

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA.**

In the matter of an Application for Leave to Appeal under section 15 of the Judicature Act no 02 of 1978 and in terms of Section 340 of the Code of Criminal Procedure Act No. 15 of 1979.

Court of Appeal Case No:  
**CA LA 03/14**

High Court of Colombo Case No:  
**6130/2012**

Hon. Attorney General,  
Attorney General's Department  
Colombo 12.

**Complainant**

Vs.

Subramaniam Ramani,  
No 36, Kelani Tissa Mawatha,  
Kandy Road, Kelaniya.

**Accused**

**AND NOW BETWEEN**

Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Complainant – Appellant**

Vs.

Subramaniam Ramani

No 36, Kelani Tissa Mawatha,

Kandy Road, Kelaniya.

**Accused – Respondent**

Before: Menaka Wijesundera J.

Neil Iddawala J.

Counsel: R. Bary, DSG for the petitioner.

Anil Silva, PC with Amaan Bandara for the Accused –  
Respondent.

Argued on: 26.09.2022

Decided on: 16.11.2022

**MENAKA WIJESUNDERA J.**

The accused respondent (hereinafter referred to as the respondent) had been indicted in the High Court of Colombo for the offences of

- 1) Knowingly purchasing the property valued at Rs 325 lakhs from the allegedly illegal money from the proceeds of a narcotics transaction,
- 2) Knowingly purchasing the property valued at Rs 265 lakhs from the allegedly monies from narcotics transactions.

And there by committing offences of Money Laundering.

The respondent had pleaded not guilty in the High Court and the trial had commenced and the prosecution had led the evidence of 24 witnesses and had marked documents from P1 to P28.

Upon the conclusion of the prosecution the defense had been called and the respondent had made a dock statement, and the trial judge had acquitted the respondent on 20.6.2014 and the appellant being aggrieved by the instant acquittal of the respondent had filed the instant appeal.

The prosecution had alleged that the property depicted in the deed of sale 1546 and 1510 had been purchased by the allegedly reputed drug dealer namely Methias Velauden alias Mervin in the names of the respondent and two others.

The prosecution alleges that the trial judge has failed to consider the fact that the money spent on the two properties could never have been the lawful monies of the respondent because the business the respondent is engaged in had been a business of manufacturing cement bricks, the hardware and the motor vehicles could never have generated such monies as per the evidence of the prosecution.

The prosecution had further averred that the family business of the respondent had hired a manager and large amounts of monies had transacted through his account which the manager had said in evidence that it had come through the transaction of the respondent's husbands businesses of money lending, the hardware shop he owned and sales of motor vehicles. But he had not been able to say it with charity. But a witness to the deeds mentioned above says that the known businesses of Mervin were the ones mentioned previously.

The daughter of the owner of one of the lands which was purchased by the accused had said that Mervin had brought the monies which transacted in gunny bags.

The notary who attested the deeds had said in evidence that the properties concerned had been undervalued and Mervin had paid for the purchases.

Daughter of Mervin and the accused had said in evidence that the audit report pertaining to the legal businesses of the accused is correct and that is about rupees one hundred thousand a month.

The prosecution had further led evidence to show that the husband of the accused had been arrested and remanded for huge quantities of narcotics but the cases had not been concluded because he had been abducted and not found thereafter.

The appellant further alleges that the trial judge has further misdirected himself in concluding that the appellant has failed to prove that the proceeds used to purchase the two properties above named had been obtained from unlawful activities of the husband of the respondent.

The contention of the respondent is that although the prosecution has alleged that the husband of the respondent is a narcotics dealer it is nowhere proved that it is so, and they further say that at the time of the transaction of the above mentioned deeds the respondent had been nowhere near the place.

Having considered the submissions of both parties now this Court draws its attention to the law pertaining to the instant matter,

Money laundering can be defined as cleansing black money into white or rather legalizing the illegally obtained monies. In the offence of money laundering there are three types of characters who are liable for the offence, they are,

- 1) The principle offender,
- 2) The abettor, who abets by having it in his or her name or,
- 3) The financial institution who has acted rashly or negligently.

The offence of money laundering is defined in the act under section 3 which separates the section into two parts on the mensrea of the accused and that is,

- 1) Knowing or,
- 2) Having reason to believe.

The act does not define the two situations stated above but the Penal Code has defined the term "reason to believe" under section 24 which says as "A person is said to have reason to believe a thing if he has sufficient cause to believe that thing but not otherwise".

But the term knowing has not been defined in the statute hence it has to be gathered from the judicial decisions made so far.

**Anyhow this Court also draws its attention to section 4 of the act which in fact creates a rebuttable presumption on the accused who claims that his money has been acquired legally. Hence the basis of the presumption is that until the contrary is proved and the moment the information is furnished to Court under the instant act the monies referred to is deemed to be illegal until it is proven otherwise.**

**Furthermore under section 3(3) of the act the prosecution does not have to prove the predicate offence.**

**Hence in the instant matter the accused had been indicted for having acquired properties to the value which the prosecution had reason to believe that she had no financial support to earn the same, but there is evidence in the prosecution case that the said properties were purchased from the monies paid by her husband whom the prosecution allege is a big time narcotics dealer.**

**But the Counsel for the accused stated that the prosecution has not proved that he was a big time narcotics dealer. But under section 3(3) of the act the prosecution need not prove the predicate offence.**

The prosecution has shown through many witnesses that monies of big amounts had transacted from the account of the manager of the accused business and the explanation given by the witness is not acceptable and very vague.

**Therefore in that case the presumption under section 4 of the act applies and the burden is on the accused to show that it was acquired through legal means.**

But in the instant matter the dock statement of the accused speaks of the sale of some motor vehicle from which the accused persons husband is supposed to have acquired the money and through money lending, but when considering the amount of the purchases made in the indictment and the notary's evidence who says that the deeds were undervalued the presumption in the act applies.

But the learned trial judge had concluded that the prosecution has not proved that the monies had been earned through illegal means but this Court fervently observes that the prosecution has no burden to prove the predicate offence and furthermore the rebuttable presumption has not been successfully rebutted by the accused.

Hence it is the considered view of this Court that the learned trial judge had misdirected himself on the law pertaining to these matters as such in the interest of justice the judgment of acquittal is hereby set-aside and a retrial is hereby ordered.

The accused in the matter is hereby directed appear to in the High Court on notice.

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**