ICAC v Sheilendra PEERTHUM and Anor CN: 713/09
Ruling delivered on 30 November 2010

Accused No 1 stands charged under Count I of the Information with the offence of "Public Official Using Office for Gratification" in breach of section 7 (1) of the Prevention of Corruption Act 2002 (PoCA 2002). Accused No 2 stands charged under Count II with the same offence.

Section 7 (1) of the PoCA 2002 reads as follows: -

Public official using his officefor gratification

(1) Subject to subsection (3), any public official who makes use of his office or position for a gratification for himself or another person shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

Both Accused pleaded not guilty and were represented by Counsel.

Counsel for Accused No 1 moved that the Information against Accused No 1 be struck out in as much as the particulars in the Information under Count I do not bear out the elements of the offence under section 7(1) of the PoCA 2002 and/or it does not disclose any offence known to the law.

Counsel for Accused No 2 concurred with the motion of Counsel for Accused No 1 and moved accordingly in respect of Accused No 2.

The motion was resisted by Counsel of the Prosecution and submissions were heard.

The motion for Accused No 1 was grounded on the following points in law: -

1. The Information contains the words "wilfully, unlawfully and criminally", which words are not found in section 7(1) of the PoCA 2002;

2. There has not been any act of corruption given that, as averred in the Information, the gratification was for another person and that the Accused No 1 did not receive any gratification; and
3. The present particulars do not reveal any offence in law.

On the first point raised, the Court relied on judgments of the Supreme Court and held: -

"… it should be clear to all that the offence under Section 7 (1) of the Act would not be committed if the making use of the office by the public official for a gratification for another person was not committed wilfully, unlawfully and criminally so that these words should be implied in the language used by the legislator. On the contrary, should the Information fail to recite these words, then it would have been fatal… "

On the second point raised by Counsel for Accused No 1, the Court relied on the case of Suneechara v The State 2007 SCJ 131 and held that an act of corruption may be committed when the gratification is for another person and it matters not if the public official does not receive anything in return.

On the third point raised by Counsel for Accused No 1, the Court held that should Counsel feel that the particulars are insufficient, then he is perfectly entitled to move for these particulars.

The Court therefore found no merit on the motion by Counsel for Accused No 1 and set aside the motion.

ICAC V Somanum SEEGOOLAM CN: 694/10 & 978/10

Sentence delivered on 30 November 2010

The Accused stands charged in two Information with the offence of "Conflict of Interests" in breach of section 13(1) of the Prevention of Corruption Act 2002 (PoCA 2002).

Section 13 (1) of PoCA 2002 reads as follows: -

13. Conflict of interests

(1)Where-

(a) a public body in which a public official is a member, director or employee proposes to deal with a company, partnership or other undertaking in which that public official or a relative or associate of his has a direct or indirect interest; and

(b) that public official and/or his relative or associate hold more than 10 per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking, that public official shall forthwith disclose, in writing, to that public body the nature of such interest.

In both Information, it is averred that the Accused was at all material time the Director of the Human Resource Development Council (HRDC), which is a public body. His son, Mr HarveshSeegoolam, was the Director of Visheel Group in which he held more than 10 % equity participation.

The facts averred in the first Information by the Prosecution are to the effect that the HRDC was proposing to deal with Visheel Group for the re-designing and re-development of its website. The Accused failed to disclose in writing to the HRDC the interest his son had in the said Visheel Group.

The facts averred in the second Information by the Prosecution are to the effect that the HRDC was proposing to enter into an agreement with Visheel Group for the placement/Training and Re-Skilling of Unemployed Persons under the Government Empowerment Programme. The Accused failed to disclose in writing to the HRDC the interest his son had in the said Visheel Group.

The Accused pleaded guilty to the counts in each Information.

The Court sentenced the Accused to perform 90 hours Community Service.

ICAC V Toolsy BEEZADHUR CN: 453/10

Judgment delivered on 25 November 2010

The Accused stands charged on five counts in 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 (FIAMLA 2002).

Section 5 (1) of the FIAMLA 2002 reads as follows: -

5. Limitation of payment in cash

(1) Notwithstanding section 37 of the Bank of Mauritius Act 2004, but subject to subsection (2), any person who makes or accepts any payment in cash in excess of 350,000 rupees or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.

(The prescribed amount of Rs 350,000/- in Section 5 (1) of the FIAMLA 2002 was amended in 2006 and now reads Rs 500,000/-)

It is averred in the Information under Count I, that on 14 June 2002, Accused made a deposit of Rs 600,000/- , under Count II, that on 12 January 2003, Accused accepted a payment of € 90,000/- (which equivalent in Mauritian rupees was in excess of the prescribed amount), under Count III, Accused made a cash deposit of Rs 500,000/- on 11 January 2006, that under Count IV, Accused made a cash deposit of Rs 500,000/- on 17 January 2006 and under Count V, that Accused made a cash deposit of Rs 820,000/- on 10 January 2007.

He pleaded not guilty and was assisted by Counsel.

The evidence adduced by the Prosecution is the defence statement of the Accused which contained admissions of the above mentioned transactions.

The Accused gave evidence in Court admitting that he effected the transaction as averred in the Information. He further explained that the money was the fruit of his savings.

Counsel for the Accused submitted that the Information was defective inasmuch as one of the material elements of the offence, namely that the property was the proceeds of crime, has not been proved. Counsel submitted that the offence of "Limitation of Payment in Cash" is found in Part II of the FIAMLA 2002 which deals with money laundering offences. He submitted that the prosecution has to aver that the money targeted in the Information is from tainted origin.

Counsel for the Prosecution submitted that the Information is in the wording of the law and therefore not defective. Whether the money is from tainted origin is not an element of the offence.

The Court held that the present Information is in the express words of section 5 (1) of the FIAMLA 2002 and that there is no reason to read words into section 5 (1) which the legislator has deliberately omitted. The Court further held that it is not for this forum to

delve into the realm of the Legislature by questioning whether criminal liability should arise from a mere cash transaction as opposed to a cash transaction related to a crime.

Counsel for the Accused further submitted that the Accused has suffered prejudice in conducting his defence on account of delay in prosecuting this case. The prejudice averred by the Accused is that he had difficulty in obtaining documentary evidence in relation to transactions which took place in 2002 and 2003.

Counsel for the Prosecution submitted that as the issue of delay has only been raised at submission stage, the witness for the Prosecution had not had the opportunity to address the issue of delay. She further submitted that the Defence's version has fully been placed on record in Court.

The Court held that given that the Accused has deponed and that his version is fully on record, the issue of delay has little bearing in the present case.

Finally, it was submitted by Counsel for the Accused that the offence of "Limitation in Payment in Cash" is not a strict liability offence.

The Court held that the Prosecution had shown from the surrounding circumstances that the Accused intentionally made the cash transactions in question. The fact that the Accused did not know that he could not make a cash payment of over a certain limit is not relevant to the issue of guilty.

The Court therefore found the Accused guilty as charged and sentenced him to a fine of Rs 50,000/- on each count.

The Accused is appealing against the decision of the Court. The Appeal is resisted by the ICAC.

ICAC V Satcamsing BUMMA CN: 133/08

Judgment delivered on 19 November 2010

The Accused stands charged with the offence of "Traffic D'Influence" in breach of section 10(4) of the Prevention of Corruption Act 2002.

He pleaded not guilty and was assisted by Counsel.

The evidence adduced by the prosecution is to the effect that the Accused solicited Rs 20,000/- from the Complainant to use his influence on officers of the Public Service Commission to facilitate the Complainant's wife to secure the job of Primary School Trainee Hindi Teacher.

Evidence was adduced from the Complainant to the effect that money remitted to the Accused was from a loan and that he complained to the ICAC because the Accused did not refund him all the money he gave.

The Complainant's wife was also called to give evidence by the Prosecution. She however gave a version different from that of her husband.

The Defence adduced no evidence.

The Court considered the evidence on record and held that not only there were contradictions between the Complainant's version and his wife's version but also there were major contradictions between the version given by the Complainant in court and the allegations he made against the Accused.

The Court held that for the above reasons, it was most unsafe to rely on the versions of the witnesses called by the Prosecution. The Information was accordingly dismissed.

ICAC V Kiran Kumar BURHOO CN: 273/07

Judgment delivered on 03 November 2010

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

The Accused pleaded not guilty and was represented by Counsel.

The facts averred by the Prosecution are to the effect that the Accused used his position as police constable to obtain Rs 200/- for himself from the Complainant for not reporting two road traffic offences against the latter.

The Prosecution called several witnesses including the Complainant to depone in Court. The Complainant explained that he was driving his van conveying school children. The Accused stopped him and, after verification of the Complainant's vehicle and having taken down all details about the Complainant, Accused informed him that he had committed two road traffic offences, that is, failing to wear seat-belt whilst driving and carrying passengers in excess of what is permissible. The Complainant begged the Accused for a let-off. Thereupon, the Accused asked the Complainant what the latter can do for him. Complainant removed a Rs 100/- note from his pocket and handed same to the Accused. The Accused refused to take the money and told the Complainant that there were two bookable offences and that the Complainant should give him Rs 200/-. The Complainant then informed the Accused that he did not have the Rs 200/- asked for by the Accused. Latter told the Complainant to go to the bank after his trip and to meet him at Abercombie Police Station after his trip to give him Rs 200/-. Accused also told the Complainant that should he not remit the Rs 200/- before noon, then Accused will insert the contravention in the "Books" at the Police Station.

The Complainant further explained to the Court that, after his trip, he went to the bank in Port Louis and withdrew some money. He then went to lodge a complaint to the ICAC.

ICAC officer also gave evidence in Court. They explained that, upon being informed about the whole incident, they decided to carry out a sting operation. They accompanied the Complainant to witness the remittance of the money, after which, they would arrest the Accused.

They proceeded to Abercombie Police Station where they were informed that the Accused was at the Intermediate Court. Through a telephone conversation, the Accused informed the Complainant that he would be standing opposite the New Court House near the "DhollPuri" merchant.

ICAC officers and the Complainant proceeded to Port Louis. ICAC Officers reached the spot before the Complainant and noticed that the Accused was at the convened place. The Complainant then came over and remitted the money to the Accused. Once the note has been remitted to the Accused, they approached him and informed him of their identity. The Accused immediately put the bank note in his mouth and swallowed it. The Accused was arrested on the spot.

Other prosecution witnesses were heard and the Prosecution produced the memo pad on which the Accused recorded all the details about the Complainant.

The Defence did not adduce any evidence and submissions were offered in Court.

The Court held that the Complainant was a genuine and honest witness on whose evidence the Court can rely. The Court held that the Accused was minded to unlawfully use his position as a police officer for a gratification for himself. The Court went on to say that the memo pad produced speaks for itself: The Accused would have booked the Complainant had he, the Accused, not intended to seize the opportunity to use his position as a police officer for gratification.

On the issue of entrapment raised in submissions by Learned Counsel for the Accused, the Court held that the completion of the offence would have occurred with or without the involvement of the ICAC officers.

The Court therefore found the Accused guilty as charged.

Sentence was delivered on 08 November 2010.

The Court held that the gravity of the act committed calls for a punitive and deterrent sentence. Despite being caught red-handed, the Accused denied the charge on being arrested.

The Court went on to hold: -

"...it must be borne in mind that the Accused here is a police officer, a figure of authority who is meant to maintain law and order. As the public expects a high standard of conduct from the Police, he should be an example to others....

Regarding his act as minor and showing leniency to this Accused would send the wrong signal to potential offenders who might be minded to indulge into similar acts of bribery."

The Court sentenced the Accused to undergo a term of 6 months imprisonment and to pay Rs 500/- costs.

The Accused is appealing against the decision of the Court. The ICAC is resisting the Appeal.

ICAC V SURESH MAHADEO CN 271/09

JUDGMENT DELIVERED ON 26 OCTOBER 2010

The Accused stands charged with the offence of Bribery by Public Official under two counts in breach of section 4(1)(b) of the Prevention of Corruption Act 2002. It is averred in the Information that under the first count on 18 July 2005 and under the second count in September 2005, the Accused, whilst being a public official, willfully, unlawfully and criminally solicited a gratification from another for himself for doing an act which is facilitated by his functions.

The evidence adduced by the Prosecution is to the effect that the Accused was at the material time the General Manager of the Rose Belle Sugar Estate (RBSE). He was also responsible for the approval of purchase orders of the RBSE given that during that period there was no financial controller at the RBSE.

The main prosecution witness was Mr Desai, the Director of Kripcen Agro Chemicals LTD (Kripcen), a herbicide supplier to the RBSE. He deposed to the effect that, on 18th July 2005, an appointment was fixed with the Accused in the parking of Eurolux at Eau Coulée. Prior to this meeting, he did not know the Accused. During that meeting, Accused told him that he was “le seul maître à bord” and that other suppliers to the RBSE were offering him 11 % commission and solicited 10 % commission from Desai. To impress Desai, the Accused phoned at the RBSE and asked to “activate” a payment to Kripcen which was pending at the RBSE.

Following the meeting with the Accused, Desai went to report the matter to the Minister of Fisheries and Agro-Chemical to the effect that the Accused was asking for 10 %

commission on supplies to the RBSE. Straightaway, the Minister reported the matter through phone to another person not known to Desai.

After the report to the Minister, Mr Desai noticed that the purchasing orders from RBSE were not arriving in time. After having enquired from the officers of the sugar estate, he asked for a meeting with the Accused. An appointment was fixed again at Eau Coulée. There, the Accused asked Desai to enter a room on the first floor of the Eurolux Building. There, Accused told Desai "tone baise moi are ministre, cettefois to donne moi 20 % commission lors supply produits herbicide sinonpenanégotiations ''. To this, Desai replied "Be ferènecompagnie ou travail ou meme". He then left the room. The witness also gave evidence that following these acts of solicitations which were turned down, he encountered problems in receiving orders from the RBSE and also his payments by the sugar estate were being withheld. He was not awarded the contract for supply of chemicals to the RBSE for the following year. At as result of same, he went bankrupt.

The prosecution adduced evidence to the effect that the Accused formally asked tests to be performed only on herbicides supplied by Kripcen. At some point in time, the Accused informed the Board of the RBSE that the herbicides supplied by Kripcen were not of required quality. He also informed the Board that he has reports as to the quality of the herbicides but at no instance the reports were tendered to the Board. The prosecution also called the agronomist of RBSE who gave evidence to the effect that the damage to planters' fields were not due to quality of the herbicides supplied by Kripcen but was due to the application of these herbicides.
The Purchasing Officer of RBSE was also called by the prosecution. In court, he explained the procedures for the purchase of herbicides at the sugar estate. He stated that prior to December 2005, Accused approved all purchases of the sugar estate. It is only in December 2005, that the Accused instructed him not to buy from Kripcen.

Mrs Seeburn from the Registrar of Companies was called by the defence. She gave evidence to the effect that Kripcen Agro Chemicals LTD was a registered company at the Registrar of Companies and that in 2004 and 2005, the company was making profits and that it started running at a loss as from 2006.

The Accused exercised his right to silence in Court.

The Defence submitted firstly in law to the effect that the Court had no jurisdiction to hear the present matter because as at the material time, the law as it stood was to the effect that the offence had to be committed outside Mauritius.
The Court held that it would be nonsensical to say that the Act did not apply to Mauritius. Further, considering the purpose and rationale of the legislation, it would be nonsensical to rule that the law did not apply to acts of corruption committed within Mauritius. Looking at the whole Act, it can only be construed that his section aimed at offences occurring in and outside Mauritius. The original Bill targeted corruption in Mauritius.

The Court accepted the testimony of witness Desai. It ruled out all possibility of lie or concoction and held that the evidence of Mr Desai was corroborated in material particulars by unrebutted evidence on record.

Based on all the evidence on record, the Court found that the prosecution had proved its case beyond reasonable doubt under both counts of the Information and accordingly found the Accused guilty as charged.

The sentence was delivered on 28th October 2010. The Learned Magistrate considered the relevant caselaw and all factors which must be considered as mitigating or

aggravating. The Court viewed with much concern that the Accused used his important position of power and control to make money for him to the detriment of this public-funded statutory body (RBSE).

The Learned Magistrate sentenced the Accused to undergo one year imprisonment under each count of the Information.

The Accused is appealing against conviction and sentence.

ICAC V CHETANAND PURSUN AND ORS CN 126/08
RULING DELIVERED ON 06 OCTOBER 2010

All Accused are charged under different counts in the same Information for the offence of Conflict of Interests in breach of section 13 (2) of the Prevention of Corruption Act 2002.
Counsel for Accused No 4 moved for separate trial on the following grounds:

1. Ex facie the Information, there is no nexus between count 7 under which Accused No 4 stands charged and the rest of the Information charging the two other Accused parties under different counts but with the same offence of Conflict of Interest;
2. Out of 15 witnesses for the prosecution, only some 3-4 of them would be relevant for Accused No 4. If a separate trial is not granted Accused No 4 will have to attend court to hear evidence not relevant to him. This will cause inconvenience and prejudice to Accused who is of poor health; and
3. Accused No 4 has made an application to the Supreme Court by way of motion and affidavit against a previous ruling delivered by this bench. This is a compelling reason for joint trial not to take place.

The motion was resisted by the Prosecution and Learned Counsel for Accused No 2 also disagreed with the motion of Counsel for Accused No 4.

It is averred in the Information that all the Accused took part in the proceedings of a public body on 31st July 2007 whilst their relative had a personal interest in the decision reached by that public body.

Learned Counsel for Accused No 2 submitted that all counts in the Information relate to one committee meeting in which all Accused took part. Furthermore, if the motion was to be acceded to, Accused No 2 would suffer prejudice as the witnesses would know the case they have to meet in advance in case they had already deposed in a separate trial for any other Accused.

Learned Counsel for the Prosecution also submitted that if the motion is to be granted, this will affect the Prosecution as it will need to produce same documents and exhibits in separate cases. The Court held that the submissions of Counsel for Accused No 4 to the effect that there was no nexus between the different charges in the Information was unfounded.

Furthermore, the Court held that the alleged poor health of Accused No 4 is not a ground for separate trial.

The Court went on to hold that the decision of Accused No 4 to have a previous ruling by the present Bench reviewed by the Supreme Court is not in itself a valid ground for ordering a separate trial.

The Court held that there is also the desirability that the same verdict and same treatment be returned against all those charged with same offence. The Court took into account the principle for separate trial which would be granted only in exceptional circumstances.
The Court set aside the motion for separate trial and ordered the trial to proceed.

ICAC V naushadmaudarbaccus AND ORS CN: 101/09
Judgment delivered on 17 September 2010

The Accused parties were charged before the Intermediate Court with the offence of Conflict of Interest in breach of section 13(2) of the Prevention of Corruption Act 2002 for having, whilst being public officials, taken part in the proceedings of a public body whilst their relatives had a personal interest in a decision of the public body. The case for the Prosecution was to the effect that one of the Accused parties was the chairman of the Tobacco Board whilst the two others were members thereof. They took part in a meeting of the Board, on 29 January 2008, when the decision was taken in connection with the allocation of permit for the production of 'Virginia Flue Cured Tobacco' wherein the relatives of the Accused parties were among the applicants. During the course of the trial, the Court was apprised of the procedures adopted by the Tobacco Board for the taking of decisions. The Prosecution also produced a certified copy of the minutes of proceedings of 29th January 2008.

Based on all the evidence adduced by the Prosecution, the Court held that there were deliberations with regard to the allocation of the said permits and that the decision taken was a unanimous one. Furthermore, the Court held that it was clearly established that none of the Accused parties left the meeting during the deliberations. As such, the Accused parties did participate in the decision making process, the more so as their

mere presence during the meeting would amount to them taking part in the proceedings of the Tobacco Board.

The Court therefore found the Accused guilty as charged in the Information. On 21 September 2010, the Court sentenced each of the Accused to a sentence of 3 months imprisonment and to pay Rs 500/- costs. The imprisonment sentence was however converted to a Community Service Order of 90 hours for each of the 3 Accused.
The Accused are appealing against conviction and sentence.

ICAC V RajenVelvindron& ORs CN: 626/07
RULING DELIVERED ON 01 SEPTEMBER 2010

The Accused parties are being charged with the offence of Money Laundering, in breach of Section 17 of the Economic Crime and Anti Money Laundering Act (ECAMLA), involving property which represented the proceeds of a crime.
Before the start of the trial, Defence Counsel moved for particulars of the crime averred in the information. It is worth noting that section 17(7) of ECAMLA provides that: "In any proceedings against a person for an offence under this section, 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."
However this provision of the law has been declared unconstitutional by the Supreme Court in the case of Bholah A. Z. & Anor v The State of Mauritius [2009] SCJ 432 and therefore no longer applicable.

In the light of the Supreme Court judgment, the Prosecution furnished some particulars by stating that the crime was 'Drug Dealing'. However, feeling dissatisfied with such

particulars, the Defence moved for further particulars to which the Prosecution objected.

The Court was therefore called upon to decide whether further particulars ought to be furnished. In so doing, the Court considered whether the Defence must be provided with further particulars for the Accused to benefit from a fair trial under section 10 of the Constitution. The Court reached the conclusion that no further particulars need to be provided given the nature of the offence and given that all material which the prosecution intended to use during the course of the Trial, had been communicated to the Defence. The motion for further particulars was therefore set aside.

ICAC V DHARMANAND GROODOYAL CN: 1342/07
RULING DELIVERED ON 27 AUGUST 2010

The Accused stands charged with the offence of Bribery by a Public Official in breach of section 4(1)(a)(2) of the Prevention of Corruption Act 2002. He was represented by counsel.
Before the start of the Trial, counsel for the Accused moved that the proceedings against the Accused be stayed on the following grounds: -

1. In the particular circumstances of the case, it would be unfair to try the Accused as there has been a breach of Section 3(a) and 10 (1) of the Constitution;
2. In the particular circumstances, the Accused has been prejudiced by the delay in the trial;
3. It offends the Court's sense of Justice and propriety to try the Accused in the particular circumstances of the case.

At the start of the hearing, the Prosecution called one witness who produced an affidavit setting out the sequence of all the events in the present matter. The evidence of the prosecution is to the effect that the investigation was started on 30 December 2002 and it was completed in October 2003. The Accused was arrested on 22 October 2003 and bailed out on the same day. The case was lodged before the Intermediate Court and came several time pro forma and then on various occasions for merits. It is worthy to note that the affidavit clearly set out the fact that the case was postponed for a rather long period as Counsel for the Accused was not free to ensure the defence of the Accused the moreso that save and except that postponement was asked for by the Prosecution on only one occasion, all postponements were asked for by the Defence.

The Defence did not adduce evidence in court.

The Court considered the caselaw on the issues raised by the Defence and held that the power to stay a proceedings will be exercised only in exceptional circumstances. In the present matter, the Accused rights were safeguarded at every stage of the proceedings. Furthermore, the delay in the trial cannot be attributed to the Prosecution. The Court went on to hold that: -

“Therefore, there is no unfairness or injustice or infringement of the right of the Accused. Nor is there any form of oppression or prejudice which is in the nature to prevent the Accused from benefiting from a fair trial by this Court.”

The Court reviewed the circumstances in the present matter and held that there is nothing in the way the prosecution had been conducted so far, which would amount to an abuse of process.

The Motions was therefore dismissed.

ICAC V RAKESH RAMMESSUR CN: 1105/10
SENTENCE DELIVERED ON 13 AUGUST 2010

The Accused was charged with the offence of Bribery of Public Official in breach of Section 5(a)(b)(2) of the Prevention of Corruption Act 2002.
The Information averred that on 14 May 2009 at SSR International Airport, the Accused willfully, unlawfully and criminally gave a gratification of 50 EURO to a Custom Officer so as not to be charged any duty or tax in connection with a laptop which the Accused brought from abroad.

On 29 July 2010, the day of the trial, the Accused pleaded guilty.
The Prosecution produced the defence statement of the Accused in which the latter admitted having given 50 EURO to the Custom Officer so as not to pay tax on a laptop which he brought into Mauritius.

The Court sentenced the Accused to 6 months imprisonment and to pay Costs of Rs 500/-. The sentence was however suspended and the Learned Magistrate ordered that a Probation Report be produced.

On 13 August 2010, the Probation Report was produced and the Accused was ordered to perform Community Service in lieu of imprisonment. The Accused was ordered to perform 120 days community service at the Gandhi Breed Ashram of Petit Raffray starting on 14 August 2010.

ICAC V Bidianand JHURRY CN: 1186/2008
Judgment delivered on 19.07.10

The Accused was charged with five counts in an Information 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 represented by Counsel. The averment in the Information is that the Accused used his office as Chairman of the Sugar Industrial Labour Welfare Fund Committee (The Committee) to cause five of his relatives to be offered employment at various Community Centres as community welfare assistants.

The Prosecution adduced evidence to the effect that 3 of the sons of the Accused, namely Devand Kumar Jhurry, Chandan Kumar Jhurry and Khatick Kumar Jhurry, and his nephew, OutamJhurry and his daughter-in-law, JankeeJhurry had all been appointed Community Welfare Assistant.

The evidence adduced by the Prosecution show that the procedure is that, as a matter of good practice, the vacancies for the post of Community Welfare Assistants have to be advertised. Names of candidates retained by the Staff sub-committee were then sent to the main Committee and then to the Ministry for approval. However in the present case, the procedure was not followed. The Accused informed the Committee that since Community Welfare Centres had already been built, it was urgent that Community Welfare Assistants be appointed to avoid acts of vandalism etc. The Accused prepared a list of proposed Community Welfare Assistant and instructed the secretary of the Committee to write to the Ministry so as to obtain approval for the appointment of the persons whose names have been included in the list. The list was neither circulated nor shown to the Committee.

Upon receiving the list, the Ministry approved the appointment of the persons whose name was on the list except the 5 relatives of the Accused as all of them bear the same

name and, by way of letter, the Ministry sought for clarifications. The evidence of the Prosecution further shows that the Accused was informed of the content of the letter from the Ministry. He instructed the Secretary of the Committee to inform the Ministry that the fact that Mr Katick Kumar Jhurry and Mr OutamJhurry and Mr Chandan Kumar Jhurry bore the same family name is mere coincidence.In relation to Devand Kumar Jhurry, Accused caused 2 letters to be sent to the Ministry stating that the former and the Accused do not live in the same area and are not closely related. The purpose of this letter is to dispel any potential objections of the Ministry for the appointment of Devand Kumar Jhurry.

On 19th July, 2010, judgment was delivered and the Court held that the acts of the Accused and the letters amply show that the intention of the Accused, which was to cause the Ministry to approve the appointment of his sons and nephew as Community Welfare Assistants by deliberately misstating the facts to conceal his family ties so as to obtain the Ministry's approval for the appointment of his relatives.

The Court held: -

"For the reasons given above, the Accused was instrumental in securing employing for his relatives under each of the 5 counts by using his office as Chairman to circumvent the normal procedure for recruitment and by misstating the facts. The Accused clearly acted intentionally.... The Accused is therefore found guilty as charged under all five counts."

On the same day, the Court sentenced the Accused to undergo 12 months imprisonment under each of the 5 counts in the Information. The Court held that: -

"A custodial sentence is warranted because of the nature of the offence. The Court also notes that the unlawful acts of the Accused have resulted in the expenditure of public money and denial to other persons of the opportunity to obtain employment."

The Accused is appealing against the conviction and sentence.

ICAC V Mohit MUNGREE CN: 1004/2008

Judgment and sentence delivered on 15.07.2010

The Accused, who was working at the Moka-Flacq District Council (MFDC), was charged with the offence of Traffic D'Influence in breach of section 10(5) of the Prevention of Corruption Act 2002. He pleaded not guilty and was assisted by Counsel.

Evidence adduced by the Prosecution

Mrs Busjeet, one of the Prosecution witness, is the acting Head Planner of the MFDC. She enlightened the Court as to the procedure for the approval of a Development Permit by the MFDC. An applicant must submit his application form together with all relevant documents at the Reception Desk of the Planning Department. After verification of the documents, the applicant is issued with an Acknowledgment of Receipt of the application form. An application file is then prepared. The file is processed by the Inspectors and handed to her for recommendation for approval by the Permit and Business Monitoring Committee (PBMC). The PBMC issue the Permit and the file is sent back to Mrs Busjeet for her to instruct the relevant inspector to inform the Applicant of the grant of the permit and to call to the MFDC to sign a declaration form. The Accused was responsible for the follow up and monitoring of Application.

Mrs Busjeet also gave evidence that, in the present matter, once the PBMC had approved the application, she instructed Mr Mootooveeren, an Inspector of the MFDC, to inform the Applicant that his application ahd been approved and to call at the MFDC to sign the Declaration form. She inserted a minute to that effect in the file. Later, the Applicant came to meet her and queried about his application. She asked Mr Mootooveeren about the file and she was informed that the file was missing. Later,

when the file was retrieved from a drawer at the MFDC, Applicant was informed that his application was approved. Latter came to meet her and informed her that the Accused had asked for Rs 5000/- for the application to be approved. She took the Applicant to Mr Seechurn, the Chief Executive Officer (CEO) of the MFDC.

Mr Mootooveren gave evidence in Court that the Applicant came to meet him and that Mrs Busjeet queried about the file. The Application File could not be retrieved and went missing at the MFDC. Later, he found the file in a drawer at the MFDC. There was an entry inserted by the Accused in the file.

Mr Seechurn, the CEO, explained in Court that Mrs Busjeet brought the Applicant to meet him. The latter told him that the Accused asked him Rs 5000/- for his application for development permit to be approved. He asked the Applicant to make a complaint to the ICAC. He also stated that the Accused does not form part of the PBMC but is only responsible for the follow up and monitoring of Applications.

The Complainant, Mr Gungaram, is the Applicant in the present matter. He explained that following the death of his parents, he submitted an application for Development Permit together with all relevant documents at the MFDC. After some time, since he did not hear anything about his application from the MFDC, he went to the District Council to query about his application. There, he was directed to the Accused, who was responsible of follow up of Applications. The Accused retrieved his application file and asked him to go home as Accused will call him later.

He then received a phone call from the Accused on his mobile phone asking him to come at the Accused house. Over there, he met the Accused who asked him to come inside. The Accused showed to him his Application File and told him that 75% was in order and 25% was not. Accused asked him for Rs 5000/- for the other 25% to be settled. He told the Accused that he did not have that sum with him and returned back home.

A couple of days later, another officer of the MFDC called him and informed him that his Permit was approved and that he will have to come to collect same. He went to collect his Permit and then met Mrs Busjeet and informed her that the Accused had asked for Rs 5000/- for his permit to be approved. Mrs Busjeet brought him to the office of the CEO where he related the matter. He was then requested to give a declaration to the ICAC.

Evidence adduced by the Defence

The version of the Accused is that he never asked the Applicant to meet him. It is the Applicant who came to meet him. He only explained to the Applicant that he will have to sign a Declaration Form and explained the procedure to him. He denied having handled the Application File but that the file came to him when the Applicant came to the MFDC to enquire about his application. He said that he received instructions from Mrs Busjeet to inform the Applicant that he will have to sign a declaration form.

Judgment

The Court considered all the evidence on record and held that the Accused was never instructed by Mrs Busjeet to inform the Applicant about the Declaration Form. In fact, evidence shows that she instructed only Mr Mootooveeren to inform the Applicant about the Decalration Form. And that when the file went missing at the MFDC, same was in possession of the Accused and it was the same file that the Accused showed to the Applicant when he met the Accused at the latter's place. He Court held that it could safely act on the evidence of the witnesses for the prosecution to find the Accused guilty.

The Court also considered the facts averred in the Information are to the effect that the gratification was for another person. The Court held that this was immaterial. The Trial Court referred to the case of DPP v Coureur 1982 MR 72, and held that the mention of the recipient in the Information is mere surplusage and immaterial.

The Court rejected the version of the Accused and qualified it as a tissue of lies and found the Accused guilty.

The Court took into account the seriousness of the offence and found that a non-custodial sentence will not meet the ends of justice. The Court held that a short term of imprisonment was fully warranted in the circumstances of the present case and sentenced the Accused to undergo 3 months imprisonment and to pay Rs 500/- as costs.

ICAC v Mrs Sahera JANNOO CN:1048/09

Sentence delivered on 14th of July, 2010

The Accused was 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 (FIAMLA).

In an Information lodged against her before the Intermediate Court, Mrs Jannoo was charged for having made a payment of Rs 400,000/- to the ABC Finance and Leasing, which payment was in excess of the prescribed limit of Rs 350,000/-.

In the statement she gave to the ICAC and produced in Court, the Accused explained that she derives her income from her shop, as a Freelance Marketing, from monthly alimony from her ex-husband and from gains at casinos. She further explained that merely repaid the loan she contracted with ABC Finance and Leasing with her income.

Mrs Jannoo pleaded guilty to the charge before the Court. The Learned Magistrate sentenced her to pay a fine of Rs 10,000/- and to pay Rs 500/- costs.

Police v Mohammad JeelanyMeeajun CN: - 357/10

Judgment delivered on 07.07.10

The Accused was charged under four counts of an Information for the offence of Limitation of Payment in Cash in breach of section 5(1) and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002(FIAMLA). He pleaded not guilty and was represented by Counsel.

Section 5(1) of the FIAMLA is as follows: -

5. Limitation of payment in cash

(1) Notwithstanding section 37 of the Bank of Mauritius Act 2004, but subject to subsection (2), any person who makes or accepts any payment in cash in excess of 500,000 rupees or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.

The Information averred that on four different occasions, the Accused made payment of Great Britain Pounds in exchange of Mauritian Rupees. Under Count 1, it is averred that the Accused made a payment of GBP 15,000 in exchange of Rs 712,000/-. Under Count 2, it is averred that the Accused made a payment of GBP 50,000 in exchange of Rs 2,287,500/-. Under Count 3, it is averred that the Accused made a payment of GBP 45,000 in exchange of Rs 2,058,750/-. Under Count 4, it is averred that the Accused made a payment of GBP 200,000 in exchange of Rs 10,480,000/-.
The evidence of the Prosecution as to the fact that the GB Pounds were given in exchange of Mauritian Rupees was not challenged. However, the Defence questioned whether the Accused made a payment in cash under the counts of the Information and whether the transactions were exempt transactions within the meaning of section 2 of the FIAMLA.

The Prosecution called a representative of a money changer. He explained that the Money Changer purchased foreign currency from the Accused and a receipt was issued. The Court held: -

"In accordance with the evidence led by the prosecution and as rightly submitted by Counsel for the ICAC, the Accused had to buy Mauritian Rupees and thus maid in foreign currencies to obtain Mauritian Rupees. Thus, this Court is of the view that the Accused has been correctly charged with making a payment in foreign currency in exchange of Mauritian Rupees under all four counts in the Information..."

On the second limb of the submission of the Defence, the Court considered the definition of exempt transaction and financial institution under section 2 of the FIAMLA, which reads as follows: -

"exempt transaction" means a transaction –

(a)between the Bank of Mauritius and any other person;

(b)between a bank and another bank;

(c)between a bank and a financial institution;

(d)between a bank or a financial institution and a customer where –

(i)the customer is, at the time the transaction takes place, an established customer of the bank or financial institution; and

(ii)the transaction consists of a deposit into, or withdrawal from, an account maintained by the Customer with the bank or financial institution,

where the transaction does not exceed an amount that is commensurate with the lawful business activities of the customer; or

(e)between such other persons as may be prescribed;

“financial institution” means

(a) an institution or a person licensed or required to be licensed under the Insurance Act 2005 or the Securities Act 2005; and
(b) (b) a management company or registered agent licensed or required to be licensed under the Financial Services Act 2007.

The Court held that the Money Changers from which the Accused purchased the Mauritian Rupees were duly licensed and thus fell within the definition of “Financial Institutions” and that there was no evidence on record to show that the Accused was either an established customer of, or had an account maintained as a customer with the money changers. Thus, the transactions performed by the accused do not fall within the definition of “exempt transaction”.

Judgment was delivered on the 7th of July, 2010 wherein the Learned Magistrate of the Intermediate Court found the Accused guilty as charged.

On the same day, the Learned Magistrate sentenced the Accused to pay a fine of Rs 100,000/- under each of counts 1, 2, 3 and 4 of the Information and to pay Rs 500/- as cost.

The Accused is appealing against the judgment of the Trial Court.

ICAC v Indursingh CHEEKHOOREE CN:709/10

Sentence delivered on 4th June, 2010

The Accused was 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 (FIAMLA).
An Information was lodged before the Intermediate Court against Accused for having wilfully, unlawfully and criminally made in cash a payment in excess of Rs 350,000/- .The Accused pleaded guilty to the charge.

The 5 section of FIAMLA states that any person who makes or accepts any payment in cash in excess of Rs 350,000/- or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.

The evidence adduced by the Prosecution in Court is to the effect that in the year 2002-2003, the Accused, a Managing Director, lent a sum of Rs 10M to his brother-in-law, DrM.Doolub. The money was to finance the studies of the latter's sons abroad. Mr Cheekhooree stated that the money was to be reimbursed to him with interests. In September, 2003, DrDoolub reimbursed the Accused the sum of Rs 1,175,000/- in cash, which sum was deposited by the Accused into the bank account. On 4th of Jun, 2010, the Accused was sentenced to pay a fine of Rs 10,000/- and to pay costs of Rs 500/-.

ICAC V Jean Ricardo BRIGITTE CN: 1174/09

The Accused was charged with the offence of Money Laundering in breach of section 3(1)(b), 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA).

On the 29th of June, 2007, the Accused together with another kept watch while their accomplices were committing the offence of larceny at the Post Office of Case Noyal. A sum of Rs 92,776.05, Post Office Stamps amounting to Rs 102,215/-, phone cards amounting to Rs 7,470.05 were stolen from the said Post Office.

After committing the abovementioned larceny, the booty was shared among all of them. Accused J.R.Brigitte obtained Rs 22,000/-.

They were all prosecuted before the Intermediate Court for the abovementioned larceny in case bearing cause number 916/2008. They pleaded guilty and were sentenced to six months imprisonment on the 18th of December, 2008.

In 2009, the ICAC lodged an information, bearing cause number 1174/09, against the Accused Brigitte for the offence of Money Laundering of the proceeds of crime, that is, the larceny committed at the Post Office of Case Noyal. In his statement given to the ICAC, Accused Brigitte confessed having deposited the sum of Rs 10,000/- on his bank account, which sum was part of the Rs 22,000/- he received as part of the booty of the larceny committed at the Post Office of Case Noyal. He pleaded guilty to the charge of Money Laundering in court.

On the 26th of May, 2010, the Learned Magistrate sentenced Accused Brigitte to pay a fine of Rs 30,000 and costs of Rs 500/-.

ICAC V BibiRassoolbi NAZEERALLY CN: - 58/2009

The Accused was charged with the offence of Limitation of Payment Cash, in breach of section 5(1) and 8 of the Financial Intelligence and Anti Money Laundering Act (FIAMLA) and pleaded not guilty.

This section of FIAMLA states that any person who makes or accepts any payment in cash in excess of Rs 350,000/- or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence. However, this provision of the law shall not apply to an exempt transaction.

In the month of March 2005, the Accused purchased a plot of land together with an existing concrete building on it from Mr FarookHossany for the sum of Rs 700,000/-. The payment was effected in cash. The Accused explained that the sum of Rs 700,000/- was remitted to her by her husband.

The submissions of the defence were to the fact that the information disclosed no offence inasmuch as it did not aver that the Rs 700,000/- was proceeds of a crime.

It is not disputed that the money was not proceeds of a crime. The Accused explained that the sum was earnings from her husband's jewellery business and vegetable and sugar cane plantations.

The prosecution (ICAC) submitted that the information was not defective as whether the sum was proceeds of a crime or not was not an element of the offence, unlike other offences in the FIAMLA which target proceeds of crimes. The offence for which the Accused is charged concerns only the fact that transaction involves a certain sum of money which was paid in cash and that amount exceeds what is permissible to be paid in cash under the law (FIAMLA).

Judgement was delivered on the 25th of May, 2010. The Court held that the law (Section 5(1) of the FIAMLA) does require that the sum should be proceeds of crime

unlike money laundering offences and as such it would not be entitled under the principle of separation of powers to read into the section 5 that proceeds of a crime as an element of the offence.

As such, whether the sum is proceeds of a crime is not an element of the offence under section 5(1) of the FIAMLA.

The Accused was therefore found guilty as charged.

On the 24th of May, 2010, the Accused was sentenced to pay a fine of Rs 5,000/- and costs of Rs 500/-.

ICAC V Van Hin Tit Fong Yow Chok Nee CN: 1372/09

The Accused was charged with the offence of Limitation of Payment Cash, in breach of section 5(1) and 8 of the Financial Intelligence and Anti Money Laundering Act (FIAMLA).

Section 5(1) of FIAMLA states that any person who makes or accepts any payment in cash in excess of Rs 350,000/- or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.

In March, 2003, Mr Benson Chai Pong Chen together with his brother-in-law were the major shareholders of Diamond Plastic Ltd. They decided to sell the company as their two main clients, namely Summit Textiles and Novel Garments had seized their operations in Mauritius. The Accused, who was in the same line of business, decided to take over the company and a deal was sealed for Rs 1,500,000/-. The Accused drew 3 cheques for the payment of the purchase price. One of the cheques was for the sum of Rs 1,344,000/-.

The Accused requested Mr Chai Pong Chen to withhold the cheque for the sum of Rs 1,344,000/- as he intended to settle that amount in cash. Subsequently, the Accused transferred a sum of USD 15,000, equivalent to MUR 416,349 to the Hong Kong bank accounts of Mr Benson Chai Pong Chen. On the 11th of March, 2003, the Accused paid the remaining sum of Rs 927,651/- in cash to Mr Benson Chai Pong Chen.

Later, on the same day, Mr Benson Chai Pong Chen made a cash deposit of Rs 927,651/- in his bank account and made a telegraphic transfer to an overseas account in Hong Kong for USD 33,270/-. Upon being questioned by officers of the bank as to the source of the money, Mr Benson Chai Pong Chen stated that the amount represented the sale of the shareholding of his brother in Diamond Plastic Ltd. Thus the Bank sent a Suspicious Transaction Report to the FIU. An investigation was then initiated.

An Information was lodged before the Intermediate Court against Accused Van Hin Tit Fong Yow Chok Nee on the 15th of December, 2009, for having wilfully, unlawfully and criminally made in cash a payment in excess of Rs 350,000/-.The Accused pleaded guilty to the charge.

On the 17th of May, 2010, the Intermediate Court sentenced the Accused to pay a fine of Rs 50,000/- and costs of Rs 500/-.

ICAC v AbooBakarSidickNoormamode CN: 556/09(Judgment delivered on the 23rd of April, 2010)

The Accused, Mr AbooBakarSidickNoormamode, was charged under the fifth count of the Information with the offence of Public Official Using Office for Gratification in breach of section 7(1) and 83 of the Prevention and Corruption Act.

Count 1 to 4 relate to the offence of Forgery on the Marriage Entry Register and Publication of Proposed Marriage Register.

Under Count 5 of the Information, it is averred that, in or about the month of December 2005, whilst being a Civil Status Officer, obtained the sum of Rs 1,500/- for the publication and registration of a civil marriage.

At the time of the commission of the offence, the Accused, who is a Civil Status Officer, was posted at the Civil Status Office of Petite Rivière where he worked on Mondays, Wednesdays and Fridays, and at the Civil Status Office of Port Louis where he worked on Tuesdays and Thursdays.

Mrs P.Vulcain, a prosecution witness, had a daughter, Mrs M.R.Poorun who was born on 03.01.1990. At the trial, Mrs Vulcain stated that her daughter was aged only 15 and she wanted her daughter to get married to Mr Kounal Poorun, her lover. She went to the Civil Status office of Petite Rivière with the birth certificate of her daughter and that of her future son-in-law for seek information. There, she met with the Accused who asked new extracts of the birth certificates and asked her to go to the Civil Status Office of Port Louis to obtain same. Mrs Vulcain also stated in court that she told the Accused that her daughter was only 15 years old. Accused told her “Madame mo pou fermariaz la moi mais seulementéna prison ladan”. He also asked for “ene dité” to go ahead with the celebration of the marriage as her daughter was not of marriable age. The Accused gave her a date for the celebration of the marriage which was the 30th of November, 2005 at 9.00hr.

On that date, when they met the Accused before the celebration of the marriage, he asked for Rs 2,000/-. Mrs Vulcain pleaded the Accused not to take so much money and the latter agreed for Rs 1,500/-.

The birth certificates of both Mr and Mrs Poorun, which were handed over to Mr K.Poorun, were to be used for the celebration and registration of the marriage. On the

birth certificates, Mrs Poorun's year of birth was written as 1989 instead of 1990 and the age of Mr Poorun was inserted as 18 instead of 20.

After hearing all evidence in court, the Learned Magistrate found the Accused guilty under all counts of the Information.

The sentence was delivered on the 27th of April, 2010. The Learned Magistrate sentenced the Accused to pay a fine of Rs 5,000/- on each of Count 1 to 4 and, under Count 5, taking into account the seriousness of the offence and particularly the fact that the law provides for penal servitude for a term not exceeding than 10 years, sentenced the Accused to undergo a term of six months' imprisonment.

Police v C.Pursun and Ors CN: 126/08 (Ruling delivered on the 16th of April, 2010)

All three Accused stand charged with the offence of "Conflict of Interests" in breach of section 13(2)(3) of the Prevention of Corruption Act 2002(POCA). Before the start of the trial, Counsel for Accused No 2 moved that the proceedings be stayed inasmuch as there has been a breach of the Separation of Powers between the Judiciary and the Executive as the DPP has dictated to the Court the sentence to be imposed by choosing to prosecute under Section 13 of the POCA instead of section 41(1)(a) of the Local Government Act 2003 (LGA) as both sections deal with the same issue. Counsel for Accused No 4 also moved that, since the Preliminary Investigation Report (PIR) has not been communicated to the defence, the court should order that the current proceedings be stayed as this would amount to an abuse of process of the court.
The Court considered both motions separately. On the first motion, the Court held that section 13 of the POCA and section 99 of the LGA are distinct as the former is in

relation to voting or taking part on procedure whereas the latter concerns disclosure of interest and that both provides for custodial sentences. On the second motion, the Court held that, since the Preliminary Investigation Report does not fall in the category of evidence contained in statements and documents which the prosecution will intend to produce in the proceedings, the Prosecution is under no obligation to disclose and to communicate the PIR to the defence.

Police v Kiran Kumar Burhoo CN: 273/07 (Ruling delivered on the 9th of April, 2010)

The Accused is charged with the offence of Public Official Using his position for Gratification in breach of section 7(1) and 83 of the Prevention of Corruption Act. The Defence Counsel objected to an answer about to be given to a question put to a prosecution witness on the ground that it would be inadmissible hearsay evidence. His argument was to the effect that if the purport of the answer was to show that the Accused was involved in the commission of the offence, then it will amount to inadmissible hearsay evidence.

Prosecution counsel submitted that what was sought to be established through this witness was not the truth of what is contained in the answer. The prosecution was only seeking to establish through the question the purpose of the sting operation and how it was carried out.

The Learned Magistrate held that the evidence to be ushered by the witness was what has been told to her by the complainant, a prosecution witness, who has already gigiven evidence in court. As such, this could not be regarded as an assertion made to her by another person who is not called to give evidence in the current proceedings and therefore it is not inadmissible hearsay evidence. The Court further went on to hold that

it will still be able, at the end of the proceedings to properly and judiciously figure out what to make with an answer when all evidence has been ushered in at the close of the case.

Police v Kiran Kumar BURHOO CN: 273/07

Ruling delivered on 09.04.10

The Accused stands charged with the offence of Public Official Using his Office for Gratification in breach of section 7(1) and 83 of the Prevention of Corruption Act 2002. Defence counsel is objecting to an answer to be given to a question put to a prosecution witness on the ground that it would be inadmissible hearsay evidence. The argument of the Defence Counsel is to the effect that the answer to be given would be inadmissible hearsay evidence as the purport of the answer was to show that the accused was involved in the commission of the offence charged.
The argument of the Prosecuting Counsel is that what was sought to be established through this question is not the truth of what is contained in the answer but to show that it was stated as a fact by the Complainant to this witness.
The Court cited the rule against hearsay, that is, evidence is inadmissible if:

1. it consists of any statement made by a person other than while giving evidence in the instant proceedings; and
2. it is tendered for the purpose of providing any fact contained in the statement.

The Court held that since the witness is about to give evidence as to what has been told to her by the complainant who has already given evidence in Court, this cannot amount to hearsay evidence. The Defence's objection was disallowed.

ICAC v Sahera Jannoo CN: 1048/09 (Ruling delivered on the 2nd of April, 2010)

The Accused is being prosecuted for the offence of 'Limitation in Cash Payment' in breach of sections 5(1) and 8 of the Financial Intelligence and Anti-Money Laundering Act. She pleaded guilty to the charge and the case was fixed for hearing. Before hearing day, the Accused changed counsel who moved that the Accused be allowed to change plea, which motion was resisted and a voire dire was held. The Accused stated that she understood creole as well as what the charge meant but that she was 'abruti' as she was asked three or four times whether she was guilty. The Court refused to exercise its discretion to allow the change of plea and referred to the case of Vyraven v The State 1995 MR 128, in which the Supreme Court held that "... in the presence of an unambiguous and unequivocal plea of guilty and it would have been unreasonable to allow a change of plea ...".

ICAC v SatyawanKutwaroo&IswarajGallu – C/N 1377/06 (Ruling)

The two accused are being prosecuted before the Intermediate Court for the offence of 'traffic d'influence' and 'public official taking gratification' in breach of sections 10(4) and 11(a) of the Prevention of Corruption Act 2002 (POCA). Counsel for the defence had made a motion to the effect that the Court could not proceed with the matter for lack of jurisdiction in that section 3(a) of the POCA creates offences committed outside Mauritius. It was found that in various provisions of the POCA, there is the word 'Mauritius' which makes it clear that the Act applied to offences committed in Mauritius. The Court further held that "As the legislator does not legislate in vain, it can be safely said that it is not only in those sections of POCA when the word 'Mauritius' appears that applies to Mauritius, but the POCA in its entirety applies to Mauritius." In addition, according to section 5(5) of the Interpretation and General Clauses Act 1974, the word 'or' in section 3(a) should be read disjunctively and not implying similarity unless the

word ‘similar’ or other word of the like meaning is added. The Court also held that “The amendment in 2006 goes to clarify any doubt which might have subsisted regarding the now obvious fact that the courts in Mauritius have jurisdiction to entertain any matter pertaining to a breach of the POCA 2002.” Therefore on 18 March 2010 it was held that section 3(a) of POCA did not oust the jurisdiction of the court. The case is now coming for continuation on 20 July 2010.

ICAC v BibiSareefaEmambux – C/N 132/10

The accused was prosecuted before the Intermediate Court for the offence of ‘limitation of payment in cash’ in breach of section 5(1) and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002. On 8 January 2003 the accused had accepted a sum of Rs 700,000 in cash for the sale of cloth. On 10 March 2010 the accused was sentenced to pay a fine of Rs 75,000.

Police v Ambar Kumar Joymungul – C/N 1159/04

Judgment:

The accused was prosecuted before the Intermediate Court for the offence of bribery by a public official in breach of sections 4 (1) & (2) of the Prevention of Corruption Act 2002. He had solicited from Mrs Engutsamy, the Director of Divali Productions Ltd, a sum of Rs. 200, 000 for Mr. Belle Etoile, Assistant Comptroller of Customs, for abstaining to establish a Customs Offence Report against the company. The Court found that Mrs Engutsamy was an impressive witness as she clearly testified as to the gist of the conversation she had with the accused although the event occurred nearly seven years ago and that she proved to be a reliable witness since she deponed without contradiction under the scrutiny of cross-examination. Moreover the two statements of the Accused clearly confirmed that on 17th February 2003 he had telephoned Mrs

Engutsamy and asked for the bribe on behalf of Mr Belle Etoile. The Court held that "...the words used by the Accused over the telephone left no room for doubt in the mind of Mrs Engutsamy that the Accused was asking for a bribe on behalf of someone else". On 4 February 2010, the Intermediate Court found the accused guilty and sentenced him to 12 months imprisonment.

Ruling:

The accused is being prosecuted under section 4 (1) & (2) of the Prevention of Corruption Act 2002 (PoCA) for having solicited from Mrs Engutsamy, the Director of Divali Productions Ltd, a sum of Rs. 200, 000 for Mr. Belle Etoile, Assistant Comptroller of Customs, for abstaining to establish a Customs Offence Report against the company. Counsel for the accused challenged the admissibility of a statement recorded from the accused which was supposedly recorded under section 50 of the PoCA. Given that during the recording of the statement, the accused was duly cautioned in terms of the Judges' Rules, the court ruled, on 24 July 2009, that the statement was admissible.

ICAC v Benson Chai Pong Chen – C/N 1373/09

The accused was prosecuted before the Intermediate Court for the offence of limitation of payment in cash in breach of section 5(1) and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002. The accused had accepted a sum of Rs 927,651 in cash for the sale of his shares in Diamond Plastic Ltd on 11 March 2003. On 22 January 2010 the accused was sentenced to pay a fine of Rs 100,000.

ICAC v MohitMungree – C/N 1004/08

(Ruling)

The accused is being prosecuted before the Intermediate Court for the offence of traffic d'influence in breach of section 10(5) of the Prevention of Corruption Act 2002. Counsel for defence had made a submission of no case to answer as he was of the view that the essential elements of the offence were not before the court. The Court found that the prosecution has established the elements of the offence at that stage and held that "…it would be for the court to appreciate from the evidence on record whether the accused could exercise any influence on the Permit and Licences Monitoring Committee…and whether his influence was a fictitious one or not." On 20 January 2010 the submission of no case to answer for the defence was set aside. Consequently the case is to proceed.