

(10)

IN THE INTERMEDIATE COURT OF MAURITIUS

Cause No. 903/2011

In the matter of:-

~~Police~~ ICAC 

v

Shoshimala Jukhoop

JUDGMENT

The accused is charged with the offence of 'Money Laundering' in breach of sections 3(1)(a), 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act ("the Act") under Counts I to V; and with the offence of 'Money Laundering' in breach of sections 3(1)(b), 6(3) and 8 of the Act under Counts VI to VIII.

She pleaded not guilty to Counts I to VIII and was assisted by Mr Y. A. R. Mohamed, S. C.


The case for the prosecution

The evidence for the prosecution is in essence as follows: according to Mr K. Ramsamy, Deputy Money-Laundering Reporting Officer, Barclays plc (W3) the accused has a Savings Account (now frozen – Doc. J), number 4015415 at Barclays (Docs. D, D1 and D2): she declared her net monthly salary as Rs3000/- and said that she was self-employed. She made various cash deposits therein in the period 10.12.08 to 20.03.09 (Docs. B, B1, B2, C, C1 to C6).

The accused's brothers, Gajadhur Jukhoop (W8) and Gaanshyam Jukhoop (W9), and sisters A. Hurloll (W6), D. Tameswar (W5) and D. Niadray (W7) said they gave her money, the brothers Rs75,000/- and Rs50,000/- respectively, and the sisters each Rs50,000/-, W8 in 2006 and the others in late 2008/early 2009. Witnesses nos. 9, 6, 5 and 7 said in cross-examination that the date of the remittance they mentioned to the ICAC was approximate.

Mr S. Soogrim (W10), auctioneer ("encanteur"), said he sells vegetables sent to him by planters, inclusive of those of Gaanshyam Jukhoop. He produced the book containing entries of payments to planters (Doc. E): clerks made the entries under his instructions, but the book remained in his custody. There is another book for details of vegetables sent by each planter. He paid Gaanshyam Jukhoop Rs5645/- and Rs325/- in December 2008 and January 2009 respectively.

Investigator Daibee (W1) identified Docs. B, B1, B2, C, C1 to C6, D, D1 and D2 as those produced to the ICAC by the banks following a Supreme Court Order. He produced the accused's MCB statements of account number 062757083 (Docs. G, G1 to G6 and H). He said that according to PIO the last time Benimadho and Neerunjun Jukhoop, the accused's uncles, were in Mauritius was in November 2007 (Docs. K, K1 and K2). The accused's brothers and sisters confirmed that they gave money to her and Avinash confirmed that he gave her about Rs15,000/- every month, for about one and a half years as from mid-2008. Gaanshyam Jukhoop confirmed that he sold part of the accused's vegetables together with his own, to Mr Soogrim, and the latter paid him Rs5645/-, Rs325/- and Rs6905/- in December 2008, January 2009 and March 2009 respectively. The accused said she waited for the money to accumulate before depositing it at the bank.



Mr J. F. Chan Kim Song Ah Chan, Anti-Money Laundering Fraud Investigator, MCB Ltd (W2) confirmed that he produced Documents G, G1 to G6 and H to the ICAC subsequent to the Supreme Court Order.

CPL Ramsurn (W16) produced documents in respect of the travel movements of Benimadho and Neerunjun Jukhoop (Docs. S and T) and said that the first has a Mauritian passport and the second both Mauritian and British passports, but travelled with a British passport only.

Mr N. Moonesamy, Asst. Superintendent of Prison (W15) produced a report in respect of the dates of remand/conviction/commitment of Dhiraj Sunnotah (Doc. A) and Mr S. Lutchanah (W14) Court Manager Intermediate Court, produced certified copies of the information and judgment in the case of Police v Dhiraj Sunnotah (Doc. U). In cross-examination W1 said that the value of the drug in the case at the District Court of Flacq was about Rs15,000/-.

The case for the defence

The defence did not adduce any evidence. The accused's out-of-Court statements as read and produced by W1 (Docs. F and F1) are in a gist that all the money deposited in her Barclays account is from the sale of vegetables she has been planting for six years and from gifts from her uncles Benimadho Jukhoop and Neerunjun Jukhoop, when they came to Mauritius in January 2009 and from her brothers Gajadhur Jukhoop and Gaanshyam Jukhoop, and her sisters Meeta, Sadna and Deviani, for the construction of her house, built "four years ago". Her brother Gaanshyam Jukhoop sells her vegetables and remits the money to her when it becomes a large sum: the largest amount he remitted to her was Rs40,000/-. She does not know the name of the auctioneer to whom her vegetables are sold and does not ask her brother any explanation about the money he remits to her. She has no explanation for the discrepancy in the quantity of vegetables she sold and the deposits in her account. She does not remember why she transferred Rs200,000/- to Gaanshyam Jukhoop's account. Her sons Dhiraj and Avinash Sunnotah live in the same house as she and they share the expenses. Dhiraj worked at the market with his mother-in-law: he is now detained at Beau Bassin prison for a drug case. Avinash works for Mr Gokhool and gives her about Rs15,000/- per month.

Discussion

The accused is prosecuted under section 3(1)(a) and (b) of the Act which reads as follows:

Any person who -

- (a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or
- (b) receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime,

where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence.

The essential elements of the offence are therefore:

1. Transaction /Possession;
2. Involves property/any property;
3. In part;
4. Directly;

5. Proceeds of crime

6. Reasonable grounds for suspecting the property was derived in part, directly, from crime.

'Transaction'/'Possession'

Section 2 of the Act defines 'transaction' as follows:

"... includes -

- (a) opening an account, issuing a passbook, renting a safe deposit box, entering into a fiduciary relationship or establishing any other business relationship, whether electronically or otherwise; and
- (b) a proposed transaction."

There is undisputed evidence on record that the accused opened and holds accounts in her name at Barclays and MCB - Barclays plc Savings Account 114015415 and MCB Account 062757083 - per the evidence of Mr H. Ramsamy and Mr J. F. Chan Kim Song Ah Chan - see Docs. D and H: I find that the opening of an account and the deposit/withdrawal of money to/from the account constitute a transaction within the meaning of section 2 of the Act.

Moreover, the accused has admitted that the deposits in the accounts are hers - see Docs. B. B1 and B2, C, C1 to C6 and G, G1 to G6 as produced by Mr K. Ramsamy and Inv. Daibee - so that there is evidence that she was in possession of such property. I am aware of her version that the deposits were at times made by one Govind and by one Ravin, but that would only be the physical action of making the deposits, since she said that the money emanated from her.

There is also undisputed evidence that the accused made deposits of Rs30,000/-, Rs50,000/-, Rs110,000/-, Rs220,000/- and Rs400,000/- in the period 10.12.08 to 15.01.09 in her Barclays account and had sums of Rs20,000/-, Rs50,000/- and Rs10,000/- in her Barclays account and Rs20,000/- in her MCB in the period 16.10.07 to 31.05.09.

Proceeds of Crime - The Predicate Offence

It is averred under Counts I to VIII of the information that in the period 07.03.08 to 15.01.09 the accused made bank deposits and possessed sums of money "*where she had reasonable grounds for suspecting that the property/sums were derived, in part directly from a crime, to wit: drug dealing.*"

Although there was no need for the prosecution to particularise the predicate crime, per section 6(3) of the Act, which reads:

"In any proceedings against a person for an offence under this Part, it shall be sufficient to aver in the information that the property is, in whole or in part, directly or indirectly the proceeds of a crime, without specifying any particular crime, and the Court, having regard to all the evidence, may reasonably infer that the proceeds were, in whole or in part, directly or indirectly, the proceeds of a crime."

the prosecution chose to do so, averring that the crime was 'drug dealing'.

Defence counsel submitted that there was no evidence that the accused's son was dealing in drugs after 2006 and that he derived a great deal of money from such dealing.

According to Doc. A, which was produced by Mr N. Moonesamy and which has remained undisputed,

the accused's son Dhiraj Sunnotah was remanded by the District Court of Flacq in a case of 'drug dealing' on 23.06.06 and was "released from Court" on 29.06.06. Still according to Doc. A, Dhiraj Sunnotah was convicted for drug dealing by the Intermediate Court – on a guilty plea – and sentenced to imprisonment on 20.06.07 and was released on bail on 22.06.07. His appeal against sentence was dismissed and he started serving his sentence on 12.01.09. Therefore, he was at large in the period 22.06.07 to 11.01.09, that is, encompassing the dates on which the accused is charged with money laundering.

It appears from Doc. A that the case before the District Court of Flacq was a provisional case and that the case before the Intermediate Court was the ensuing main case, and that they were not two different cases, although the evidence adduced by the prosecution is not clear about this. There is evidence that the value of the drug in the case before the Intermediate Court was around Rs15,000/- and defence counsel submitted that there is no evidence that the accused's son Dhiraj Sunnotah was deriving a great deal of money from drug dealing: I find that the minimal value of the drug secured from the accused does not have any adverse incidence on the case for the prosecution that the accused banked money that was the proceeds of drug dealing. It is to be noted that the accused was convicted for the offences of 'offering Cannabis for sale' and 'possession of Cannabis for the purpose of selling', meaning that there was an on-going business with an element of profit.

In *Andrew Ryan Ferrell v The Queen* [2010] UKPC 20, cited by the prosecution, the Board said that in the absence of any credible explanation to the contrary, the jury was entitled to infer that the money was the proceeds of drugs even if the drugs were found in the possession of the accused after the offence of money laundering. Therefore, even if there was no charge of 'drug dealing' against Dhiraj Sunnotah subsequent to 2006, this does not automatically mean that the money banked by the accused is not the proceeds of crime.

It is to be noted that section 6(1) of the Act provides that: -

"A person may be convicted of a money laundering offence notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered."

The accused's unsworn version is that the money credited to her accounts at Barclays and MCB emanated from her legitimate occupations of maid and planter, and are gifts from relatives. I bear in mind, per the evidence of Mr K. Ramsamy, that in the Application Form to open the account at Barclays she declared her net monthly salary as Rs3000/- – see Doc. D. Her salary would be at odds with the amounts she deposited in her bank accounts, although the bank officer agreed in cross-examination that since she said she was self-employed, this meant two sources of income.

→ The accused said in her unsworn statement that she was a planter and that the deposits of Rs30,000/-, Rs50,000/-, Rs110,000/- and Rs220,000/- made on 10.12.08, 17.12.08, 26.12.08 and 12.01.09 respectively, came from the sale of vegetables. Mr S. Soogrim agreed that he sold the vegetables sent to him by Gaanshyam Jukhoop, the accused's brother, but also agreed that he paid the latter the sums of Rs5645/- and Rs325/- in December 2008 and January 2009 respectively. Gaanshaym Jukhoop said that he sent the accused's vegetables together with his, to be sold, but there is undisputed evidence from Inv. Daibee that he said that Mr Soogrim paid him Rs5645/-, Rs325/- and Rs6905/- in December 2008, January 2009 and March 2008 respectively. I take into account that the accused said in her unsworn statement that the largest amount he remitted to her from the sale of vegetables was Rs40,000/-.

Mr Soogrim said that he has another book, but a careful reading of his testimony shows that he said the other book contained details of the quantity of vegetables each planter sent to him for sale, and that the book he produced – Doc. E – contained the payments he made to planters. I do not agree with the

submissions of defence counsel that the book was not properly kept, inasmuch as even if clerks made the entries in Doc. E, they were made under the instructions of Mr Soogrim and there is un rebutted evidence that the book always remained in his custody.

There is evidence on record that Gaanshyam Jukhoop is also known as 'Sanjay', and that he is the 'Sanjay' mentioned in Doc. E. The contention of the defence that there is no marking next to every name 'Sanjay' in Doc. E does not damage the case for the prosecution, since the amounts that Mr Soogrim said he paid to Gaanshyam Jukhoop in the months of December 2008 and January 2009 are far below the deposits made by the accused in her accounts. It is of course possible that the accused let the payments accumulate before making one large deposit, but she could not have deposited more than she was paid for the sale of vegetables, the more so that she alleged that a total sum of Rs410,000/- came from such sale.

As for the initials 'GJ' meaning Gaanshyam Jukhoop, although the question was put to Inv. Daibee, who said that this was possible, there is no conclusive evidence that it was so. I note that Mr Soogrim, who would have been more likely to say whether 'GJ' meant Gaanshyam Jukhoop, was not cross-examined about it.

The amounts of money the accused derived from her occupation as planter are not consistent with the amounts of money she deposited in her bank accounts for the same period.

The accused also said in her unsworn statement that her son Avinash gave her a monthly sum of approximately Rs15,000/-. Over and above the evidence of Inv. Daibee that such contributions started in mid-August 2008, the accused never said in her unsworn statement that the money she deposited in her account came from the money Avinash gave her.

The accused explained the deposit of Rs400,000/- made in her account on 15.01.09, as money given/lent to her by her relatives, namely, that each of her two uncles Benimadho and Neerunjun Jukhoop gave her Rs100,000/- when they were in Mauritius in January 2009, her brothers Gajadthur and Gaanshyam gave her Rs75,000/- and Rs50,000/- respectively, and her sisters Meeta, Sadna and Devianee gave her Rs40,000/-, Rs50,000/- and Rs50,000/- respectively. I note that the accused did not give any indication of the date/month/year her relatives gave her those sums. Moreover, a simple addition reveals that if her relatives had given her the sums mentioned, the total would be Rs465,000/- and not Rs400,000/-.

The brothers and sisters of the accused deposed and said that they gave money to her: Gajadthur Jukhoop gave her a sum of Rs25,000/- on three occasions, that is, in November 2008, January 2009 and March 2009; Gaanshyam Jukhoop gave her Rs50,000/- in April 2006; A. Hurloll/Meeta lent her Rs50,000/- in January 2009; D. Tameswar/Sadna lent her Rs50,000/- in 2009; and Deviani Niadray gave her Rs25,000/- in July/August 2008 and Rs25,000/- in January 2009. In cross-examination the last four named said that the date that they gave to the ICAC is approximate, but at the same time agreed that they did mention the said date to the ICAC. I find that although those four witnesses said that the date they gave is approximate, this cannot be interpreted as those witnesses not telling the truth: I bear in mind the fact that they mentioned those dates in their statements, and never at any time said that they had lied in such statements.

It is to be noted that Gajadthur Jukhoop said that he gave the accused a last instalment of Rs25,000/- in March 2009, that is, *after* the crediting of Rs400,000/- to her Barclays account, which was on 15.01.09: this is blatantly inconsistent with her version that the whole of the Rs400,000/- was constituted of gifts from relatives. It is also on record that Gaanshyam Jukhoop said he gave her Rs50,000/- in 2006, when she was constructing her house: it is highly improbable that she would have kept the money to credit it to her account in January 2009. The amount Meeta Hurloll said she gave the accused is inconsistent with the

accused's own version, and if Deviani Niadray gave her Rs25,000/- in July/August 2008, once more I find it hard to believe that she would have kept the money to credit it to her account in January 2009.

As for the alleged gifts from her uncles Benimadho Jukhoop and Neerunjun Jukhoop, according to the accused's unsworn version, each gave her – Rs100,000/- – when they were in Mauritius in January 2009: it is to be noted that there is no mention of any bank/electronic transfer of money. However, there is evidence on record that the two persons were not in Mauritius in January 2009, and that the last time they were in the country was in November 2007 – see Docs. K, K1 and K2, S and T as produced by CPL Ramsum (W16), and the defence has not rebutted such evidence. Moreover, even if Neerunjun Jukhoop travelled with a British passport, his entry in Mauritius would still have been on record.

Furthermore, if the accused needed money when she was constructing her house, which according to her unsworn version was “four years ago”, meaning in 2006, since her statement is dated 18.03.10, it is odd that her relatives would give her money in 2008 and 2009. There is no evidence that the construction of her house went on for two to three years. Prosecution counsel pointed out during his submissions that the accused transferred Rs200,000/- to Gaanshyam Jukhoop on 29.01.09: whilst he said the transfer to his account was for the purchase of a vehicle, she could not remember why she did so. It is indeed odd that the accused, who was allegedly in need of money and asked her relatives for financial aid in 2008/2009, and was given much smaller sums, would transfer Rs200,000/- to one of her brothers at roughly the same time.

In the circumstances, the unsworn version of the accused that the Rs400,000/- she banked on 15.01.09 came from her relatives is inconsistent with the evidence on record as adduced by the prosecution, and therefore unreliable.

In part and directly

The particulars of the offences are that the accused made cash deposits and possessed sums in her Barclays and MCB accounts “*where she had reasonable grounds for suspecting that the said sum was derived, in part directly from a crime, to wit ‘Drug Dealing’.*”

Following the Ruling of the Court dated 02.08.12, the prosecution gave particulars of “*in part*” as follows: “*refers to that sum of money which can be inferred to be derived from the predicate crime, when excluding such sums obtained by Mrs Soshimala Jukhoop from her legitimate income and from the various financial aids that had allegedly been given to the said Soshimala Jukhoop's by her relatives.*” (sic)

Defence counsel submitted that the particulars given by the prosecution admit that the accused's relatives gave her money, because it asks the Court to deduct same and find that the rest is proceeds of crime, and that the Court was not given enough information about the part of the money derived from her job as maid and from the plantation.

In the light of the evidence on record, I do not agree with the submissions of the defence that in spite of the particulars the Court is still in the dark. I find that although the accused received money from the sale of vegetables/as gift from her relatives, the total amount she credited to her account in the period December 2008 to January 2009 has remained unexplained, and this coupled with the fact that her son Dhiraj Sunnoth was convicted of drug dealing in 2007 and was at large during that same period, entitles the Court to safely infer that part of the money she credited to/possessed in her accounts was directly the proceeds of crime.

Reasonable grounds to suspect

In *J. M. D. J. Antoine v The State* [2009 SCJ 328] the Supreme Court said the following:

"The mental element 'reasonable grounds to suspect' has been elaborated and explained in the Chambers case of *Manraj and Others v ICAC* 2003 SCJ 75. We find it apt to quote an extract of the Learned Judge's judgment, which we find appropriate and relevant. It reads as follows:-

First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr. App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."

Since suspicion has to be based on facts, it is the duty of the Court to analyse the whole of the evidence on record in order to determine whether or not it can be inferred, from the facts and circumstances of the case, that the accused reasonably suspected that the proceeds were proceeds of crime..."

The accused's explanations of the origin of the money she credited to her accounts are not plausible and not supported by evidence. Her reply when questioned about the discrepancy in the amounts she attributed to the sale of vegetables and the sums deposited in her account, was that she did not have any explanation. The accused might not be educated, might be from a village, and might not remember precise dates, as submitted by defence counsel, but I find that the Court can infer from her failure to give a valid explanation for the large sums of money she credited to her accounts, that she knew of the tainted source of the said money.

Conclusion

In the light of all the above, I find that the prosecution has proved the case against the accused under Counts I to VIII beyond reasonable doubt. I accordingly find the accused guilty as charged under Counts I to VIII.

W. V. Rangan
Magistrate
Intermediate Court (Criminal Division)

This 18 September 2014