the Complainant and that he booked latter as he did not have a valid Agreed Statement of Fact. He however denied that he solicited Rs 200/- so as not to book the Complainant for the alleged offence. He conceded that the Complainant was irritated and that an argument between him and the Complainant followed where latter told him that he was going to make a complaint against him at the Police Station. The Accused stated that he did not report the incident as it is common for irritated drivers to utter such words to him.

The Defence also called the Traffic Warden who was in the company of the Accused at the material time. He stated that there was indeed an argument between the Accused and the Complainant and that at no time did he hear the Accused soliciting money from the Complainant. He however stated that he only heard the Complainant saying to the Accused that he will put him into trouble and that "li pou met enl'entrée dans station".

After having considered the evidence on both sides, the Court found that the Accused should be given the benefit of the doubt in as much as the Complainant had no witness to support his version, the version of the Accused and that of the defence witness were consistent. The Court further found that there was nothing sinister in the fact that the Accused did not report the incident. The Information against the Accused was therefore dismissed.

ICAC v Maneeshi SEENAUTH CN: - 975/11

Sentence delivered on 16.05.12

The Accused stood charged with the offence of Traffic D'Influence in breach of section 10(2) of the Prevention of Corruption Act 2002.

It was averred in the Information that the Accused gave the sum of Rs 1,500/- to one George Ferdinand to use his real influence to obtain a driving license from the Mauritius Police Force without going through the normal procedure.

The Accused pleaded guilty and was assisted by Counsel.

At the hearing, the defence statement of the Accused was produced wherein he confessed to having given the said sum of money so as to obtain a driving licence without going through the normal procedure set up by the Mauritius Police Force for the grant of a driving license.

In light of the guilty plea, the Court found the Accused guilty as charged and sentenced the Accused to undergo 3 months imprisonment. The sentence was however suspended and the Accused was order to perform 90 hours community service instead and to follow counselling sessions once monthly.

ICAC v Rohit BOKHOREE CN:- 486/11

Sentence delivered 14.05.12

The Accused stood charged under five counts of the Information for the offence of Bribery by Public Official in breach of section 5(1)(a) and (2) of the Prevention of Corruption Act 2002.

It was averred in the Information that the Accused did, on 5 occasions, give to one Sohonah OODHOO, a water tanker driver of the Central Water Authority, the sum Rs 200/- in order for latter to supply him water at his complex at Blue Bay.

The Accused pleaded guilty to all 5 counts of the Information.

The Court sentenced the Accused to one year imprisonment and to pay Rs 500/- costs. The sentence was however suspended and the Accused was ordered to perform 200 hours community service and to follow counselling sessions monthly at Grand Port Probation Office.

ICAC v Shri KrishnaduthJee RAMCHURN CN: - 980/10

Judgment delivered on 02.05.12

The Accused stood charged with the offence of Public Official Using Position for Gratification in breach of section 7(1) of the Prevention of Corruption Act 2002.

It was averred in the Information that the Accused, whilst being employed as Agricultural Machinery Operator by the Sugar Planters Mechanical Pool Corporation (SPMPC) wilfully, unlawfully and criminally, made use of his position by causing a plot of land of a planter to be ploughed without there being a contract between the said planter and the SPMPC for the said work.

The Accused pleaded not guilty and was assisted by Counsel.

The Prosecution called, among other witnesses, officers of the SPMPC who gave evidence to the effect that the SPMPC hires out agricultural machinery, including tractors particularly to small planters. The planters have to make a request to the SPMPC for hiring such machinery. A contract is prepared and thereafter officers of the SPMPC would contact the planter who requested for agricultural machinery and ask him to call at their office to sign the contract and pay the required deposit. It is only then

that the machinery will be use on the planters land. The Prosecution also called the Internal Comptroller of the SPMPC who deposed to the effect that, following certain irregularities noted in relation to the tractor operated by the Accused and enquiry was conducted. At the material time, the Tractor operated by the Accused was being used in Fond du Sac. When he went to Fond du Sac, the said tractor was being used on a plot of land in relation to which there was no contract with the SPMPC. The witness also deposed to the effect that the plot of land in relation to which there was no contract between the SPMPC and the planter belong to on Mrs Ramchurn who agreed that he had no contract with the SPMPC to plough her plot of land.

The Prosecution also produced the defence statement of the Accused in which latter confessed to having unlawfully ploughed the land of Mrs Ramchurn who is his sister-in-law.

The Defence adduced no evidence.

The Court held that the evidence adduced by the Prosecution has remained unchallenged and that the case has been proved beyond reasonable doubt against the Accused not only on the evidence of witnesses called for the Prosecution but on the confession made by the Accused. The Court found that the Accused wilfully and unlawfully made use of his position as an officer of the SPMPC to gratify his sister-in-law by enabling her to benefit from tractor services for free.

On 04.05.12, the Court sentenced the Accused to undergo 4 months imprisonment and to pay costs Rs 500/-. The Court however suspended the sentence and in lieu, the Accused was sentenced to perform 90 hours Community Service and to attend counselling sessions at Pamplermousses Probation Office every fortnight.

ICAC v S.Mangal CN: - 902/11

Sentence delivered on 02.03.12

The Accused stood charged under one count of the Information with the offence of Traffic D'Influence in breach of section 10(2) of the Prevention of Corruption Act 2002.

It was averred in the Information that in or about the month of February 2008 at Bel Air RiviereSeche in the District of Flacq, the Accused did wilfully, unlawfully and criminally give a gratification to another person to use his real influence, to obtain a benefit from a public body. It was further averred that the Accused gave sum of Rs 5,410/ to one Georges Ferdinand, through one BalramTooree, to use his real influence, to obtain a benefit, a driving licence without going through the normal procedure, from the Mauritius Police Force.

The Accused pleaded guilty to the Information.

The Court sentenced the Accused to undergo one year imprisonment. However, the term of imprisonment was suspended and converted into 120 hours of community service at Ernest Florent Community Centre as from 06.03.12 on Tuesdays and Thursdays between 08.00 hrs and 16.00 hrs and to attend counselling sessions at Flacq Probation Office on monthly basis as from 16.03.12.

ICAC v A.Jeebun CN: - 1424/11

Sentence delivered on 15.03.12

The Accused stood charged under one count of the Information with the offence of Limitation of Payment in cash in breach of section 5(1) of the Financial Intelligence and Anti-Money Laundering Act 2002.

It was averred in the Information that, on 29 December 2009, the Accused made a payment which was in excess of the limit prescribed by law, that is, Rs 500,000/-, when

he paid sum of Rs 1,500,300/- in cash to British American Insurance (BAI) for a life Insurance cover.

He pleaded guilty and was assisted by Counsel.

The defence statement of the Accused was produced on court in which he confessed to the transaction.

The Learned Magistrate sentenced the Accused to pay a fine of Rs. 20,000 and to pay Rs. 500 as costs.

ICAC v P. BallchandUdhin CN:- 76/12

Ruling delivered on 22.03.12

The Accused stands charged with the offence of Limitation of Payment in Cash in breach of section 5(a) of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA). She pleaded guilty and was assisted by Counsel.

At the start of the Hearing, the defence moved for the Accused to change her plea from guilty to not guilty on the ground that the guilty plea was entered by mistake. The motion was objected to by the Prosecution and Arguments were heard.

The Accused deposed to the effect that she has both Mauritian and Swedish nationalities. She left Mauritius when she was 9 years old and she now works and lives in both Mauritius and Sweden. She explained that her mother tongue is Swedish and that it is difficult for her to understand Creole and English. She averred that she is a company director and that it is her accountant who explains the contents of documents written in English to her. She further averred that when she was served with the Information, she had time to read it and she even showed it to some other people who read it and explained to her albeit in different versions. She explained that when she came to court on a previous occasion, she was not assisted by counsel and that the

charge was read over to her in Creole. She averred that at the time she was asked to plead, she was "abrupti".

Counsel for the defence submitted that the offence the Accused stands charged is of a highly technical nature, that the Accused was of good faith and that she should be allowed to change her plea in the interest of justice.

Counsel for the Prosecution submitted that the particulars of the offence are simple and if the Accused did not understand that charge she could have retained services of counsel at an earlier stage. The charge was read and explained to the Accused in Creole and she was asked to plead. She chose to enter a guilty plea which was unequivocal and unambiguous. She did not give any indication that she did not understand Creole.

In deciding whether to allow the motion, the Court made several observations as to the demeanour of the Accused and her deposition in Court. The Court found that it could not be said that the mother tongue of the Accused was Swedish since she moved to Sweden with her parents at the age of 9 and there was no indication that her parents talked to her exclusively in Swedish. Furthermore, she could not be said not to understand Creole as after she has deposed in Examination in Chief and Cross-Examination, she had a foreign accent but mastered the Creole language reasonably well and was able to answer questions put to her. The Court further noted that she could well understand local idioms, which would have been impossible could she not understand creole.

The Court therefore found that the language was not such a barrier that it prevented the Accused from understanding the charge which was put to her.

The motion for change of plea was therefore refused and set aside.

ICAC v M.S.Nunhuck CN: - 1047/10

Ruling delivered on 28.03.12

The Accused stands charged with the offence of Public Official using office for gratification in breach of section 7 of the Prevention of Corruption Act 2002. He pleaded not guilty and was assisted by Counsel.

The matter came for trial for the fourth time when the Defence moved that the proceedings against the Accused be stayed for want of prosecution as the main witness for the Prosecution was always absent each time the case came for Trial. The motion was resisted by the Prosecution and submissions were offered.

The Defence submitted that the said witness was repeatedly absent and that he has not been warned to attend court and that without the said witness, there is no case against the Accused. The Prosecution submitted that it is only when the prosecutor is absent that a case can be dismissed for want of prosecutions. Furthermore, other witnesses can be heard in the meantime and that the main prosecution witness has now been traced out so that he can now be warned to attend court on the next occasion.

The Court held that, given that the Prosecution has now traced out its main witness and that the defence bears the responsibility for one of the three postponements in the present matter, the Prosecution should not be punished for the non-attendance of the Complainant. The Court further held that the prejudice which will be caused to the Prosecution if the case is dismissed largely outweighs the prejudice which is being caused to the Accused.

The motion of the Defence was therefore set aside.

ICAC v H.K.J.Reddi CN: - 247/11

Judgment delivered on 29.03.2012

The Accused stood charged under one count of the Information with the offence of Limitation of payment in cash in breach of section 5(1) of the Financial Intelligence and Anti-Money Laundering Act 2002.

It was averred in the Information that on or about the 21st August 2002 at State Bank of Mauritius, the Accused did wilfully, unlawfully and criminally make a payment in cash in foreign currency whose equivalence was in excess of 350,000/- rupees, to wit, he made a deposit of GBP 32000 in his bank Account No 01130100001934 held at SBM Ltd, Pope Hennessy Branch and which said sum was equivalent to Rs 1,428,800/.

He pleaded not guilty and was assisted by Counsel.

The Prosecution produced the defence statement of the Accused in which he averred that at the material time, he was working in a company named COMISCO. He further averred that the money he deposited into his bank account was given to him to effect payment on behalf of the said company. He also explained that he had other sources of income. The Prosecution also called an officer of the Registrar of Companies whose evidence was to the effect that there was no such entity named COMISCO registered at the Registrar of companies. Lastly, the Prosecution called an officer of the bank who produced bank statements of the account held by the Accused. He confirmed that the Accused was a customer of the bank and that no Suspicious Transaction Report was raised in relation to the transaction.

The defence adduced no evidence.

The Court held that a deposit into a bank account is a payment and that the transaction does not fall within the definition of exempt transaction as the payment was not commensurate with the Accused lawful activities since there was evidence on record to

show that there was no such company as COMISCO. The Court found the Accused guilty as charged and sentenced him to pay a fine of Rs 20,000/- and costs of Rs 500/-.

ICAC v P.Baboolall CN: - 1397/10

Judgment delivered on 29.03.12

The Accused stood charged under one count of the Information with the offence of Public Official Making use of office for gratification in breach of section 7 of the Prevention of Corruption Act 2002.

It was averred in the Information that, on the 27th day of March 2008, along Sivananda Avenue towards Vacoas, the Accused, a Police Constable did, whilst being a public official, wilfully, unlawfully and criminally, make use of his position for a gratification for himself. It was averred that the Accused did whilst being a Police Constable in uniform, solicit Rs 500 for himself, from one Mr Sheik Mohammed AsrafAdamsaib, so as not to book latter for an alleged Road Traffic contravention.

The Accused pleaded not guilty and was assisted by Counsel.

The Prosecution produced the defence statement of the Accused in which the latter said that he indeed stopped a towing vehicle at Sivananda Avenue driven by the Complainant. There was another vehicle which was being towed. He noticed that the driver was speaking over the phone whilst being at the steering wheel and this was the reason why he stopped the towing vehicle. He explained that he did talk to complainant but did not solicit any gratification. He explained that he spoke to the complainant about the buying latter's private registration number. The Prosecution called the Complainant, Mr AsrafAdamsaib, who stated that the Accused informed him that he has committed an offence in failing to affix an "On Tow" plate on the vehicle that was being

towed. His evidence however contained numerous contradictions on several issues. The Prosecution also called other witnesses to support its version.

The defence adduced no evidence.

In his judgment, the Learned Magistrate laid emphasis on the fact that the testimony of the complainant contained numerous contradictions. He held the only reasonable conclusion reached was that the said witness was devoid of any credit usually attached to a truthful and reliable witness and that it would be most unsafe and insecure to rely on such evidence to find the case proved beyond reasonable doubt against the Accused.

The Information was accordingly dismissed against the Accused.

ICAC v C.Pursun & Ors CN: - 126/08

Ruling delivered on 03.02.12

Counsel for Accused No 3 moved for the proceedings to be stayed on the ground that the provisions of the Prevention of Corruption Act 2002 (PoCA) and of the Constitution have not been complied with so that the continuance of the proceedings would be an abuse of the process of the Court. The motion of Counsel for Accused No 3 was in relation to the fact that the Accused was being prosecuted by the ICAC, whilst the investigation was carried out by non-ICAC officers (police officers), such that the evidence to be adduced by the Prosecution was prima facie inadmissible, having been obtained in breach of sections 46, 47 and 50 of the Prevention of Corruption Act 2002 and sections 71, 91 and 118 of the Constitution and that the arrest of the Accused was effected in breach of section 53 of PoCA. Counsel for Accused No 1 and No 2 joined in the motion. Counsel for the Prosecution resisted the motion.

Evidence on record was to the effect that documents secured in the present matter were secured by police officers, investigation was initiated by the Police and referred to ICAC, defence statements were either recorded by police officers or witnessed by police officers under instructions of ICAC officers.

The issues addresses by defence counsel in his submissions were to the effect that: -

1. ICAC officers interfering with the powers of the Commissioner of Police in the course of the investigation;
2. The Commissioner of Police interfered with the powers of the Disciplined Forces Service Commission;

Under the first issue, the submissions of defence counsel was to the effect that the Commissioner of Police was holder of a constitutional post and that the police force is under the command of the Commissioner of Police, and that nobody else, be it the Director General of the ICAC nor any ICAC officer can issue orders to any police officers. Police officers posted at the ICAC by the Commissioner of Police can only perform their police duties and exercise their powers under the Police Act. They report to the Commissioner of Police and they are only under the command and control of the Commissioner of Police. They cannot perform ICAC investigation using their police powers.

Counsel for the ICAC submitted that it was not imperative for the Director General of the ICAC to examine persons as per the provisions of section 50 of the PoCA. He further submitted that the provisions of section 50 cannot be applied to an Accused party as the latter enjoy an absolute right to silence under the constitution and not a selective one as provided for under section 50(3) of the PoCA. He further submitted that it was within the sole discretion of the Commissioner of Police to decide upon the posting of members of the police force. Counsel for the ICAC submitted extensively on provisions of the PoCA and further referred to the case of *Ha Yeung v The ICAC* 2003 SCJ 273.

The Court held that section 24 (5)(b) of the PoCA provides for police officers to be posted at the ICAC by the Commissioner of Police as their services were required for the purpose of the PoCA, that is, combating corruption. The Court further held that there was nothing abnormal in the present matter for police officers posted at the ICAC working under the instructions of ICAC officers in carrying out the investigation. The Court further held that the issue whether the ICAC, being a corporate body with statutory powers, having interfered with powers of the Commissioner of Police does not arise.

Under the second issue, Counsel for the defence submitted that the PoCA makes provisions for the Commissioner of Police to send police officers outside the police force to work for the ICAC, a corporate body, which is not a disciplined force and this goes against the Constitution.

Counsel for the Prosecution submitted that when a police officer joins the ICAC, he does so in substantial capacity as a police officer to help in an ICAC investigation. He further submitted, relying on a judgment of the Supreme Court, that all police officers involved in an ICAC enquiry remain under the disciplinary control of the DFSC.

The Court held that the argument of the defence on the second issue cannot stand.

The motion of the defence was accordingly set aside.

ICAC v SIMS International Trading Ltd CN: - 304/11

Sentence delivered on 16.02.12

The Accused Company stood charged with the offence of Limitation of Payment in Cash in breach of section 5(1) of the Financial Intelligence and Anti-Money Laundering Act 2002.

The particulars in the Information read that on 10 November 2003, the Accused company wilfully, unlawfully and criminally accepted a payment of Rs 850,000/- which was in excess of the prescribed limit of Rs 350,000/-.

The Accused Company, through its Representative, pleaded not guilty and was assisted by Counsel.

Evidence of the Prosecution

The evidence adduced by the Prosecution was to the effect that the Accused Company accepted payment by means of three (3) uncrossed cheques by another company, Tang Knitwear. The accounts clerk of Tang Knitwear was called by the Prosecution and she deposed to the effect that her company had to make a payment of Rs 850,000/- to SIMS International Trading Ltd. The Director of the Accused Company asked that the payment be made by way of uncrossed cheque on which no drawee's name would be inserted. The request of the Accused Company was agreed to by the representative of Tang Knitwear.

The Defence adduced no evidence.

The Defence submitted that the payments by way of 3 cheques were 3 different transactions and that same were made by way of cheques, which, albeit, were uncrossed.

The Court referred to the definition of cash in the FIAMLA 2002 and held that the cheques which were not crossed and name of payee were left blank amounted to cash. The Court further referred to judgments of the Supreme Court so as to look into the intention of the Accused Company so as to determine whether the payment was one transaction or 3 transactions. The Court held that, from the evidence adduced before it, the transaction amounted to only one transaction as same were for the payment of Rs 850,000/- at the request of the Director of the Accused Company.

The Court found the Accused Company guilty of the offence charged and sentenced the Accused to pay a fine of Rs 50,000/- and to pay costs of Rs 500/-.

ICAC v D.Aubeeluck CN: - 1583/10

Sentence delivered on 17.02.12

The Accused stood charged under 16 counts of the Information for the offence of Limitation of Payment in cash in breach of section 5(1) of the Financial Intelligence and Anti-Money Laundering Act 2002.

It was averred in the Information, that, as from September 2005 to November 2005, on 16 different occasions, the Accused either accepted or made a payment of more than the prescribed limit of Rs 350,000/-.

He pleaded Guilty and was represented by Counsel

The Court sentenced the Accused to pay a fine of Rs 30,000/- on each of the 16 counts of the Information and to pay costs of Rs 500/-.

ICAC v Joybee Co Ltd CN: - 38/12

Sentence delivered on 17.02.12

The Accused Company stood charged with the offence of Limitation of Payment in Cash in breach of section 5(1) of the Financial Intelligence and Anti-Money Laundering Act 2002.

It was averred in the Information that, on or about 5th April 2004, the Accused made a payment of Rs 1,200,000/- in cash to one Mr Pierre for the purchase of a plot of land at The Vale, Grand Bay.

The Court sentenced the Accused to pay a fine of Rs 100,000/- and costs of Rs 500/-.

ICAC v G.Guness& Anor CN:- 1379/07

Ruling delivered on 22.02.12

Both Accused moved that the present proceedings be stayed by reason of undue delay in instituting and pursuing the present proceedings.

The motion was resisted by Counsel for the Prosecution who moved to call a witness to produce an affidavit in support of his objection.

The defence are now objecting to this motion of the prosecution on the ground that this would amount to a further attempt to unconscionably delay the proceedings and would constitute a further breach of the rights of the Accused to a speedy trial.

Argument on the initial motion for stay on ground of abuse of process was scheduled for 25.01.2012. The Affidavit sought to be adduced was only communicated to the defence on the eve of the Hearing. Defence Counsel averred that the affidavit contains averments of fact known to the ICAC and by communicating same to the defence on the eve of the Argument, the Prosecution has put the defence in a situation where it would be forced into begging for a postponement so as to meet the facts of the case.

Counsel for the Prosecution submitted that it is only in exceptional circumstances that the court would order a stay of prosecution, that is, where the circumstances are oppressive and vexatious.

The Court took note of the fact that it was being called to rule on a motion for abuse of process within another motion of the same nature.

The Court held that it has a discretion to decline to hear proceedings on the ground that they are oppressive and constitute an abuse of the process of the Court and that the test would be that of fairness.

The Court held that the defence was right to aver that it needed time to prepare its case in light of the affidavit and that a simple solution to that issue would be to grant time to the defence. The Court held that it was not prepared to read unconscionable delay in the fact that the affidavit was communicated on the eve of an argument. The Court held that there was nothing unfair, oppressive or something grave or wrong in the conduct of the prosecution so as to constitute an abuse of process which would warrant such an exceptional measure as to order a stay of proceedings.

The motion of the defence was accordingly set aside

ICAC v Jimmy Robert Gaetan Pierre CN: - 39/12

Sentence delivered on 23.02.12

The Accused stood charged with the offence of Limitation of Payment in cash in breach of section 5(1) of the Financial Intelligence and Anti-Money Laundering Act 2002.

It was averred in the Information that, on or about the 5th April 2004, the Accused accepted a payment of Rs 1,200,000/- in cash from Joybee Co Ltd for the sale of a plot of land situated at The Vale, Grand Bay.

The Accused pleaded guilty.

The Court sentenced the Accused to pay a fin

ICAC v Maherally & Ors CN:- 1049/09

Judgement delivered on 17 January 2012

All four Accused stood charged with the offence of Limitation of Payment in Cash in breach of Section 5 of the Financial Intelligence and Anti-Money Laundering Act 2002. They pleaded not guilty and were represented by Counsel.

It was averred in the Information that all four Accused did wilfully, unlawfully and criminally accept a payment in cash in excess of Rs 500,000/- , to wit, they accepted a payment of Rs 750,000/- from one AnwarhusseinRanjaun following the sale of an apartment situated at Wolmar, Flic en Flac.

Evidence on record was to the effect that all four Accused were co-owners of a property at Wolmar, Flic en Flac, which property they sold to Mr AnwarhusseinRanjaun for Rs 750,000/-. The statements of all four Accused were also produced in Court.

The Court found that Accused No 1 and 3 accepted the payment on behalf of their respective wife, Accused No 2 and 4, and that the latter, that is, Accused No 2 and 4 were not directly involved in the remittance of the money. The Information against Accused No 2 and 4 was accordingly dismissed.

As for Accused No 1 and 3, the Court found that there were clear admissions that they accepted the payment of Rs 750,000/- and sentenced each of them to pay a fine of Rs 15,000/- and costs of Rs 500/-

ICAC v Amimah MEEAJUN CN:- 1079/11

Sentence delivered on 18 January 2012

The Accused stood charged with the offence of Limitation of Payment in Cash in breach of section 5 of the Financial Intelligence and Anti-Money Laundering Act 2002.

It was averred in the Information that the Accused made a payment of GBP 15,000/- to Shibani Finance Money Changer in exchange of Rs 712,000/-.

The Accused pleaded guilty to the charge.

At the Hearing, the statement of the Accused was produced, in which she confessed having done the transaction as averred in the Information. She further averred that the GBP 15,000/- represented her earnings from her Rest Home Business in the United Kingdom.

The Accused was sentenced to pay a fine of Rs 25,000/- and to pay costs of Rs 500/-.

ICAC v Jaganada REDDI CN: 247/11

Ruling delivered on 24 January 2012

The Accused stands charged with the offence of Limitation of Payment in Cash in breach of section 5 of the Financial Intelligence and Anti-Money Laundering Act 2002. He pleaded not guilty and was assisted by Counsel.

Counsel for the Defence moved that the present proceedings be stayed as same constitutes an abuse of process inasmuch as the date of the alleged offence is the 21 August 2002 and the Information was lodged on 24 February 2011. He added that in the circumstances, the result of such delay will be that the Accused will not benefit from a fair trial. The Motion was resisted by the Prosecution.

The Prosecution submitted that the time for computation of delay should start as from day of arrest, which, according to the record, was in February 2011. As such, there was no unreasonable or undue delay which would warrant a stay of proceedings in the present matter.

Counsel for the Defence submitted even though the Accused was arrested and formal Information lodged only in 2011, the investigation started in February 2003 and that there was no reason on record to explain the delay.

The Court considered the submissions of both parties and concluded that the general rule is that delay should start as from time of arrest. However, it was of the view that the present matter was a fit case to consider the period from the start of the investigation. The Court found that true it is that there has been some unexplained delay but that there has been no prejudice caused to the Accused since latter was only arrested in 2011 and his first statement recorded in 2010 and that the suspicion of him having committed an offence was not known to him prior to the recording of his statement. The Court found that it cannot be said that the Accused suffered any anxiety or uncertainty from 2003 to 2011.

The Court overruled the motion of the defence and held that the Accused will still benefit from a fair trial at this stage.