

ICAC v N.B Anauth Judgment

2024 INT 226

FCD CN: FR/L28/2022

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

ICAC

V

Nazimah Bibi ANAUTH

JUDGMENT

A. BACKGROUND

1. Under **Count 1** of the Information, accused is being prosecuted for the offence of Money Laundering in breach of **sections 3 (1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act** (the “FIAMLA”) for being in possession of a motor car bearing registration No. 3076 ZV 06 of make Toyota Axio representing proceeds of a crime.
2. Under **Count 2** of the Information, accused is being prosecuted for the offence of Money Laundering in breach of **sections 3 (1)(b), 6 and 8 of the FIAMLA** for being in possession of Rs. 196,324/- in cash representing proceeds of a crime.
3. Accused has pleaded not guilty to both Counts and was represented by Counsel, Mr. R. Rama.
4. The case for the prosecution was conducted by Mr. H. Ponen and Mr. G. Bundhoo for the ICAC.

B. CASE FOR THE PROSECUTION

5. Mr. Julien Anthony Sookun (witness no.8), a Registration and Licensing Officer at the NTA, produced the Registration Certificate of vehicle bearing registration No. 3076 ZV 06 – **Doc A**

refers. According to that Registration Certificate, the previous owner of this vehicle is one Rommaldawo Dawood and ownership of that vehicle was transferred to accused on the 03rd December 2014.

6. According to PS 5637 Rustom (witness no.2), in 2017, one Mrs. Bibi Mooneza Esackjee (witness no.3) made a declaration against accused at Moka Police Station for the offence of swindling. Accused is currently standing trial before the Intermediate Court for the offence of swindling.
7. Three statements recorded from accused on the (i) 27th April 2018, (ii) 17th July 2018 and (iii) 26th July 2018 were produced by Investigator Peerbocus (witness no.1), the main enquiring officer – **Doc B, Doc B1 and Doc B2** refer. He also produced two (2) receipts emanating from Royal Games Casino which accused remitted to him during the course of the enquiry – **Doc C and Doc C1** refer. According to **Doc C and Doc C1**, accused won Rs. 109,120/- and Rs. 69,204/- at Royal Games Casino on the 14th January 2017 and the 13th January 2017 respectively and was paid in cash on both occasions. Investigator Peerboccus (witness no.1) is also the holder of a degree in Accounting and Finance and is occupying his present post at the ICAC since 2008. As part of the enquiry, he carried out a Net Worth Analysis taking into account the version of accused and other information available and which he produced – **Doc D** refers. He conceded that amongst all the items secured from accused place, only motor vehicle bearing registration No. 3076 ZV 06 and the sum of Rs. 196,324/- are subject matter of the present two Counts of the Information. He further conceded that the Net Worth Analysis, i.e., **Doc D**, was not confronted to accused during the course of the enquiry.
8. Mr. Dawood Rommaldawo (witness no.4) is the previous owner of Toyota Axio car bearing registration No. 3076 ZV 09. In November 2014, he decided to change car and left the car with one Sheik Hussein Tasleem Hosenbocus (witness no.5), owner of Dagenham Motors, to have same sold. He later went to Dagenham Motors whereby he signed a deed of sale for the car and was remitted Rs. 325,000/- in his bank account as representing the sale of that car. He also produced the deed of sale – **Doc E** refers and a Copy of Entries in the Register of Motor Vehicles – **Doc F** refers.
9. Mr. Manoj Kumar Matabadul (witness no.6), Manager at Royal Games Casino, confirmed that two payments, as mentioned in **Doc C and Doc C1**, were made to accused on the 14th January 2017 and the 13th January 2017 respectively representing money she won at the Royal Games Casino.
10. Mr. Sheik Hussein Tasleem Hosenbocus (witness no.5), director of Dagenham Motors, explained that Mr. Dawood Rommaldawo (witness no.4) left a Toyota Axio car bearing registration No. 3076 ZV 09 at Dagenham Motors at the end of November 2014 to have same sold. On the 01st December 2014, accused came to Dagenham Motors and decided to buy the

car for Rs. 340,000/- which she paid in cash. She also signed a deed of sale in that respect which Mr. Sheik Hussein Tasleem Hosenbocus (witness no.5) produced – **Doc G** refers.

11. Mrs. Bibi Mooneza Esackjee (witness no.3) is a retired teacher. She is married and has two (2) children. Her eldest son fell ill during his first semester at university and was diagnosed with schizophrenia in 1998. Despite following treatment with private doctors and treatment at the Brown Sequard Hospital, his state of health did not ameliorate. Later, Mrs. Bibi Mooneza Esackjee (witness no.3) thought that his son “...*gagne ene mauvais air, oubien dimoune in capave faire mechanceté are li*”. One day, she saw accused at a bus stop and overheard a conversation accused was having with another person to the effect that she often goes to Madagascar to treat similar health illnesses. She approached accused and told her about her son’s state of health. As accused told her that she treats black magic, Mrs. Bibi Mooneza Esackjee (witness no.3) gave accused her address. To her surprise, accused came to her place on the very same day with a bag containing items which she stated were used to remove black magic. From then on, accused regularly came to see her and asked for money to perform certain rituals and to make also animal sacrifices. Accused even brought her to several places of worship and brought animal heads which allegedly had been sacrificed by accused. Between June 2014 and December 2016, she remitted approximately Rs. 5,000,000/- to accused in order to cure her son from black magic. She lengthily explained how she remitted that money, on numerous occasions and in different amounts, to accused. In that respect, she produced (i) a bank statement from the MCB – **Doc J** refers, (ii) three documents from the Mutual Aid Association – **Doc K, Doc K1 and Doc K2** refer, (iii) a remittance advice from SICOM – **Doc L** refers, (iv) Letter from SICOM – **Doc M** refers, (v) Receipts from Jeweller – **Doc N, Doc N1 and Doc N2** refer, (vi) Statement from HSBC – **Doc P** refers, (vii) another bank statement from MCB – **Doc Q** refers, and (viii) another bank statement from MCB – **Doc R** refers.
12. Mrs. Bibi Mooneza Esackjee (witness no.3) maintained that she did not know accused upon first meeting her. Only later she became aware that accused was a distant family with her. She conceded that because it was expensive, she did not continue the treatment of her son with private doctors. However, she had become desperate for her son’s health and money had no value for her to get her son treated. That is why she did not hesitate to give large sums to accused. She denied having proposed accused to marry her son. She also denied that she was taking revenge because accused did not marry her son. She also explained that she was making regular withdrawals from her bank accounts, as can be seen from her different bank statements, to give money and jewellery to accused to cure her son.

C. CASE FOR ACCUSED

13. Accused deposed under oath and accepted the contents of her statements in **Doc B, Doc B1** and **Doc B2**. She denied having bought the Toyota Axio car bearing registration No. 3076 ZV

09 with money derived from a criminal activity. She explained that she won a jackpot of Rs. 347,000/- at the Senator Casino on the 22nd November 2014 and was paid in cash. She could not get any receipt because Senator Casino told her that the payment had already been erased from their system. However, she has one Mr. Rocves, who was working as security officer at Senator Casino when she had won the jackpot, as witness. According to her, it is with that money that the Toyota Axio car bearing registration No. 3076 ZV 09 was bought. She also denied that the Rs. 196,324/- secured from her place is derived from a criminal activity. She explained that this money is from two jackpots she won at Royal Games Casino for the sum of Rs. 109,000/- and Rs. 69,000/- and for which she had produced receipts to the ICAC. She confirmed that Ricardo Poonosamy is her paramour with whom she has been living with for fifteen years. She denied having taken any money from Mrs. Bibi Mooneza Esackjee (witness no.3). According to her, Mrs. Bibi Mooneza Esackjee (witness no.3) did not approve the fact that she was living with a non-muslim man and instead wanted that accused lives with her. She was adamant that she mentioned this is her statement despite the prosecution confronting her with the fact that she never mentioned in her statement that Mrs. Bibi Mooneza Esackjee (witness no.3) was not agreeable to her living with a non-muslim man. She conceded having brought Mrs. Bibi Moonneza Esackjee (witness no.3) to several places of worship. The bank refused to accept the Rs. 347,000/- in cash that she won as jackpot at the Senator Casino as she had no receipt to that effect. This is why she then decided to buy a car with that money.

14. Mr. Desiré Laval Ricardo Poonosamy is the paramour of accused. They have been living together for more than 10 years and deposed as a witness for accused. He was with accused at the Senator Casino on the 22nd November 2014 when latter won Rs. 347,500/- as jackpot. Accused was remitted that money in cash. The bank refused to take the money as deposit since there was no receipt and as such, they decided to buy a car with that money. They bought a Toyota Axio car bearing registration No. 3076 ZV 09 for the sum of Rs. 340,000/- in December 2014. He is not aware of any Rs. 5.4m that allegedly one Mrs. Bibi Mooneza Esackjee (witness no.3) had remitted to accused over a certain period of time. He also never saw such a big sum of money at home. He conceded having brought accused and Mrs. Bibi Mooneza Esackjee (witness no.3) to several places of worship but Mrs. Bibi Mooneza Esackjee (witness no.3) only gave him money for fuel. He also denied being a mere witness 'de complaisance' for accused.
15. Mr. Jean Paul Rocves also deposed on behalf of accused. He currently works at Pallagames in Rose Hill. In November 2014, he was working as security officer at Senator Casino. His job at the Senator Casino consisted of preparing the casino to receive clients and providing them with necessary assistance when needed. Since accused was a frequent player at Senator Casino, he knew her well. He stated that on the 22nd November 2014, accused won a jackpot and received money in cash for that jackpot. However, he could not remember any name of anyone who

won the jackpot before and after accused had won nor did he provide any amount of the jackpot won by accused.

D. SUBMISSIONS

16. The Prosecution submitted that the version of Mrs. Bibi Mooneza Esackjee (witness no.3) should be believed instead of the version of accused the more so when the witnesses who deposed on behalf of accused were mere witnesses ‘de complaisance’. According to the prosecution, the money with which the Toyota Axio car bearing registration No. 3076 ZV 09 (**Count 1**) was bought and the money secured (**Count 2**) were proceeds of the money remitted by Mrs. Bibi Mooneza Esackjee (witness no.3) to accused to cure her son from black magic.
17. On the other hand, Counsel for accused submitted that the version of Mrs. Bibi Mooneza Esackjee (witness no.3) should not be believed since it defies logic that she has been remitting accused large sums of money over a period of three (3) years amounting to Rs. 5.4m. Counsel also submitted that the Prosecution has not rebutted the fact that accused stated the she won a jackpot at Senator Casino and therefore has not proved beyond reasonable doubt that the properties were proceeds of a crime.

E. THE LAW

18. **Section 3 (1)(b) of the FIAMLA** provides:

“(1) Any person who:

(a) ...; 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.”

19. In the present case, the prosecution has to prove, beyond reasonable doubt, that:

- a. accused was in possession of property;

- b. the property, in whole or in part directly or indirectly, represents the proceeds of any crime; and
- c. accused suspected or has reasonable grounds for suspecting that the property is derived, in whole or in part, directly or indirectly, from any crime.

F. ANALYSIS

a. accused was in possession of property?

- 20. In respect of **Count 1**, the Toyota Axio car bearing registration No. 3076 ZV 09 was bought by accused (**Doc B**) and is registered under her name (**Doc F**). As rightly conceded by counsel for accused in his written submissions, the said car was in possession of accused.
- 21. In respect of **Count 2**, accused has admitted that the sum of Rs. 196,324/- belongs to her (**Doc B**). Again, as right conceded by counsel for accused in his written submissions, that sum of money was in possession of accused.
- 22. As such, it has been proved, beyond reasonable doubt, that accused was in possession of the property as specified under **Count 1** and **Count 2** of the Information.

b. the property, in whole or in part directly or indirectly, represents the proceeds of any crime?

- 23. It is incumbent on the prosecution to prove that the Toyota Axio bearing registration No. 3076 ZV 09 under **Count 1** and the sum of Rs. 196,324/- under **Count 2** of the Information are, in whole or in part directly or indirectly represent, the proceeds of a crime. Here, the prosecution need not aver nor prove any crime, i.e., proof of a predicate offence which generated the proceeds is not an element of the offence of money laundering under **section 3 of the FIAMLA** – see **DPP v Bholah [2011] UKPC 44**.
- 24. The prosecution needs however to prove that the properties represented proceeds of a criminal activity. In **R v Anwoir [2009] 1 WLR 980**, 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.”

25. Similarly, in **Audit v The State [2016] SCJ 282**, it was held that:

*“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)*

26. It is firstly the contention of accused that she never received any money from Mrs. Bibi Mooneza Esackjee (witness no.3). Secondly, it is also the contention of accused that, in any way, the Toyota Axio car bearing registration No. 3076 ZV 09 was bought from money she won at the Senator Casino whilst the sum of Rs. 196,324/- represented money she won at Royal Games Casino. Now, the case of the prosecution rests mainly on the testimony of Mrs. Bibi Mooneza Esackjee (witness no.3). She candidly narrated how her eldest son was diagnosed with schizophrenia in 1998 and remained ill despite following treatment at Brown Sequard Hospital and with private doctors and how one day she overheard a conversation which accused was having with another person at a bus top to the effect that she often goes to

Madagascar to treat people suffering from black magic. That led her to approach accused and to relate her son's state of health to her. Accused affirmed that she indeed treats black magic. She gave accused her address and to her surprise, accused came to her place on the very same day with a bag containing items to remove black magic. From there on, she would meet accused on numerous occasions whereby accused will bring her to several places of worship with a view to remove the black magic. Also, accused would regularly ask her for money and jewellery which she would give to her. The withdrawals she made from the bank can be seen from **Docs J, P, Q and R**. Her testimony as to how she met accused, how accused told her she could cure black magic and how she had been regularly giving money to accused, as described earlier, was given in a clear and coherent manner. She had an unhesitating narration as to what happened between her and accused and how accused was regularly taking money from her to supposedly cure black magic from her son. Her testimony clearly withstood the test of cross examination since she maintained, in an unwavering manner, her account of events. In an attempt to attack her credibility, it was put to Mrs. Bibi Mooneza Esackjee (witness no.3) that she was taking revenge because accused refused to marry her son, an assertion she not only strenuously denied but also further explained that she would never seek to marry her son with anyone due to latter's illness. Indeed, it is difficult for this Court to believe that any reasonable person would try to marry a son having such a serious mental impairment, thought on top of that, to have been caused by black magic. On the contrary, the whole testimony of Mrs. Bibi Mooneza Esackjee (witness no.3) is witness of a mother's struggle to help his son, by all means, to regain his health and whereby marriage of that son was surely the last of her worries. Accused, during her testimony under oath, made a further attempt to attack the credibility of Mrs. Bibi Mooneza Esackjee (witness no.3). She stated that Mrs. Bibi Mooneza Esackjee (witness no.3) was also taking revenge on her because she was unhappy with the fact that accused was living with a non-muslim and wanted accused to live with her. Here, the Prosecution confronted accused with the fact that she never made mention of such a thing in any of her statement to which accused merely stated that she did mention same. A perusal of her statements (**Doc B, Doc B1 and Doc B2**) shows that accused never stated that Mrs. Bibi Mooneza Esackjee (witness no.3) was unhappy with her living with a non-muslim. The Court cannot but conclude that this is yet another lame attempt to cast doubt over the otherwise straightforward and coherent version of Mrs. Bibi Mooneza Esackjee (witness no.3). Indeed, Mrs. Bibi Mooneza Esackjee (witness no.3) attempt to have his son cured from black magic explains why she been withdrawing so much money from different bank accounts to give to accused. It is again perfectly understandable, given her account of events, that Mrs. Bibi Mooneza Esackjee (witness no.3), in her desperation to have her son treated from black magic, saw money as being insignificant. That state of desperation, as explained by her, led her being easily deceived by accused who made her believe that she could cure black magic. Therefore, having assessed both the testimony of Mrs. Bibi Mooneza Esackjee (witness no.3) and that of accused, the Court has no difficulty in believing the version of Mrs. Bibi Mooneza Esackjee

(witness no.3) instead of accused mere denial, under oath, that she did not receive any money from accused to remove black magic.

27. The fact that accused did make Mrs. Bibi Mooneza Esackjee (witness no.3) believe that she could remove black magic from her son, brought items in her bag for removing black magic, brought her to several places of worship and making animal sacrifices are undoubtedly illustrative of a criminal activity which was being used by accused to obtain money from Mrs. Bibi Mooneza Esackjee (witness no.3). It is indeed through this criminal activity that money was remitted to accused in the sum of Rs. 5,000.000/- to accused by Mrs. Bibi Mooneza Esackjee (witness no.3) as per latter's testimony.

28. Now, it is also the contention of accused that the money with which she bought the Toyota Axio car bearing registration No. 3076 ZV 09 was money she had won as jackpot at Senator Casino. She could not produce any receipt since same, according to her, was not available at Senator Casino. She also had Mr. Desiré Laval Ricardo Poonoosamy and Mr. Jean Paul Rocves who deposed as to that jackpot she won. In that respect, accused explained as follows:

*“A. Moti al juste Senator Port Louis le 22 novembre 8 heures entre 9 heures lerla mo jouer lor roulette mais ti enan ene jacpot moti gagner Rs347,000 kitchose lerla mo dir mo monsieur coumsa lundi nous al garde li la bank le temps nous ti al la bank so lundi lerla li dir coumsa ki pas garder penan reçu be jamais moti conner gagne reçu dans casino”
(Underlining is mine)*

29. It is clear from the above version of accused that both her and Mr. Desiré Laval Ricardo Poonoosamy went to the bank to deposit the money but the bank refused to take that money as deposit in the absence of any receipt. Though Mr. Desiré Laval Ricardo Poonoosamy confirmed that he was together with accused when she won that jackpot at Senator Club, however his version as to whom went to the bank to deposit that moeny is diametrically different. He stated that:

“A. Non, mo tout seul ki ti aller.

A. Oui, parski ler mo ti al travail sa, lerla monn garde sa en moi, lerla monn fini telephone, moti dire li bé la banque pe refuser soz-

A. Non pas de suite, après ene 30 à 40 minutes ler mone retourne laba, dans travail, lerla mo dire li coumsa be pas pou capave mette l'argent la, parski bixin reçu, li pas ti coner si bizin ena reçu.” (Underlining is mine)

30. From the above extract, it is the version of Mr. Desiré Laval Ricardo Poonoosamy that he went alone to the bank to deposit the money and he informed accused, by phone, that the bank was refusing to take that money as deposit. The Court is aware that not all inconsistencies will render the testimony of any witness unreliable – See **Saman v The State (2004) SCJ 3**.

31. In **Hauradhun v The State (2010) SCJ 183**, it was held that:

“It is well established that the Court will not outright reject the evidence of a deponent merely because it contains inconsistencies. It has a duty to analyse the whole testimony of the deponent taking into consideration, inter alia, the lapse of time between the alleged offence and the time he gives the evidence, his age, his apparent mental state and his demeanour in Court. The Learned Magistrate has then to decide whether the inconsistencies were so material that the whole of the deponent’s testimony should be rejected; or whether they were such of a nature that they did not affect his credibility...”

32. In **Rajbally v The State (2016) SCJ 340**, it was held that:

“It is not uncommon, before our Courts, for witnesses to give a version in court which, upon close scrutiny, is either inconsistent with or contains certain contradictions in comparison to statements made on previous occasions by him or her. This is not an automatic ground to reject the testimony of the witness in toto. Rather, the situation calls for a close analysis by the Magistrate who is hearing the case.

If the contradictions or inconsistencies are on minor matters, or relate to peripheral issues or relate to matters unconnected with the case and do not affect the substance of the witness’s testimony, the Magistrate can choose to discard or ignore those inconsistencies and contradictions; at the same time, if the substance of the testimony of the witness is credible on the whole, there is nothing wrong for the Magistrate to act on it to convict the appellant.

On the other hand, if the inconsistencies and contradictions are on matters of substance to such an extent that it would render a conviction unsafe, the Magistrate is in duty bound to reject the testimony of the witness and to give the appellant the benefit of the doubt should there be no other evidence to sustain a conviction.

However, the point that we wish to stress at this stage, is that the analysis referred to above should be quite clear in the judgment of the trial Magistrate. It is not sufficient for the Magistrate to relate the facts, or make a few comments or to make imputations that, upon being read in between the lines, would lead to one or another conclusion. The principle of transparency requires that the reader, be it the appellant or the victim or any other person perusing the judgment, should be able to see clearly from it why the Magistrate chose to convict or to give the appellant the benefit of the doubt. This is not to say that the judgment of the Magistrate should be excessively detailed or long; but the reasoning on the issues of inconsistencies and contradictions must be clear.”

33. In **Neeroo v The State (2023) SCJ 116**, it was held that:

“Inconsistencies of any kind or departures from the original complaint cannot invariably be placed on account of the fact that deposing in court is not an exercise of memory test and to simply brush them aside. Where the trial court is accepting a particular version in the face of contradictions and inconsistencies it is the duty of the trial court to explain which part of the witness’ testimony is being accepted and the reasons thereof. It is a rule of thumb that a witness, victim of an attempt against his or her person, is expected to be consistent in the manner the assault was committed and when it comes to the material facts and circumstances leading to the commission of the offence, any inconsistency in the actual perpetration of the impugned act is a factor to be considered against credibility.” (Underlining is mine)

34. Recently, in **Oodally M A v The ICAC and anor (2024) SCJ 355**, it was held that:

“The credibility of a witness should not be assessed in isolation from the other evidence in the case which is capable of throwing light on its reliability.”

35. One would have expected that the version of both accused and that of Mr. Desiré Laval Ricardo Poonosamy as to whom went to the bank to deposit the money to be similar since it is directly linked with the issue of whether a jackpot of Rs. 347,000/- had been won by accused. Unfortunately, Mr. Desiré Laval Ricardo Poonosamy clearly contradicted accused by stating that he went alone to the bank whereas accused stated that she went together Mr. Desiré Laval Ricardo Poonosamy to deposit the money at the bank. Such a contradiction is not merely collateral but goes to the crux of the issue, i.e., was a jackpot of Rs. 347,000/- won by accused.

Both of them could not give a similar account as to what happened after that jackpot was allegedly won thereby rendering that version of accused doubtful and not worthy of belief especially in view of that fact that Mr. Desiré Laval Ricardo Poonoosamy, being the paramour of accused for more than ten years, may have an interest to serve. Furthermore, it is noteworthy that the version of Mr. Jean Paul Rocves cannot help accused since he could not state what amount accused won as jackpot at Senator Club. The fact that he strangely cannot give the single name of any person, apart from accused, who has won a jackpot at the Senator Casino, makes his version further doubtful and unreliable.

36. Accused further contends that the sum of Rs. 196,324/- comes from money she won as two jackpots at Royal Games Casino for the sum of Rs. 109,000/- and Rs. 69,000/- and for which she produced two receipts. It is not disputed by the Prosecution that accused won those two sums of money (**Doc C** and **Doc C1**). What is being disputed by the Prosecution is the fact that, even if we do accept that accused won such monies as per **Doc C** and **Doc C1**, accused was still incapable of having Rs. 196,324/- given the Net Worth Analysis made by Investigator Peerbocus (witness no.1) (**Doc D**). It is noteworthy that this Net Worth Analysis (**Doc D**) was not challenged by Counsel for accused except for the fact that same was not confronted to accused during the enquiry. True it is that this Net Worth Analysis (**Doc D**) was not confronted to accused during the enquiry but it is equally true that Counsel for accused did not object to its admissibility nor did he cross examine Investigator Peerbocus (witness no.1) to show that same is unreliable and that no weight should be attached to it. On the contrary, Investigator Peerbocus (witness no.1) explained that he made this Net Worth Analysis (**Doc D**) from the explanations and figures given by accused in her different statements. As such, the Court is of the view that the probative value of that Net Worth Analysis (**Doc D**) outweighs its prejudicial effect the more so when Counsel for accused had ample chance to challenge its admissibility and/or credibility but chose not to do so. The Court can therefore safely rely on the Net Worth Analysis (**Doc D**). As per that Net Worth Analysis (**Doc D**), it is stated that *“The above analysis clearly shows that Mrs. Nazimah Bibi Anauth is not legally capable of acquiring the above properties as she has insufficient savings and never taken any loan during the period concerned.”* As per that Net Worth Analysis (**Doc D**), the sum of Rs. 196,324/- forms part of the properties which could not have been legally acquired by accused even when accepting that accused won the two sums of money as per **Doc C** and **Doc C1**.

37. Since the version of accused with respect to the money she allegedly won at Senator Casino is not worthy of belief and that the sum of Rs. 196,324/- could not have been legally acquired as per the Net Worth Analysis (**Doc D**), the irresistible inference as to how accused paid for the Toyota Axio car bearing registration No. 3076 ZV 09 and came into possession of that Rs. 196,324/-, is that such monies came from the criminal activity orchestrated by accused, as earlier explained, and to which Mrs. Bibi Mooneza Esackjee (witness no.3) was the victim. As such, the Prosecution has proved beyond reasonable doubt that the Toyota Axio bearing

registration No. 3076 ZV 09 under **Count 1** and the sum of Rs. 196,324/- under **Count 2** of the Information are, in whole or in part directly or indirectly represent, the proceeds of a crime.

c. accused suspected or has reasonable grounds for suspecting that the property is derived, in whole or in part, directly or indirectly, from any crime

38. The prosecution has also the burden of proving 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. As explained in **Antoine v The State [2009] SCJ 328** and approved in **Audit (supra)**:

“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.”

39. In the present case, accused all throughout made Mrs. Bibi Mooneza Esackjee (witness no.3) believe that she could remove black magic from her son. From that false belief, accused was regularly taking large sums of money from Mrs. Bibi Mooneza Esackjee (witness no.3). The Court has no difficulty to conclude that accused must reasonably have suspected that the monies she was taking from Mrs. Bibi Mooneza Esackjee (witness no.3) were as a result of a crime. Indeed, the Toyota Axio car bearing registration No. 3076 ZV 09 having been bought from such monies, accused must reasonably have suspected that the said car was proceeds of a crime just as for the sum of the Rs. 196,324/- which she could not legally possess as per the Net Worth Analysis (**Doc D**).

40. Therefore, the prosecution has proved, beyond reasonable doubt, that accused suspected or had reasonable grounds for suspecting that the property, under **Count 1** and **Count 2** of the Information, is derived, in whole or in part, directly or indirectly from a crime

G. CONCLUSION

41. For the reasons explained above, the Court concludes that the prosecution has proved its case, beyond reasonable doubt, under **Count 1 and Count 2** of the Information and accused is accordingly found guilty under those Counts.

A.R.TAJOODEEN

