

Cause Number: 872/2016

**IN THE INTERMEDIATE COURT OF MAURITIUS
[CRIMINAL DIVISION]**

In the matter of:

**INDEPENDENT COMMISSION AGAINST CORRUPTION
(ICAC)**

V/S

MOHAMED HASSAD FIGUE

JUDGMENT

The accused stands charged with the offence of "**Money Laundering**" in breach of Sections 3(1)(a), 6 & 8 of the Financial Intelligence and Anti Money Laundering Act 2002 coupled with Section 44(1), (b) of the Interpretation and General Clauses Act.

He pleaded not guilty to the said charge and he was assisted by Counsel Mrs. G.Dayal at his trial.

Witness 1 Karishma Narayen Foolessur (now Technical Officer at the Mauritius Revenue Authority) deposed and produced 3 out of court statements recorded from the accused on 2 June, 2014 at 10.15 hours, 10 June, 2014 at 09.40 hours and 4 June, 2015 at 09.00 hours – **Docs A-A1-A2**. She confirmed that Omar Washil passed away in 2011 as per the Civil Status Office.

Upon cross-examination she confirmed that a statement was recorded from witness 13 Zaahir Ibrahim Pooloo, the Accountant of Figo Express Co. Ltd. It was confirmed by witness 4 Aveenash Chatooree that all bank transactions were conducted by the said Zaahir Ibrahim Pooloo at the Barclays Bank PLC. She added that several statements were recorded from persons, including witness 2 and her husband during the enquiry but no statement was recorded from the DBM Ltd regarding a loan. She added that on 23 July, 2014 she did record a statement from witness 13 Zaheer Ibrahim Pooloo where the latter said that it was one Omar Waschill who had introduced him to witness 4 Aveenash Chatoory of Barclays Bank PLC regarding loan purposes. She stated that she could not remember if witness 13 had said that it was Omar Waschill who was the person behind Figo Express Co. Ltd.



Witness 11 Senior Investigator Papain deposed and produced an out of court statement recorded from the accused on 17 June, 2016 at 13.20 hours – **Doc A3**. He made it clear that under FIAMLA a bank has the duty to inform the relevant authority of any transaction exceeding 1 million rupees. He confirmed that the accused had signed the documents in relation to the money transfer and it was stated by witness 4 that certain of those documents were signed outside the bank premises by the accused.

Witness 10 represented by Mary Jane Cynthia Chellemben and deputed by the Registrar of Companies deposed to state that as per records Figo Express Co. Ltd was incorporated on 14 September, 2009 and its director and shareholder is Mohamed Hassad Figue and its nature of business is "*Dealer in motor vehicles, spare parts and tyres and agent for import/export*".

Witness 7 Vidya Bhooshan Prakash Tany testified that following a Disclosure Order No. 104891 he was authorized by the Barclays Bank to produce documents in court with regards to the loan application of 1 million rupees made by Figo Express Co. Ltd. He stated that the guarantee offered was a plot of land situate at Brisée Verdière belonging to witness 2 Noorjahan Khodabucus. In 2011 in his capacity as Fraud Investigator at the Barclays Bank PLC he enquired into the matter after witness 2 had made a complaint regarding arrears on the loan for which her land was given as guarantee. Her version was that she had never given her land in guarantee for that loan. His investigation revealed that the said loan was wholly processed by witness 4 Aveenash Chatooree who has since left Barclays Bank PLC. It was also found that the Valuation Report of the land in guarantee and bearing the signature of one Gowtam Saddul was a faked one. The latter had confirmed that the Valuation Report was never issued by him. He produced the following documents:

- A – Faked Valuation Report – **Doc B**
- B – Letter dated 4 November, 2010 – **Doc C**
- C – Application for loan – **Doc D**
- D – Letter from Barclays Bank PLC – **Doc E**.

In cross-examination he stated that the loan was repaid by means of a cheque but could not say who signed it. He confirmed that witness 2 did not sign any document relating to the loan. He added that he was not in position to say if the accused was involved in any money laundering offence.

Witness 8 Devendre Naresh Treebhoobun, retired Bank Officer, deposed to state that following a Disclosure Order served on SBM Ltd he was mandated by SBM Ltd to produce in court a document pertaining to bank account No. 03436200002933 belonging to Mohamed Hassad Figue covering the period of 1 January, 2008 to 18 February, 2009 – **Doc F**. He added that as at 18 February, 2009 the balance was Rs. 4.78 cs and it is dormant since then.

Witness 2 Noorjahan Khodabucus solemnly affirmed to state that she is civilly with witness 14 Mohammud Shakill Khodabucus. In 2009-2010 she was owner of a plot of land of the extent of about 4 perches situate at Royal Road, Brisée Verdière. In 2010 she received a phone call from Barclays Bank PLC informing her that the bank would evaluate her land which had a fixed charge in guarantee for a loan. She maintained that she had never given her land in guarantee for any loan at Barclays Bank PLC. She also

stated that she did not know the accused nor Figo Express Co. Ltd. She was adamant that the signature on Doc E is not hers.

Upon cross-examination she agreed that she had given photocopies of all the documents of her land to her daughter Kushila Mohidin who was projecting to buy the said land. She could not say how those documents reached Barclays Bank PLC and it was later that she became aware that they were used for a loan. She confirmed that Zaheer Ibrahim Pooloo told her not to report the case to police as he would sort it out. It was the latter who told her that he would pay 1 million rupees to Barclays Bank to clear out the loan.

Witness 14 Mohammud Shakeel Khodabucus deposed to say that he was civilly married to witness 2 and he does not own any land. He maintained that Doc E does not bear his signature.

Witness 12 Chief Investigator Mungar testified to the effect that he was the main enquiring officer in the present matter which was reported by witness 2 regarding the fact that her land was used as guarantee for a loan. He stated that as per records the accused is the sole director of Figo Express Co. Ltd. His enquiry has revealed that in 2009 Figo Express Co. Ltd had applied for a loan from Barclays Bank PLC by using 4 faked documents. The loan was granted by Barclays Bank PLC and the money was credited into the bank account of Figo Express Co. Ltd which it transferred into a foreign bank account in the name of Wise Forward Holdings Co. Ltd.

In cross-examination he stated that the accused had told him that he does not know how to read and write. The enquiry did not implicate Zaheer Ibrahim Pooloo although he was named by witness 2. The enquiry has shown that it was the accused who had called at Barclays Bank PLC for the loan. When the accused was confronted with the loan application document he exercised his right to silence. He concluded that the predicate offence was forgery.

Witness 3 Virendra Kumar Mohith deposed to state that in the course of the enquiry by ICAC he produced to it certain documents. He produced in court a document containing an instruction given to the bank to make a payment to Wise Forward Holdings Co. Ltd – **Doc G**. He confirmed that it was witness 4 Aveenash Chatooree who had worked on the loan file at the bank.

Witness 4 Aveenash Chatooree was tendered for cross-examination and he stated that during the period of 2000 to 2010 he was working at Barclays Bank PLC and in 2010 he was posted at the department of SME Banking. In 2010 he did process a loan application for Figo Express Co. Ltd but he could not remember who was its director. He could neither remember if there was any internal investigation concerning that loan following any complaint made by witness 2. He maintained that the said loan application had gone through all the steps before disbursement, including its sanction by the bank.

The case was then closed for the prosecution.



The accused deposed to solemnly affirm as to the correctness of his statements which are on record.

Upon cross examination he stated that parts of his statements are not correct. ICAC had recorded in those statements matters which he had not said and he was ordered to sign them. He agreed that he was the director of Figo Express Co. Ltd.

The defence thereupon rested its case.

I have carefully considered the whole of the evidence on record as well as the submissions of both Learned Counsels.

The charge leveled against the accused as per the present information is with regards to the offence of money laundering.

Section 3(1)(a) of The Financial Intelligence and Money Laundering Act (FIAMLA) reads as follows:

"Any person who engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime."

Section 6 of the same Act provides the following:

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

(2) Any person may, upon single information or upon a separate information, be charged with and convicted of both the money laundering offence and of the offence which generated the proceeds alleged to have been laundered.

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

In the case of **The Director of Public Prosecutions v A.A.Bholah [2011] UKPC 44**, the **Privy Council** held the following:

"The Board has therefore concluded that proof of a specific offence was not required in order to establish guilt under Section 17(1) of ECAMLA. It is sufficient for the purpose of that subsection that it is shown that the property possessed, concealed, disguised, or transferred, etc, represented the proceeds of any crime – in other words any criminal activity – and that it is not required of the prosecution to establish that it was the result of a particular crime or crimes. In the light of this conclusion it follows that a failure to identify and prove a specific offence as the means by which the unlawful proceeds were produced is not a breach of section 10(2)(b) of the Constitution. In the Board's view, that section requires that the nature of the offence of which the accused person must be informed is that with which he is charged, in this case the offence of money laundering.

Proof of a particular predicate crime is not an essential "element" of the offence of money laundering."

It is clear from the evidence adduced that the charge of money laundering has been put to the accused during the enquiry by ICAC. In Doc A2 it is specifically mentioned therein that the accused was suspected of having committed the offence of money laundering whilst being the sole director of Figo Express Co. Ltd as at 14 December, 2009.

It is on record as per evidence revealed by witness 10 Mary Jane Cynthia Chellemben, the representative of the Registrar of Companies, whose unrebutted testimony showed that the accused was the sole director and shareholder of Figo Express Co. Ltd. Moreover, as per Doc A1 the accused has expressly admitted therein of his status in the said company. It is trite to note that Doc A contains averments from the accused about an alleged loan of Rs. 1 M taken from the Development Bank of Mauritius Ltd (DBM) by Figo Express Co. Ltd but this evidence is not concerned with the present charge. However, the contents of the said statement also show the modus operandi operated by the accused in putting up the company and using it as a platform to obtain loans from financial institutions.

In fact, this Court is faced with a money laundering offence committed by the accused involving a sum of Rs. 1 M fraudulently obtained from Barclays Bank PLC by the accused in the name of Figo Express Co. Ltd whereby he used forged documents. Hence, the predicate offence is forgery and making use of forged documents. It is worthy to consider that Doc B is a fake one in that it was never issued by witness 9 Gowtum Saddul, Chartered Valuer, as confirmed by witness 7 Vidya Bhooshan Prakash Tany, the Fraud Investigator at Barclays Bank PLC. This is clear from a reading of Doc C which explicitly states that Doc B did not emanate from witness 9. A simple observation will show that Docs B and C are different in format and style which adds water to the fact that Doc B is fake. It is worthy to note that the guarantee given for the loan of Rs. 1 M from Barclays Bank by the accused as director of Figo Express Co. Ltd was a plot of land situate at Brisée Verdière belonging to witness 2 Noorjahan Khodabucus. The latter was all the way adamant that she never gave her land to secure the loan taken by the accused from Barclays Bank PLC and Doc E does not contain her true signature and that of her husband, witness 14. In fact, it was her complaint that a fraud investigation was carried out by witness 7 which also showed the active participation of witness 4 Aveenash Chatooree in the financial scam.

The present charge is one of money laundering and this is clear that the illegally obtained loan of Rs. 1 M was subsequently transferred by the accused into the account of Wise Forward Holdings Co. Ltd. Doc G dated 11 December, 2009 contains clear instructions regarding that transfer request from the accused to witness 4 and on 14 December, 2009 that transfer was completed into the account of Wise Forward Holdings Co. Ltd by means of US Dollars. Hence, there are reasonable grounds to suspect that an offence of money laundering by the accused has taken place.

At this stage it is apposite to refer to the case of **Jean Marc Dominik Janot Antoine v The State [2009] SCJ 328** where the Supreme Court held the following:

"The mental element 'reasonable grounds to suspect' has been elaborated and explained in the Chambers case of Manraj and Others v ICAC 2003 SCJ 75. We find it



apt to quote and extract of the Learned Judge's judgment which we find appropriate and relevant. It reads as follows:

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

Since, the onus is on the accused to show cause the source of the funds as particularized in the charge, his explanation, as contained in Doc A1, was that it was one Oomar Waschill who was the mastermind behind all the dealings with Barclays Bank PLC. This explanation is unworthy of belief in that all documents produced contain the name and signature of the accused. Further, in the later part of the enquiry by ICAC when documents and incriminating evidence were put to him he simply exercised his right to silence thereby stating that he will speak all in court. In fact, in court his sworn version was that he solemnly affirmed as to the correctness of his statements produced in court and at the same time he stated that part of the contents of those statements were untrue. The testimony of the accused in court is devoid of any belief. In truth and in fact he was very much involved in illegally obtaining the loan of Rs. 1 M from Barclays Bank PLC and subsequently he fraudulently laundered the said sum into the account of Wise Forward Holdings Co. Ltd.

From a due consideration of all of the above observations this Court concludes that it has enough evidence in hand to infer that the sum of Rs. 1 M, as mentioned in the charge in hand, was the proceed of crime.

I, therefore, find the case for the prosecution proved beyond reasonable doubt.

I, accordingly, find the accused guilty as charged under the present Count, as per the information.



Mr. Raj Seebaluck
Vice-President
Intermediate Court – Criminal Division
This 10 June, 2020.