FCD CN: FR/L125/2020

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

ICAC

V

Jaywantee BUNDHOO

JUDGMENT

A. Background

1. Accused is being prosecuted for the offence of Money Laundering (46 Counts) in breach of Sections 3(1)(a), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (the 'FIAMLA'). She pleaded not guilty and was represented by Counsel, Mrs. S. Mootien-Rogbeer.

2. The case for the Prosecution was conducted by Mr. L. Nulliah for the ICAC.

B. Case for the Prosecution

3. SI Papain (witness no.1), senior investigator at the ICAC, is the main enquiring officer in the present case. During the course of the enquiry, she recorded five statements from accused. Those five statements are dated (i) 19th August 2014, (ii) 28th August 2014, (iii) 03rd September 2014, (iv) 11th September 2014 and (v) 15th January 2016 respectively and were produced by her – **Docs C, C1, C2, C3 and C4** refer.

4. SI Papain (witness no.1) also produced:

   (i) a correspondence dated 05th September 2013, from the Mauritius Revenue Authority, to the effect that accused is not registered as a tax payer and that Meeraman Company Ltd, despite being registered as a tax payer, has not filed any return– **Doc D** refers;

(ii) a memo dated 18th October 2013, from the Commissioner of Police, in respect of cases reported against the accused and one Mr. Ramdhany Raghoo – **Docs E, E1, E2 and E3** refer;

(iii) a letter dated 11th September 2013, from the Financial Services Commission, to the effect that (i) accused, (ii) Mr. Ramdhany Raghoo, (iii) Milestone & Company Ltd and (iv) Websun Management & Consultants Ltd are not licensed to carry out any business activities in Mauritius – **Doc F** refers;

(iv) a letter, together with its annexes, dated 19th May 2014, from the Corporate and Business Registration Department of the Registrar of Companies, to the effect that Meeraman Company Ltd was incorporated on 16th January 2012 as a general retailer – foodstuff (excluding liquor) and non-foodstuff (foodstuff predominant), retail sale of clothing and accessories in stores and import and export. Accused is also the director and shareholder of the said company – **Docs G, G1, G2, G3 and G4** refer;

(v) a document dated 05th May 2013, from one Mr. Uday Mohesh (witness no.5), attesting that he had lent Rs. 690,000 to accused on the name of Meeraman Co. Ltd – **Doc H** refers; and

(vi) a document dated 01st March 2013, from one Mrs. Shakuntala Ramtohul (witess no.24), attesting that she had lent Rs. 30,000 to accused – **Doc J** refers.

5. According to SI Papain (witness no.1), the ICAC initiated an enquiry into the present case following an anonymous letter to the effect that accused was illegally collecting money from people by using fraudulent pretences. As part of the enquiry, the ICAC sent a correspondence to the Commissioner of Police to ascertain whether any complaint had been reported against accused. The ICAC also recorded statements from 23 people in the present case. The ICAC's investigation revealed that accused collected a total sum of Rs. 6.9millions from 2012 to 2013 from several people by promising them a return of 40% to 60% on their investment. Accused had told those people that she was in the business of importing and exporting 'sandal' from India to Reunion Island. ICAC's investigation revealed that accused was never into any 'sandal' business. The money collected by accused would go to one Sanathan Raghoo with whom she had an intimate relationship. The said Sanathan Raghoo would thereafter give her money to remit to certain people as profits generated from their investments. The said Sanathan Raghoo was interviewed during the course of the enquiry; he claimed his right to silence and did not give any statement.

6. SI Papain (witness no.1) further explained that the ICAC's investigation revealed that:

   (i) the Rs. 600,000 remitted by Mr. Kanraz Ramnarain (witness no.3) to accused was derived from his business;

   (ii) Mr. Oodaye Monesh (witness no.5), Mr. Rajasingh Rambhujun (witness no.7), Mr. Tasvin Haton (witness no.9), Mrs. Sadna Bahadoor (witness no.11), Mrs. Oumadevi Ramchurran (witness no.12), Mrs. Nanda Ramessur (witness no.13), Mrs. Bhaminee Gobin (witness no.14), Mr. Ganessen Mootoossamy (witness no.18), Mrs. Sanjana Moorgawa (witness no.21), Mrs. Toolseeprasad Doolee (witness no.22), and Mr. Kavidass Ramasami (witness no.26) all invested money with accused and received their investments together with profits, which they thereafter reinvested with accused;

   (iii) there is also nothing to suggest that the money invested by those people were of tainted origin; and

   (iv) those people were being given their capital and profits to make them believe in the genuineness of the 'sandal' business so that they may further reinvest their money.

7. Mr. Kanraz Ramnarain (witness no.3) met accused at her place in 2012. She told him that she was in a business of 'sandal' which she imports from Reunion Island and distribute throughout Mauritius. She showed him some documents including her business card and samples of 'sandal' and told him that he would get the double of his investment. Mr. Kanraz Ramnarain (witness no.3) thereby remitted to accused Rs. 100,000. Accused later gave him Rs. 200,000 representing his capital and profit. Since accused told him that the business was flourishing and that further investments were needed, Mr. Kanraz Ramnarain (witness no.3) continued investing money. He had eventually made an investment of Rs. 800,000 when accused told him that she was running the 'sandal' business together with another person and that the latter was not giving her money to remit to investors. The money Mr. Kanraz Ramnarain (witness no.3) invested is derived from his legitimate business.

8. Mr. Teeluckchand Soondar (witness no.4) also met accused at her place. She told him that she was in the business of 'sandal' which she imports from India and exports to Reunion Island. She showed him her business card and asked him to invest money in the business in return of substantial profit. He invested money and was receiving profits of double the amount invested. This motivated him to reinvest again. When accused told him that there was a big order for which a huge investment was needed, he invested Rs. 600,000. However, he neither got the Rs. 600,000 back nor any profit on this investment. Mr. Teeluckchand Soondar (witness no.4) never saw any business of 'sandal' being operated by accused except for some boxes she showed to him. He conceded that if he knew that the money would go to Mr. Sanathan Ragoo, he would not have invested into that business.

9. As per Mrs. Devika Doorga (witness no.2), Senior Fraud Investigator at the MCB, accused holds a bank account at the MCB bearing number 000023571713 since November 2000. She also produced bank statements in relation to that MCB account for the period December 2006 to January 2014 – **Doc B** refers.

C. Case for defence

10. Accused did not adduce any evidence during the trial. Her version is found in the different statements she gave to the ICAC during the course of the enquiry - **Docs C, C1, C2, C3 and C4** refer.

D. The Submissions

11. Mr. L. Nulliah submitted that accused has confessed to the charge of money laundering in her statement to the ICAC, namely **Doc C3**. Accused also admitted how she lied and convinced people about the 'sandal' business in order to get them to invest their money, which money she would thereafter remit to Sanathan Raghoo. Also, Sanathan Raghoo was giving her money to remit to those people to make them believe in the genuineness of that 'sandal' business in order to make them invest even more. Mr. L. Nulliah finally submitted that in view of the evidence on record, the Prosecution has proved its case beyond reasonable doubt.

12. Mrs. S. Mootien-Rogbeer submitted that although accused admitted having remitted the money she collected to Sanathan Raghoo, all the people were getting their money back together with profits. According to her submissions, business was going fine. The fact that accused collected the money and paid back those people show that she did not have the intention of keeping the money for herself. She relied on the case of **R v GH [2015] UKSC 24** to submit that the monies were not tainted property since they came from a legitimate source and people were getting their money back together with profits which they were reinvesting back again into that 'sandal' business.

13. Both Mr. L. Nulliah and Mrs. S. Mootien-Rogbeer also filed written submissions.

E. Analysis

14. Section 3(1)(a) of the FIAMLA provides:

> *"(1) Any person who - (a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime;*
> ...
> *where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence."*

15. In the present case, the prosecution has to prove that:

(i) accused engaged in a transaction that involved property;
(ii) the property is, in whole or in part directly or indirectly represents, the proceeds of any crime; and
(iii) accused suspected or had reasonable grounds for suspecting that the property is derived, in whole or in part, directly or indirectly from a crime.

(i) Accused engaged in a transaction that involved property

(a) is it a "transaction"?

16. Section 2 of the FIAMLA provides that:

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

17. The legislator has used the word 'includes' whilst the defining the term 'transaction' under the FIAMLA. In **Jugmohun v The State [2010] SCJ 151**, the Appellate Court explained the approach to be adopted when the word 'includes' is used to define a term in a statute. In that respect, it held that:

> *"It is to be noted that in section 30(9) the legislator has used the word 'includes' whilst defining the scope of application of 'public place' and which would be applicable to an offence under section 30(6).*
>
> *Firstly, in adopting the use of the word 'includes' in its ordinary sense, it cannot be construed to be limiting or restricting the meaning of 'public place' only to the places described in section 30(9) of the Act. The current dictionary meaning of 'include' is 'to contain, comprise, embrace as a member of an aggregate, or a constituent part of a whole* ***(Shorter Oxford English Dictionary, 2nd Edition)***.
>
> *'Public place' therefore should normally be given its ordinary meaning as it is understood in its 'usual and most known signification'* ***(Cross, Statutory Interpretation, 2nd edition, page 73 and Maxwell on the Interpretation of Statutes, 12th edition, pages 28-29)***. *In such a case, section 30(9) cannot be read to restrict the application of 'public place' only to those places which are specified therein.*
>
> *The use of the word 'includes' for the purposes of interpreting or defining a word or expression is also used, however, in a technical and legal sense in order to give an extended meaning and scope of application to the word or expression it purports to define. In explaining what is meant by an 'enlarging definition',* ***Bennion in Statutory Interpretation, A. 4th Edition [2002 p. 489]*** *refers to* ***Deeble v. Robinson [1954 1 Q.B 77 at 81-82]*** *to state the following:*
>
> *'The typical form of an enlarging definition is 'T includes X'. This is taken to signify 'T means a combination of the ordinary meaning of T plus the ordinary meaning of X'. In other words the mention of X does not affect the application of the enactment to T in its ordinary meaning.'*
>
> *The use of an enlarging definition is therefore meant to widen the defined term to include matters which may not normally fall within the scope of its ordinary meaning. What the legislator has done under subsection 30(9) is to extend 'public place' not only to places which may or may not 'for the*

time being open to the public' but also to 'doorways and entrances of premises abutting upon any ground adjoining and open to a road.'

***Thornton, Legislative Drafting, 4th Edition**, again emphasizes the extended definition which is achieved by the use of 'includes' by contradistinction with the use of 'means'. He has this to say at p. 148 – ''means' is appropriate where the stipulated meaning is expressed in a complete form and no part of the intended meaning is omitted. The significance to be attached by the reader to the word defined is limited to the stipulated meaning.' 'includes' is appropriate only where the expression of the stipulated meaning is incomplete and part only of the intended meaning is expressed.'*

The object of subsection (9) is to make it plain that for the purposes of the section, more particularly with reference to section 30(6), 'public place' is to be enlarged to include other places which would not be regarded as 'public places' within the meaning which those words ordinarily bear.

It is abundantly clear, therefore, that the term 'public place' is not being exhaustively and limitatively defined in section 30(9) of the Act for the purposes of an offence under section 30(6) of the Act, as was submitted by learned Counsel for the appellant. We are in full accord with the finding of the learned Magistrate that on the proven facts it was established beyond reasonable doubt that the appellant was 'frequenting a public place' as contemplated by section 30(6) of the Act. It has not been questioned that the premises where the appellant was found committing the offence was a restaurant open to the public."

18. In **Land and Agricultural Bank of South Africa v The Minister of Rural Development and Land Reform and Others [2022] ZASCA 133** (applied later in **Constantia Insurance Company Limited v The Master of the High Court, Johannesburg and Others (512/2021) [2022] ZASCA 179**), the Supreme Court of Appeal of South Africa held:

> *"[26] As I have said, s 1 of POCA provides that 'interest' includes any right. This brings the meaning of the word 'includes' to the fore. When used in a definition, 'includes' generally denotes a term of extension. That would be the case where the primary meaning of the term that is defined is well-known and the word 'includes' introduces a meaning or meanings that go beyond that primary meaning. In such a case, the definition would encompass the primary well-known meaning as well as that which the*

definition declares that it shall include. The context may, however, indicate that 'includes' signifies that what follows thereafter constitutes a complete or exhaustive definition of the relevant term. In this sense 'includes' is equivalent to 'means'. See Union Government v Rosenberg Ltd 1946 AD 120 at 127; R v Debele 1956 (4) SA 570 (A) at 572H-573A and 575A-576A; Stauffer Chemical Co & Another v Safsan Marketing and Distribution Co (Pty) Ltd & Others 1987 (2) SA 331 (A) at 350H-351E and De Reuck v Director of Public Prosecutions, Witwatersrand Local Division & Others[2003] ZACC 19; 2004 (1) SA 406 (CC) paras 17-19. The judgment of Langa DCJ in the latter matter is particularly instructive."

[27] The word 'interest' has no such well-known primary meaning. It is a word of wide and vague import. Therefore it is unlikely that 'includes' was intended to add a wider meaning to a primary meaning that itself was in no need of definition. It rather seems that the purpose of the expression 'includes any right' was to define 'interest' more precisely. This is strongly supported by the context of POCA..."

19. In **Bharat Co-Operative Bank (Mumbai) Ltd. v Co-Operative Bank Employees Union [2007] Insc 318 (22 March 2007),** the Supreme Court of India held:

"22. ...

On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition; it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise."
(Underlining is mine)

20. **Professor Crabbe**, in his **Book on Legislative Drafting (First Edition)**, observed:

"In defining words or expressions in legislation, means and includes should be used with great care. Means restricts. It is explanatory. The word or expression defined means what the definition prescribes. Includes, on the other hand, expands. It is extensive. It is exhaustive. It indicates that the word or expression defined bears its ordinary meaning and also a meaning which the word or expression does not ordinarily mean. ...""
(Underlining is mine)

21. The interpretation of the word "includes" has always been a popular subject of legal analysis. When the word "includes" is used to define a term in a statute, the definition to be adopted for that term should be a broad one; it would comprise of both the primary ordinary meaning of that term together with the definition that the legislation stated it should include. The definition of that term is thus enumerative and allows for additional matters beyond those mentioned to be encompassed by that term in the statute. However, there are also situations where the term "includes" can be interpreted more restrictively - **See Land and Agricultural Bank of South Africa (supra).**

22. According to **Black's Law Dictionary**, 'transaction' is defined as:

> *"3. Any activity involving two or more persons"* (Underlining is mine)

23. According to **Merriam-Webster Online Dictionary**, 'transaction' is defined as:

> ***"1 a:** something transacted...*
> *especially: an exchange or transfer of goods, services, or funds...*
> *...."* (Underlining is mine)

24. According to **Oxford English Online Dictionary**, 'transaction' is defined as:

> *"1663-1794 physical operation, action or process*
>
> ***a1608–91** The action of passing or making over a thing from one person, thing, or state to another; transference..."* (Underlining is mine).

25. As can be seen above, 'transaction' is a well-known term which is used in different spheres of our daily lives. As such, its primary ordinary meaning together with the extended definition which the legislator included in section 2 of the FIMALA should be taken into account in order to ascertain its scope of application.

26. In the present case, given the primary ordinary meaning of 'transaction' as described above,

    (i) the act of withdrawing money from a bank account – **Counts 1, 2, 3, 4, 7 & 8**;
    (ii) the act of transferring money from a bank account to another bank account – **Counts 5 & 6**;
    (iii) the act of depositing money in a bank account – **Counts 9 & 10**; and
    (iv) the act of remitting money in cash to another person – **Counts 11 to 46**,

    do amount to a 'transaction' under sections 2 and 3 (1)(a) of the FIAMLA.

(b) <u>the withdrawals/transfers/deposits/remittances and evidence thereto</u>

27. As per **<u>Doc C</u>**, accused stated the following with respect to **Count 27** and **Count 28**:

> *"...Si Mme Ramchurrun dire qui dans le mois de Fevrier 2013 li fine remettre moi Rs 25,000 dans magasin so sœur et qui dans l'espace 20 jour mo fine donne li Rs 40,000. <u>Li capave vrai</u>. Si li aussi dire qui dans le mois Fevrier 2013 a deux occassions li fine investi Rs. 25,000. <u>Ca mo pas rappelle</u>...<u>sa deux ti montant de Rs 25,000 qui madame ramchurn fine donne moi la</u> le meme jour ou so lendemain Sanathan Raghoo .... et mo fine remet li ..."* (Underlining is mine)

28. Although some ambiguity may arise by the accused stating "*Li capave vrai...*" or "*...Ca mo pas rappelle...*", she however unequivocally admits afterwards that two sums of Rs. 25,000 had been remitted to her by Mrs. Ramchurrun and that she remitted that money to Sanathan Raghoo. As such, this admission of accused shows that there had been remittances of money as averred in **Counts 27** and **Count 28**.

29. As per **<u>Doc C</u>**, accused also admitted that Mrs. Ramchurrun remitted to her Rs. 125,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo on 03 April 2013 – **Count 42**;

30. As per **<u>Doc C1</u>**, accused, when confronted with her bank statements for the period 01/12/2006 to 08/01/2014 in respect of her bank account number 023571713 at the MCB, admitted that:

    (i) one Rajasingh Rambhujun made a transfer of Rs. 150,000 in that bank account for the 'sandal' business;

    (ii) one Atmika Singh made a transfer of Rs. 100,000 in that bank account for the 'sandal' business;

    (iii) she used the money received from Rajasingh Rambhujun and Atmika Singh for her personal use, by withdrawing from that bank account:

        (a) on 04 January 2012, at the ATM of Rose-Belle, a sum of Rs. 10,000 - **Count 1**;

        (b) on 05 January 2012, at the ATM of Rose-Hill, a sum of Rs. 8,000 - **Count 2**;

        (c) on 06 January 2012, at the ATM of Rose-Belle, a sum of Rs. 10,000 – **Count 3**;

        (d) on 09 January 2012, at the ATM of Rose-Belle, a sum of Rs. 10,000 – **Count 4**;

(e) on 13 January 2012, at the ATM of Rose-Hill, a sum of Rs. 10,000 – **Count 7**; and

(f) on 17 January 2012, at the ATM of Rose-Hill, a sum of Rs. 10,000 – **Count 8**.

(iv) she also used the money received from Rajasingh Rambhujun and Atmika Singh, by making a transfer from that bank account:

(a) on 09 January 2012, of Rs. 40,000 to the bank account of one Tasvin Haton – **Count 5**; and

(b) on 09 January 2012, of Rs. 40,000 to the bank account of one Rajasingh Rambhujun as representing profits on his investment – **Count 6**.

(v) on 24 February 2012, she deposited a sum of Rs. 100,000 in that bank account. That money was given to her by Sanathan Raghoo as reward for collecting money from people for the 'sandal' business – **Count 9**; and

(vi) on 12 April 2012, she deposited a sum of Rs. 30,000, which she had collected from people for the 'sandal' business, on that bank account– **Count 10**.

31. The above bank transactions are corroborated by accused bank statement which Mrs. Devika Doorga (witness no.2) produced, i.e., **Doc B**.

32. As per **Doc C2**, accused admitted that:

(i) in August 2012, one Baboo Ramnarain remitted to her Rs. 600,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 11**;

(ii) in August 2012, one Nitesh Soondur remitted to her Rs. 600,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 12**;

(iii) in August 2012, one Oodaye Monesh remitted to her Rs. 795,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 13**;

(iv) in November 2012, one Bhaminee Gobin remitted to her Rs. 100,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 15**;

(v) on 24 December 2012, one Bhaminee Gobin remitted to her Rs. 60,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 16**;

(vi) on 09 January 2013, one Mrs. Ramessur remitted to her Rs. 50,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 18**;

(vii) at the beginning of 2013, one Mrs. Sadhna Bahadoor remitted to her Rs. 15,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 19**. The Court notes that, as per the Information under **Count 19**, it is averred that a sum of Rs. 10,000 was remitted to Sanathan Raghoo. This is at variance with the admission of accused as per **Doc C2**. The Court, proprio motu, amends the information under **Count 19** by deleting "10,000" and by replacing it by "15,000" in view of the fact that this amendment does not relate to a material element of the offence but rather to particulars of the "property" as averred in the information. Furthermore, since the sum of Rs. 15,000 reflects accused own admission, this amendment is not likely to cause any embarrassment or prejudice to her. Accordingly, there is no need for accused to plead anew to **Count 19 – See Sookur v The State [2022] SCJ 4**;

(viii) at the beginning of 2013, one Mrs. Sadhna Bahadoor remitted to her Rs. 40,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 20**;

(ix) on 04 February 2012, one Mrs. Ramessur remitted to her Rs. 70,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 23**.

(x) in February 2013, one Mr. Mooratsing remitted to her Rs. 100,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 24**;

(xi) on 26 February 2013, one Mrs. Ramessur remitted to her Rs. 100,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 25**;

(xii) in March 2013, one Mrs. Neera Raghu remitted to her Rs. 300,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 29**;

(xiii) in March 2013, one Mrs. Neera Raghu remitted to her Rs. 205,000 for the 'sandal business' and she remitted that money to Sanathan Raghoo – **Count 30**;

(xiv) in March 2013, one Mr. Karan Raghu remitted to her Rs. 300,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 31**;

(xv) in March 2013, one Mrs. Bhaminee Gobin remitted to her Rs. 20,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 32**;

(xvi) on 06 March 2013, one Mrs. Devianee Joorawon together with Mrs. Devina Phaju remitted to her Rs. 33,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 35**;

(xvii) on 08 March 2013, one Mrs. Ramessur remitted to her Rs. 100,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 36**;

(xviii) on 13 March 2013, one Mrs. Devianee Joorawon remitted to her Rs. 50,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 37**; and

(xix) on 27 March 2013, one Mrs. Ramessur remitted to her Rs. 100,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 38**.

33. As per **Doc C3**, accused admitted that:

(i) in November 2012, one Mrs. Chummun remitted to her Rs. 50,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo- **Count 14**;

(ii) in November 2012, one Mrs. Chummun remitted to her Rs. 100,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 17**;

(iii) as per **Doc C3**, accused stated that *"...mo connais qui ena aussi monsieur Ganessen Mooootoosamy .... et mo fine promet li ene profit de 50% dans 15 jours pou ene investissement de Rs. 100,000. Oui pou sa mo pe dire qui li vrai. Mo ti paye li Rs 150,000 avant delai meme..."*. Although accused does not admit having received Rs. 100,000 from Mr. Ganessen Mootoosamy, she must necessarily have received that sum of money for her to have remitted Rs. 150,000 to Mr. Ganessen Mootoosamy before the agreed date. As such, the Court finds that there indeed had been remittance of Rs. 100,000 to accused by Mr. Ganessen Mootoosamy for the 'sandal' business – **Count 21**;

(iv) one Mr. Ganessen Mootoosamy remitted to her Rs. 100,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 22**;

(v) in February 2013, one Mr. Ramasami remitted to her Rs. 25,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 26**;

(vi) in March 2013, one Mrs. Moorgawa remitted to her Rs. 20,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 33**;

(vii) in March 2013, one Mr. Ramasami remitted to her Rs. 90,000/- for the 'sandal' business and she remitted that money to Sanathan Raghoo- **Count 39**;

(viii) in March – April 2013, one Mrs. Chummun remitted to her Rs. 100,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 41**;

(ix) in April 2013, one Mr. Mooratsing twice remitted to her Rs. 50,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 43** and **Count 44**;

(x) on 09 April 2013, one Mr. Imrit remitted to her Rs. 200,000 for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 45**; and

(xi) in November 2012, one Mrs. Chummun remitted to her a total sum Rs. 50,000 and she remitted that money to Sanathan Raghoo – **Count 46**.

34. As per **Doc C2** and **Doc C3**, accused also admitted that a total sum of Rs. 430,000 was remitted to her on 01 March 2013 by different people for the 'sandal' business and she remitted that money to Sanathan Raghoo – **Count 34**;

35. In respect of **Count 40**, the relevant extract of accused statement is in **Doc C2**. It reads as follows:

> *"...Si Mme Bahadoor aussi dire ... li fine donne moi Rs. 100,000 et qui ...mo d'accord mo fine dire li sa mais ca Rs. 100,000 li pas ti donne moi sa..."* (Underlining is mine)

36. The above extract shows that accused did not admit having received Rs. 100,000 from Mrs. Bahadoor. As such, there cannot have been any remittance of Rs. 100,000 to Sanathan Raghoo under **Count 40** if, a priori, she did not receive that money.

(c) is it property?

37. "property" is defined, in section 2 of the FIAMLA, as:

> *"(a) means property of any kind, nature or description, whether moveable or immoveable, tangible or intangible..."*

38. As per the different Counts of the Information, money was either withdrawn, transferred, deposited or remitted. Given the above definition, money does fall under the category of "property" under section 2 and 3 (1)(a) of the FIAMLA.

(d) <u>the dates in the Information under Counts 11 to 39 and Counts 41 to 46 and admissions of accused</u>

39. The dates mentioned under **Counts 11 to 39** and **Counts 41 to 46** relate to the dates on which accused remitted money to one Ramdhany Raghoo, also known as Sanathan Raghoo. This is not to be confused with the dates on which such money was received, by accused, from people who had invested into the 'sandal' business. As per accused own admissions, all the money she received for the 'sandal' business was remitted to Sanathan Raghoo on the same day or the following day or some days after. Now, any discrepancy between the dates mentioned under **Counts 17, 19, 21, 22, 23, 24 and 25** and the admissions of accused as detailed above, is not material for the following reasons:

I. the rule, as explained in **Beedasy v The State [2011] SCJ 274**, is that the date mentioned in an information is not a material element of the offence. The relevant extract of the judgment is hereunder reproduced:

> *"Relying on the cases of Mootooveeren v R [1919 MR 46], Hurry v The Queen [1958 MR 274] and Marmarot v The Queen [1978 MR 177], learned Counsel for the State has submitted that: -*
>
> *(a) the date averred in the information is not a material element of the offence;*
>
> *(b) the variance in the dates is not material since there was sufficient proof that the incident as narrated by witness No. 2 in fact occurred on the 25 July 2006;*
>
> *(c) the variance in the dates was never made an issue at trial stage; and*
>
> *(d) the appellants, in the circumstances, have not been misled or deceived and prejudiced in their defence by such a variance in the dates.*
>
> *We agree with the submissions of learned Counsel for the State.*

In Hurry v The Queen (above), it was held as follows: - "The fact that the specific date averred in an information is at variance with the evidence is no ground for quashing a conviction, unless the date is an essential part of the offence.""

II. in **Blackstone's Criminal Practice (2015)**, it can be observed that:

"Materiality of date – If the evidence at trial as to date differs from that particularised in the Count, that is not, as a rule, fatal to conviction (Dossie (1918) 13 Cr App R 158; and see Pritchett [2007] EWCA Crim 586, in which Dossie was approved and it was held not to invalidate an indictment that the offence charged was in force for only part of the period mentioned in the indictment).

This position will be different where the allegation as to date is not merely procedural, but may determine the outcome of the case. For example, in some instances the date on which the act occurred will affect the age of the alleged victim, which may be material ...."

III. as per her own admissions, there is sufficient proof that the money, under those Counts, was in fact received by accused and remitted to Sanathan Raghoo;

IV. as per her own admissions, the remittance of money to Sanathan Raghoo was either made on the same day she received the money from people or on the next day or afterwards;

V. as per her own admissions, she collected money from people between January 2012 and May 2013. As such, the remittances to Sanathan Raghoo must necessarily have taken place during that period; and

VI. therefore, accused cannot complain of being embarrassed, misled or prejudiced by any discrepancy as to the dates since she knows very well what case she has to meet. As per her own admissions, remittance of all the money, as specified under **Counts 11 to 39** and **Counts 41 to 46** is unequivocal and that between January 2012 and May 2013.

40. Given that any discrepancy in the dates, as explained above, is not material and that accused cannot say that she has been misled or prejudiced in her defence by any such discrepancy, there is no need for any amendment in that respect – **See Sookur (supra)** in which the Appellate Court held:

> *"As a matter of fact, once she had found that the "inconsistency" she observed neither amounted to a material defect in the information nor had misled the appellant in his defence, she was entitled according to the guidelines in **Venkiah (supra)**, to make the amendments she made and could have even left the information as it was. In that respect, it is appropriate to quote the following extracts of the guidelines:*
>
> *".... (b) if the defect is of no consequence and the accused cannot have been misled in any way, there may not even be cause for amendment at all;*
> .....
> *(d) if there is or can be no likelihood of prejudice, more particularly if it is patent that the accused was all along fully aware of the real charge against him and has had every opportunity of saying what he had to say, there is no need or duty to amend the information for the purpose of enabling the accused to put forward a new defence, ... ""* (Underlining is mine)

41. Therefore, for the reasons above, the prosecution has established, beyond reasonable doubt, that accused did engage in a transaction that involved property under **Counts 1 to 39** and **Counts 41 to 46.**

(ii) the property is, in whole or in part, directly or indirectly represents, the proceeds of any crime

42. It is incumbent upon the prosecution to prove that the sum of money as specified under each Count of the Information is, in whole or in part directly or indirectly represents, the proceeds of any crime. It is trite law that the prosecution need not aver nor prove any crime. Proof of a predicate offence is not an element of the offence of money laundering under section 3 of the FIAMLA. In other words, the prosecution need not identify and prove the specific predicate offence which generated the proceeds.

43. This was explained in the landmark case of **DPP v Bholah [2011] UKPC 44** whereby the Judicial Committee of the Privy Council held that:

> *"33. 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 purposes of that subsection that it be 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 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."*

44. To prove this element of the offence, it suffices for the prosecution to establish that the property represented proceeds of a criminal activity. Here, guidance is found in **R v Anwoir [2009] 1 WLR 980** in which it was held that:

> *"We consider that in the present case the Crown are correct in their submission that there are two ways in which the Crown can prove the property derives from crime, (a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime."*

45. A similar approach may be seen in the following extract of **Audit v The State [2016] SCJ 282**:

> *"We are of the opinion that even if the Magistrate did not refer to the case of **DPP v Bholah [2011] UKPC 44 [2010 PRV 59]**, he rightly came to the conclusion that "when the evidence on record as well as the suggestions that arise from the cross-examination adopted by the Defence are considered, it barely leaves any doubt that the only irresistible inference is that the property under all five counts were derived from a crime. The learned Magistrate went further in his analysis and stated that "even*

though the prosecution was not under any obligation to aver any particular crime, it did so in the present case". Whether at the end of the day, this Court finds that it is not larceny but forgery or any other offence is of no effect whatsoever since the law has explicitly provided that the only requirement is for the prosecution to aver "a crime" and for the Court then to reasonably infer whether the proceeds were proceeds of a crime in the light of evidence on record."

*In **DPP v Bholah (Supra)** the Judicial Committee held that "Proof of a particular predicate crime is not an essential "element" of the offence of money laundering". It is therefore sufficient for the purposes of section 3(1) of FIAMLA that it was shown that the appellant was in possession of property, which is, in whole or in part, directly or indirectly represent the proceeds of any crime that is any criminal activity.*

*We accordingly find that the learned Magistrate rightly applied the law in respect of the predicate offence and at no time he departed from the findings of the Judicial Committee in **DPP v Bholah (supra)**. We therefore find no merits in grounds 3 and 8."* (Underlining is mine)

46. As per her own admissions - **Docs C, C1, C2, C3 and C4** refer - it can be gathered that accused:

(i) formed Meeraman Co. Ltd in 2012 to operate a clothing business and she was a director and shareholder of that company;

(ii) lied to people that Meeraman Co. Ltd had ceased business and that she was now in the business of importing 'sandal' from India and exporting same to Reunion Island;

(iii) showed to people her business card and documents from the Registrar of Companies in order to convince them to invest money by promising them a return on investment of 40-50% within a short lapse of time;

(iv) even repaid some of those people their initial investments plus profits to convince and encourage them to reinvest larger sums of money, which they did;

(v) remitted the money collected to one Sanathan Raghoo; and

(vi) neither her nor Sanathan Raghoo used the money collected to carry any 'sandal' business.

47. As per accused own admissions, the 'sandal' business was nothing but a deceptive facade masking the illegitimacy of the whole operation being carried out by accused and her confederate Sanathan Raghoo. In fact, no 'sandal' business was being carried out by accused or Sanathan Raghoo. The absence of any 'sandal' business makes it obvious that the money being remitted to people, as representing their investment and profit, was nothing more but money collected by accused from different people for the 'sandal business' itself; it cannot be otherwise since there was no 'sandal' business being carried out. The mere fact that several people had been getting back their investment and profit cannot amount to 'good business'. On the contrary, it was a further deceitful stratagem elaborated and used by accused to convince those people to reinvest more money into the bogus 'sandal' business. This was further confirmed by both Mr. Kanraz Ramnarain (witness no.3) and Mr. Teeluckchand Soondar (witness no.4) who were duped by accused to invest money into the 'sandal' business. All this is reflective of the criminal activity operated by accused to get money from people.

48. Counsel for accused relied on the authority of **GH (supra)** to submit that there cannot be an offence of money laundering because the money which was remitted to accused by people and later, by accused to people as representing their investment and profit, was of legitimate origin. The short answer to this is found in the following extract at paragraphs 47 and 50 of the same judgment:

> *"47. The character of the money did change on being paid into the respondent's accounts. It was lawful property in the hands of the victims at the moment when they paid it into the respondent's accounts. It became criminal property in the hands of B, not by reason of the arrangement made between B and the respondent but by reason of the fact that it was obtained through fraud perpetrated on the victims. There is no artificiality in recognising that fact, and I do not see it as illegitimate to regard the respondent as participating in (or, in the language of section 328, entering into or becoming concerned in) an arrangement to retain criminal property for the benefit of another. For that reason, the ruling that the respondent had no case to answer was erroneous and this appeal should be allowed.*
>
> ...
>
> *50. The phrasing of the certified question is not entirely apt because it asks whether the arrangement to receive and retain money in a bank account can be treated as both rendering the property "criminal property" and facilitating its retention, use or control. What rendered the property which the respondent received from the victims "criminal property" was not the arrangement made between B and the respondent, but the fact that it was obtained from the victims by deception. For the reasons explained, the*

arrangement between B and the respondent for its retention is capable of constituting an offence under section 328." (Underlining is mine)

49. The money invested by people with accused in respect of the 'sandal' business may have come from a legitimate source. However, accused came into possession of that money by deception and it thereby made that money tainted in her possession.

50. It is to note that accused is not being prosecuted for being in possession of those monies as proceeds. As submitted by Counsel for accused, this could have potentially put accused in a similar situation as the example given in **GH (supra)** of the thief who *"...is not guilty of acquiring criminal property by his act of stealing it from its lawful owner..."*. The present case is quite dissimilar. Here, the actus reus of accused is her engaging into different transactions after coming into possession of those monies.

51. Counsel for accused also submitted that the prosecution had provided particulars of the crime as being in the nature of a swindling operation and as such had to prove that swindling operation. True it is that the prosecution had stated that the 'crime' is in respect of a case of swindling. But that does not mean that the prosecution had to establish an actual case of swindling to prove that the money was proceeds of a crime – **See Audit (supra)**.

52. An akin situation arose in **Bhuttoo v The State [2018] SCJ 96** whereby Counsel for the appellant argued that since the prosecution had particularised the predicate offence as the selling of tramadol, the prosecution had to prove that the proceeds were in fact derived from the sales of tramadol. The Appellate Court held:

> *"In the present case, the prosecution chose to specify the nature of the criminal activity that is the selling of Tramadol (Topalgic) without prescription. However, it was not incumbent on the prosecution to prove actual selling of Tramadol without prescription in order to establish that the sum Rs 1,896,000 represented proceeds of crime...*
>
> ...
>
> *We have reviewed the evidence on record and we find that the learned Magistrate rightly concluded that there was sufficient evidence before her to infer that the appellants had reasonable ground to suspect that the large sum of money represented the proceeds of crime."* (Underlining is mine)

53. For the reasons above, the only irresistible inference, from the evidence on record, is that the money, as specified under **Counts 1 to 39** and **Counts 41 to 46**, is derived from a crime, i.e., the criminal activity as described above. As such, the prosecution has proved, beyond

reasonable doubt, that the sum of money as specified under each of those Counts is, in whole or in part directly or indirectly represents, the proceeds of any crime.

(iii) <u>accused suspected or had reasonable grounds for suspecting that the property is derived, in whole or in part, directly or indirectly from a crime</u>

54. As for the element of mens rea, the prosecution has to prove that accused suspected or had reasonable grounds for suspecting that the property is derived, in whole or in part, directly or indirectly from a crime. Here, the approach to be adopted in order to determine whether accused had the necessary mens reas was explained in **Antoine v The State [2009] SCJ 328** (approved later in **Audit (supra)**). The Appellate Court, in that case, held that:

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

55. Now, as per her own admissions – **<u>Docs C, C1, C2, C3 and C4</u>** refer – accused all throughout knew that:

(a) the 'sandal' business was a facade that she and her confederate Sanathan Raghoo were using in order to deceitfully convince people to invest money;

(b) there was no such 'sandal' business being carried out by herself or Sanathan Raghoo; and

(c) that all money she got from people was a result of the false existence of a 'sandal' business.

56. Although accused might conveniently convince herself that she was swayed by one Sanathan Raghoo, nevertheless, the fact remains that, being fully aware that there was no such 'sandal' business, she continuously told lies to people to convince them to invest money. As such, she was fully aware that all the monies remitted by people were as a result of her lies and deceit. She was also equally fully aware that, in the absence of any 'sandal' business, the money that was being paid to certain people as representing their investments and profits was money that had been collected through the dubious 'sandal' business itself. As admitted by accused in **<u>Doc C</u>**, she had become greedy after seeing so much money. She kept lying to people and collecting money despite knowing that, at some point in time, there will be no money to repay those people.

57. For the reasons above, it is clear that accused must have reasonably suspected that the money she was collecting from people and which she later either used (through withdrawals from, transfers to or deposits in, a bank account) or remitted to Sanathan Raghoo, were proceeds of a crime. As such, the prosecution has proved, beyond reasonable doubt, that accused suspected or had reasonable grounds for suspecting that the property is derived, in whole or in part, directly or indirectly from a crime

F. Documents produced by SI Papain (witness no.1)

58. SI Papain (witness no.1) produced several documents in respect of which the prosecution specifically undertook to call their respective makers – **Docs D, E (E1 to E3), F, G (G1 to G4), H and J** refer. However, the makers of those documents were not called by the prosecution. The Court needs not embark on an analysis of whether such documents could potentially constitute hearsay evidence since none of those documents has been taken into account, by the Court, in its analysis and conclusion in the present case.

59. The case for the prosecution rests mainly on the admissions of accused in her different statements – **Docs C, C1, C2, C3 and C4** refer. Such admissions have remained unchallenged during the trial and, as such, can safely be relied upon by the Court as evidence against the accused – See **The State v Ruhumatally [2015] SCJ 402**.

G. Conclusion

60. For the reasons above, Court finds that the prosecution has proved it case, beyond reasonable doubt, under **Counts 1 to 39** and **Counts 41 to 46** and accused is accordingly found guilty under those Counts.

61. Also, for the reasons above, the Court dismisses **Count 40**.

A.R.TAJOODEEN
Ag Magistrate of the Intermediate Court (Financial Crimes Division)
23.11.2023