

JUDGMENT

PRIVY COUNCIL

Beezadhur (Appellant) v The ICAC and another (Respondents) [2014] UKPC 27- Privy Council Appeal No 0083 of 2013 -Judgment delivered on 07.08.14

On 25 November 2010, the Appellant was convicted by the Intermediate Court of Mauritius for breach of sections 5(1) and 8 of FIAMLA under 5 counts. Section 5(1) of the FIAMLA reads as follows: "... 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". Section 5(2) of FIAMLA reads as follows: "Subsection (1) shall not apply to an exempt transaction". It is to be noted that "exempt transaction" as defined by section 2 of the FIAMLA has been amended with effect from 12 December 2013 by the Economic and Financial Measures (Miscellaneous Provisions) Act (Act 27 of 2013).

The Appellant had been sentenced to pay a fine of Rs. 10,000 under each count and Rs. 500 costs. His appeal against conviction and sentence were dismissed by the Supreme Court on 28 June 2013. The Appellant was granted leave to appeal to the Judicial Committee of the Privy Council ("JCPC") on 29 October 2013.

On 7 August 2014, the Board of the JCPC upheld the decision of the lower court. Two issues were raised namely (i) On which party did the onus of proof lie regarding the application of exemptions under section 5(2) of FIAMLA? ; and (ii) What were meant by the words "lawful business activities" in the definition of "exempt transaction" in section 2 of FIAMLA?

In relation to the first issue , the Board considered section 10 of the Constitution. Section 10(2) (a) reads as follows: "Every person who is charged with a criminal offence-(a) shall be presumed to be innocent until he is proved or has pleaded guilty; ...". Section 10(11) (a) reads as follows: "(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 10(2)(a), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts; ...". The Board noted that section 10 gives expression to a fundamental rule of the common law, namely that the general burden of proof in criminal cases lies on the prosecution. However, that rule is subject to well established exception.

The Appellant contended that (i) in light of the case of **Police v Moorbannoo [1972] MR 22**, section 10(11)(a) above should be treated as placing the burden of proof on the defendant only in respect of matters "peculiarly or exclusively within his knowledge"; (ii) section 10(11)(a) only applies where the "law in question" expressly imposes upon the person charged the burden of proof. In relation to the first contention, the Board did not accept the submission of the Appellant. The Board held that exclusivity of knowledge is not an essential requirement for the application of the exception. In relation to the second contention, the Board held in essence that the relevant law when interpreted in light of the common law principle as enunciated in **R**

v Edwards (1975) Q.B. 27, 39-40, has the effect of placing the burden of proof on the defendant and if that effect is clear from the form of the provision in issue, it does not need to be spelt out in express terms. The Board held that the Supreme Court was right to hold that, in accordance with section 10(11)(a), it was for the defendant to show that the transaction was within one of the exempt categories.

In relation to the second issue, the Board of the JCPC agreed with the Supreme Court that, the Appellant's activities could not be construed within the ordinary meaning of "business activities". The Board held that the wording of the exemption must be looked at as a whole. It is concerned with "business activities" not just business in a loose general sense. The Board held that the emphasis is on the nature and amount of the cash transactions, which must be "commensurate" with the activities of that business which tend to support the Supreme Court's view that exemption is directed at businesses, typically in the retail trade, in which substantial cash transactions are a routine activity as compared to the transactions in the present matter.

Further, the Board held that "Strict control of cash transactions was clearly seen as an important part of the strategy for countering financial abuse. The exemptions were narrowly defined, being directed principally at transactions under the control of the central bank, or between recognized banks and financial institutions. The last category extends the exemption more widely, while still subject to some control by the banks, but it is not surprising to find it limited to businesses with a pattern of cash transactions, as opposed to the public at large." On this issue, the appeal therefore failed.

The Appeal was dismissed.