

Police v BalramTooree C/N: 746/11-Ruling delivered on 30.10.13

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

When the case came for trial, the defence moved that prosecution be stayed for abuse of process on the ground that the accused disclosed possible acts of corruption to the ICAC and therefore he could not be prosecuted as he obtained protection under section 49(1) of the Act.

The enquiring officer explained in court, that the accused came to the ICAC and reported that one G Ferdinand took money from him to facilitate the obtaining of a driving license for himself and his wife. The accused alleged that he collected Rs200,000 from 32 different persons which he remitted to the said Ferdinand for similar facilities. Both the accused and the said Ferdinand were arrested. The prosecution submitted that section 49 does not apply to 'ParticipesCriminis'. The defence submitted that the accused disclosed an offence to the ICAC and was therefore protected under section 49. Section 49 provides for the protection of witnesses and the issue before the Court was whether the accused was a witness or a suspect. The Learned Magistrate held that the accused was a 'participes criminis' in as much as he admitted giving money to obtain certain facilities and his first statement was recorded under warning. The Magistrate considered that the accused was in fact treated as a suspect since the beginning and section 49 could not apply to him. The motion of the defence was set aside.

ICAC v PriadeviBallchandUdhin C/N: 76/12-Ruling delivered on the 16.10.13

The Accused was charged with the offence of 'Limitation of payment in cash' in breach of sections 5(1) and 8 of the FIAMLA.

She pleaded guilty to the charge and was assisted by counsel. During the deposition of the Supervisor of the State Bank of Mauritius, a witness for the prosecution, defence counsel moved that the guilty plea of the accused be amended by the Court because there was evidence being ushered which tend to disculpate the accused.

The abovementioned witness stated two persons gave him the money that made up the transaction, and same was credited in one account. When it was put to him that in his statement to the ICAC he said that the accused gave him EUR 20,000, he replied that he was confused and did not know.

The Court noted that although the abovementioned witness stated in court that two persons came to the bank and remitted the money to him, that witness also stated that the money originated from the accused's savings. The statement of account and certified copy of forex voucher dated 20.08.04 which were produced were in the name of the accused and were evidence that EUR 20,000 were credited in the accused's account and there had only been one transaction.

The Learned Magistrate held that the evidence of the abovementioned witness did therefore not render the maintaining of the guilty plea unsafe.

Motion of the defence for the Court to invite the accused to change her plea from guilty to not guilty was therefore declined.

ICAC v PriadeviBallchandUdhin C/N: 76/12-Ruling delivered on the 17.09.13

The Accused was charged with the offence of 'Limitation of payment in cash' in breach of sections 5(1) and 8 of the FIAMLA.

She pleaded guilty to the charge and was assisted by counsel. Three of the witnesses for the prosecution were bank officers of the State Bank of Mauritius.

Counsel holding a watching brief for the said witnesses, made a statement to the effect that calling the said witnesses to depose would amount to an abuse of process. The witnesses gave statements to the ICAC in connection with the facts of the present case in their capacities as employees of the SBM. Two of the witnesses gave statement under warning and they might be prosecuted individually.

Counsel for the defence concurred with the above and draw the attention of the Court to the fact that if the witnesses were not tendered for cross-examination, this would infringe the accused's right to a fair trial under section 10 of the Constitution and stated that if the relevant warning was given to the witnesses, then there would be no legal impediment.

Prosecution submitted that there was no evidence to establish that there might be an abuse of process if the witnesses were called by the prosecution.

The Court noted that there was nothing on record about any proceedings against the said witnesses in their personal capacity or as representative of the bank. However, since statements have been recorded from them under warning, and since there was no undertaking on record of any immunity given to them, the possibility of proceedings against them could not be cast aside.

The Learned Magistrate held that there would be no abuse of process of the Court in the prosecution calling the said witnesses but there existed reasonable ground to

apprehend danger to the witnesses, so that they should be given warning against any self incriminating questions.

Police v SatyajeetBoyjoonauth C/N:1631/2011-Judement delivered on the 07.11.13

The accused was charged with the offence of 'Bribery by Public official' in breach of section 4(1)(b) and (2) of the PoCA. The particulars were that, whilst being a police constable at Vacoas Police Station enquiring into a case involving Mr. V Ragoomundun, the accused solicited Rs5, 000 from the latter for him to get away with his case. The accused pleaded not guilty and was assisted by counsel. The case for the prosecution was that the accused, whilst in uniform, went to the house of Mr. V Ragoomundun to inform him that one Mr. Sauba had reported a case against him. The accused took a statement from Mr. V Ragoomundun and solicited Rs 5,000 from him to withdraw the case against him. Accused called Mr. V Ragoomundun from his mobile phone as well as from Vacoas Police Station to ask for money. The said Mr. V Ragoomundun was called as a witness for the prosecution. He deposed to the effect that his first statement at the ICAC was on 19.11.09 and he was still in contact with the accused. He stated that the accused phoned him on the 20.01.10 and convened him to the police station on the next day.

The representative of the Mauritius Telecom was called by the prosecution and she produced records of registered names and addresses of subscribers to phone numbers which were subject matter of the case and a list of incoming and outgoing calls for the numbers.

The Enquiring Officer was also called by the prosecution and he produced statements of the accused and said there were phone contacts between mobiles of the accused and

Mr. V Ragoomundun and between the mobile phone of Mr. V Ragoomundun and Vacoas Police Station.

Evidence was also adduced by the prosecution to the effect that during an identification exercise, Mr. V Ragoomundun positively identified the accused.

The Defence did not adduce any evidence.

The Court held that the records of subscribers' names/list of incoming/outgoing calls produced by the prosecution gave credence to the testimony of Mr. V Ragoomundun, whereas it gives the lie to the unsworn version of the accused. The Court found that the prosecution had established a prima facie case and that the evidence adduced by the prosecution had seriously dented his credibility.

Accused was found guilty as charged.

The accused was sentenced to 12 months imprisonment and Rs 500 cost. The accused has given notice of appeal.

ICAC v Dhaneshwar Soobrah C/N:1181/2009- Judgment delivered on the 30.10.13

The accused was charged under two counts with the offence of 'Public official using his office for gratification' in breach of section 7(1) of the PoCA.

The particulars of the offence were as follows:

Count I: On or about 11.10.06, the accused approved the request of Mr. S Napaul for the purchase of unserviceable materials lying at La Tour Keonig without approval of the Management Quotation Committee ("MQC").

Count II: On or about 7.11.06, the accused caused the said Mr. S Napaul to be appointed as personnel officer without the approval of the DWC Board. Accused pleaded not guilty to both counts and was assisted by counsel. The case of the prosecution, under Count I, was that the sale of unserviceable materials should be tabled at the MQC. The then secretary to the Board was called as a witness and he deposed to the effect that he prepared an MQC paper to be tabled at the MQC. He also stated that the accused did not consider same and approved the sale of unserviceable materials to Mr. S Napaul for the final sum of Rs2, 000. The Court held: "It is accordingly the opinion of the Court that in the absence of any Regulation/established procedure at DWC level rendering it incumbent upon Accused to refer any Application/Quotation to buy DWC's old, unserviceable items to the MQC, Accused cannot be faulted for not having referred Mr. N's Application to Purchase (or any other person's Application) to the MQC.

Whatever Mr S or Mr Hurbungs stated at statement-stage is irrelevant and this Court would be derelict in its duty were it to consider what those witnesses had stated at statement-stage-all the more so when they reneged those statement versions in Court. It is their testimonies under oath that is to be considered by Court and both witnesses stated that the MQC being a purchasing entity under the DWC had nothing to do with the sale of old, unserviceable materials."

Whilst under Count II, the case for the prosecution was that Mr. S Napaul was appointed personnel officer by way of letter sent to him on 07.11.06 without Board approval, in breach of section 15 of the repealed DWC Act 1971. The Court, although having found that Mr. S Napaul appointment in November 2006 was without Board approval, the Court held that the subsequent ratification of the said appointment validated in toto and ab initio Mr. S Napaul's appointment.

For the above mentioned reasons, the case was dismissed against the accused.

ICAC v 1. AhmudShakeel Khan Jahangeer 2. Jean Luc Songor C/N:221/2012-
Judgment delivered on the 16.10.13

The two accused were charged with the offence of 'Limitation of payment in cash' in breach of sections 5(1) and 8 of the FIAMLA.

It was averred under Count I that, in or about 2004, accused No 1. paid a sum of about Rs 500,000 in cash to accused no.2.

It was averred under Count II that, in or about 2004, Accused No 2.accepted a sum between Rs400, 000 and Rs500, 000 in cash from accused no 1. Both accused parties pleaded not guilty and were assisted by counsels. The case for the prosecution rested essentially on the statements recorded from the accused parties.

In a gist, the case for the defence was as follows:

In his defence statement, accused no. 1 said he was the director and shareholder of JPS Ltd and in 2004, accused no.2 did renovation work for the company. He paid accused No. 2 Rs 500,000 in cash in one instalment and issued a receipt to accused no. 2.

However, under oath he produced a contract between accused no.2 and Mr. Bhantoo for renovation work at JPS Ltd. The document bore the signatures of Mr. Bhantoo and accused no. 2. Payments were made by JPS Ltd on three occasions as per the statements of accounts, in issue.

Mr. Saroo, employed by JPS Ltd identified the contract signed by Mr. Bhantoo and accused no.2. He said that Mr. Bhantoo was the manager of JPS Ltd.

In cross-examination, accused no.1 said it was not necessary for him to produce the contract at the ICAC.

In his defence statement, accused no 2. said he signed a contract with accused no. 1 for renovation work in the latter's company at the cost of Rs500, 000. When the work was done, accused no.1 paid him Rs 500,000/- or Rs 400,000 in cash. Under oath, he said he signed the contract which accused no.1 produced, and denied the contents of his defence statement. He said he told the officers of the ICAC that he could not remember anything.

The Court assessed the weight attached to the unsworn statements of the accused and their sworn versions. The Court held that even though the two accused said, in their statements at the ICAC, that they respectively made/receive one payment of Rs 500,000 in cash in respect of renovation work done at JPS Ltd, the contract which accused no.1. produced contradicted their versions as per their statements. Count I and II of the information were therefore dismissed.

ICAC v/s Shah Neelam Mohammad MOSAFEER C/N: 1424/13 – Judgment delivered on 19.09.13

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

It was averred in the information that accused did wilfully, unlawfully and criminally make a payment in cash in excess of Rs 500,000, to wit he made a cash deposit of Rs 1,000,000/ in the Account of Leal & Co. Ltd, towards the purchase of a car.

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

ICAC v/s Vishnu PAIDIGADU C/N: 111/13 & 112/13 – Judgment delivered on 08.08.13

Accused was charged with the offence of Money laundering in breach of sections 3(1) (a), 6(3) & 8 of FIAMLA under 50 counts. He pleaded guilty to all the 50 counts.

It was averred in the information that accused did wilfully, unlawfully and criminally engage in a transaction that involved property which in whole directly represented the proceeds of a crime, where he, the said accused had reasonable grounds for suspecting that the property was derived, in whole directly from a crime to wit, 'Embezzlement by person in receipt of wages to the prejudice of his master'. The investigation found that he made 50 deposits in the sum of Rs 328,519 in his Barclays Savings Account, which he had defrauded from the Mauritius AndraMahaSabha.

The court found accused guilty as charged and on 08.08.13 sentenced accused to pay a fine of Rs. 10,000 on each of the 50 counts + Rs. 500 as costs.

ICAC v/s 1. PreetambarRajcoomarsing AUCHARAZ, 2. Lallchand SALLEGGRAM, 3. Shraddhanand SALEEGRAM, 4. Magadeven CUNAPUDY C/N: 964/10 – Ruling delivered on 31.07.13

Voir-dire

Accused no.1, no.2 and no.3 were charged with the offence of 'Bribery of public official' in breach of section 5(1)(b)(2) of PoCA under one count each. They pleaded not guilty and were assisted by counsel. The latter has challenged the admissibility of various defence statements given by his clients on the grounds that same had been obtained illegally in breach of section 53(2)(d) of PoCA and by Oppression and Incitement contrary to the Judges Rules.

Accused no.4 was charged under 3 other counts and was assisted by another counsel; however he did not challenge the admissibility of his defence statements.

Several witnesses were called on behalf of the prosecution, some of whom clearly denied the allegations made against them, while others stated that proper procedures were opted to record statements from accused parties and proper treatment were given to them, including refreshments.

After perusal of the evidence on record, the court did not find any reason to give credence to the defence's contentions and was of the considered opinion that the defence had failed to discharge its burden on a balance of probabilities. However, prosecution had proved beyond all reasonable doubt that accused no.1, no.2 and no.3 had voluntarily given and signed their statements without any oppressive manoeuvres, threats or inducement exercised upon them by a person in authority at ICAC. Indeed there did not appear to have been any breach of the requirements prescribed in the Judges' Rule.

Statements of accused no.1, no.2 and no.3 were deemed to be admissible. The case has been fixed for continuation on 20.01.14 and 21.01.14.

ICAC v/s Mohamed Reza ELAHEE C/N: 1387/12 – Judgment delivered on 30.07.13

Accused was charged with the offence 'Limitation of Payment' in cash in breach of section 5(1) & 8 of FIAMLA. He pleaded guilty.

It was averred in the information that accused did wilfully, unlawfully and criminally make a payment in cash in excess of 500,000/- rupees, to wit, he paid sum of Rs 520 000 in cash to one Mr. JeelallNewaj for the purchase of car bearing registration No 45

RM 04 from the Auction Sale of police VIP vehicles and which said sum was in excess of Rs 500,000/.

The court found accused guilty as charged and sentenced him to pay a fine of Rs. 50,000 + Rs. 500 as costs.

ICAC v/s 1. Rakesh Kumar SUMPUTH, 2. Marday RAMSAMY C/N: 116/13 - Judgment delivered on 15.07.13

Accused No.1 was charged with the offence of 'Limitation of payment in cash' in breach of section 5(1) & 8 of FIAMLA under one count while accused no.2 was charged with the same offence under two counts. They pleaded guilty.

It was averred in the information, under count 1, that accused no.1 did wilfully, unlawfully and criminally make a payment in cash in excess of 500,000/- rupees, to wit accused no.1 made a cash payment of Rs 600,000/- to one MardayRamsamy respecting the purchase of car number 3421 ZS 04.

While under count 2 it was averred that accused no.2 did wilfully, unlawfully and criminally accept a payment in cash in excess of 500,000/- rupees, to wit: accused no.2 accepted sum of Rs 600,000/- in cash from one Rakesh Kumar Sumputh representing the proceeds of the sale of his car number 3421 ZS 04.

Furthermore under count 3 it was averred that at Mauritius Commercial Bank Ltd., Port-Mathurin Branch in the District of Rodrigues, accused no.2, did wilfully, unlawfully and criminally make a payment in cash in excess of 500,000/- rupees, to wit: accused no.2 made a cash deposit of Rs 590,000/- in his MCB Account No 000031244032.

The court found both accused guilty as charged and sentenced each accused to be conditionally discharged upon furnishing a surety of Rs. 3,000 and to be of good

behavior for a period of one year failing which they would undergo 1 month imprisonment on each of their respective charge.

ICAC v/s Sajid Goodur C/N: 985/09– Judgment delivered on 21.05.13

Accused was charged with the offence of 'Traffic d'influence', in breach of sections 10(3) and 83 of PoCA.

It was averred in the information that accused wilfully, unlawfully and criminally gave a gratification to public official to cause that public official to use his influence, real or fictitious, to obtain a benefit from a public body. To wit:- accused gave sum of Rs 10,000/- to Mr Jaikishan Bhantoo, a Police Constable, for the latter to use his influence, real or fictitious, to exculpate Messrs Shamir Soobrattee and Mohamad Nawaz Subratty, the two suspects, in case OB 1771/04 reported at Camp de Masque Police Station.

Accused pleaded guilty and the court found him guilty as charged.

On 21.05.13 accused was conditionally discharged and entered a recognizance of one surety in cash in the sum of Rs. 20,000 and a recognizance in his own name in the sum of Rs. 30,000. He needs to be of good behaviour for a period of 3 years, failing which he will undergo 3 months imprisonment.

ICAC v/s Priadevi Ballchand UDHIN C/N: 72/12 – Ruling delivered on 16.05.13

Accused was charged with the offence of 'Limitation of payment in cash' in breach of sections 5(1) and 8 of the FIAMLA. She pleaded not guilty and was assisted by counsel.

On a previous ruling the court declined the change of plea of accused from guilty to not guilty and the court also found that language was not an obstacle to the accused understanding the court proceedings. However prosecution did not object to the motion of the defence that an interpreter be available as the accused was seemingly not in a position to understand English, Creole or French to the standard that would be expected.

On 09.05.13 Mrs Chowra was sworn in as interpreter, whereupon defence counsel objected on the ground that an interpreter must be qualified and if not there would be a denial of a fair trial.

Prosecution counter-argued that no academic qualification was needed and the interpreter did not need to be fluent in the native language of the accused, but the court should be able to ascertain that the interpreter understood and could interpret the proceedings in a language understood by the accused.

The court concluded that Mrs Chowra was referred to this court following a request made by the Intermediate Court to the Supreme Court and that she had taken oath before this court to translate the proceedings truly and faithfully and that there was no evidence that Mrs Chowra would not translate the proceedings in a language understood by the accused.

Hence, the court found that there would be no impediment to Mrs Chowra acting as interpreter in the present matter, hence, set aside the objection of counsel for the defence and ordered the hearing to proceed.

ICAC v/s Mohammad Haniff NAUZEER C/N: 171/2009 – Judgment delivered on 15.05.13

Accused was charged with the offence of 'Corruption of Agent' in breach of sections 16(1) and 83 of the PoCA under 4 counts, to all of which he pleaded not guilty and was assisted by counsel.

It was averred that the accused, whilst being employed as security guard at SOS Guard Ltd, obtained several sums of money, total of Rs 5,500 from several persons, for himself to recommend people as security guards at the SOS Guard Ltd. .

In all the 4 counts prosecution witnesses failed to show themselves as being reliable and credible. There were serious irregularities and inconsistencies between the evidences they gave in court and versions they gave to the ICAC.

Hence, the court found it unsafe to rely on prosecution evidence and dismissed all the 4 counts against the accused.

ICAC v/s Dick Christophe NG SUI WA C/N:1854/10 – Ruling delivered on 15.05.13

During the ongoing cross examination of the witness for the prosecution on whether the proceedings should be stayed on grounds of abuse of process, the learned counsel for the defence moved for communication of the recommendations of the Commission which it submitted to the DPP as part of its statutory duties under section 47 of PoCA.

The court was of the considered view that the recommendations of the Commission under section 47 (7) of PoCA is akin and in fact tantamount to a PF 100 which the Police refer to the DPP for advice as regards to prosecution and hence, falls within the protection of public interest immunity.

The court found that the prosecution should not and could not be ordered to disclose such a document which is protected by public interest immunity. Therefore the motion of the defence was set aside.

ICAC v/s Robert JANDOO C/N: 86/11 – Judgment delivered on 08.05.13

Accused was charged with the offence of 'Conflict of interests' in breach of section 13(2)(3) of PoCA. It was averred in the information that accused, whilst being a public official having 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: whilst being a member of the Board of the Information and Communications Technology Authority (ICTA) he took part in the proceedings as regards the sale of car Rover 3555 NV 02 when he was interested in obtaining the car for his personal use. He pleaded not guilty and was assisted by counsel. Several witnesses came to depose and to produce documents, especially Minutes of proceedings.

It was not disputed that accused was a member of the Finance Committee, therefore a public official in the period of August to January 2007. However, from different Minutes of Proceedings produced in court it was confirmed that the accused was present during the sittings of the Board, the Finance Committee and the Fast Track Committee in August and December 2006.

The court found the witnesses for the prosecution were credible and there were no reason not to disbelieve them. Furthermore there was undisputed evidence that a sum Rs 160,000/- paid to the ICTA for the purchase of the car Rover 3555 NV 02 by a MPCB Banker's cheque came from the accused's saving account.

The court concluded that the accused had a personal interest in the car, i.e. he wanted the car for his own use and did obtain it for his own use. The court found it difficult to believe accused unsworn version that he lent the money to Mr Lareine to purchase the car, especially when accused admitted that he kept the car Rover 3555 NV 02 at his place, drove it, and paid the insurance and registration fees. Hence, the court concluded that the prosecution had proved its case beyond doubt and found accused guilty as charged. On 08.05.13 accused was sentenced to undergo 6 months imprisonment plus Rs 500 costs. However, sentence was suspended and on 12.06.13 accused was ordered to perform 120 hours community service order at Forest Side Fire Station and he also had to follow consulting sessions on a fortnightly basis at Curepipe Probation office.

ICAC v/s Narainduth PURSOTY C/N: 687/2009 – Judgment delivered on 08.05.13

Accused was charged with the offence of 'Bribery by Public Official' in breach of section 4(1)(a)(2) of the PoCA.

It was averred that the accused whilst being a probation officer, solicited a discount through Mr MohamadAslamAbdur Rahman, on purchase price of a car make Proton which he intended to buy for himself, from RaoufDusmohamud and Co Ltd, in order to draft a favourable Probation Report on the said Mr MohamadAslamAbdur Rahman. Accused pleaded not guilty and was assisted by counsel.

The case for the prosecution rested upon the version of Mr MohamadAslamAbdur Rahman, who on the whole did not depose in a straightforward and convincing manner. He failed to establish that there was some kind of a deal between accused and himself which was the main thrust of the prosecution case.

The court could not safely rely on the prosecution witness as he failed to impress the court as being a witness of truth. Therefore, the court found that the prosecution failed to prove its case beyond reasonable doubt and dismissed the case against the accused.

ICAC v/s Dharmanand JOTTEE C/N: 205/2009 – Judgment delivered on 02.05.13

Accused was charged with the offence of 'Bribery by public official', in breach of section 4(1)(b)(2) of PoCA and he pleaded not guilty. The case for the prosecution was that in the course of an enquiry, the accused, a police officer involved in the said enquiry, asked for bribe of Rs 5000 from Mr Boobhun for his release on bail.

It was averred in the information that the accused, whilst being a public official willfully, unlawfully and criminally, solicit from another person for another person a gratification for doing an act which is facilitated by his duties, to wit: accused, whilst being a police constable posted to Quartier Militaire CID who was involved in an enquiry into case OB 4521/07 Moka, wherein one Mr Serge Boobhun was a suspect, solicited sum of Rs 5000 to be shared with others from the said Serge Boobhun to cause latter to be released from Police custody.

It was submitted that it was not part of the duties of the accused to release suspects from police custody and he could not go against the order of the ACP. He could not therefore solicit a gratification for carrying out any sort of release.

The case against the accused was dismissed because the release of Mr Boobhun was not an act which was facilitated by the duties of the accused and the evidence did not clearly show that the gratification was 'for another person'.

ICAC filed notice of appeal on 21.05.13.

ICAC v/s SurajGowry C/N: 394/10 – Judgment delivered on 30.04.13

Accused was charged with the offence of bribery by Public Official in breach of section 4(1)(a)(2) of the PoCA. Accused pleaded not guilty.

It was averred that on or about the 19.10.06 at Sir SeewoosagurRamgoolam National Hospital, accused, a police constable, whilst being a public official, wilfully, unlawfully and criminally, accept from another person, for himself, a gratification for doing an act which is facilitated by his duties, to wit: accused, whilst being a Police Constable performing sentry duties over one detainee Neelam BhaveyraoSumbajee, accepted the offer of a sum of Rs 25,000 for himself from the said Neelam BaveyraoSumbajee, so as to facilitate his escape.

Court considered all the evidence on record and although some inconsistencies from the main prosecution witness, Mr Sumbajee, the court believed him and concluded that prosecution had proved its case beyond reasonable doubt.

Accused was found guilty as charged and on 08.04.13 he was sentenced to undergo 6 months imprisonment + Rs. 500 as costs. However, the sentence was suspended and on 30.04.13 accused was ordered to perform 120 hours community service at Morcellement St Andre Community Centre on Tuesdays, Wednesdays & Fridays from 09.00 to 14.00 hrs.

ICAC v/s Zahir Mohammad Soobratee C/N: 1619/12 – Judgment delivered on 23.04.13

Accused was charged with the offence of Bribery of Public Official in breach of section 5(1) (a) & (2) of PoCA. Accused pleaded guilty.

It was averred that on or about the 08.08.11 along Mallefille Street, Port-Louis, accused did wilfully, unlawfully and criminally offer to a public official, a gratification for

abstaining from doing an act in the execution of his duties, to wit: accused offered to police constable No 8247 Joree, sum of Rs 100 so as not to book him for a road traffic contravention.

Court found accused guilty and on 28.03.13 he was sentenced to undergo 6 months imp + Rs. 500 as costs but sentence was suspended pending report for Community Service Order (CSO). On 23.04.13 accused was ordered to perform 120 hours of community service at St Anne Chapelle on Tuesdays, Wednesdays and Thursdays from 09.00 to 15.00 hrs as from 30.04.13.

ICAC v/s Mrs Mimawatee Rani Saddul C/N: 114/13– Judgment delivered on 19.04.13

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

It was averred in the information that on or about the 14.05.09 at the Mauritius Commercial Bank Ltd, accused did wilfully, unlawfully and criminally make a payment in cash in excess of Rs 500,000/- to wit accused made a deposit in cash for the sum of Rs 643,800/- in her Savings Account.

Court found her guilty and on 19.04.13 she was sentenced to pay a fine of Rs. 10,000 + Rs. 500 as costs.

Icac v Hemraj JAWAHIR C/N: 1175/2011 – Judgment delivered on 19.04.13

Accused was charged with 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 100 to PC No. 35 Auckburally

so as not to establish a road traffic offence which the accused had committed. He pleaded not guilty and was assisted by counsel.

The court considered the version and demeanour of the witnesses for the prosecution and the unsworn statement of the accused. The issue to be determined by the Court was whether the accused did hand over a Rs 100 banknote to PC Auckbarally so that he would refrain from booking him or whether the money was in the pouch handed over by the accused which contained his driving licence and as such accused never offered any bribe.

The court found that the versions of prosecution witnesses contained some material contradictions which could not but cast some doubts in the mind of the Court as to whether their versions could be safely relied upon.

Hence, the court gave the accused the benefit of doubt and case was dismissed.

ICAC v/s Darshanand DOYAL – Judgment delivered on 28.03.13

The Accused was charged with the offence of 'Bribery by Public official' in breach of sections 4(1)(a) and 4(2) of PoCA to which he pleaded Not Guilty and was assisted by Counsel.

The particulars provided by the prosecution under the said information were as follows:
“.. the said DarshanandDoyal whilst being a Police Constable on mobile patrol, obtained sum of Rs. 1000/- and some 100 litchis for himself from one GooroodeoChoomucksing, in order not to contravene latter for selling fruits at Beau Plan/Pamplemousses round about without being the holder of an appropriate license”

The Court considered the elements of the said offence and found that the prosecution had failed to discharge its burden of proof to the required standard of proof, case was dismissed.

ICAC v/s Sheik Mohammad Nasser Jaulim C/N: 1562/11 - Judgment delivered on 14.03.13

The accused was charged with the offence of 'Limitation of payment in cash' in breach of sections 5(1) and 8 of FIAMLA. It was averred in the information that on or about 19 February 2007 he accepted a payment in cash in excess of Rs 500,000/- to wit; he accepted from Mr Hitendranath Beegoo Rs 753,000/- in cash, being part payment in respect of the sale of shares of Shah Institute of Technology & Co Ltd.

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

Prosecution produced the out of court statement of the accused, where he admitted that he received Rs 753,000, together with the copy of the receipt and other documents to show that there was a transaction between Accused and the other party. However, defence case was that accused accepted Rs763,000 in cash from the other party, but the payment was in guarantee for a deal for the transfer of shares of SIT and that he was acting in the capacity as director of World Islamic Mission(WIM).

The Court had to consider whether accused accepted the payment in the name of WIM/ SIT/as director of WIM or in his personal capacity. Due to lack of evidence on the defence side i.e. no minutes from WIM where Accused was mandated to received the said sum, the court concluded that the accused was not acting as an individual concerned in the management of WIM or purporting to act as one concerned in its management, but in his own capacity.

The Court found that accused had failed to rebut the evidence for the prosecution and concluded that the prosecution had proved the case against the accused beyond reasonable doubt and hence found accused guilty as charged.

On the same day, accused was sentenced to pay a fine of Rs. 25,000 + Rs. 500 as costs.

ICAC v/s Ahmad HossenRamankhan C/N: 132/12 – Judgment delivered on 18.02.13

Accused was charged with the offence of Limitation of payment in cash, in breach of sections 5(1) and 8 of the FIAMLA, under 3 counts. It was averred in the information that the accused deposited sum of Rs 425,000, Rs 415,000 and Rs 575,000 in cash into his Bank Account held at the Indian Ocean International Bank Ltd.

Accused pleaded guilty and was sentenced to pay a fine of Rs. 7,000 on each of the 3 counts + Rs. 500 as costs.

ICAC v/s ReshadDilmahomed C/N: 922/12 – Judgment delivered on 31.01.13

Accused was charged with the offence of Limitation of payment in cash in breach of Section 5(1) & 8 of the FIAMLA.

On or about 13th day of May 2010 at Line Barracks, in the District of Port Louis, accused did wilfully, unlawfully and criminally make a payment in cash in excess of 500,000/- rupees to wit, he paid sum of Rs 1, 870,000 in cash to one Mr. JeelalIINewaj for the purchase of four cars from the Auction sale of police VIP vehicles.

Accused pleaded guilty and was sentenced to pay a fine of Rs. 50,000 + Rs. 500 as costs.

ICAC v/s Luciano Tony Curtis Bawanee C/N: 400/09 - Judgment delivered on 28.01.13

Accused was charged, under 3 counts, with the offence of Conspiracy to commit the offence of Money Laundering, in breach of Sections 4 of FIAMLA.

It was averred that the accused wilfully, unlawfully and criminally agree with one Marie NatachaRangasamy, to commit an offence of Money Laundering to wit, to engage in a transaction involving property which was, in part, directly representing the proceeds of a crime, by crediting in the bank account held at The Mauritius Commercial Bank, different sums of money, amounting to Rs 67,000, to which sum the accused and the said Miss Marie NatachaRangasamy, had reasonable grounds for suspecting to have been derived, in part, directly from a crime.

Accused pleaded guilty and was sentenced to pay a fine of Rs. 10,000 on each of the 3 counts + Rs. 500 as costs.

ICAC v/s Marie NatachaRangasamy C/N: 400/09 - Judgment delivered on 28.01.13

Accused was charged with the offence of Money Laundering in breach of Sections 3(1) (b) of FIAMLA under 11 counts and with the offence of Conspiracy to commit the offence of Money Laundering in breach of Section 4 of FIAMLA under 3 counts.

It was averred in the information that accused, on 11 occasions, was wilfully, unlawfully and criminally in possession of Rs 399,300 in her bank account at the Mauritius Commercial Bank, 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.

Under the 3 additional counts it was averred that accused, did wilfully, unlawfully and criminally agree with one Tony Curtis Bowanee to commit the offence of Money Laundering, to wit, accused and the Tony Curtis Bowanee alias Brandon agreed with each other to engage in a transaction involving property which was, in part, directly representing the proceeds of a crime, by crediting in the bank account different sums of money, amounting to Rs 67,000, which sum accused and the said Tony Curtis Bowanee

had reasonable grounds for suspecting to have been derived, in part, directly from a crime.

Accused pleaded guilty and was sentenced to pay a fine of Rs. 10,000 on each of the 14 counts + Rs. 500 as costs

ICAC v/s 1. Subhiraj DOOKHY, 2. MamodeAmanoollah OODALLY C/N:

1563/11 – Ruling on 28.02.13

Accused no.1 was charged in breach of section 7(1) and 83 of PoCA under two counts while accused no.2 was charged in breach of section 4(1)(b)(2) of PoCA under one count. They both pleaded not guilty and were assisted by counsel.

On 2nd August 2012 when the case came for trial, counsel for accused no.2 questioned the prosecution with a view to ascertain whether-

1. Accused no.2 was prosecuted under section 4 or 7 of PoCA; and
2. There was evidence that accused no.2 physically received gratification.

Counsel for prosecution stated that prosecution was under section 7 as averred in the information and for the answer to the question it was a matter of evidence.

Case was fixed for argument.

On 9th November 2012 when matter came to be heard counsel for accused no.2 stated that there was no evidence that accused no.2 received Rs 9000 as gratification and that the court could not embark in a trial when there was no evidence. Prosecution stated that evidence is a matter to adduce at trial stage and trial should follow. The case was again fixed for argument.

On 24th January prosecution moved to amend the particulars of the information under count 2 to delete the words "obtained sum of Rs 9000 from the said SanjaiOree so as not to detain him after inquiry" and to substitute by "caused latter not to be detained after enquiry for a gratification of Rs 9000".

Counsel for accused no.2 objected to the motion and contended that the offence was being substituted by another offence. He also mentioned that since accused has already pleaded to the information as particularized under section 4 of the PoCA, prosecution could not bring amendments to bring the offence under section 7 of the law.

Court stated that, if an information is defective, amendments may be allowed provided that certain procedures do follow. In the present case, defence was given the opportunity to object. And also if amendment is allowed, defence will have all the opportunity to re-engineer its position before trial starts.

Hence the court held that the motion of defence counsel was devoid of any merit and was set aside.

ICAC v/s ShoshilaJukhoop C/N: 903/2011 – Ruling II delivered on 27.02.13

The accused was charged under 8 counts for having breached sections 3(1)(a)(b), 6(3) and 8 of FIAMLA. It was 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 she had reasonable grounds for suspecting that the property was derived from a crime. The particulars were that she effected cash deposits/possessed money in her savings account when she had reasonable grounds to suspect that the sums were derived in part directly from drug dealing.

Counsel for defence moved for particulars of the part of the property mentioned in each count which directly represented the proceeds of crime. In a Ruling dated 2 August 2012 the Court ordered that particulars of the "in part" of the property allegedly derived from the crime be given to the defence.

Particulars were communicated to the defence. Prosecution also stated that it could not give further and better particulars than that given for otherwise in light of the previous Ruling prosecution would have to move to amend the information on all counts so that the information read "in whole or in part".

Defence counsel moved that the case be dismissed for want of prosecution given that as the information did not bear the words of the statute, it therefore disclosed no offence. When the case came for argument defence counsel moved that all counts be dismissed as they were not valid in law.

Prosecution submitted that they could not provide further particulars as this would require ushering evidence of how crime officers reached the conclusion that it was "part" and not "whole". It could not be assumed that the "part" could be a specific sum because it all depends on the nature of evidence collected, and it was not too late for the prosecution to amend the information to follow the words of the statute.

Court held that the body of the information contained all the averments of the offence under the aforementioned section and that the fact that it did not reproduce the exact wording of the statute did not render it bad in law. It was the particulars which were the subject of the arguments before this court and the fact that the further particulars provided by the prosecution were not deemed to be satisfactory to the defence, did not justify the striking out of the counts under the information.

ICAC v/s Dick Christophe NG SUI WA C/N: 1854/10 – Ruling delivered on 19.02.13

Pursuant to court ruling dated 27th November 2012, the prosecution handed over to the Court for perusal the two documents which the defence had prayed for disclosure. As stated in the previous Ruling the court could only decide whether the two documents could be disclosed to the defence only after perusal of same.

After having perused the two documents, the court came to the following conclusions: As regards the document pertaining to an “Executive summary” between the Commission and the Commissioner of Police, since the first line made mention of the name of the informer, the court was of considered view that the first line of the document be edited after which the said document was to be communicated to the defence.

Concerning the second document which was the letter of complaint referred to in the second paragraph of the affidavit sworn by CI Chung Yen, the court was of view that the said letter could not be disclosed to the defence as same was indeed in the category of privileged document. It contained materials which were sensitive and might affect the public interest immunity.

ICAC v/s JHUGAROO C/N: 21/10 – Judgment delivered on 14.02.13

Accused was charged with the offence of bribery by Public Official in breach of section 4(1)(a)(2) of the PoCA. It was averred that during the month of January 2008 the accused whilst being an Inspector of works at the NHDC, solicited money from one AbooRujubally (W.3) for himself to favorably process latter’s application for a grant for the casting of slab. Accused pleaded not guilty and was assisted by counsel.

The prosecution relied only on the testimony of W.3 who was the main witness for the prosecution. The court was of view that, had it been a genuine case W.3 would have reported the matter straightaway and found it doubtful why he waited for three weeks to report the matter. Also W.3 deposed differently from what he said in his statement to the ICAC. Therefore the court found that it was unsafe to rely on his testimony for he was not a witness of truth on whose evidence the court could rely upon to find the charge proved.

The court held that the prosecution had not proved its case beyond reasonable doubt and dismissed the charge against the accused.

ICAC v/s Rajkoomarsingh SEEPERSON C/N: 478/09 – Judgment delivered on 12.02.13

The accused was charged for breach of section 4(1)(b) & 2 namely for having on or about the month of August 2004 at Belle Rose, whilst being a public official, willfully, unlawfully and criminally obtained from another person for himself, a gratification for doing an act which was facilitated by his duties. He pleaded not guilty and was assisted by counsel.

The case for the prosecution rested principally on the sworn testimony of witness no.14 whose version was that he had to pay duties, and fine to the Customs Department in relation to the importation of a container of spare parts of which he had undervalued the costs. He paid part of same by cash and provided a bank guarantee for the balance. After the expiry of the bank guarantee he furnished a 2nd one to the Customs Department. He approached the accused so that the 1st bank guarantee be returned to him. Some two weeks later, the accused phoned him to ask for a sum of Rs 125,000 in order to return the bank guarantee. Two weeks later the accused called at his shop

at RoseBelle where the accused gave him the bank guarantee and in return he paid him a sum of Rs 125,000.

The court noted that there were major flaws in the testimony of W.14 and found that they were material ones which when taken altogether affect the credibility of the said witness.

Consequently, the court held that prosecution did not prove its case beyond reasonable doubt and dismissed the charge against the accused.

ICAC v/s Rookmanee MOOKEN C/N: 828/08 – Judgment delivered on 24.01.13

The accused was prosecuted under 16 counts for breach of sections 3(1)(b), 6 & 8 of the FIAMLA for the offence of money laundering. She pleaded not guilty and was assisted by Counsel.

Several witnesses for the prosecution deposed.

Accused was as a maid servant earning Rs 7500 monthly. During the period July 2002-July 2003 substantial sums of money totaling about Rs 3millions were deposited in her bank account. She explained that the said money was being deposited by her son Richard Mookan who had a pig breeding business and that the money were proceeds from the sale of pigs.

However, it was shown that the said Richard Mookan had a small scale farm and he could not have reaped all that money. The accused confirmed in cross-examination that her son Richard and daughter Jennifer Mookan were into drug business. Richard Mookan was convicted for "possession of heroin" and was sentenced to undergo 5years

imprisonment while Jennifer Mookan was prosecuted before the Assizes and was sentenced to 34 years imprisonment.

The court was not convinced that all those sums, as per different counts, were proceeds from the sales of pigs. The court found the version of the accused totally beyond belief and that the accused was aware that those sums of money were proceeds of crime.

Therefore, the court held that the prosecution had proved its case beyond reasonable doubt and accordingly found accused guilty as charged under all the 16 counts.

On 28th January 2013 accused was sentenced to pay a fine of Rs 20,000 on each of the 16 counts and Rs 500 as costs.

ICAC v/s 1. Anderson Ross Consulting LTD (ARCL) 2. Balraj APPANAH 3. Ahmad Parwise MUNGROO 4. Paradise Pearl LTD 5. Mrs. Nundhanee Devi SANTBAKSHSING C/N: 210/12 – Ruling delivered on 21.01.13

Learned Counsel for Accused company (accused no.1) made a motion to the effect that counts one to three were bad for duplicity. Accused no.2 joined the said motion and submitted that counts 4, 5 and 6 against accused no.2 were verbatim reproduction of counts 1, 2 and 3 respectively so that the question which arose, according to him was the propriety of prosecuting a director of a company when the said company was being prosecuted for same offences under separate counts of the same information.

The Prosecution resisted the above motion made by the Defence and full argument was heard.

The general rule is that the prosecution is bound to aver in the Information what it intends to prove and to prove what it has averred. Since particulars are closely connected with the Information, it would be improper to require the prosecution to aver

matters of evidence in the guise of particulars and later contend that the prosecution is bound to restrict itself to such evidence.

Moreover, under our legal system, it is the sole province of the Director of Public Prosecutions to decide under which offence an Accused is to be prosecuted, as per section 72 of the Constitution, so that if in his wisdom, he has decided to refer for prosecution the present accused parties for an offence of money laundering under section 3(2) of the Act instead of several offences which are also possible under part IV of the Act, then the Court or any other judicial authority has only one option, namely to hear and determine the offence for which the Director of Public Prosecutions has decided to prosecute the accused parties.

The court stated that the Prosecution is entitled to exercise its discretion to prosecute accused no.2 as well and did so properly by averring under counts 4, 5 and 6 respectively 'whilst being concerned in the management of a body corporate'.

Thus the court concluded that counts 1 to 6 were not bad for duplicity and set aside the motion made by defence counsels.

ICAC v/s 1. MahendranthDindyal, 2. ArveenRamphul C/N: 1341/10 – Ruling delivered on 16.01.13

Accused No. 1 and accused No.2 were charged for having breach of sections 5(1) and 8 of the FIAMLA under count 1 and 2 respectively. They both pleaded not guilty and were assisted by counsels.

After the evidence of witness No.1 for the prosecution was heard, counsel for accused No.2 submitted that during the evidence of W.1 it came to light that accused No.1 made incriminating remarks against accused No.2 which went to the root of accused

No.2's defence, and that this have been brought to the attention of accused no.2 and counsel for the first time.

Counsel for accused No.2 moved that the information be severed and that accused No.2 be tried separately. Motion was resisted by the prosecution.

Prosecution counsel counter-argued that the separate trial should not be allowed since an unsworn statement cannot be used against a co-accused so that the question of prejudice could not arise.

The court referred to Archbold where it said that "There is no rule of law that separate trials should be ordered where an essential part of one defendant's defence amounts to an attack on a co-defendant, but the matter is one which the judge should take into account in deciding whether to order separate trials or not."

The fact that the charge put to accused no.2 was under section 19 of the Act and that he was being prosecuted under section 5 was also raised during the cross-examination of W1. This was a matter which could be raised by the defence, but not in the course of a motion for severance of trial.

Court held that there were no compelling reasons dictating a severance of trial for accused No.2 to be tried separately. Therefore motion of defence counsel was set aside.

ICAC v/s 1. Rajen VELVINDRON, 2. Mookieswaree VELVINDRON, 3. Mandeel VELVINDRON C/N: 626/07 – Ruling delivered on 15.01.13

Accused parties were charged for having breached section 17(1)(a) and 19 of the Economic Crime and Anti Money Laundering Act under 20, 12 and 3 counts respectively. They pleaded not guilty and were represented by counsel.

Counsel for all accused raised the point that ICAC had no jurisdiction to enquire into money laundering cases which occurred before April 2002.

Prosecution called SI Naiken to depose. He produced an affidavit. He stated that the defunct Economic Crime Office ECO started the enquiry and that ICAC did part of the enquiry. He also produced a fiat from the Financial Intelligence Unit (FIU) under section 90(4) of PoCA allowing the ICAC to proceed with the enquiry.

Counsel for the prosecution stated that the enquiry was started by ECO and completed by ICAC following the authority of the FIU.

The Court held that a reading of section 90(3) of PoCA clearly shows that the ICAC has power to continue investigations commenced under the ECAMLA. Section 90(4) brings further qualification to this power of investigation, in relation to money laundering offences, in as much as approval of the FIU must be obtained before ICAC can continue with the investigation. It was clear from the evidence on record that the investigation was started by the ECO and that FIU gave further authority to ICAC to investigate.

Court held that the motion of defence counsel was devoid of merit and thus it was set aside.

ICAC v GowrySuraj C/N: 394/2010 – Judgment delivered 09.01.13

Accused was charged for having on 19 October 2006 accepted a gratification for doing an act which was facilitated by his duties in breach of section 4(1)(b),(2) PoCA i.e whilst being a police constable performing sentry duties over detainee Neelam BhaveyraoSumbajee, [‘Mr S’], accepted the offer of a sum of Rs.25,000 for himself from the said [Mr S], so as to facilitate the latter’s escape.’

Accused pleaded Not Guilty and was assisted by counsel.

The gist of the Prosecution's submissions was based on the central issue as to whether or not accused accepted the Rs.25,000- offer made by Mr S, as regards the facilitation of the latter's escape plan. This, according to prosecution had been amply proved by the unshaken and unrebutted testimony of Mr S.

It was the submission of the defence that save for Mr S's testimony there was insufficient evidence upon which the Court could, beyond all reasonable doubt, conclude that the accused accepted gratification.

After due consideration of all the evidence on record including the explanations given by accused in his unsworn statements and the independent evidence, the Court came to the conclusion that Mr S was not lying, inventing anything, or distorting the truth and that whatever he said as regards accused's "acceptance of his offer of gratification" was the truth.

The Court was entirely satisfied that the prosecution had established a strong, unshaken prima facie case and in the dearth of any evidence in rebuttal emanating from the defence, the Court held that the prosecution proved its case against the accused beyond all reasonable doubt and accused was accordingly found guilty as charged.

Submission on sentencing has been scheduled to be heard on 15 March 2013.