ICAC v Mohammad ShaikIbraham CN: - 618/11

Sentence delivered on 04 November 2011

The Accused was charged under 28 counts in the Information with the offence of Money Laundering in breach of section 3(1)(a), 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002. He pleaded guilty to all counts and was assisted by Counsel.

Under all counts of the Information, it was averred that the Accused dealt with the proceeds of a crime, that is, larceny by person in wages. The total amount involved was Rs 231662/-.

At the Hearing, the defence statement of the Accused was produced whereby he stated one of his relative worked at the DBM. The latter fraudulently caused cheques to be issued on the name of the Accused or friends of the Accused. The Accused and his friends would deposit the cheques into their respective bank accounts and withdraw the money which was remitted back to his relative who works at the DBM. In return, the Accused obtained the sum of Rs 500/- for each transaction.

The Court sentenced the Accused to pay a fine of Rs 30,000/- under each count of the Information and to pay Rs 500/- costs. The Court however converted the fine into 100 days imprisonment under each count of the Information and one day for costs.

ICAC v NizamUdeenPeerboccus& Anor CN: - 1299/09

Judgment delivered on 15 November 2011

Accused No 1 stood charged under count 1 of the Information with the offence of Limitation of Payment in Cash in breach of section 5 of Financial Intelligence and Anti-

Money Laundering Act 2002 (FIAMLA). He pleaded not guilty and was assisted by Counsel.

Accused No 2 stood charged with the similar offence under count 2 of the Information. He pleaded guilty and was assisted by Counsel.

It was averred under Count 1 of the Information that the Accused No 1 made a payment of Rs 500,000/- in cash to Accused No 2 for the purchase of a portion of land from the latter. Under Count 2 of the Information, it was averred that Accused No 2 accepted a payment in cash from Accused No 1 for the sale of a portion of land from latter.

The Prosecution produced the defence statement of both Accused in which, the transaction was admitted. The Prosecution further adduced evidence to establish that there was a sale of property from Accused No 2 to Accused No 1.

The defence submitted that the offence of Limitation of Payment in Cash was not a strict liability offence and that criminal liability did not arise where the money in question was not derived from any crime.

The Court held that section 5 of the FIAMLA 2002did not expressly create any exception for transactions which are not of tainted origin. In the circumstances, the Court must give the statutory words their plain meaning. The Court further held that liability arises where anu accused party knew he was making a payment.

The Court therefore found Accused No 1 guilty under Count 1 and Accused No 2 guilty under Count 2.

The Court held that, since the money was not from a tainted origin, a custodial sentence was not warranted. However, as per the evidence on record, Accused No 1, being a businessman, perfectly knew what he was doing. The amount was a significant one. The Court sentenced Accused No 1 to pay a fine of Rs 40,000/- under Count 1 and

to pay Rs 500/- costs. In relation to Accused No 2, the Court found that latter was not used to these types of transactions and therefore sentenced him to pay a fine of Rs 15,000/- and to pay Rs 500/- costs.

ICAC v GovindranathGunness& Anor CN: - 1379/07Ruling delivered on 29 November 2011

The Accused stand charged with the offence of Public Official making use of office for gratification in breach of section 7 of the Prevention of Corruption Act 2002 (PoCA). The date of the commission of the offence as averred in the information is March 2005.

Counsel for Accused No 1 has moved that the proceedings against his client be permanently stayed on the ground that the Information does not disclose an offence known to the law at the time of the alleged commission of the offence, that is March 2005 and that therefore, continuing the process will cause serious breach of Accused fundamental rights.

The motion was resisted by the Prosecution

Counsel for the Accused submitted that section 3 of the PoCA 2002 at the material time read as follows: -

3. Application of Act

A person shall commit an offence under this Act where –

(a) the act or omission constituting the offence occurs elsewhere than in Mauritius; or

(b) the act constituting the offence is done by that person, or for him, by another person.

The Defence submitted that this section is clear, precise and explicit and the court can only give effect to it. The PoCA did not apply to offences committed in Mauritius. An ordinary reading of section 3 is that the offence is constituted by acts committed elsewhere than in Mauritius.

He further submitted that the fact that the PoCA 2002 was not applicable to offences committed in Mauritius lead the Parliament to legislate anew in 2006 to correct this fundamental breach by deleting the words "elsewhere than in Mauritius" and replacing them by "in Mauritius and outside Mauritius". He submitted that the deeming provision at section 16 of the Prevention of Corruption Amendment Act 2006 was unconstitutional as it is in breach of section 10(4) of the Constitution.

Counsel for the Prosecution submitted that, to fully understand the issue in the present matter, one must refer to the functions of the parliament and referred to section 45(1) of the Constitution, section 4(1) of the Interpretation and General Clauses Act and to the word "or" in section 3 of the PoCA 2002. He submitted that section 3(a) and section 3(b) should be read disjunctively. When section 3(b) is read separately, it is clear that the Act is not restricted to acts which are committed in Mauritius.

It was also submitted that the PoCA repealed all section of the Criminal Code dealing with corruption offences given that the Parliament viewed these provisions of the Criminal Code as ineffective and unclear. If the court was to adopt the view of the defence, this would mean that all acts proscribed by the Criminal Code were rendered legal and this cannot be the case. To ascertain the intention of the Parliament, one should not look at few sections of the statute but to the whole of the statute, the Constitution and the Interpretation and General Clauses Act.

The Court held that it had no difficulty going along the line of argument of the Prosecution. If the interpretation given by the Defence was to be adopted, it would have the most absurd effect which is far from the rational of the PoCA 2002 and would render nugatory all investigations, prosecutions and convictions that were obtained

between 2002 and 2006. Many offenders will walk away with impunity. This obviously could not have been the legislative intention.

The Court further held: -

“Hence the defence interpretation would lead to the most unwanted and illogical result. Considering that the old corruption offences under the Criminal Code were repealed, it would mean that a general license was given to indulge in corrupt practices and fraud as from 01.04.02. Mauritian public officers particularly could give free rein to their greed and fraudulent tendencies between 2002 and 2006. On the contrary, it was clear that the PoCA sought to bring about a more effective framework to deal with corruption. In the words of the Act itself, “it is to provide for the prevention and punishment of corruption and fraud and for the establishment of an Independent Commission Against Corruption”.”

The Court took into account the explanatory memoranda accompanying the original Bill and applied the appropriate purposive approach to its interpretation and held that it was clear that the bill targeted corruption in Mauritius. Section 3 could not have aimed only at offences occurring outside Mauritius.

The Court further held that, in light of its observations on the legislative intention, it was of the view that the constitutional aspect of the submissions of the defence became redundant.

The motion of the Defence was therefore set aside.

ICAC v M.Y.Meeajun CN 1588/11

Sentence delivered on 29 November 2011

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

It was averred in the Information that the Accused unlawfully, wilfully and criminally made 3 payments in cash in foreign currency which was in excess of Rs 350,000/- during the month of July 2004. Under count 1 of the Information, it was averred that the Accused made a payment £ 60,000/- to Shibani Finance Co Ltd and that it was equivalent to Rs 3,103,800/-. Under Count 2 of the Information it was averred that the Accused made a payment £ 35,000/- to Shibani Finance Co Ltd and that it was equivalent to Rs 1,811,250/-. Under Count 3 of the Information, it was averred that the Accused made a payment £ 15,000/- to Shibani Finance Co Ltd and that it was equivalent to Rs 780,000/-.

He pleaded guilty and was assisted by Counsel.

At the Hearing, the defence statement of the Accused was produced, in which, the Accused averred that he has the British Nationality. He resides in the United Kingdom and regularly visits Mauritius. He averred that he owned a care home in the UK. He averred that the money he exchanged at Shibani Finance Co Ltd was proceeds of his business in the UK. He further averred that he was not aware of the offence of limitation of payment in cash under the FIAMLA and was not informed of same by Shibani Finance Co Ltd.

The Court sentenced the Accused to pay a fine of Rs 20,000/- under each of the 3 counts and to pay Rs 500/- costs.

ICAC v Marie Katie Ramgoolam& Anor CN:- 619/11

Sentence delivered on 30 November 2011

Both Accused stood charged with the offence of Money Laundering in breach of section 3(1)(a), 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002.

Under counts 1 to 13, it was averred that Accused No 1, Mrs Marie Katie Ramgoolam, deposited into either her bank account, her sons bank account or her partner's bank account certain sums which she had reasonable grounds to suspect that same were in part directly derived from the offence of swindling and unauthorized access to computer data.

Under counts 14 to 17, it was averred that Accused No 2, Mrs BibiParveenRymanbee deposited a certain sum of money into her bank account, which sum she had reasonable grounds to suspect that same were derived from the offence of swindling and unauthorised access to computer data.

Both Accused pleaded guilty to the offence they were charged with.

At the hearing, the defence statements of both accused were produced. In her defence statement, Accused No 1 averred that her partner, Mr SajitRymanbee, is a habitual criminal. She acknowledged that the deposited made into bank accounts as per count 1 to 13 were given by SajitRymanbee. She averred that she had serious doubts as to the source of the money. When she questioned her partner, latter told her that same were from his gains at the casinos. She averred that she found the sum very suspicious. She nevertheless deposited the money into the bank accounts.

Accused No 2 averred in her defence statement that her brother is a habitual criminal and a swindler. Latter has been jailed on several occasions. She averred that her brother remitted to her the sums averred in counts 13 to 17 of the Information. She deposited the money into her bank accounts and later, her brother would withdraw the

money using her debit card. He admitted that the money given to her by her brother looked very suspicious and doubtful as letter did not work and was a swindler.

The Court sentenced Accused No 1 to pay a fine of Rs 10,000/- under each of count 1 to 13 and to pay Rs 500/- costs. The Court sentenced Accused No 2 to pay a fine of Rs 10,000/- under each of count 14 to 17 and to pay Rs 500/-.

ICAC v Radhashyam Ramtohul CN: - 1107/10

Sentence delivered on 15 December 2011

The Accused stood charged under 4 counts in the Information of the offence of Public Official Using Office for Gratification.

It was averred in the Information that the Accused did, on four occasions, made use of his position as Senior Social Security Officer to recommend the payment of mileage claim allowance to one Mrs Boodhram although the latter did not make use her personal vehicle. The total sum under these four counts which had unlawfully been paid to the said Mrs Boodhram amounted to Rs 11,513.10.

Accused pleaded guilty to all counts of the Information and was represented by Counsel.

At the Hearing, the defence statement of the Accused was produced. He stated that he knew that Mrs Boodhram did not make use of her personal vehicle to perform the trips for which mileage allowance was claimed but he recommended payment of same so as Mrs Boodhram will be paid the amount claimed.

In court, the Accused gave evidence to the effect that he did not receive any money from the transaction and that he has to look after his wife and one of his children. He begged for leniency of the court.

The Court ordered that the Accused be conditionally discharged on all counts upon his furnishing a surety of Rs 30,000/- in cash and entering into a recognisance in his own name in the sum of Rs 50,000/- within 21 days and to be of good behaviour for a period of 3 years failing which he will have to undergo 2 months imprisonment under each count and pay costs of Rs 500/-.

ICAC v Mahesh Gopaul CN: - 559/09

Judgment delivered on 15 December 2011

The Accused stood charged under two counts of the Information with the offence of bribery by public official in breach of section 4(1)(a), 4(2) and 83 of the Prevention of Corruption Act 2002. Accused pleaded not guilty.

The Prosecution adduced evidence as to an identification exercise carried out where the Accused was identified by the main prosecution witness, one Mr Poorun. Mr Poorun was also called as a witness. He gave evidence to the effect that he was asked to give a Rs 100/- of money whilst making an application for the issue of two birth certificates and that he was also asked to give another Rs 200/- when he was handed the birth certificates.

The Court held that it was not satisfied with the evidence of the main prosecution witness and that the said witness failed to incriminate the Accused in court. The Court also found that the evidence of identification during investigation was done two years after the alleged commission of the offence and as such was unreliable. The Court therefore held that, in view of the unsatisfactory evidence, both counts were dismissed against the Accused.

ICAC v Marie Gilberte Bazerque CN: - 782/11

Sentence delivered on 19 December 2011

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

It was averred in the Information that, on or about the 22nd of September 2007, at Champs des Mars, the Accused made a payment of Rs 1,300,000/- to one Mr Beekhy as refund to Biosphere Trading Ltd, which amount was in excess of Rs 500,000/-.

The Accused pleaded guilty to the Information.

At the Hearing, the Defence statement of the Accused was produced, in which, she acknowledged having made the cash payment as a refund to Biosphere Trading Ltd. She averred that the said company made advance payment for consultancy so as to obtain an export permit. However, the permit was not granted and hence the company claimed its payment back.

The Court sentenced the Accused to pay a fine of Rs 10,000/- and costs of Rs 500/-

ICAC v S.Rymanbee CN: 617/2011

Sentence delivered on 31 October 2011

The Accused stood charged under Counts 1 to 17 and Counts 19 to 23 of the Information with the offence of Money Laundering in breach of section 3(1)(a) of the Financial Intelligence and Anti-Money Laundering Act 2002.

It was averred under each of Counts 1 to 17 and 19 to 23 of the Information that the Accused deposited a certain sum of money into bank accounts and that the Accused had reasonable grounds for suspecting that the money was derived directly from

crimes, that is, Swindling and Unauthorised Access to Computer Data. The total of the sum involved under Counts 1 to 17 and Counts 19 to 23 was Rs 1,177,200/-.

The Accused stood charged under count 18 of the Information with the offence of Bribery of Public Official in breach of section 5(1)(b) & (2) of the Prevention of Corruption Act 2002.

It was averred under Count 18 that in the month of March 2009 in Port Louis, the Accused gave a gratification of Rs 10,000/- to a Clerical/Higher Officer at the National Identity Card Unit for the issue of a fake National Identity Card.

Accused pleaded guilty to all counts in the Information.

The defence statement was produced in court in which Accused confessed having, on the dates averred in the Information, having withdrawn various sums of money from different persons' bank accounts using these persons ATM debit card at different casinos. He further confessed having given the sum of Rs 10,000/- to one of his friends who works at the National Identity Card Unit for the issue of a fake National Identity Card, which he used to withdraw money from a bank account.

The list of previous conviction was produced in court as well as the fact that the Accused cooperated with the investigating officers. Furthermore, Accused tendered his apologies from the dock.

The Court took into account the long list of previous convictions which, the Court held, shed light on his bad character and that Accused had been persisting on the wrong track. The Court further found that the Accused failed to mend his ways over the years. The Court also took into account the substantial amount involved for the offence of money laundering. The Court also took into account, as mitigating factors, the guilty plea of Accused and the fact that latter cooperated during the investigation.

The Court held that, in the circumstances, a custodial sentence was fully warranted. The Accused was therefore sentenced to undergo 8 years penal servitude under all counts of the Information and to pay Rs 500/- as costs.

ICAC v BibiSaidaRymansaibCN : - 376/10

Sentence delivered on 04.08.11

The Accusd stood charged under seven counts of the Information with the offence of Limitation of Payment in Cash in breach of section 5(1) of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) 2002.

Section 5(1) of the FIAMLA 2002, as it stood at the time of the commission of the offence, read as follows: -

5. Limitation of payment in cash

(1) Notwithstanding sections 30 and 31 of the Bank of Mauritius Act, 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.

Under Count 1 of the Information, it was averred that, on 25 June 2002, the Accused made a payment in cash in excess of Rs 350,000/-, to wit: Rs 664,200/-, into her bank account.

Under Count 2 of the Information, it was averred that, on 12 July 2002, the Accused made a payment in cash in excess of Rs 350,000/-, to wit: Rs 456,500/-, into her bank account.

Under Count 3 of the Information, it was averred that, on 29 January 2003, the Accused made a payment in cash in excess of Rs 350,000/-, to wit: Rs 456,500/-, into her bank account.

Under Count 4 of the Information, it was averred that, on 6 June 2003, the Accused made a payment in cash in excess of Rs 350,000/-, to wit: Rs 446,000/-, into her bank account.

Under Count 5 of the Information, it was averred that, on 4 July 2003, the Accused made a payment in cash in excess of Rs 350,000/-, to wit: Rs 475,200/-, into her bank account.

Under Count 6 of the Information, it was averred that, on 16 January 2002, the Accused made a payment in cash in excess of Rs 350,000/-, to wit: Rs 462,000/-, into her bank account.

Under Count 7 of the Information, it was averred that, on 27 April 2002, the Accused made a payment in cash in excess of Rs 350,000/-, to wit: Rs 714,900/-, into her bank account.

The Accused pleaded guilty and was assisted by Counsel.

At the hearing, the statement of the Accused was produced wherein she explained that, after her marriage, she settled in the United Kingdom with her husband. They were carrying out a renting business of housing units. They were deriving an average annual income of £ 50,000/-. She further explained that they sold some of the housing units they owned. The Accused explained that the money she credited into her bank account was derived from the rent she received and the sale of their housing units.

The Learned Magistrate sentenced the Accused to pay a fine of Rs 10,000/- under each of the 7 counts and to pay costs of Rs 500/-.

ICAC v Peermamode CN: - 729/09

Ruling delivered on 24.08.11

The Accused stood 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.

It was averred in the Information that, on 01.03.06 under Count I and on 23.03.06 under Count II, the Accused wilfully, unlawfully and criminally solicited a gratification from another person, for any other person in order to make use of his influence, real or fictitious, to obtain a benefit from a public body.

Learned Counsel for the Defence moved that both counts be dismissed because they do not disclose any offence known to the law on the abovementioned dates, more particularly, the offences of "Traffic D'Influence" committed within Mauritius which were not known to the law at the relevant time. The motion was resisted by the Prosecution.

Section 3 of the Prevention of Corruption Act 2002, as it stood prior to the 2006 amendment, reads as follows: -

"3. Application of Act

A person shall commit an offence under this Act where -

1. the act or omission constituting the offence occurs elsewhere than in Mauritius; or

1. the act constituting the offence is done by that person, or for him, by another person."

In 2006, section 3 of the Prevention of Corruption Act was amended by the Prevention of Corruption (Amendment) Act 2006 to read as follows: -

"3. Application of Act

A person shall commit an offence under this Act where -

(a) the act or omission constituting the offence occurs in Mauritius or outside Mauritius; or

(b) the act constituting the offence is done by that person, or for him, by another person."

Section 16 of the Prevention of Corruption (Amendment) Act 2006 reads as follows: -

"16. Commencement

(1) Subject to subsections (2) and (3), this Act shall come into operation on a date to be fixed by Proclamation.

(2) (2) Different dates may be fixed for the coming into operation of different sections.

(3) (3) Section 3 shall be deemed to have come into operation on 1 April 2002."

Learned Counsel for the Defence submitted that the amendment of 2006 to replace "elsewhere than in Mauritius" by "in Mauritius or outside Mauritius" was passed by the National Assembly on 25 April 2006 and purported to give retrospective effect to the amendment to section 3 of the Prevention of Corruption Act 2002 was contrary to section 10 (4) of the Constitution.

Learned Counsel for the Prosecution submitted that section 16(3) was only a deeming clause and that it did not give retrospective effect to section 3. He submitted that no offence was created in 2006 and that the offence of "Traffic D'Influence" existed by virtue of section 3(b) of the PoCA 2002.

The Intermediate Court referred to its ruling delivered on 18 November 2010 where it already ruled that since no mention in made as to offences committed in Mauritius in section 3 at the time of the commission of the offence, the offence was unknown to the law. It was also of the opinion that the amendment in 2006 purported to cure that defect. The court also ruled that, since there was no provision for corruption offences in Mauritius prior to the amendment in April 2006, it should send the matter to the Supreme Court for interpretation as to whether the amendment in 2006 could apply retrospectively.

In its judgment, the Supreme Court held that no criminal law should apply retrospectively since section 10(4) of the Constitution prohibits retrospective legislation in the context of criminal offences.

The Intermediate Court therefore ruled that the offence of "Traffic D'Influence" within Mauritius did not exist in the Prevention of Corruption Act 2002 and that section 16(3) of the Prevention of Corruption (Amendment) Act 2006 purported to cure this shortcoming. However, retrospective effect to this amendment could not be given.

Consequently, the Intermediate Court upheld the motion of Learned Counsel for the Defence to the effect that both counts of the Information cannot stand inasmuch as they do not disclose an offence known to the law at the relevant dates. The Information was accordingly quashed and case dismissed.

The ICAC is appealing against the decision of the Intermediate Court.

ICAC v LE GRAND CASINO DU DOMAINE LIMITEE CN: - 1582/10

Sentence delivered on 28 July 2011

The Accused Company stood charged with the offence of Limitation of Payment in Cash under 7 counts in the Information in breach of section 5 (1) of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA 2002).

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

"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."

It is averred under count 1 to 7 of the Information that, during the period of 05 September 2005 to 07 November 2005, the Accused Company willfully, unlawfully and criminally made a payment in cash in excess of Rs 390,000/-, Rs 380,000/-, Rs 400,000/-, Rs 370,000/-, Rs 800,000/-, Rs 540,000/- and Rs 785,000/- respectively.

The Accused Company, through its representative, pleaded guilty to all 7 counts.

The Court sentenced the Accused Company to pay a fine of Rs 25,000/- on each count and to pay Rs 500/- costs.

ICAC v Yoshika AUDIT CN:- 314/10

Ruling delivered on 28 July 2011

The Accused stands charged under five counts in the Information with the offence of Money Laundering in breach of section 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) 2002. She pleaded not guilty to all counts and is represented by Counsel.

Before the start of the trial, Counsel for the Accused moved that the present proceedings be stayed on two grounds: -

1. There has been unconstitutional delay that has lapsed between the alleged date of the commission of the offences and the date the present Information was lodged, which would deprive the Accused of a fair trial as guaranteed by the Constitution;

1. The particulars offered by the Prosecution are inadequate for the Accused to benefit from a fair trial as per the Constitution

Counsel for the Prosecution resisted the above motion and Arguments were heard.

The Prosecution called one witness who gave evidence as to the facts and circumstances of the investigation. Thereafter, submissions were offered by both the Prosecution and the Defence.

Under the first ground for stay of proceedings, the Court referred to decisions of the Privy Council setting out the guiding principle when delay is a ground for stay of proceedings, which is as follows: -

1. If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of section 10(1) of the Constitution, whether or not the defendant has been prejudiced by delay;
2. An appropriate remedy should be afforded for such breach, but the hearing should not be stayed or a conviction quashed on account of delay alone, unless (a) the hearing was unfair or (b) it was unfair to try the Defendant at all.

The Court held that, in the present matter, the very high threshold set by the superior court before finding such a breach of right to being tried within reasonable time has not been crossed. The Court further held that the facts and circumstances of the case do not reveal anything which could raise the eyebrows towards an area of grave concern as regards the time elapsed. The Court found that there was nothing on record which would make it unfair if proceedings against the Accused would continue. Under the second ground for stay of proceedings, the Court held that true it is that section 6(3) of the FIAMLA 2002 provides that there is no need for the prosecution to specify particular crime from which the property derives and that a similar provision in the Economic Crime and Anti-Money Laundering Act had been held unconstitutional, but the Prosecution had voluntarily and despite this provision of the FIAMLA 2002, particularised the precise crime as being aggravated larceny. The Court further held that it is bound to apply section 6(3) of the FIAMLA 2002 until the superior courts rule that same is unconstitutional.

The motion made by the Defence was therefore set aside by the Court.

ICAC v Gerard Phillippe RAYEPA CN 1238/2009

Judgment delivered on 27 June 2011

The Accused stood charged with the offence of Traffic D'influence in breach of section 10 (4) of the Prevention of Corruption Act 2002 (PoCA 2002).

Section 10(4) of the PoCA 2002 reads as follows: -

Any person who solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

It was averred in the Information that the obtained the sum of Rs 4,700/- from one Mr Nabab for him to make use of his fictitious influence for the latter to obtain a driving licence for motor bus from Traffic Branch, Police Department, without undergoing any test.

Evidence adduced by the Prosecution

The Prosecution called an officer posted at the Traffic Branch of the Mauritian Police Force who gave evidence as to the procedures to follow to obtain a driving licence. He further stated that these procedures are compulsory and that no derogation is accepted.

The Prosecution also called the Complainant, Mr Nabab, who testified as to what happened in the present matter: - He stated that he knew the Accused. During a conversation about driving licences, the Accused proposed to help him to obtain a driving licence for a 14 seater. He stated that he was not interested but Accused latter phoned him on several occasions stating that he had a relative, referred to as “Boss”, working at the Traffic Branch and that the Complainant will not have to undergo the normal test in exchange of Rs 2,500/-. He asked the Complainant to come with a bus for the Driving Test. Complainant told him that he could not come with a bus. Accused then asked him for Rs 4,700/- in which case, he will not have to undergo any test. The Complainant remitted the money to Accused but lost contact with him. He tried to obtain back him money but to no avail. Thus, he lodged a complaint against the Accused.

Evidence adduced by the Defence

The Accused testified under oath and confirmed the truth of his statements. He stated that he obtained Rs 4,700/- as a loan from the Complainant.

Decision of the Court

The Court found that the remittance of the Rs 4,700/- was not in dispute as well as the fact that the Accused had no real influence to obtain a driving licence without going through the normal procedure as evidenced by the testimony of the Police Officer posted at the Traffic Brance. It was also admitted that the Accused was a Police Officer. The only issue which remained to be determined was the purpose of the remittance of the money.

The Court considered that the main witness for the Prosecution was a witness of truth having deposed in a convincing manner. On the other hand, the Court observed that what the Accused stated under oath in Court and he stated in his statement at ICAC contained contradictions.

Subsequently, the Court concluded that the Prosecution had proved its case and convicted the Accused. The latter was sentenced to six months imprisonment and to pay costs of Rs 500.

ICAC v Shibani Finance Co. Ltd CN 148/2011

Judgment delivered on 23 June 2011

The Accused stood charged with 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 2002) coupled with section 44 (2) of the Interpretation and General Act.

Section 5(1) of the FIAMLA 2002, as it stood in 2003, reads as follows: -
(1) Notwithstanding sections 30 and 31 of the Bank of Mauritius Act, 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.

(2) Subsection (1) shall not apply to an exempt transaction.

It was averred in the Information that the Accused Company, on 05 July 2003, accepted a payment of GBP 15,000 which was in excess of the prescribed limit of Rs 350,000/-.

It was not disputed that the Accused party did accept such payment. However, it was the contention of the Defence was that the person who was representing the Accused in Court was not involved in the transaction and that it was an exempt transaction.

The Court concluded that this was immaterial given that the Accused party was Shibani Co. Ltd and not the person representing it in Court as the evidence on record showed that the Teller did seek approval of her superior officers before accepting the payment. Thus the Accused Company had the necessary mensrea in the commission of the offence.

Furthermore, the Court considered the relevant definition of exempt transaction as per the FIAMLA 2002 and concluded that the Accused Company was not a Financial Institution so that the transaction could be considered as an exempt transaction.

The Court therefore found the Accused Company guilty as charged and sentenced it to pay a fine of Rs. 125, 000.

ICAC v Johnson ROUSSETY CN:- 1915/10

Ruling delivered on 03 June 2011

The Accused stands charged with the offence of Influencing Public Official in breach of section 9 of the Prevention of Corruption Act 2002. He pleaded not guilty and was assisted by Counsel.

During the examination in chief of a prosecution witness, namely, the main enquiring officer, the Defence objected to the production of certain documents produced to the ICAC by Mr Jean Claude Pierre Louis, the then Island Chief Executive (ICE).

The matter was then fixed for Argument.

At the hearing of the Argument, the Prosecution adduced evidence to show that the documents subject matter of the objection of the Defence are correspondence between the Ministry of Local Government and the Island Chief Executive, emails exchanged between the ICE and the Accused, copy of correspondence between the ICE and the Head of Civil Service and Secretary to the Cabinet.

The submission of Counsel for the Accused is to the effect that the above mentioned documents have been illegally obtained by the Prosecution in asmuch as the ICE had no right to divulge such documents to the ICAC without sanction of the Head of Civil Service given that he is presumed to have signed a DECLARATION containing reference to the Official Secrets Act and an undertaking not to divulge information gained by him by result of his employment to any authorised person. As such, the ICAC having received the documents unlawfully could not proceed in adducing same in Court.

The submissions of Counsel for the Prosecution are that the Official Secrets Act 1972 imposes a duty on any person not to dispose of any material which is prejudicial to the safety or interests of Mauritius. Counsel for the Prosecution therefore submitted that, as per the evidence on record, the documents obtained by the ICAC concern the duties of

the Island Secretary in relation to the appointment of workers, the discharge of his functions and the grievances he had against the Accused and as such do not include documents which are of such a nature that will prejudice in any way the safety and interests of Mauritius. He further submitted that it is presumed that the ICE signed only a DECLARATION not an Oath of Secrecy as those provided for under the Prevention of Corruption Act 2002 and the Financial Services Act 2007. He further submitted that if ever the Court is to find that the documents should not have disclosed to the ICAC, then the Court would have to perform a balancing exercise to determine whether the prejudicial effect outweighs the probative value of adducing such documents.

The Court held that there was no evidence on record to show whether the ICE had signed the DECLARATION or not. The Court further found that the DECLARATION is not similar to an OATH OF SECRECY which could be found in the Prevention of Corruption Act 2002 and the Financial Services Act 2007 and that there is no evidence on record to rebut the evidence of the witness for the prosecution to the effect that the documents sought to be produced do not include documents which are of such a nature that will prejudice in any way the safety and interests of Mauritius. The Court further held that it did not find that the ICE committed any illegal act by obtaining and producing certain documents to the ICAC in support of his complaint of alleged acts of corruption.

The Court therefore overruled the objection of the Defence to produce the documents.

ICAC v R. Ramtohul CN: -1107/10

Ruling delivered on 26 May 2011

Accused is a Senior Social Security Officer charged under 4 counts of information for making use of his position for gratification for another person in breach of section 7(1) of the Prevention of Corruption Act.

The defence challenged the admissibility of the statement of the accused given on 26 August 2009 on the grounds of:

1. Oppression, in that being a civil servant he had to get a special permission to get to ICAC to give his statement and was under much pressure to get back to office to return some urgent files and that the statements recorded by ICAC was never read over to him before he signed same;
2. Use or threat of violence, in that Accused deposed for about 2 hours and was not offered any refreshments so that he was feeling dizzy and hungry as he had not eaten since morning;
3. Unreliability, in that he wrote 4 lines in his own handwriting at the end of his statement but he did not scrutinise what he was writing as he was being dictated by ICAC officers and that his statement has not been accurately recorded and that he blindly trusted by the ICAC officer for having properly recorded same.

The defence emphasized that 'oppression' according to the definition in R v Fulling [1987] QB 426 is the "exercise of authority in a burdensome, harsh or wrongful manner", and according to R v Mushtaq [2005] UKHL 25 at [64] it is "questioning so as to excite hopes or fears so as to affect the mind of the subject so that his mind crumbles and he speaks when he could have remained silent", has been present.

After considering all evidence adduced by the prosecution during the Voire-Dire the court took note that accused is a high-ranking civil servant who has been given ample notice to attend ICAC for a statement. He chose to come without counsel on the appointment day and at no time he requested change of the appointment because his pressing works at office. The court found that the ICAC officers who deponed were constantly clear that accused had read his own statement. The prosecution has proved that the atmosphere was not oppressive and no threat was exercised upon the accused.

The court also found that the Accused spent 1hr & 25 minutes of the morning at ICAC which cannot be said to be such excessive amount of time that failure of the ICAC to

offer refreshment would be akin to violence. ICAC cannot be reasonably held responsible if Accused had not eaten anything in the morning and feeling dizzy and hungry at the time of recording of the statement.

The court observed that there is nothing untoward in accused being requested to insert a certificate in his own handwriting and it emphasized that in respect of 'statement not accurately recorded' the court is satisfied that Accused had read same before signing and/or initialled at over-writings.

The court held that the Prosecution has proved beyond reasonable doubt that the Accused gave and signed his statement voluntarily and did not give same as a result of oppressive manoeuvres, threats or inducement exercised upon him by ICAC officers.

ICAC v M. Boodhram CN: - 1108/10

Ruling delivered on 04 May 2011

Defence moved that the information as styled be dismissed as it constitutes an abuse and is oppressive or alternatively to have all 17 counts in the information reduced into one single count as they formed a continuous offence.

The court observed that this is not a case where the General Deficiency rule would apply and that this is a case where the principles elaborated in Cossigny v R [1988] SCJ 12 finds its direct application. The court found that the Prosecution in choosing to aver 17 counts under the information has acted within the legal parameters and permissibility. The motion made by the Defence was accordingly set aside.

However, Defence also submitted that there are three other information against Accused each containing 18 counts. Thus, the court went on to observe that for the sake of practicability in matters of drafting, it would be proper for the Prosecution to consider their stand following what was said in R v Taylor [1924] 18 Cr. App.R.25 and

which the court in Cossigny (supra) held was “authority for the proposition that the Court of Appeal in England disapproves of the multiplication of indictments (there were indeed three indictments for house breaking), not of counts when, as Avory J rightly observed at p.26, in the Indictments Act there is express authority to put into one indictment all charges of the same character.”

The Court also quote section 67A(1) of the District and Intermediate Courts Act (Criminal Jurisdiction) which provides that an information before the Intermediate Court may contain any number of counts.

ICAC v S.Peerthum&A.S.Jaumally CN: - 602/09

Ruling delivered on 04 May 2011

Both Accused stand charged with the offence of public official using his office for gratification in breach of section 7(1) of the Prevention of Corruption Act.

The Defence objected for a certified true copy of an original document be produced on the ground that it has been established by case law that the document which prosecution intends to produce must be an original one. Prosecution contended that the original document had faded out but was not lost or destroyed.

Investigator of ICAC who secured the original document produced same to the Court. The officer who made the certified true copy of the original document and who produced same to the ICAC in the course of the enquiry positively identified same. He confirmed his handwritings on the document and maintained that he made a copy of the said original document and certified as to its truthfulness. He also explained that the original document has faded away.

Defence referred to Archbold at Par9-98 on “primary and secondary Evidence” relating to private documents which read as follows: “The old rule that only the ‘best’ evidence

is admissible now survives only if the rule that secondary evidence of the contents of a private document cannot be given without accounting for the non-production of the original....When a deed or other document or writing is to be given in evidence, the document itself must be produced at trial, except in the following cases:

1. Where the document is in the hands of the opposite party;
2. Where the document is in the possession of a person who cannot be compelled to produce it;
3. Where the writing is physically impossible to produce, and;
4. Where it has been lost by time or accident, or by any other casualty.

In such cases its contents may be proved by a copy or other secondary evidence."

The Prosecution submitted that the original having faded out this brought the document within the ambit of the exceptions where it has been lost by time.

The Court, not being prepared to endorse the submissions of the Defence, relied on the case of The State v Sir BinodBacha (1996) SCJ 218 which observed the following: "My opinion is that where secondary evidence is sought to be adduced, a satisfactory account of the non-availability of the primary evidence must be given first. What amounts to a satisfactory account is a matter for the appreciation of the Judge taking into account all the circumstances placed before him" and found that the true certified copy of the original produced by the person who duly certified same is admissible and it is for the Court to assess what weight to attach to the said document.

ICAC v P.R Aucharaz& Ors CN : - 964/10

Ruling delivered on 02 May 2011

Accused No.4, a NTA Vehicle Examiner, stands charged for having made use of his position for a gratification in breach of sections 7(1) & 84 of the Prevention of

Corruption Act. His Counsel moved to be communicated with particulars as to the averment of gratification under the Counts of the Information, and to which the Prosecution objected.

It is the Defence's contention that any behaviour falling within the definition of gratification as defined under section 2 of the Prevention of Corruption Act will amount to gratification and the failure of the Prosecution to give particulars of same is in breach of the principle enunciated in section 10(2) Constitution whereby a person must be informed of the nature of the offence charged so that he may accordingly prepare his defence.

The Prosecution argued that the Defence is asking it to qualify the element of gratification and that same would be a matter of law. There was no requirement on the Prosecution to furnish such particulars and that such failure will not deny the accused of a fair hearing as per section 10 Constitution. Sufficient particulars have already been given and it would be for the Court to assess whether 'filing the Report without examination' would amount to gratification.

The Court was not convinced with Prosecution's arguments and it ordered that the particulars of gratification be furnished to the Defence. The Court's reasoning was that furnishing of such particulars at this stage of the proceedings would minimize delays, permit the Defence to prepare its cross-examination and call defence witnesses.

Further, the Court observed that the issue in the present case is not one of 'brevity' but rather one of 'specifying the type and nature of gratification the Prosecution would be relying upon' as opposed to keeping the matter conveniently vague and leaving it to the Court to determine whether the Accused's complained-of behaviour amounts to 'gratification'.

Finally, the Court relied on the case of Police v Kuderbux [1994] SCJ 424 to add that furnishing to the Defence concise particulars about gratification is far from being and/or adducing matters of evidence.

ICAC v Marie Chantale Dumont & Louis Laval Pietro ANSELINE CN : - 1738/10
Judgment delivered on 24 April 2011

Both Accused were charged with the offence of Money Laundering in breach of Section 3 of the Financial Intelligence and Anti Money Laundering Act 2002 (FIAMLA).

Under count I, both Accused were jointly charged with 'Money Laundering' in breach of sections 3(1)(b), 6(3) and 8 of the Financial Intelligence and Anti Money Laundering Act 2002 (FIAMLA). It was averred under this Count that both Accused were in possession of Rs 80,000/- in their bank account, which amount both Accused had reasonable grounds for suspecting that same was derived from a crime, to wit, drug dealing.

Under each of Count II to V, Accused No 1 was charged with 'Money Laundering' for having deposited a sum of money in a bank account, where the total sum under these counts amounted to Rs 210,000/- and where Accused No 1 had reasonable grounds to suspect that the said sum was derived from a crime, to wit, drug dealing.

Under each of Count VI to IX, Accused No 2 was charged with 'Money Laundering' for being in possession of a sum of money in his bank account, where the total sum under these counts amounted to Rs 210,000/- and where Accused No 2 had reasonable grounds to suspect that the said sum was derived from a crime, to wit, drug dealing.

Accused No 1 pleaded Not Guilty to Count I to V and Accused No 2 pleaded Not Guilty to Counts I and Counts VI to IX.

The Prosecution's case

Officers of the ICAC were called to produce statements of both Accused recorded under warning. They also gave evidence to the effect that fingerprints were taken from both Accused and that, pursuant to a Judge's Order, an extract of Accused No 1's bank statement had been produced to the ICAC, which document was produced in Court.

The Prosecution also adduced evidence to the effect that the fingerprints of both Accused were examined and compared to those on the deposit vouchers and that these fingerprints were from the same person.

The Prosecution called an officer of the Civil Status Office to produce documents to prove that Accused No 1 was the mother of Accused No 2. An officer of the Social Security Office was called to show that Accused No 1 was beneficiary of Basic Retirement Pension whereas Accused No 2 was benefitting from Invalidity Pension, Child Allowance and an additional Basic Invalidity Pension. He then produced several documents showing sums received by both Accused from the Social Security.

The Prosecution also called a representative of the Bank who confirmed that he produced five savings vouchers under the name of Accused No 1 to ICAC. He also produced an account agreement in the name of Accused No 1. He further produced an application for joint account after Accused No 1 made a request to make her bank account a joint one with Accused No 2. He also added that this last document contained two thumbprints and that both the holder and the person intending to hold the joint accounts should be present to sign the agreement. The said agreement is dated 14.06.06.

Finally the Prosecution produced a certified copy of an Information before the Intermediate Court showing that Accused No 2 was charged of Drug Dealing-Possession of Cannabis for the purpose of selling.

<u>The Defence's case</u>

Accused No 1 made a statement from the dock to the effect that the money she deposited in the bank was hers. She also produced several receipts from Western Union showing money received from various persons from abroad.

Accused No 2 stated from the dock that the money in question were not proceeds of sale of drugs.

Judgment

The Court held that there was ample evidence on record to prove that Accused No 2 knew of the existence of the money in his bank account and that Accused No 1 herself admitted that she made the deposits as averred under Counts I to V.

The Court then went on to determine whether the evidence on record proved that both Accused had reasonable grounds to suspect that the sum averred under each count in the Information was derived from a crime, to wit, drug dealing.

The Court took into account the fact that the various deposits effected by Accused No 1 in the joint accounts held by both Accused were as follows: - Rs 80,000/- on 10.11.06, Rs 40,000/- on 15.02.07, Rs 20,000/- on 27.02.07, Rs 50,000/- on 19.03.07 and Rs 100,000/- on 27.04.07 whereas the 'clean' income derived by Accused No 1, which she herself estimated, ranges from Rs 4,000/- to Rs 5,000/- monthly.

The Court held that it was so clear from these two mentioned facts that the total monthly incomes of these two Accused cannot and indeed have not explained logically and satisfactorily the origins of the sums of money which have been deposited at the specified dates under counts II, III, IV and V.

The Court took into account the abovementioned facts and also the fact that, as per the Information produced, Accused No 2 was involved in drug dealing activities, and held that: -

"Thus, when the above facts are collectively analysed it leaves no reasonable doubt that the proceeds were in fact at least partly as averred by the information under all counts

directly proceeds of the crime. Such inference can only be reasonable and there is no other facts which might either destroy or rebut such a reasonable inference as to the tainted origin of the money involved."

The Court also held that based on the above facts, it can only be safely stated that the facts of this case point unequivocally to the fact that both Accused indeed had reasonable grounds for suspecting that the different sums in lite were derived in part directly from the said crime to wit drug dealing.

The Court therefore found both Accused guilty as charged.

"Accused No 1 was sentenced to pay a fine Rs 100,000/- under each of Count I to V and to pay costs of Rs 500/- and Accused No 2 to pay a fine of Rs 100,000/- under Count I and VI to IX and to pay costs of Rs 500/-."

ICAC v Georges FERDINAND CN: - 111/11

Sentence delivered on 18 April 2011

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

It was averred under counts I to VI of the Information that the Accused obtained various sums of money to make use of his fictitious influence to obtain a benefit from a public body for another person, to wit, to obtain a driving license for another person from the Mauritius Police Force.

Under Count VII of the Information, it was averred that the Accused solicited Rs 7,000/- from another person to use his fictitious influence to obtain a benefit from a public body for that person, to wit, the discontinuance of an enquiry by the Police.

The Accused pleaded guilty to all counts in the Information.

The Court sentenced the Accused to undergo a term of 18 months imprisonment under each count in the Information and to pay costs of Rs 500/-

ICAC v Imtiaz Khan DOWLUT CN: - 778/08

Judgment delivered on 13 April 2011

The accused was charged with Bribery by Public official in breach of section 4 of the Prevention of Corruption Act 2002.

It was averred in the Information that on 06.09.04 along Nicolay Road, Port Louis, the Accused did, whilst being a public official, willfully, unlawfully and criminally, solicit for himself from one Mr Sameer Ahmed Baurhoo a gratification for abstaining from doing an act in the execution of his duties.

He pleaded Not Guilty and was assisted by Counsel.

Among other witnesses, the Prosecution called the Complainant who stated that upon being stopped by the Accused for a road traffic contravention, Accused asked him what could he do for the Accused. The Complainant further stated that by these words he understood that the Accused was asking for a gratification.

After taking into account all the evidence on record, the Court held that it cannot be conclusively determined whether the Accused 'was looking for money' or had even asked or solicited for money, which is even less likely.

The Court found that the Prosecution has failed to prove the essential elements of the offence beyond reasonable doubt. The information against the accused was accordingly dismissed.

ICAC v Marie Natasha RUNGASAMY & Luciano Curtis BOWANEE CN: - 400/09
Ruling delivered on 13 April 2011

Both Accused stand charged with the offence of Money Laundering in breach of section 3 of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) 2002.

At the trial, Counsel for Accused No 1 has raised two objections which are as follows: -

1. Evidence of an previous arrest in a matter where the Accused No 2 was prosecuted before the Intermediate Court but a nolleprosequi was filed by the Director of Public Prosecutions (DPP) should not be admitted in the present matter as same would be tantamount to a review of the decision of the DPP; and

1. Records of convictions subsequent to the alleged offences of Money Laundering should not be admitted as only previous conviction prior to the commission of the Money Laundering offence in the present Information is relevant to enable the Court to make the necessary inference under section 6 of the FIAMLA 2002.

After hearing submissions on both sides, the Court held that by adducing evidence of an arrest in relation to which the DPP has exercised his powers under the Constitution, the Prosecution is not embarking on a request to the Court for a review of the decision of the DPP. The prosecution of both Accused in the present matter has been consented to and referred to the Court by the DPP after he had been communicated with all the material in the present matter.

In relation to the second objection, the Court held that it was appropriate for previous convictions and subsequent convictions to be adduced to enable the Court to infer that

the money in lite was proceeds of crime and evidence of later drug dealing is evidence probative of the allegation that the Accused were laundering drugs money over an extended period of time.

The objections of learned Counsel for Accused No 1 was therefore set aside

ICAC v Jennifer MOOKEN CN: - 830/08

Ruling delivered on 29 March 2011

The Accused stands charged under 21 counts in the Information with the offence of Money Laundering in breach of section 3 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA 2002). It is averred in the Information that the offences for which the Accused is presently charged were allegedly committed from 3rd January 2003 to 23 January 2003. The Accused pleaded not guilty and is assisted by Counsel.

During the course of the trial, the Prosecution sought evidence from a witness, a police officer, as to the outcome of the arrest of the Accused effected on 26 September 2004.

The Defence objected to this question on the ground that it would be unfair to the defence to allow prosecution to adduce evidence pertaining to facts which occurred in 2004, outside the period in relation to which the Accused stands trial in the present matter.

The Court considered the relevant caselaw and held that it agreed with the proposition of the Privy Council that the evidence of later drug dealing is evidence probative of the allegation that the Accused was laundering drugs money but that it would ultimately be for the Court to decide what weight to be attached to this evidence.

The objection of the Defence was set aside and the question of the Prosecution to the Police Officer, in relation to the arrest of the Accused on 26 September 2004, was allowed.

ICAC v Ravindranath JHUGROO CN: - 1343/08

Ruling delivered on 28 March 2011

The Accused stands charged with the offence of making a false disclosure to the ICAC in breach of Section 49(6) of the Prevention of Corruption Act 2002. The Accused pleaded not guilty and is assisted by Counsel.

During the trial, Counsel for the Prosecution moved to amend the Information to add the word "false" so that the wording of the Information would read "false disclosure". Defence Counsel resisted the motion and submissions were offered.

The Learned Magistrate, in deciding whether to allow the amendment or not, took into consideration the actual wording of the Information which included the following: -

"..... did willfully, unlawfully and criminally make a disclosure to an officer, that a public official has been involved in an act of corruption, knowing it to be false."

The Learned Magistrate also took into account several caselaw and provisions of the law and held that: -

"In the present matter as well, i find that the situation is very much the same as in Agathe and in fact the Information is merely defective in that it described an offence known to the law however incompletely. The amendment sought will only comply with the actual wording of the relevant sections."

The Court also found that the Accused could not suffer any prejudice or embarrassed or misled.

The motion of the Prosecution was granted and amendment allowed.

ICAC v Meckraj DOOLUB CN: - 709/10

Sentence delivered on 23 March 2011

The Accused stood charged with the offence of Limitation of Payment in Cash in breach of section 5 of the Financial Intelligence and Anti-Money Laundering Act 2002. The Accused pleaded guilty to the charge and was represented by Counsel.

It was averred in the Information that, on or about 17 September 2003, the Accused did wilfully, unlawfully and criminally make a payment in cash in excess of Rs 350,000/- , that is, a payment of Rs 1,175,000/- in cash to Mr IndursingCheekhooree. The Court sentenced the Accused to pay a fine of Rs 10,000/- and costs of Rs 500/-.

ICAC v Alain Dominique PYDIAH CN: - 979/10

Sentence delivered on 21 March 2011

The Accused was charged under 16 counts in an Information with the offence of Money Laundering in breach of section 3 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA).

It was averred under each count in the Information that the Accused was in possession of a sum of money in his bank account, which sum was derived from a crime.

The total sum of money under all 16 counts amounted to Rs 394,300/-.

The Accused pleaded Guilty to all counts in the Information and was assisted by Counsel.

At the hearing, the statement of the Accused was produced. In his statement, the Accused agreed that he was working at the Mauritius Commercial Bank (MCB) of Rivière des Anguilles.

The particulars of the offence before the Court were that the crime committed was larceny by person in wages, in that he forged signatures of clients of the MCB of Rivière des Anguilles to transfer sums of money electronically and by way of cheques from clients holding money at the MCB into his personal account.

The Court took into account the fact that the Accused had a clean record and the timely guilty plea and sentenced the Accused to a term of 3 months imprisonment which was suspended. Instead, Accused was sentenced to perform 90 hours Community Service.

ICAC v FazalJamalsah CN: - 1185/09

Judgment delivered on 18 March 2011

The Accused was charged with the offence of Bribery of Public Official in breach of section 5(1)(a)(2) of the Prevention of Corruption Act 2002. He pleaded not guilty and was assisted by Counsel.

It was averred in the Information that, on or about 4 June 2009, at Royal Road, Pointe Aux Sables, the Accused wilfully, unlawfully and criminally gave to a public official, CPL Toussaint, a gratification of Rs 100/- so as not to contravene him for a Road Traffic Offence.

Evidence adduced by the Prosecution

The Prosecution called, among other witnesses, CPL Toussaint who deponed to the effect that on 4 June 2009, he was detailed to help children cross the road opposite Pointe Aux Sable Government School. While he was performing his duty, he saw a white van coming from the direction of La Pointe overtook another vehicle on an uninterrupted white line. He signalled the driver to stop, which latter did. He informed the driver, that is, the Accused, that he had committed an offence and that he will have to report him. The Accused asked for a chance. CPL Toussaint asked for the driving license, which Accused handed over to him. While he was noting down the particulars of the license, the Accused asked him anew for a chance and extended his right hand trying to remit something to CPL Toussaint. He asked Accused what was in his hand to which Accused replied "prendsadité la, laisse moi aller". He asked Accused what he meant and Accused told him that it was a Rs 100/- note and to take it and let him go. CPL Toussaint took the note and informed the Accused that he was trying to bribe him. He took the Accused to the Police Station where the Rs 100/- note was sealed in an envelope and an entry was made in the Diary Book.

The Prosecution produced the Rs 100/- note as exhibit as well as the Diary Book Entry.

Evidence adduced by the Defence

The Accused deponed under solemn affirmation and denied the charge. The Accused agreed that he was stopped by CPL Toussaint for a Road Traffic Contravention and that he asked for a chance. He averred that he handed over his license to CPL Toussaint but did not know how a Rs 100/- came out together with his license from his pocket and fell in front of CPL Toussaint. Latter then picked up the Rs 100/- note and said to him that he was trying to bribe him.

Decision of the Court

The Court found that it could believe the version of CPL Toussaint who deponed simply with no attempt at embellishment and this despite attempts by the Defence to attack his credibility. The Court also found that most of the material part of CPL Toussaint's evidence has not been rebutted.

The Court further held that it was unimpressed by the testimony of the Accused and that latter's version as to the sudden appearance of the Rs 100/- note was far-fetched, if not illogical.

The Court therefore found that the Prosecution had proved its case beyond reasonable doubt and found the Accused guilty as charged.

Sentence delivered on 29 March 2011

The Court took into account the seriousness of the offence and also the fact that the Accused had a clean record and sentenced the Accused to 3 months imprisonment. However, the Court ordered that the sentence be suspended pending the filing of the Suitability Report.

On 09 May 2011, the Suitability Report was filed and the Accused was ordered to perform Community Service for a period of 90 hours.

ICAC v Ismael GOOLAMALEE CN: - 1737/10

Sentence delivered on 11 March 2011

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

It was averred in the Information that, on or about 12 June 2008, the Accused did wilfully, unlawfully and criminally accept a payment in cash in excess of Rs 500,000/-, that is, he accepted sum of Rs 1,150,000/- in cash as withdrawal.

At the hearing of the present matter, the Prosecution produced the statement of the Accused in which the Accused agreed that the Cashier at the Bank refused to give him Rs 1,150,000/- in cash but proposed to give him the said amount on an Office Cheque, which Accused refused and insisted vehemently to be paid in cash. It was only then that he was remitted the amount in cash.

On 11 March 2011, the Learned Magistrate, after taking into account the circumstances of the case, sentenced him to pay a fine of Rs 100,000/- and to pay costs of Rs 500/-.

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

Ruling delivered on 10 February 2011

The Court was called upon by Learned Counsel for the Defence to rule that the statement given by the Accused No 2 on 14 November 2006 was inadmissible in view of the fact that it was obtained following promises made by a person in authority, namely by Senior Investigator Audit as well as through oppression and duress by the same officer.

The motion regarding the admissibility of the said statement of Accused No 2 revolves around the issue of immunity.

The Court held that a person of the calibre of the Accused No 2, who was the General Manager of the DWC, could not be under the impression that he could benefit from immunity. There was nothing in the evidence that suggests that the Accused could have mistakenly taken it that he could be granted immunity or that immunity was applicable to him. The suggestion that Accused No 2 was hoping to have such an advantage is

untenable.

In relation to the issue of oppression, the Court went on to hold that it had the opportunity to watch the Accused for a considerable length of time and found that he was not somebody who can easily be impressed. The Court therefore held that, in the circumstances, there was no oppression exercised or hope of advantage meted out to Accused No 2 by the ICAC.

The Court therefore held that the prosecution had proved beyond reasonable doubt that the impugned statement was not made following promises made by a person in authority, that there was no oppression and no duress exercised by SI Audit. The Court accordingly held that Accused No 2 voluntarily wrote his statement on 14 November 2006 when he was assisted by Counsel. His statement was therefore admissible. The Motion of the Defence was accordingly set aside.

ICAC v N.U.Peerboccus& Anor CN:- 1299/09

Ruling delivered on 09 February 2011

The Accused parties stand 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 2002). The offences alleged to have been committed by the Accused took place on 09 November 2004.

Section 5 of the FIAMLA 2002 as it stood at 2004 reads as follows: -

5. Limitation of payment in cash

(1) Notwithstanding sections 30 and 31 of the Bank of Mauritius Act, 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.

(2) Subsection (1) shall not apply to an exempt transaction.

The above section was amended by section 11 of the Finance Act 2006 by increasing the limit for effecting payments in cash from Rs 350,000 to Rs 500,000. The present Information was lodged in 2009 and averred that the Accused made and received payments of Rs 500,000/- on 09 November 2009 in excess of Rs 350,000.

First Motion

Counsel for the Defence moved that the Information be dismissed since the limit for cash transaction is now Rs 500,000/-. Therefore, the Information does not disclose an offence.

The Court held that this reasoning cannot stand because, firstly, the criminal liability arises when the offence is committed, not when the Information is lodged and secondly only the limit for payments in case was changed by the Finance Act 2006, not the offence. At the time of the commission of the offence the law existed as reproduced above. The offence had not been repealed. Furthermore, the Interpretation and General Clauses Act expressly stated that an amendment shall not affect any liability already accrued. The first motion was accordingly set aside.

Second Motion

The second motion of Defence Counsel is to the effect that since the law stated that the cash payment must be in excess of Rs 500,000 and that the payment effected by the Accused amounted to Rs 500,000/-, the transaction cannot attract liability. The Court held that the Accused had been properly prosecuted for payments in excess of Rs 350,000/-. The second motion was therefore set aside.

ICAC v Jaipraygassen SEENEEVASSEN CN: - 634/08

Judgment delivered on 31 January 2011

The Accused 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). It is averred under this Count of the Information that the Accused, whilst being a Police Constable, obtained Rs 2,600/- from the Complainant in relation to a Warrant of Commitment against the Complainant's daughter.

Under Count II and II of the Information, the Accused is charged with the offence of Bribery by Public Official in breach of Section 4(1)(b) and (2) of the POCA. It is averred under these counts of the Information that the Accused solicited € 500/- and Rs 4,000/- from the Complainant under Counts II and III respectively in relation to a Warrant of Commitment against the Complainant's daughter.

Under Count IV of the Information, the Accused is charged with the offence of Bribery by Public Official in breach of section 4(1)(a) and 2 of POCA. It is averred under this count of the Information that the Accused solicited Rs 4000/- from the Complainant in relation to a Warrant of Commitment against the Complainant's daughter.

The Prosecution adduced evidence to the effect that the Accused was posted to the Warrant Squad of Abercombie Police Station. Two Warrants of Commitment against the Complainant's daughter had been referred to the said Police Station. The first warrant was referred to in 2004 and the second one in 2005.

The first Warrant was in relation to a debt of Rs 3,000/-. The Accused went to the place of Complainant in search of her daughter. Thereat, he was informed by the Complainant that her daughter was now living abroad. The complainant queried as to the purpose of the visit of the Accused. Latter then informed her that there was a

Warrant of Commitment against her daughter and that this will cost Rs 3,000/- for the Warrant. Accused came back to Complainant's place in the afternoon on the same day and told her that the necessary had been done and that she had to give him Rs 3,000/- . Later, Complainant gave Rs 2,600/- to the Accused to pay for the Warrant against her daughter.

In 2005, the Accused came again to the Complainant's place in relation to the second Warrant of Commitment. He solicited € 500/- from the Complainant and further solicited Rs 400/- which was still owed to him in relation to the first Warrant of Commitment. The Accused came later and inquired whether the Complainant was agreeable to pay the amount solicited. He then informed the Complainant that he will come back the next day, but never did so.

The Defence adduced no evidence.

Both Counsel for the Prosecution and Counsel for the Defence offered submissions. Learned Counsel for the Prosecution, from the outset, conceded that no evidence had been adduced to sustain Count III of the Information, and the Court accordingly dismissed the third count of the Information.

In respect of the remaining counts, the Court was of the opinion that the evidence adduced by the Prosecution is to the effect that the money remitted and the amount solicited from the Complainant was for a specific purpose; that is, for the Accused to pay the debt owed by the Complainant's daughter. The Court further held that the corrupt intent was lacking in the present case and that the money remitted and solicited cannot qualify as gratification.

The Court therefore dismissed the Information against the Accused.

The Prosecution has appealed against dismissal of the Information.

ICAC v MohessRamrattan CN: - 558/09

Judgment delivered on 25 January 2011

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

It was averred under the first and second count of the Information that, on 04 July 2007 and 10 July 2007 respectively, the Accused, who was an Inspector of Work at the Road Development Authority (RDA) posted at the Roche Bois Sub-Office, made use of his position to cause materials belonging to the RDA to be delivered at his place of residence by means of transport allotted to the aforesaid sub-office.

The Court took into account all the evidence adduced and held that there were contradictions in the versions given by the witnesses. The Court also considered the version of the Accused that Mr Budhoo, the Complainant, was levelling false allegations against him because of the bad blood between them, which ample evidence had been adduced to support this version. The Court held that this was a fit case to give the Accused the benefit of the doubt. The Court therefore dismissed the Information against the Accused.

ICAC v Tirat MOOSSUN CN: - 1153/07

Judgment delivered on 19 January 2011

Accused was charged with the offence of Conflict of Interest in breach of section 13(2) and (3) of the Prevention of Corruption Act 2002.

13. Conflict of interests

(2) Where a public official or a relative or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.

1. (3) Any public official who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

The Information averred that on 03 November 2004, the Accused, who was then the Lord Mayor of the Municipal Council of Port Louis, took part in the proceedings of the Public Health Committee during which a decision to allocate to his sister a stall at the new market in Port Louis was taken.

The evidence adduced by the Prosecution is to the effect that the Accused, who was then the Lord Mayor of the city of Port Louis from November 2003 to November 2004, sat on various committees and sub-committees together with other councillors and staff of the Municipal Council. As Lord Mayor, the Accused enjoyed the same rights as other councillors during the sittings of the various committees and sub-committees, including the Public Health Committee.

The Public Health Committee (PHC) sitting was to be held on 03 November 2004. The proposed agenda was circulated amongst the members of the said committee before the Meeting of the PHC. The PHC had to allocate vacant stalls at the market of Port Louis and a list of applicants for the vacant stalls was also circulated among the members. The name of Mrs Vimla Callichurn was present on the list. The Prosecution produced the minute of the meeting of the PHC held on 03 November 2004, in which the Accused was present. The minute bears no record of any declaration from the Accused to the effect that he had a personal interest in the matter in as view of the fact that his sister had applied for a stall at the market.

The Prosecution also adduced evidence to the effect that before the PHC sits, a 'small' meeting of Councillors took place and it was then that the Accused recommended that a stall be allocated to his sister. The recommendation was then approved by the PHC.

The Defence called one witness, Mr Veerabadrun, to give evidence on behalf of the defence. Mr Veerabadrun was the chairman of the PHC at its sitting of 03 November 2004. He stated that all members present at the meeting voted for the allocation of a stall to Mrs Vimla Callichurn and that if ever there was any objection, reservation or declaration from any member, this should have been recorded. He conceded that as per the rules laid down in the Local Government Act, whenever a member has a Conflict of Interest, he must declare it both in orally and in writing and if that person makes such disclosure during a committee sitting, this has to be recorded in the minutes. Furthermore, if any person makes such a disclosure, he must inform the committee. Mr Veerabadrun did not remember whether the Accused disclosed his interest that his sister had applied for a stall at the market in Port Louis.

In his statement, the Accused admitted that he knew that his sister had applied for a stall at the market in Port Louis. He however denied the charge and averred that he had disclosed his interest and had left the committee meeting. He stated that he did not disclose his interest in writing as this was not the current practice at the Municipal Council of Port Louis.

Defence Counsel submitted that the evidence only showed that the Accused was present at the said meeting of the PHC on the 03 November 2004 but no evidence of Accused taking part in the proceedings has been adduced.

The Court held that "taking part in the proceedings" must be given a wide meaning. The Legislator's aim was to eliminate any bias or likelihood of bias. Hence, "taking part" would include a lesser participation in circumstances which would give rise to a perception of bias or favouritism. The Court held that the mere presence in such circumstances would, in its view, be caught by section 13 of POCA, the more so given

that the Accused was the Lord Mayor and that his mere presence gave rise to a perception of bias and had an effect on the decision in question.

The Court further held that even the evidence adduced by the Defence tended to bolster the prosecution case.

The Court therefore found the Accused guilty as charged.

Sentence delivered on 31 January 2011

The Court took into account all mitigating factors in favour of the Accused but however held: -

"Apart from the gravity of the acts committed, the Accused's status at the material time constitutes an aggravating factor which in my view calls for a punitive and deterrent sentence."

The Court went further to hold: -

"… a strong signal needs to be sent by the Court to potential offenders that they will not be dealt with lightly if caught."

The Court therefore sentenced the Accused to 6 months imprisonment and to pay Rs 500/- costs.

The Accused has appealed against conviction and sentence.

ICAC V Rama Krishna MUDALIAR CN: - 1182/09

Ruling delivered on 19 January 2011

The Accused 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) and under Count II of the Information, with the offence of Bribery by Public Official in breach of section 4(1)(b) of POCA.

Defence Counsel moved for a stay of proceedings as the provisions of the POCA, more specifically, section 19(4), are unconstitutional in as much as the Director General of the ICAC is appointed by the Executive, that is, the Head of the Government after consultation with the Leader of the Opposition. The Officers of the ICAC are not public officers, but private officers whose terms of employment are approved by the Parliamentary Committee and who investigate into alleged acts of corruption by public officials. He also highlighted that the termination of appointment of the Director General is effected by the Parliamentary Committee composed of partisan members of Parliament; people who have declared interest in political parties. As such, the effect of section 19(4) is tantamount to a denial of the right to a fair trial from an independent body as guaranteed by the Constitution. Defence Counsel submitted that all the proceedings at the ICAC, including all investigations, which are under the supervision of the Director General, are therefore tainted with unconstitutionality. Defence Counsel further submitted that there is concern about the independence of the ICAC in view of the fact that the independence of the ICAC is not provided for under the Constitution and this body has been set up under a mere Act of Parliament. Defence Counsel therefore submitted that the matter has to be referred to the Supreme Court for its interpretation on the constitutionality of investigations by the ICAC.

The Motion was resisted by the Prosecution and Counsel for the ICAC submitted that there was no issue for interpretation by the Supreme Court. He submitted that the Accused stands charged under 2 counts under the POCA. The Information is referred to the Court by the DPP. The POCA imposes the duty on the ICAC to submit all evidence gathered together with its recommendation to the DPP once the enquiry is completed. The DPP will then review and assess all the evidence gathered and upon being satisfied that there is enough evidence to substantiate a criminal case, he refers the matter to the appropriate Court. Counsel for ICAC therefore submitted that safeguards exists

within the legislation setting up the ICAC, namely the DPP and the Supreme Court. He further submitted that the Director General, who is selected from a pool of highly qualified pool of professional, is not under the control of any person or authority and the provisions of the POCA imposes restrictions and limits to what the Parliamentary Committee can do.

Counsel from the DPP's office also offered submissions against the motion of Defence Counsel and stated in clear terms that there is nothing sinister in having officers of a corporate body to investigate into specific offences. He referred to investigations and prosecutions by local authorities into breaches of Public Health Act. The conduct of investigation is therefore not the exclusive realm of the police. Furthermore, by virtue of the delegated powers of the DPP, it would be within the parameters of the Constitution for other investigating bodies to investigate into offences. Counsel from the DPP's office further submitted that the mere fact that the Director General of the ICAC is appointed by the Head of Government after consultation with the Leader of the Opposition does not mean that the investigations by the ICAC should be held unconstitutional. Similarly, the mere fact that the Chief Justice is appointed by the Executive does not fetter the independence of the Judiciary.

The Court endorsed the view of Prosecuting Counsel and held that the present issue is not one which gives rise to a prima facie constitutional point and does not raise any question of interpretation.

The Court held that the POCA has been enacted according to the rules and procedures pertaining to the passing of any legislation. The Court referred to judgments of the Supreme Court and to the Select Committee Report to hold: -"... it is obvious that the ICAC can investigate into specific criminal offence relating to corruption and officers appointed or deputed to act can act legally under an Act of Parliament without any derogation provided by law."

The Court accordingly set aside the motion of Defence Counsel.