

IN THE INTERMEDIATE COURT (FINANCIAL CRIMES DIVISION)

CN 113/2020

In the matter of:

POLICE

V

OUMESHLALL RAMSARRAN

JUDGMENT

The charge and the applicable law

1. The accused Oumeshlall Ramsarran stands charged under six counts in the information for the offence of money laundering under Section 3 (1) (b) of the Financial Intelligence and Anti Money Laundering Act 2002 (FIAMLA). Section 3 (1) (b) of the FIAMLA reads as follows:

PART II - MONEY LAUNDERING OFFENCES

3. Money Laundering

(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; or*

(b) receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any 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.

(2) A reporting person who fails to take such measures as are reasonably necessary to ensure that neither he, nor any service offered by him, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence or the financing of terrorism shall commit an offence.

(3) In this Act, reference to concealing or disguising property which is, or in whole or in part, directly or indirectly, represents, the proceeds of any crime, shall include concealing or disguising its true nature, source, location, disposition, movement or ownership of or rights with respect to it.

Counts 1 to 6: willfully and receiving (count 1 to 5) and transferring (count 6) property which in whole or in part directly or indirectly represent the proceeds of crime where the accused 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.

2. Count 1 and 2 aver that in or about the month of May and July 2016 respectively at Jumbo Phoenix the accused received Rs 400,000 and Rs 300,000. Count 3 avers that on or about the mid month of August in 2016 at New Trunk Road (NTR) Nouvelle France the accused received Rs 400,000. Count 4 avers that on or about the end of the month of August 2016 at Jumbo Phoenix the accused received Rs 400,000. Count 5 avers that on or about the month of September 2016 at the Parking of Orchard Tower Quatre Bornes, the accused received Rs 400,000. And count 6 avers that on or about the month of November in 2016 at Bonne Terre Vacoas opposite Toyota Mauritius the accused transferred Rs 400,000. According to the information put up by the prosecution, the sums of money (in counts 1 to 6) were proceeds of crime and that the accused had reasonable grounds to suspect that the said money (property) was derived in whole or in part, directly or indirectly from a crime. Another common factor in all six counts is that the accused received (counts 1 to 5) and transferred (count 6) the sums of money by the intermediary of one Fabio Tony Riacca alias 'Ti Gro Chinois' (witness 14 on the prosecution's list of witnesses).



3. The accused pleaded not guilty to the six counts and retained the services of counsel.
4. Before delving into the evidence adduced in the present case, this court finds it appropriate to observe that the facts in issue that the prosecution must prove beyond reasonable doubt rested heavily on the shoulder of one main witness. That witness is witness No 14. His name is Fabio Tony Riacca. He is on the list of the prosecution witnesses. His alias is "Ti Gros Chinois." In the present judgment, this court for reasons of clarity will refer to the latter simply as Riacca.
5. There are no exhibits in this case. The money is only averred in the information.
6. Furthermore, this court also finds it appropriate to lay emphasis on the applicable law that governs the present proceedings. So that, these overriding principles that are applicable in money laundering offences can be applied easily to the facts in issue. In the present matter the accused stands charged under Section 3 (1) (b) of the Financial Intelligence and Anti Money Laundering Act 2002. In Y. Audit v The State [2016 SCJ 282] The Supreme Court reaffirmed the principles outlined in Antoine v The State [2009 SCJ 328] and Manraj and Others v ICAC [2003 SCJ 75] and stated that under Section 3 a court of law should consider the following legal ingredients:

The elements of the offence under section 3 of FIAMLA are:

- (a) possession of property;*
 - (b) in whole or in part directly or indirectly represents the proceed of any crime;*
 - (c) has reasonable grounds for suspecting;*
 - (d) the property is derived or realised;*
 - (e) in whole or in part, directly or indirectly from any crime*
7. In **Audit** because the appellant was prosecuted for being in possession of property hence the actus reus was possession of property as underlined at (a) by the Supreme Court. In the present case, this court is concerned with the act of receiving and transfer, thus in order to successfully obtain a conviction the prosecution must prove under counts 1 to 6 that Oumeshlall Ramsarran has:



- (a) received, transferred property
- (b) in whole or in part directly or indirectly represents the proceed of any crime;
- (c) has reasonable grounds for suspecting;
- (d) the property is derived or realised;
- (e) in whole or in part, directly or indirectly from any crime

The evidence on record

8. On the 15th September 2021 the trial started. The prosecution called witness 13 PC Rangasamy. Witness 13 explained that in connection with a case of importation of dangerous drugs, on the 9th June 2017 as from 11:00 hours up to 13:00 hours a reconstruction exercise took place under the instructions of DI Mohesh (witness 1) in presence of Fabio Tony Riacca and Bar at Law Mr Jean Claude Bibi. Witness 13 took seven photographs. Witness 13 stated that the photos show Mr Fabio Tony Riacca indicating spots at Jumbo Phoenix; New Trunk Road Nouvelle France; the parking slot of Orchard Tower Quatre Bornes; Bonne Terre, Vacoas opposite ex-Toyota Car Showroom; two spots behind a supermarket at Pointe Aux Sables; one spot along Vandermeersch, Rose-Hill. The photos according to witness 13 have been made in connection with the case against the accused Mr Ramsarran. Witness 13 was shown the booklet containing the seven photographs and he solemnly affirmed as to its correctness, identified and produced that booklet and the photographs. The booklet and photographs were filed and marked as DOC A, A1, A2, A3, A4, A5, A6 and A7 respectively. As there was no cross-examination for witness 13. Witness 6 DI Valaydon was called by the prosecution.
9. In examination in chief witness 6 DI valayadon read and produced the three out of court statements of the accused. The first statement is dated 20th July 2017 at 11:30 hrs. The second statement is dated 21st July 2017 at 10:30 hrs. The third statement is dated 25th July 2017 at 11:00 hrs. These statements were marked as DOC B, B1 and B2. In addition to reading out the statements witness 6 explained that the accused was arrested as a result of allegations made by Riacca and one Seechua. In fact, the gist of witness 6 testimony is that the accused is part of a criminal network involved in drugs business. In cross-

examination, witness 6 however conceded that witness 1 Inspector Mohesh is the main enquiring officer and that he (witness 6) had only participated as regards the recording of the accused's out of court statements. Witness 6 conceded he neither enquired into the existence of independent witnesses nor into whether there were CCTV footages available at the different places where the alleged transactions took place between Riacca and the accused. Page 62 of the transcript of the record of proceedings of the court sitting dated 15th September 2021 sums up the testimony of witness 6:

MR S MOHAMED:

Ok; so you did not enquire into that aspect to try and find out what he was saying whether it was true or not because Mr Mohesh did it?

DI VALAYDON

Yes, Your Honour.

10. In re-examination, prosecution sought to elicit from witness 6 details about a newspaper article and scratching in a statement. As witness 6 could not give clear explanations, the prosecution stated that witness 1 would be in a better position to enlighten the court about those issues.

11. On the 9th December 2021, CI Rambaruth witness 7 was called by the prosecution. In examination in chief witness 7 gave evidence to the effect that on the 6th July 2017 he proceeded to the Independent Commission against Corruption (ICAC) where he arrested the accused. He informed the accused about the reasons for the arrest and told the accused that Riacca had remitted a total sum of Rs 2.3 million on different occasions. Witness 7 said that the accused told him: "*mo pas conne sa Riacca la. Tout seki mo pou faire mo pou faire en presence mo avocat.*" The accused was arrested and brought to the ADSU headquarters. In cross-examination, at page 8 of the transcript of court sitting dated 9th December 2012, witness 7 agreed that he is not the enquiring officer in these terms:

A. I was the supervising officer. I was not the enquiring officer, Your Honour.

12. Namely witness 7 was not able to give clear indications regarding the background reasons which lead to the arrest of the accused and whether the arrest was based on "hearsay." In re-examination witness 7 confirmed that Riacca came to the ADSU on his own volition.
13. On the 13th January 2022, the prosecution called three witnesses. Witness 11 PS Yan Sun Fong, witness 1 Inspector Mohesh and witness 15 Shezad Ali Elaheeboccus.
14. In a nutshell the testimony of witness 11 is to the effect that on the 14th July 2017 a confrontation exercise took place at the ADSU headquarters. Witness 1 explained at the outset, the applicable procedure that was put into place prior to exercise being carried out. Witness 11 said that Riacca was accompanied by his bar at law Mr Jean Claude Bibi. Witness 11 added that prior to the exercise taking place, he told Riacca that he has given in connection with the case, he has given a previous statement where he has mentioned one Alex and for the purpose of the enquiry police intent to carry out an identification exercise where I informed him that in his previous statement he has stated that on 6 occasions at different location from May 2016 to November 2016 he remitted to one Alex total sum of Rs 2.3 million rupees suspected to be proceeds of dangerous drugs. And I also informed him that a male person has been arrested.' [sic] [page 4 of the transcript of record of proceedings of court sitting dated 13th January 2022]. Witness 11 confirmed that the accused was accompanied by his bar at law Mr Shakeel Mohamed who came and sat down in the interview room. Witness 11 added that: " Riacca identified the accused by pointing his right four finger towards him and stated li mem sa." [page 5 ibid]. Thereupon the accused said: *Guet bien ki to p dire.*
15. In cross-examination witness 11 was confronted with the fact that he had no knowledge about the newspaper article upon which Riacca based himself to identify the accused prior to the exercise being carried out. Witness 11 admitted that indeed he is unaware of Riacca is lying and if that newspaper really exists. There was no re-examination and witness 1 Inspector Mohesh was called to testify.

The testimony of the main enquiring officer: witness 1 Inspector Mohesh



(a) The reconstruction exercise

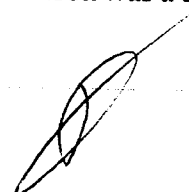
16. In examination in chief on the 13th January 2022, witness 1 firstly identified the album and the photos. Thereafter witness 11 produced a statement. The statement explains the seven photographs which were taken under his instructions. The statement is dated 9th June 2017 was marked as DOC C. Witness 1 confirmed that the reconstruction exercise was carried out with the voluntary participation of Riacca and that the photographs were taken by PC Rungasamy.

(b) The enquiry and Riacca's participation explained by witness 1.

17. According to Inspector Mohess (witness 1) on the 26th May 2017 a man called Fabio Tony Riacca voluntarily comes to the Anti Drug and Smuggling Unit (ADSU) office accompanied by his counsel. Riacca was repenting. Riacca told the ADSU that he wanted to give a statement in relation to certain facts. Riacca referred to the arrest of one Navin Kistnah which he heard on the news regarding the importation of around 180 kg of heroin. Witness 1 explains that Riacca told the ADSU that prior to the arrest of Navin Kistnah, he (Riacca) had transferred money to several persons including the accused upon the instruction of One Ramesh. This had occurred on six occasions. Witness 1 adds that Riacca thereafter showed the ADSU the six different places where the money had been transferred.

(c) Riacca's description of the accused to the ADSU and Riacca prosecuted.

18. Witness 11 at page 15 of the transcript of the record of proceedings of court sitting dated 13 January 2022 underscores that Riacca gave a personal description of the accused in these terms: *Ene zom bient batit, crane rase*. Subsequently, witness 11 produced a copy of an information whereby Riacca had been prosecuted for money laundering. The information was marked as DOC D. Witness 11 added that Riacca has been sentenced to three years imprisonment for these offences. Witness 11 ended his examination in chief by confirming he does not remember if the ADSU enquired into whether the accused was a dog breeder.



Cross-examination of witness 1.

19. In cross-examination witness 1 was confronted with the following aspects of the enquiry.
The salient features of the cross-examination are as follows.

(a) Who is Ramesh?

Witness 1 conceded that he could not confirm the existence of an individual called Ramesh who has remained untraceable. Hence, witness 1 said that he was unaware if the said Ramesh was speaking the truth. In fact, witness 1 added that although the ADSU applied for a judge's order, the ADSU could not recognize any of those numbers as being that of Ramesh.

(b) The bag of money, the newspaper article and independent evidence.

Witness 1 also conceded that he is unaware if Riacca opened the bag and counted the money. Witness 1 also confirmed that the ADSU does not know which newspaper Riacca has referred to in order to identify the accused as one Alex. Witness 1 confirmed that the ADSU was not able to find independent evidence like witnesses or CCTV to incriminate the accused.

20. In re-examination, witness 1 confirmed that Riacca has destroyed the phone with which Ramesh was contacted.

21. On the 13th January 2022, the prosecution also called witness 15 Shezad Ali Elaheeboccus who only confirmed that the accused had bought a car at his car showroom and that at one point in time Riacca was working for him.



The testimony of Riacca and the prosecution closes its case

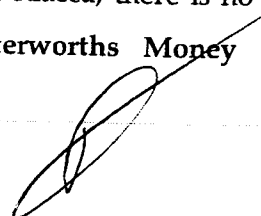
22. On the 21st June 2022, before Riacca was called to testify, the prosecution called Mr Sanjeev Jagarsing who is an animal control officer only to testify if the accused had a dog breeder's certificate. After he was cross-examined the prosecution called witness 14 Mr Fabio Tony Riacca. The latter's examination in chief, this court must point out was very tedious for the prosecution. In fact, witness 14 who is one of the key witnesses for prosecution is supposed to be involved in a drugs network whereby he conveys money which is proceeds of crime. The prosecution's case is also that in his declaration to the ADSU Riacca confirms that he has identified from a newspaper a person to whom he has delivered money previously. He identifies that person whom he knows as Alex. Riacca also tells the ADSU that he has delivered tainted money received from another person called Ramesh to that person named Alex. And it is on the basis of Riacca's denunciations and description, the ADSU learns that Mr Ramsurrun is the person named Alex. In court however, the prosecution's case rested essentially upon refreshing the memory of Riacca. The testimony of Riacca which runs through almost forty-seven pages is essentially about "*mo pas rapelle*" and "*oui*" or "*non*." In other words, Riacca, does not say much unless his memory is prompted each and every time by the prosecution. Riacca confirms the prosecution's questions but with a sense of disinterestedness.

Submissions

23. On the 28th September 2022 and the 10th October 2022 the defence and prosecution submitted lengthily about the issues involved in the present matter. This court has carefully considered the evidence on record and the submissions.

Conclusion

24. As stated at paragraph 7 of this judgment the prosecution must prove all the facts in issue and the elements of the offence. In the present matter, upon reviewing the evidence on record, this court notes that apart from the evidence of Riacca, there is no other direct evidence which incriminates the accused. In **Butterworths Money Laundering**



Law/Division 1 Money Laundering Offences/Chapter 2 Proceeds of Crime Act 2002: the Offences Digested/Criminal Property¹ the following principles have been underlined regarding how to approach the concept of criminal property or proceeds of crime. This court will quote the extract in order to shed light of what amounts to proceeds of crime:

CRIMINAL PROPERTY

[56]

The principal money laundering offences require proof that a defendant has in the specified manner dealt with 'criminal property'. By s 340(3), property is 'criminal' if it constitutes or represents a person's benefit from criminal conduct and the defendant 'knows or suspects' that it constitutes or represents such benefit. The mens rea required therefore is knowledge or suspicion – not dishonesty¹. The property is within scope if it represents such a benefit whether in whole or in part, whether directly or indirectly, by s 340(3)(b).

Therefore, Criminal property is property that was already criminal property by reason of criminal conduct distinct from the conduct alleged to constitute the money laundering offence. If the meaning of 'criminal property' were not limited to property that was criminal property before the money laundering arrangement came into operation, there would potentially be serious consequences for banks and financial institutions, which already had onerous reporting obligations².

¹ See *Montila* [2004] UKHL 50, [2004] 1 WLR 3141.

² *R v GH* [2015] UKSC 24 – Supreme Court.

[57]

The effect of these provisions is that the definition of criminal property has four components:

- (a) *criminal conduct;*

¹ **Editors Drystone Chamber; Andrew Campbell-Tiech, QC and Gavin Irwin Barrister.**



- (b) benefit;
- (c) property that in whole or in part directly or indirectly constitutes or represents benefit;
- (d) knowledge or suspicion on the part of the defendant.

However, the prosecution is not obliged to prove that the property 'emanated from a particular crime or a specific type of criminal conduct'¹. Still less must it prove a 'coincidence between the defendant's view of origin and the origin itself'². Were this otherwise, a defendant who believed he was laundering the proceeds of drug trafficking would fall to be acquitted if the true position was that he was laundering the proceeds of eg people smuggling.

¹ Craig [2007] EWCA Crim 2913.

² Per Scott Baker in Montila [2003] EWCA Crim 3082 – the CA judgment.

25. It is further added in the same Chapter of **Butterworths Money Laundering Law/Division 1 Money Laundering Offences/Chapter 2 Proceeds of Crime Act 2002: the Offences Digested/Criminal Property** that:


THE 'CLASS OF CRIME': ANWOIR AND THE DECISION IN NW

[58]

Albeit that the prosecution does not have to prove a particular crime, it was once thought that the prosecution must at least prove the 'class of crime in question'¹. A differently constituted Court of Appeal determined otherwise:

"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 crime²."

The effect is that the prosecution must prove that the property in question derives from criminal conduct either by evidence showing that it derived from a specific kind (or kinds) of crime (eg money laundering or drug dealing), or by evidence from which a jury would be



entitled to infer that the property can only be derived from crime (the 'irresistible inference'). An example of the latter would be bars of gold bullion hidden in the floor of a plane as it departs from Panama. Note also that there is no requirement that a specific crime be named and proved by the prosecution³.

In *R v Ogden (Neil)*⁴, the court held that, if A, being in possession of a controlled drug, agrees with B to supply it to B (who is aware that the substance in question is a controlled drug), A and B will both be guilty of conspiracy to convert criminal property. The rationale is that 'illegal drugs always represent criminal property'. The court stated that, whilst this would entail every person who buys 'illicit' drugs even for their own personal use also being guilty of an offence under s 327, the prospect of the authorities charging offences under the 2002 Act in such circumstance is unreal, as the 'good sense' of prosecuting authorities would prevail.


1. *NW [2008] EWCA Crim 2*, para 37.

² *Anwoir [2008] 4 All ER 582*. See also *Ahmad v HM Advocate [2009] SCCR 821* for an analysis of the legislative history.

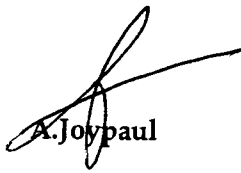
³ *R v Kuchhadia (Kishor Arshi) [2015] EWCA Crim 1252*.

⁴ *[2016] EWCA Crim 6*, *[2016] 1 Cr App R 447*.

26. This court has applied the principles outlined above and those underscored in *Y. Audit v The State [2016 SCJ 282]*. This court notes that from all angles the prosecution has not been able to prove at the very outset that the accused was even present on the location where the alleged transactions occurred. Furthermore, most importantly, none of the prosecution witnesses have even been able to say convincingly that there was money in the bag and that this property in question were indeed proceeds of crime. In fact, Riacca



is not a credible witness and on the basis of his testimony which does not exclude the possibility that he may have an axe to grind, this court finds that it would be unsafe to convict the accused. Furthermore, there are substantial qualms as regards the enquiry itself. In fact, the accused himself was never taken on the spots where the alleged offence occurred. He never attended any reconstruction exercise. A police enquiry is not a "fait accompli" the person must be confronted properly with the case against him. For these reasons, the accused is given the benefit of doubt and the charges against him in the present information are accordingly dismissed.



A. Joypaul

Intermediate Court Magistrate

27.4.23

