Ang Jeanette *v* Public Prosecutor
[2011] SGHC 100

Case Number : Magistrate's Appeal No 148 of 2010

Decision Date : 26 April 2011

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Roderick Edward Martin, SC and Mohamed Baiross (Martin & Partners) and Vijay Kumar (Vijay Kumar & Co) for the appellant; Christopher Ong Siu Jin and Magdalene Huang (Attorney-General's Chambers) for the respondent; Goh Yihan (Faculty of Law, National University of Singapore) (Young Amicus Curiae).

Parties : Ang Jeanette — Public Prosecutor

Criminal Law

26 April 2011 Judgment reserved.

V K Rajah JA:

Introduction

1 By employing the latest technology, enormous amounts of money can be easily moved around the globe from country to country and from account to account almost instantaneously. Efforts to track the movement of the proceeds of crime are frequently unsuccessful, given the smokescreens and layering that envelop such transactions and the sophistication of underground banking systems. The concealment of proceeds from crime has in itself become a global industry. Attempts to snuff out money laundering activities are akin to battling the Lernaean Hydra and the international nature of money laundering requires active international cooperation. International conventions have been entered into by many countries and these have found their way into domestic law. In Singapore, the legislative response to international initiatives is presently contained in the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("the CDSA"). Some absorbing issues of statutory interpretation and public policy have been raised in this matter. How has Parliament struck a balance between protecting the civil rights of individuals and the need to protect society from the scourge of money laundering by arming the enforcement agencies with effective legal tools?

2 This case involves appeals by Ang Jeanette ("the Appellant"), a 52-year-old businesswoman, against her conviction and sentence on five charges under s 44(1)(*a*) of the CDSA. The crux of the appeal against conviction pertains to the construction of s 44(1)(*a*) of the CDSA, and in particular, whether, in order to prove a charge under that said section, the Prosecution must establish that the moneys involved were in fact the benefits of criminal conduct. As will be seen, the answer to that question will also shed light on the other elements of the *actus reus* of the offence.

Background facts

3 In her grounds of decision rendered on 1 June 2010 (see *Public Prosecutor v Jeanette Ang* [2010] SGDC 232 ("the GD")), the District Judge ("the DJ") set out (at [3]–[25] of the GD) the salient facts in admirable detail. As an understanding of the facts of this case is necessary to facilitate an

understanding of the legal issues, I will summarise them here.

Fraudulent bank transfers from the United States to Singapore

4 On 15 July 2008, the Commercial Affairs Department ("CAD") received information that funds had been fraudulently transferred from the United States of America ("the US") to accounts in Standard Chartered Bank ("SCB") in Singapore. These accounts were in the names of two Singaporeans, Mesenas Aloysious James ("Aloysious") and Ang Poh Seng ("Poh Seng"). In particular, Poh Seng's account was registered under his sole proprietorship named CityAds Media ("CityAds"). In the course of investigation, it was revealed that Aloysious had also opened accounts in Development Bank of Singapore Limited ("DBS"), Oversea-Chinese Banking Corporation Limited ("OCBC") and United Overseas Bank Limited ("UOB") (together with SCB collectively called "the Singapore banks"), into which large sums of moneys had been transferred from the US. Withdrawals had also been made from all these accounts.

5 The bank records produced by the Singapore banks disclosed that between 13 June and 14 July 2008, the following transactions involving these bank accounts were made:

Date/ Amount received	**Sender / Bank**	**Receiver / Bank**	**Date / Amount withdrawn**
13 June 2008 US$473,000.00 (S$651,001.20)	Mark L Morris / Severn Savings Association, Maryland	Aloysious / DBS	13 June 2008 S$650,000.00
3 July 2008 US$343,897.00 (S$466,142.38)	James McCormick / Citibank NA, New York	Aloysious / UOB	3 July 2008 S$466,142.38
10 July 2008 US$894,871.17 (S$1,211,208.13)	Larry R Andrews / Orion Bank	CityAds / SCB	10 July 2008 S$1,211,208.12
11 July 2008 US$503,031.00 (S$679,091.85)	Larry R Andrews / Orion Bank	Aloysious / SCB	11 July 2008 S$679,091.00
14 July 2008 US$61,231.98 (S$82,683.79)	Richard D Kippes / Wachovia Bank, Philadephia	Aloysious / OCBC	14 July 2008 S$82,683.79

6 At the trial, Michael A Nail ("Nail"), a Special Agent with the US Federal Bureau of Investigation ("FBI"), who was the lead investigator in a FBI investigation concerning several money transfers from the US to the Singapore banks' accounts, gave background information as to how the moneys found their way into the subject Singapore accounts. His testimony, which was not challenged by the Appellant's solicitors, provides a compelling narrative detailing how a few manipulative individuals carried out an audacious banking scam and then moved the proceeds of their crimes across the globe in a bid to disguise the origins of the moneys.

7 In December 2007, the FBI received a complaint from a victim that his Home Equity Line of Credit ("HELOC") account had been compromised by fraudsters who had wire-transferred US$280,000 from his HELOC account. A HELOC loan is typically obtained by consumers in the US on the value of their homes and is usually used to obtain money for emergency funds, college expenses and home repairs. This investigation revealed that Tobechi Onwuhara ("Tobe") had called the victim's bank, impersonated that victim's identity (using call cards which concealed the phone number of the caller) and then wire-transferred US$280,000 to a bank in Hong Kong. Further investigations revealed that fraud on a massive scale involving several other accounts had been perpetrated in similar fashion. Tobe and Michael Walters ("Michael") had conspired to fraudulently wire-transfer large amounts of money from the accounts of several hundred victims. The amount of money transferred abroad amounted to several millions of US dollars. Some of those wire transfers were made to the Singapore banks' accounts opened in the names of Aloysious and Poh Seng and are reflected in the table at [5] above. Roland James Kesslar ("Kesslar") was another Singaporean who featured in Nail's investigations.

8 As a result of Nail's investigations, nine persons who were responsible for wiring moneys for Tobe have been apprehended and sentenced in the US. Michael and Tobe remain at large while Kesslar was convicted in Singapore of an offence under s 39 of the CDSA on 4 August 2009 and fined $10,000.

The Appellant's involvement

9 The Appellant is married with two children. Her highest educational qualification is the passing of the Singapore 'A' Level examination. She has been in business for 20 years and was at the material time running a modest retail trade store called "The Gift Shop". Her store was at a split unit in Brooke Road, for which she paid S$550 in rent per month. It is material to also set out her financial situation. She had a POSB account which had a balance of some S$20,000 as at April 2008 but that balance dropped to S$6,515.12 in July 2008.

10 The Appellant's brother, Richard Ang ("Richard"), had been released from prison in 2006. He lived with her for a while after his release but left sometime in July 2006. The Appellant knew he was overseas but did not know exactly where. On 13 June 2008, Richard called her, saying that he was in trouble and needed her help. He told her that one "Mike" would call her shortly and she was to take instructions from him regarding receiving money from someone and remitting it overseas. When she queried him what the money was for and whom she would be remitting it to, he told her not to worry and that he would talk to her later. Shortly after that, she received a telephone call from someone with an American accent who introduced himself as "Mike". Mike instructed her to proceed to the DBS branch at Shenton Way and meet someone called Aloysious. Even though she did not know who Aloysious was, she complied with Mike's directions and met Aloysious as instructed. There, in her presence, Aloysius withdrew money, placed it in a bag, and asked her to carry the bag as he had a limp. They got into a car and Aloysious counted the money, kept some and then handed the balance to her, telling her to wait for further instructions. She later received a call from Mike who instructed her to remit the money through any remittance agent whom she was familiar with, using details that she received via an SMS text message. She went to a money-changing and remittance company at Parkway Parade, Yakadir Pte Ltd ("Yakadir"), and made two remittances to Michael, splitting up the remittances as instructed by Mike. She was not paid for these remittances and did not tell her husband about them.

11 On 3 July 2008, she received another request from Mike to remit more money. Though she was initially reluctant, she later acceded to his request when he said that it would be helping Richard and

added that "there would be something in it" for her. Acting upon Mike's instructions, she contacted Aloysious and met him at the UOB branch at Battery Road. In the bank, Aloysious passed her the money and they went to her car where Aloysious counted the money, kept some and passed the rest to her. She proceeded to a branch of OCBC and deposited the money into Yakadir's account with OCBC. She called Yakadir and instructed them to remit the money to Michael in Indonesia. Mike told her to keep the balance of $50,000 which he would get from her later. The next day, she met Mike and passed him that sum of money in an envelope, out of which he gave her two $1,000 notes. Mike told her that Richard was fine. In her statements to CAD, she said that at that time, it did cross her mind that it was "fishy money" but she "put it out of [her] mind". She also stated that Aloysious (from whom she had received the moneys) had not offered any explanation for the money, stating further that she "did not ask him [*ie*, Aloysious]" and "didn't want to know". [note: 1]

12 Her next encounter with Mike and Aloysious was on 10 July 2008. Following Mike's instructions on the telephone, she met Aloysious at Serangoon Gardens. Aloysious told her that he had trouble cashing a cheque at the SCB branch there and asked her to send his companion and him to the SCB branch at Battery Road. She did so. After Aloysious and his companion were done at SCB, she went back to her car with them. Aloysious passed her an envelope, telling her that it contained "a million plus". Mike then gave her further instructions on the telephone to bank in the money in two deposits. Pursuant to those directions, she proceeded to an OCBC branch near the SCB Battery Road branch to bank in two amounts of cash (S$546,207.80 and S$478,100.00) into Yakadir's OCBC account and returned home with the remaining cash. Mike subsequently called her, telling her to take S$3,000 out from the remaining cash and give him the balance. She took the S$3,000 out, left it at home and went to Yakadir where she received US$350,000 (equivalent then to S$478,100). She then met Mike at Marriott Hotel where she handed him the US$350,000 and some S$120,000.

13 The next day, on 11 July 2008, Mike told the Appellant on the telephone that there was "one more pick up". Although she thought this was strange, since he was in Singapore and presumably could remit the money himself, she followed his instructions and arranged to meet Aloysious at the SCB branch at Battery Road where Aloysious gave her an envelope saying, "All yours." She once again proceeded to Yakadir and remitted S$580,606 to Michael in Indonesia as instructed. Instead of using her own name for this transaction, she used Richard's name, explaining at trial that she was "getting fed up and ... did not want to use [her] name anymore as [she] was uneasy that [she] may have problems with the 'tax man'". She then met Mike again at Marriott Hotel and handed him a sum of money between S$50,000 and S$60,000. When she asked him why he did not remit the money himself, his reply was that he did not drive and it was inconvenient to use a taxi. She "half believed" his answer, accepting that it was inconvenient to use a taxi while having reservations as to his other reply.

14 She received her final assignment on 14 July 2008 when Mike called her from overseas. She told him that "this was getting a bit too far"; he assured her that "this would be small and [the] last one". She informed him that she did not wish to remit any more money and that she would not use her name for further remittances. She met Aloysious around lunch time at Alexandra Village where he handed her an envelope and told her that the amount was about S$70,000. She held on to the money under Mike's instructions until he called her around 4.00pm and asked her to change the money into US dollars. She converted it into US$51,000, leaving some loose change in Singapore dollars which she kept. At around 8.00pm in the evening, Mike called her again and told her to meet someone called "James" at a hotel at Kitchener Road at 10.30pm. Meeting "James" for the first time, she passed him an envelope containing the US$51,000. That was the last she heard from Mike. She later met "James" again in the police lock-up and "James" turned out to be Kesslar.

15 On 21 July 2008, Aloysious called her and told her that there was trouble, meaning that he had

been "picked up by the police and released". She immediately threw away her mobile phone but kept the SIM card, as she was afraid that the phone would "connect [her] to Aloysius [*sic*] and the rest".

Telephone records

16 The above facts were largely disclosed by the Appellant in her statements to CAD. The information about telephone calls that she had made to and received from Aloysious (such as the date and time of such calls) was corroborated by her mobile phone records. Numerous calls from three telephone numbers with a "60" prefix were received on Aloysious's mobile phone. Calls were made and text messages were sent to those same telephone numbers. Calls from those telephone numbers were also received on the Appellant's mobile phone on the dates on which she stated she had received calls from Mike.

17 Interestingly, her records also showed that she had received calls on her mobile phone from a telephone number on various occasions in June and July 2008. Messages from this same telephone number were received in Aloysious's mobile phone, including messages which read, "Sender Larry R. Andrews ... USD 894,879.17 to CityAds Media from Orion Bank ..." (on 10 July 2008) and "Same sender Larry R. Andrews same Orion Bank ... USD 503,056" (on 11 July 2008). One of the messages sent to the telephone number read, "Is yr sis coming". [note: 2] The DJ inferred that the person operating the telephone number was Richard.

Evidence of remittance and money-changing

18 The Appellant's account of the remittance and money-changing transactions at Yakadir corresponded with the receipts produced by Yakadir.

19 The five transactions which formed the basis of the five charges against her were the following:

Date	**Location of her receipt of money**	**Amount**	**Who she passed the money to**
13 June 2008	Car park outside DBS Shenton Way branch	Rp1,807,191,000.00 (S$267,732.00) Rp2,025,000,000.00 (S$300,000.00)	Michael Michael
3 July 2008	UOB Battery Road branch	US$280,000.00 (S$385,000.40)	Michael
10 July 2008	Car park outside SCB Battery Road branch	US$400,020.00 (S$546,207.80)	Ningbo MH Industry Company Ltd
11 July 2008	SCB Battery Road branch	Rp3,907,478,380.00 (S$580,606.00)	Michael
14 July 2008	Alexandra Village	US$51,000.00 (S$69,360.00)	Kesslar

20 At the close of the Prosecution's case, the Appellant made a submission of no case to answer.

Based on the evidence before her, the DJ was of the view that the charges against the Appellant should be amended so as to substitute the words "having reasonable grounds to believe" therein for the word "knowing" [note: 3], and, further, that there was sufficient evidence to call upon the Appellant to enter her defence. However, the Appellant elected not to testify, called no witnesses and adduced no evidence on her own behalf. The DJ then convicted the Appellant on all five charges preferred against her. In respect of each of the first four transactions listed in the table above, the DJ sentenced the Appellant to six months' imprisonment since they concerned the remittance of moneys overseas. For the last transaction, in view of the considerably lower amount of money involved, the DJ sentenced the Appellant to three months' imprisonment. The DJ ordered one six-month imprisonment term and one three-month imprisonment term to run consecutively, with the remaining imprisonment terms to run concurrently. Thus, the Appellant was sentenced to a total of nine months' imprisonment.

The DJ's view on s 44(1) of the CDSA

21 Parties in the court below relied mainly on case law from two jurisdictions, the United Kingdom ("UK") and Hong Kong, to support their contentions as to how s 44(1)(*a*) of the CDSA ought to be construed. As the discussion below will show, the lines of authority from these two jurisdictions diverge on the issue of whether the Prosecution is required to prove as part of the *actus reus* of an offence under their respective statutes criminalising money laundering (for ease of reference, such an offence is hereinafter referred to as a "money laundering offence") that the moneys handled by the accused person were indeed the benefits of criminal conduct. Noting (at [41] of the GD) that the money laundering offences under the UK and Hong Kong statutes are not identical to an offence under s 44 of the CDSA, the DJ approached the matter from first principles and concluded (at [45] of the GD) that:

> [I]t is **not** part of the *actus reus* that the accused must deal with proceeds of crime; the nature or quality of the property is relevant only for the accused's mental element. Accordingly, it is my view that it is **not** a requirement of the offence under section 44 of the CDSA that the prosecution must prove that the property involved in the arrangement was indeed benefits of criminal conduct. [emphasis in original]

With regard to the *mens rea* of a s 44(1)(*a*) offence, the DJ held that there is no need for the Prosecution to prove that the accused person had a "specific notion" (see the GD at [58]) of the criminal conduct from which the moneys are derived. In her view (at [57] of the GD):

> [O]ne should look at the facts or "reasonable grounds" available to the accused person, and determine what inferences a reasonable man in that position would make thereon. If those facts would cause the reasonable man, only after a little thought, to believe that the property could be the proceeds of *any* serious offence or foreign serious offence, then this would be sufficient to constitute reasonable grounds for him to suspect that the property was proceeds of criminal conduct. [emphasis added]

The proper interpretation of s 44(1)(a) of the CDSA

Whether criminal conduct needs to be proved

22 As mentioned above at [2], the main point of contention in this case is whether an offence under s 44(1)(*a*) of the CDSA can only be established if the Prosecution proves that the moneys involved were in fact the benefits of criminal conduct. The material portions of s 44(1)(*a*) of the CDSA provide as follows:

Assisting another to retain benefits from criminal conduct

44. —(1) Subject to subsection (3), a person who enters into or is otherwise concerned in an arrangement, *knowing* or *having reasonable grounds to believe that*, by the arrangement –

(*a*) *the retention or control by or on behalf of another (referred to in this section as that other person) of that other person's benefits of criminal conduct is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise)*; or

...

and knowing or having reasonable grounds to believe that that other person is a person who engages in or has engaged in criminal conduct or has benefited from criminal conduct shall be guilty of an offence.

[emphasis added]

23 In sum, there are two alternative approaches to interpreting s 44(1)(*a*) of the CDSA.

24 Under the first interpretation, the *actus reus* of the offence is made out if an accused "enters into or is otherwise concerned in an arrangement" stipulated in the section. The rest of the words in s 44(1)(*a*) of the CDSA relate only to the *mens rea* of the offence. Thus, the phrase "benefits of criminal conduct" relates solely to the accused "knowing" or having "reasonable grounds to believe" that the moneys he is handling are the benefits of criminal conduct. There is no further requirement for the Prosecution to prove that the moneys are indeed "the benefits of criminal conduct." It follows from this that, under this interpretation, there is also no need for the Prosecution to prove that, by the arrangement, the retention or control of those benefits by the "other person" was facilitated, or that that other person engages in or has engaged in criminal conduct, or has benefited from it.

25 Under the second interpretation, the *actus reus* of the offence is made out if a person "enters into or is otherwise concerned in an arrangement" stipulated in the section. However, the rest of the words in s 44(1)(*a*) of the CDSA are not solely a *mens rea* requirement. Of course, the Prosecution must still prove that the accused knows or has "reasonable grounds to believe" that the moneys he is handling represent the "benefits of criminal conduct", *ie*, proceeds of crime, that the accused knows or has "reasonable grounds to believe" that the arrangement facilitates the retention or control of those benefits by the "other person", and that that other person is a "person who engages in or has engaged in criminal conduct or has benefited from criminal conduct". In addition, however, the moneys must actually be the benefits of crime, the retention or control of those benefits by the "other person" must actually be facilitated by the arrangement, and that other person must actually engage in or have engaged in criminal conduct or have benefited from criminal conduct. In other words, those phrases are elements of the *actus reus* that need to be proved in order to make out an offence under s 44(1)(*a*) of the CDSA.

26 As a matter of statutory construction, s 44(1)(*a*) of the CDSA is fairly capable of taking on either of the two interpretations stated above. Given that this is so, the legislative history of the CDSA must be considered to ascertain the legislative intention behind this provision. Indeed, this purposive approach is now statutorily mandated (see *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [41]). For the avoidance of doubt, I should add that I use the words interpretation and construction interchangeably in these grounds when I refer to the process of ascertaining the Parliamentary intention underpinning a statutory provision or scheme.

The statutory background of the CDSA

The statutory background of the CDSA

(1) The Vienna Convention and the Palermo Convention

27 The CDSA was enacted in 1999, with the amalgamation of the Drug Trafficking (Confiscation of Benefits) Act (Cap 84A, 1993 Rev Ed) (the "1993 DTA") and the Corruption (Confiscation of Benefits) Act (Cap 65A, 1990 Rev Ed) (the "C(CB)A"), two years after Singapore formally acceded to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 ("the Vienna Convention") in October 1997 (see the statement of the Minister for Home Affairs, Mr Wong Kan Seng, at the Second Reading of the Misuse of Drugs (Amendment) Bill, (*Singapore Parliamentary Debates, Official Reports* (1 June 1998) vol 69 at col 46)). At the Second Reading of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Bill (*Singapore Parliamentary Debates, Official Reports* (19 September 2007) vol 83 at col 1965 (Senior Minister of State for Home Affairs, Associate Professor Ho Peng Kee)), it was commented that:

> Clauses 9 and 10 will amend sections 46 and 47 to enable CAD to investigate into and prosecute anyone who is only involved in the receipt and onward transmission of property derived from serious offences, as well as confiscate proceeds of crime in the possession of a third party. The new offences would also enable us to comply with the obligations under the Vienna and Palermo Conventions, and in line with the recommendations by [the Financial Action Task Force on Money Laundering].

28 Given that the CDSA was enacted shortly after Singapore's accession to the Vienna Convention, it is plain that one of the key objectives behind its enactment was to align our domestic legislation with the requirements of the Vienna Convention. Article 3 of the Vienna Convention provides that:

> Article 3
>
> OFFENCES AND SANCTIONS
>
> 1. Each party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:
>
> ...
>
> b) (i) The conversion or transfer of property, ***knowing that such property is derived from any offence or offences*** established in accordance with subparagraph *a)* of this paragraph [subparagraph (a) refers to drug trafficking generally], or from an act of participation in such offence or offences, ***for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions*** ;
>
> (ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, ***knowing that such property is derived from an offence or offences*** established in accordance with subparagraph *a*) of this paragraph or from an act of participation in such an offence or offences;
>
> ...

11. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

[emphasis in original in italics, emphasis added in bold italics]

29 The United Nations Convention against Transnational Organised Crime and the Protocols thereto ("the Palermo Convention") was adopted on 15 November 2000 and entered into force on 29 September 2003. Article 6 of the Palermo Convention states:

Article 6. Criminalization of ***the laundering of proceeds of crime***

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(*a*) (i) The conversion or transfer of property, ***knowing that such property is the proceeds of crime*** , for the purpose of concealing or disguising the illicit origin of the property or of ***helping any person who is involved in*** the commission of the ***predicate*** offence to ***evade the legal consequences*** of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, ***knowing that such property is the proceeds of crime*** ;

(*b*) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, ***knowing, at the time of receipt, that such property is the proceeds of crime*** ;

(ii) ***Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling*** the commission of any of the offences established in accordance with this article.

[emphasis added in bold italics]

30 Under both the Vienna Convention and the Palermo Convention, the *mens rea* requirement for someone to be regarded as being involved in a money laundering offence is that of *knowledge*. This can be seen from the use of the word "knowing" in both conventions. The phrase "reasonable grounds to believe" (or any equivalent) is entirely absent from the two conventions. As a matter of general usage, when we say that a person "knows" something, what we are trying to communicate is that the person is subjectively aware of a state of affairs that really exists. For example, if we say that A knows that B is dead, what we actually mean is that "B is dead, and A knows this." Thus, the word "knows" ordinarily conveys more than just a mental state; it also implies a factual predicate that a certain state of affairs is in existence (see *R v Montila* [2004] 1 WLR 3141 ("*Montila*") at [27]). Thus, according to the clear wording of Art 3 of the Vienna Convention and Art 6 of the Palermo Convention, what should be criminalised under the legislation of each State Party is the laundering of *property derived from offences* or *proceeds of crime*. Indeed, the conduct that should be criminalised under Art 6 (*ie*, conversion or transfer of property, or concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property) is that which is accompanied by *knowledge* that such property is "*derived from an offence*" or "*the*

proceeds of crime" [emphasis added].

31 This conclusion is fortified by the equally clear wording of Art 3 of the Palermo Convention which states that:

> *Article 3. Scope of application*
>
> 1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:
>
> (*a*) The offences established in accordance with articles 5, 6 [*ie*, laundering of ***proceeds of crime***] ... of this Convention; and
>
> (*b*) ***Serious crime*** as defined in article 2 of this Convention;
>
> where ***the offence is transnational in nature and involves an organised criminal group*** .
>
> [emphasis in original in italics, emphasis added in bold italics]

Hence, we can surmise that the purpose of the Vienna Convention and Palermo Convention was to deal with people who were involved in the laundering of *actual* proceeds of crime. Furthermore, in *Combating Money Laundering and Terrorist Financing: A Model of Best Practice for the Financial Sector, the Professions and Other Designated Businesses* (Commonwealth Secretariat, 2nd Ed, 2006) (first published by the Commonwealth Secretariat in 2005 as Economic Paper 70 in the Commonwealth Economic Paper Series), the authors described Art 6 of the Palermo Convention in the following terms (at p 63):

> Under Article 6 activities relating to 'money laundering' must be criminalised. This extends not only to cash but to *any form of property which is the proceeds of crime*, and includes any form of transfer or conversion of the property for the purpose of concealing its true origin. Simple acquisition or possession is also included if the person in possession *knows* that the property *is* the proceeds of crime. [emphasis added]

32 The English Court of Appeal (at [30] of the decision in *R v El-Kurd (Ussama Sammy)* [2001] Crim LR 234 CA (Crim Div) ("*El Kurd*")) stated that the Vienna Convention was intended to provide a framework both for *minimum standards* relating to the enforcement of the control of drugs, and a framework for international co-operation. In the Hong Kong decision of *Oei Hengky Wiryo v HKSAR (No 2)* [2007] 1 HKLRD 568 ("*Oei Hengky Wiryo*"), McHugh NPJ noted (at [105]) that the Vienna Convention and other relevant Conventions or instruments dealing with the confiscation of the proceeds of crime lay down *legislative baselines* with which parties to those Conventions and instruments must comply. It is for each signatory to the Convention or instrument to decide whether or not it wishes to enact domestic legislation that is more extensive in reach.

(2) The enactment of the CDSA

33 The CDSA was enacted on 13 July 1999. Before the CDSA was enacted, the money laundering regime in Singapore was governed primarily by two separate acts, *viz*, the 1993 DTA and the C(CB)A (see [27] above). The Drug Trafficking (Confiscation of Benefits) (Amendment) Act 1999 (No 25 of 1999) ("the 1999 Amendment Act") repealed the C(CB)A and renamed the 1993 DTA the CDSA. At the Second Reading of the Drug Trafficking (Confiscation of Benefits) (Amendment) Bill ("the DT(A) Bill"), which was the bill that subsequently resulted in the 1999 Amendment Act, the Minister for Home

Affairs, Mr Wong Kan Seng, commented (see *Singapore Parliamentary Debates, Official Report*, (6 July 1999) vol 70 at col 1733):

> [T]his Bill seeks to amend the [1993 DTA] to extend the asset confiscation and anti-money laundering provisions of the [1993 DTA] beyond drug trafficking to cover other serious crimes.

34 Section 44(1)(*a*) of the CDSA is almost identical to s 41(1)(*a*) of the 1993 DTA, except that the latter provision referred to the retention of the benefits of drug trafficking only and required an accused to *know* that he was facilitating another person's retention or control of that person's benefits of drug trafficking. On the introduction, in the CDSA, of an amendment to the 1993 DTA to allow an accused to be convicted based on evidence showing that he had "reasonable grounds to believe" that another person trafficked in drugs or the proceeds were derived from drug trafficking or other serious crimes, the Minister for Home Affairs, Mr Wong Kan Seng, commented that (*Singapore Parliamentary Debates, Official Reports*, (6 July 1999) vol 70 at cols 1734 and 1739):

> [C]lauses 22 to 25 [of the DT(A) Bill] amend the money laundering offences *to clarify that the prosecution need not prove that the accused had actual knowledge of the relevant facts, that is, that the person is a drug trafficker, or that his proceeds are derived from drug trafficking or other serious crimes. Instead, the accused can be convicted based on evidence showing that he had "reasonable grounds to believe" that the person trafficked in drugs or the proceeds were derived from drug trafficking or other serious crimes. This would facilitate enforcement because in practice, proof of actual knowledge is difficult to produce*. This is in line with the laws of many countries.
>
> ...
>
> As to whether we should have imposed "actual knowledge" instead of "reasonable ground to believe", the latter is a standard set in many other countries, and I do not believe that we should be more stringent than the other countries. Since we are part of the international community in this area, we should therefore be in line with what the other countries are doing. We are not doing more; we are not doing less than what others are doing. We are in keeping with the international mood and climate and the trend as required of the other countries.
>
> [emphasis added]

35 It is apparent though that s 44(1)(*a*) of the CDSA goes beyond the legislative baselines mandated by the Vienna Convention and Palermo Convention (see above at [27]–[31]). Crucially, the addition of the phrase "reasonable grounds to believe" to the "knowing" requirement lowers the *mens rea* threshold significantly for a money laundering offence. Indeed, the stated purpose of lowering the *mens rea* requirement was to facilitate the prosecution of money laundering offences because as the Minister pointed out "*in practice, proof of actual knowledge is difficult to produce*". This explains why the Parliamentary debates on the enactment of the CDSA dwelt upon the lowering of the *mens rea* requirement and whether this was a deviation from the two Conventions.

36 In contrast, during the Parliamentary debates, nothing was said on whether it was appropriate to deviate from the Vienna Convention and Palermo Convention by criminalising purported acts of money laundering, simply because the parties had mistakenly thought that the money they were handling represented the proceeds of crime, or because the would-be launderer had mistakenly thought that his counterpart (the "other person") had engaged in criminal conduct. I find it hard to believe that Parliament could have intended such a drastic change without any consultation or even mention of it in Parliament. Evidently, Parliament's addition of the phrase "reasonable grounds to

believe" was aimed principally at facilitating the prosecution of money laundering by lowering the *mens rea* requirement. How this might affect any other predicate condition of a money laundering offence was apparently not discussed.

UK authorities

37 My view that Parliament did not intend to criminalise mistaken acts of money laundering (*eg*, because the money did not represent proceeds of criminal conduct) is further fortified by the fact that such an interpretation of s 44(1)(*a*) is similar to the English courts' interpretation of the broadly similar UK provisions.

38 As mentioned above at [34], s 44(1)(*a*) of the CDSA is based substantially on s 41(1)(*a*) of the 1993 DTA, except that the latter has a *mens rea* requirement of knowledge, and applies only to the benefits of drug trafficking. Section 41(1)(*a*) of the 1993 DTA was, in turn, based on s 24(1)(*a*) of the UK Drug Trafficking Offences Act 1986 (c 32) ("the UK 1986 DTOA"). At the Second Reading of the Drug Trafficking (Confiscation of Benefits) Bill, the Minister for Home Affairs, Professor S Jayakumar stated that (*Singapore Parliamentary Debates, Official Report* (20 March 1992) vol 59 at col 1375):

> [T]he aim of this Bill is to deny drug traffickers the enjoyment of the benefits of their crime by confiscating their assets which are derived from drug trafficking. So that the Bill will be made effective, the laundering of drug assets will also be made an offence and benefits derived from this offence will be confiscated.
>
> *The provisions of this Bill are based largely on the United Kingdom Drug Trafficking Offences Act with modifications to suit local circumstances*. Members will recall that our Corruption (Confiscation of Benefits) Act, 1989, was also modelled on this United Kingdom law.
>
> [emphasis added]

39 In 1994, the UK 1986 DTOA was replaced by the UK Drug Trafficking Act 1994 (c 37) (the "UK 1994 DTA"). In addition, the enactment of the UK Criminal Justice Act 1988 (c 33) ("1988 CJA") and UK Criminal Justice Act 1993 (c 36) ("1993 CJA") further extended the scope of the money laundering provisions to other serious offences apart from drug trafficking offences, by including similar provisions (to the UK 1994 DTA) where the references to "drug trafficking" were replaced with "criminal conduct". Although the wording of these new provisions (s 50(1) of the UK 1994 DTA and s 93C(2) of the 1988 CJA) differed from s 24(1)(*a*) of the UK 1986 DTOA, there is no indication that the UK Parliament intended to change the nature of the offence. Accordingly, given the similar statutory lineage which s 44(1)(*a*) of the CDSA shares with s 24(1)(*a*) of the UK 1986 DTOA, the UK cases have persuasive force in the interpretation of similar provisions in the CDSA.

40 In *Montila*, the House of Lords, in its construction of s 49(2) of the UK 1994 DTA and s 93C(2) of the 1988 CJA, held that it was necessary for prosecutions under these legislative provisions to prove that the property being dealt with was the proceeds of crime or drug trafficking. Section 49(2) of the UK 1994 DTA and s 93C(2) of the 1988 CJA are almost identical, except that the former deals with proceeds of drug trafficking while the latter deals with proceeds of criminal conduct. They are the equivalent of ss 46(2) and 47(2) of the CDSA respectively and read as follows (with the words in square brackets being the points of difference between the two sections):

> A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of

[drug trafficking/criminal conduct], he —

(a) conceals or disguises that property, or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for [a drug trafficking offence/an offence to which this Part of this Act applies] or the making or enforcement of a confiscation order.

41 The reasons given by the House of Lords for its decision in *Montila* were, *inter alia*, as follows:

(a) the words "knowing or having reasonable grounds to suspect" provided a strong indication that they were directed to activities in relation to property which was in fact "another person's proceeds of drug trafficking" or "another person's criminal conduct" (see *Montila* at [28]);

(b) there was no defence available to an accused person if the property which the accused person was alleged to have had reasonable grounds to suspect to be "another person's proceeds" turn out to be something different (see *Montila* at [28]);

(c) in the context of s 49(1) of the UK 1994 DTA and s 93C(1) of the 1988 CJA, which both state that a person is guilty if he does the things described in relation to "his proceeds" of drug trafficking or of criminal conduct, there was no doubt that the Crown had to prove that the property in question was the proceeds of drug trafficking or of criminal conduct (see *Montila* at [29]); and

(d) it could be gathered from the headings and sidenotes of s 49(2) of the UK 1994 DTA and s 93C(2) of the 1988 CJA that the mischief that Parliament had been seeking to address was the concealment, conversion or transfer of actual proceeds so as to avoid prosecution for the conduct that gave rise to them, *ie*, *the fact that the property in question had its origin in drug trafficking or criminal conduct was an essential part of the actus reus of the offence* (see *Montila* at [31]–[37]).

42 The law in the UK concerning the laundering of proceeds of criminal conduct is currently encapsulated in the Proceeds of Crime Act 2002 (c 29) ("2002 POCA"). Section 327 of the 2002 POCA makes it an offence to conceal, disguise, convert or transfer criminal property, or to remove criminal property from the jurisdiction. Section 329 makes it an offence to acquire, use or possess criminal property. Section 326 defines criminal conduct as conduct which "(a) constitutes an offence in any part of the UK, or (b) would constitute an offence in any part of the UK if it occurred there" and criminal property as property constituting "a person's benefit from criminal conduct" or representing "such a benefit (in whole or part and whether directly or indirect)", it being immaterial "(a) who carried out the conduct; (b) who benefited from it". Section 328 of the 2002 POCA deals with "Arrangements". Section 328(1) states that:

A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

Section 340(4) of the 2002 POCA also states that it is immaterial who carried out the conduct, who benefited from it or whether the conduct occurred before or after the 2002 POCA was passed. The offences created by ss 327 and 329 of the 2002 POCA are broadly encapsulated in s 47(1) of the

CDSA, while the broad parallel for the offence created by s 328 of the 2002 POCA is s 44(1) of the CDSA.

43 In *R v W(N) and others* [2009] 1 WLR 965 ("*R v W(N)*"), the accused was charged under s 327 of the 2002 POCA for transferring £105,000 to three defendants who had subsequently removed the money from the UK to Jamaica. The Crown contended that in view of the large sums involved and the first defendant's lack of any visible means of support, it could establish that the money in question could only be "criminal property" within the meaning of s 340 of the 2002 Act.

44 The English Court of Appeal in *R v W(N)*, applying *Montila*, held that a charge under s 327 of the 2002 POCA could only be sustained if the Prosecution could prove that the money involved was actually criminal property. In order to do so, *the Prosecution need not prove the commission of a specific criminal offence by a particular individual, but should, as is required by elementary fairness, identify the class of crime from which the money is derived* (see *R v W(N)* at [37]–[38]). The English Court of Appeal in *R v W(N)* also contemplated (at [16]) that there may be cases in which the inference from the available facts is that criminal activity is the only reasonable and non-fanciful explanation for the presence of the relevant property in the hands of the accused person concerned (even though there is nothing to show what class of crime is involved); if in such cases such a *prima facie* inference is drawn, an evidential burden is cast on the accused person to provide another explanation for his dealing with the property so as to demonstrate that the inference is wrongly drawn (see *R v W(N)* at [19]).

45 In my view, this approach is sound and should be applied to s 44(1)(*a*) of the CDSA because of its consonance with the clear legislative intention and undergirding policy. As I have explained above (at [33]–[36]), Parliament's intention in enacting s 44(1)(*a*) to criminalise the entering into of an arrangement having "reasonable grounds to believe" that this would facilitate the retention or control of another person's benefits of criminal conduct could not have been to do away with an element of the *actus reus* (or any other element of the *actus reus*, for that matter), *viz*, that the moneys so dealt with are "benefits of criminal conduct". Since "knowing" and "having reasonable grounds to believe" are both in the *chapeau* of s 44(1), the same elements in the *actus reus* should apply to both (albeit different) modes of *mens rea*. Thus, in a situation where moneys dealt with via an alleged arrangement were not in fact benefits of criminal conduct, an accused person cannot be held to have had "knowledge" that the impugned arrangement would facilitate the retention or control of those moneys; similarly, he should not be found guilty of an offence if, instead of knowledge, he had reasonable grounds to believe that the moneys were benefits of criminal conduct (but in fact they were not).

46 I would further add that the prosecution of an accused person who laboured under the mistaken belief that the moneys were benefits of criminal conduct (or that the arrangement facilitated the retention or control of those benefits by the other person, or that the other person engages in or has engaged in criminal conduct or has benefited from it) is unlikely to further the stated purpose of the Palermo Convention, *ie*, "to promote cooperation to prevent and combat transnational organised crime more effectively" (see Art 1 of the Palermo Convention). After all, if the moneys involved in a purported arrangement were not in fact the proceeds of criminal conduct, or if the arrangement did not in fact facilitate the retention or control by the other person of his benefits of criminal conduct, or if the other person was or has not engaged in criminal conduct or has not benefited from it, prosecuting the entering into of such an arrangement would have little, if any, effect on preventing and combating transnational organised crime. Neither would the purpose of deterrence be served by adopting an over-inclusive interpretation of a penal statute, since this purpose can be served just as well by interpreting that statute in a way that allows police and prosecutorial resources to be concentrated on the actual laundering of "dirty money".

Hong Kong authorities

47 In this regard, I note that the Hong Kong courts, in dealing with the money laundering offence under the Hong Kong Organized and Serious Crimes Ordinance (Cap 455, LN 145 of 2002) ("OSCO"), *viz*, s 25(1) of the OSCO, have held that the Prosecution is *not* required to prove that the moneys involved are the proceeds of crime (see, *eg*, *HKSAR v Wong Ping Shui & Another* [2001] 1 HKLRD 346 ("*Wong Ping Shui*"), *HKSAR v Yam Ho Keung* [2002] HKCU 1230 ("*Yam Ho Keung*") and *Oei Hengky Wiryo*). This approach, to a large extent, appears to have been adopted because of the peculiar wording of the money laundering offence under s 25(1) of the OSCO, which provides as follows:

> [A] person commits an offence if, *knowing or having reasonable grounds to believe* that *any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence*, he *deals* with that property. [emphasis added]

In *Wong Ping Shui*, the Hong Kong Court of Final Appeal held that "the quality of the goods being such proceeds [*ie*, of an indictable offence] is therefore an element in the *mens rea* but not the *actus reus*" (*per* Ribeiro PJ at 348), which is defined solely as "dealing with property" (which the accused person knows or has reasonable grounds to believe represents the proceeds of an indictable offence). The Hong Kong Court of Final Appeal in *Oei Hengky Wiryo* agreed with this interpretation, holding that this construction "is the natural and ordinary meaning" of s 25(1) of the OSCO (*per* McHugh NPJ at [100]).

48 In *Oei Hengky Wiryo*, the court also distinguished the reasoning of the House of Lords in *Montila* on the basis of the difference in the wording of the legislation in the UK defining money laundering offences. In McHugh NPJ's judgment (with which the other four judges in the Court of Final Appeal agreed), given the terms of the UK legislation, *viz*, s 93C(2) of the UK 1988 CJA, under which "the only property caught by the sub-section is property that is or represents, another person's proceeds of criminal conduct", it was "not surprising" that the House of Lords held that in a prosecution concerned with an offence under that sub-section, the Prosecution must prove that the property is or represents another person's proceeds of criminal conduct (see *Oei Hengky Wiryo*, *per* McHugh NPJ at [101]–[102]).

49 In like vein, owing to the differences in wording between the money laundering offence as defined in s 25(1) of the OSCO and our s 44(1)(*a*) of the CDSA, the Hong Kong line of authority should not be followed in Singapore. Construing s 44(1)(*a*) based on its literal wording as well as its legislative history, I am of the view that Parliament must have intended that the only property caught by s 44(1)(*a*) is that which in fact represents benefits of criminal conduct. Therefore, to make out an offence under s 44(1)(*a*), the Prosecution must prove as part of the *actus reus* that:

> (a) the accused has entered or is otherwise concerned in an arrangement;
>
> (b) which (i) facilitates the retention or control by or on behalf of another ("that other person") of (ii) that other person's benefits of criminal conduct; and
>
> (c) that other person is a person who engages in or has engaged in criminal conduct or has benefited from criminal conduct.

50 In passing, I note that the Hong Kong courts have interpreted their legislation as aimed at "*condemning the man who reasonably foresees that he may be dealing in the proceeds of an indictable offence yet nonetheless goes on to do it*" [emphasis added] (see *Yam Ho Keung* at [15]). While this is a perfectly understandable response to a crime which can often be hard to prove, the

difficulty of proving a fact should not detract from the requirement to prove it, if, on a proper reading of the statutory wording of a money laundering offence, it ought to be proved as an element of the *actus reus*. I am confident that the interpretation of s 44(1)(*a*) of the CDSA preferred in this judgment strikes a fair balance between a realistic assessment of prosecutorial abilities, and the need to avoid casting the criminal net too widely to include activities that are not in the final analysis detrimental to society. Indeed, the *methods* by which the Prosecution may prove that the moneys dealt with under an arrangement that allegedly offends against s 44(1)(*a*) are "benefits of criminal conduct", or that the other person engages in or has engaged in "criminal conduct", or has benefited from it, is a separate issue which I shall turn to next.

How to prove "criminal conduct"

51 Having concluded (at [49] above) that in order to make out an offence under s 44(1)(*a*), the Prosecution is required to demonstrate as part of the *actus reus* of the offence that (*inter alia*) the property whose retention or control the impugned arrangement is alleged to facilitate is indeed "benefits of criminal conduct", I turn now to address the next question: how can the Prosecution prove that the property is derived from or represents the benefits of "criminal conduct", or that the other person engages in, or has engaged in, or has benefited from, "criminal conduct"?

Parties' arguments

52 Counsel for the Appellant, Mr Roderick Martin SC ("Mr Martin"), submitted that the Prosecution is required to establish a link between the Appellant's belief as to the nature of the moneys and a specific predicate offence. Furthermore, since the specific predicate offence that the Prosecution was relying on to secure the conviction of the Appellant in this case allegedly took place in the US, it was a "foreign serious offence". Thus, according to Mr Martin, pursuant to the definition of "foreign serious offence" in s 2(1) of the CDSA, the Prosecution was required to produce a certificate purporting to be issued by or on behalf of the US government (a "foreign certificate") in order to prove that there was criminal conduct which tainted the moneys handled by the Appellant. Since the Prosecution did not fulfil this requirement at the trial, it did not prove any specific predicate offence to which the Appellant's belief as to the nature of the moneys was linked.

53 The Prosecution, on the other hand, submitted that any references to "benefits of criminal conduct" or "criminal conduct" relate solely to the required *mens rea* of the offence, and there was no requirement under s 44 to prove a specific *predicate* offence. Thus, according to the Prosecution, the failure to produce a foreign certificate at the trial was not fatal and the conviction should stand.

Criminal conduct

54 "Criminal conduct" is defined in s 2(1) of the CDSA principally as:

> (*a*) doing or being concerned in, whether in Singapore or elsewhere, any act constituting —
>
> (i) a serious offence (other than an offence under section 44 or 47); or
>
> (ii) a foreign serious offence …

(1) Serious offence

55 Under s 2(1) of the CDSA, "serious offence" means any of the offences specified in the Second Schedule to the CDSA ("the Second Schedule"), or inchoate offences relating to any of those

offences, whereas "foreign serious offence" means:

> an offence (other than a foreign drug trafficking offence) against the laws of, or of a part of, a foreign country stated in a certificate purporting to be issued by or on behalf of the government of that country *and* the act or omission constituting the offence or the equivalent act or omission would, *if it had occurred in Singapore*, have constituted a *serious offence*[.] [emphasis added]

56 In order to prove that the moneys handled by the Appellant were "dirty", the Prosecution has to show that there was some criminal conduct from which the moneys were derived. If the conduct occurred in Singapore, it has to constitute an offence listed under the Second Schedule in order to come within the meaning of "criminal conduct". Even if the conduct occurred outside Singapore, it might still come within the definition of an offence listed in the Second Schedule and fall to be treated as conduct constituting a "serious offence". To take an obvious example: suppose a Singapore citizen, while he was overseas, corruptly received gratification as an inducement to enter into a transaction. He would have committed an offence under s 5 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA") even though the receipt of gratification occurred outside Singapore; under s 37(1) of the PCA, where an offence under the PCA is committed by a citizen of Singapore in any place outside Singapore, he may be dealt with in respect of that offence as if it had been committed within Singapore. Thus, even though the act constituting the offence against s 5 of the PCA took place "elsewhere", that act falls within the ambit of s 5 of the PCA and therefore constitutes a "serious offence", since offences under s 5 of the PCA are included in the Second Schedule (see item 168 of the Second Schedule). The mere fact that the conduct occurred in a place outside Singapore does not necessarily mean that that conduct constitutes a "foreign serious offence" so as to necessitate the production by the Prosecution of a foreign certificate.

57 In *R v Anwoir and others* [2009] 1 WLR 980 ("*Anwoir*"), the Prosecution was unable to adduce any direct evidence as to the source of cash which the appellants had been convicted of laundering, although there was evidence from which the jury could infer that at least some of it came from drug trafficking and some from tax fraud. The English Court of Appeal held (at [21]) that for the purposes of a prosecution under s 328 of the 2002 POCA, the Crown could prove that property was "criminal property" within the meaning of s 340 of the 2002 POCA either by (a) showing that it derived from a specific kind or kinds of unlawful conduct; or (b) by evidence of the circumstances in which the property had been handled which were such as to "give rise to the irresistible inference that it can only be derived from crime". The English Court of Appeal reiterated this view in *R v F* [2009] Crim LR 45 at [46] (see also the incisive judgment of the Scottish High Court of Justiciary sitting as the Criminal Appeal Court in *Ahmad v HM Advocate* 2009 SLT 794 (particularly at [12]–[25]) which sets out with great clarity the current English position).

58 This approach should similarly be adopted in Singapore given the wording of s 44(1)(*a*) of the CDSA and the similarities in the architecture of the respective statutory schemes. There is nothing in that provision that requires or points to any need to impose on the Prosecution the heavy and impractical burden of proving beyond reasonable doubt the crime or class of crime that may constitute the predicate offence. Further, given the mischief this section is intended to address, a court should be slow in reading in such a requirement. On the other hand, as mentioned earlier (above at [45]) the Prosecution has to adduce particulars of the commission of a predicate offence or a class thereof. Such a construction provides sufficient flexibility to the Prosecution in proving the predicate criminal conduct under the myriad factual circumstances in which money laundering offences can be committed, and does so without undermining the careful course that Parliament has steered between requiring the Prosecution to prove the commission of a *specific predicate criminal offence* and allowing the Prosecution to make *wholly unparticularised allegations of criminal conduct*. To elaborate, it is not necessary for the Prosecution to satisfy the court beyond a reasonable doubt that

all the constituent elements of a specific offence listed in the Second Schedule have been met. This approach would mitigate the Prosecution's understandable concern that it would have to prove *two* offences to the same exacting standards every time it undertakes a prosecution of an offence under s 44(1)(*a*) of the CDSA. There is no reason to assume that Parliament intended the Prosecution to go through the awkward and costly exercise of summoning foreign witnesses to prove all the ingredients of a foreign offence when these predicate offences are often in practice difficult to pin down. Indeed, given the inherent difficulties of legal proof in most such matters, taking such a technical view of the requirements of s 44(1)(*a*) of the CDSA would be tantamount to driving a coach and horses through it and robbing it of its intended efficacy. It is, however, necessary for the Prosecution to adduce some evidence linking the moneys in question with particular criminal conduct, *ie*, some act that may constitute one or other of the offences (or classes thereof) listed in the Second Schedule, from which the moneys dealt with in an arrangement under s 44(1)(*a*) are derived, and in which the other person is engaged or has engaged, or from which he has benefited. Equally, circumstances could well arise where the only logical inference to any reasonable person is that the moneys involved in the arrangement are criminal property, and that the other person engages in, or has engaged in, or has benefited from, criminal conduct. I should add, parenthetically, that even with regard to prosecutions arising out of sting operations, the Prosecution may be able to prove that the moneys involved were derived from attempts to commit a serious offence specified in the Second Schedule. It will all depend upon the facts.

(2) Foreign serious offence

59 As was mentioned above at [56], the mere fact that the criminal conduct relied on by the Prosecution took place outside Singapore does not lead, without more, to the requirement that the Prosecution has to prove that criminal conduct as if it was a "foreign serious offence", *ie*, produce a foreign certificate. Evidence pertaining to criminal conduct that took place outside Singapore can be led to show that an act constituting one or another of the offences listed in the Second Schedule has been committed, if that offence is defined in the statute criminalising that act as having been committed when committed in a place outside Singapore.

60 Alternatively, circumstances could well arise in which information is received in Singapore from a foreign jurisdiction pertaining to the transfer into Singapore of moneys derived from or representing the proceeds of criminal conduct which took place in that foreign jurisdiction. If the state of the information is such that it is insufficient by itself to constitute an offence under the Second Schedule or to give rise to the inference that such an offence has been committed, then it is necessary for the Prosecution to produce a certificate purporting to be issued by or on behalf of the government of that foreign jurisdiction stating the offence (other than a foreign drug trafficking offence) against the laws of that foreign jurisdiction which is constituted by that act purportedly taking place or having taken place there.

61 According to the definition of "foreign serious offence" under s 2(1) of the CDSA, there is a need to establish double criminality: where a foreign certificate is required, not only must that impugned act constitute an offence in that foreign jurisdiction (as stated in the foreign certificate), it must, *in addition*, also constitute an offence listed in the Second Schedule *if it occurred in Singapore*. The purpose of this is not to impose additional barriers to the prosecution of money laundering offences in Singapore where the criminal conduct from which the moneys are derived occurs elsewhere. Rather, it is to ensure that the courts do not criminalise the handling of moneys derived from conduct which would *not* constitute a serious offence in Singapore if it occurred here. This is consonant with Singapore's obligations under Arts 6(2)(*b*) and (*c*) of the Palermo Convention which state that:

(*b*) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of State Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(*c*) For the purposes of subparagraph (*b*), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. *However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there*[.]

[emphasis added]

62 To illustrate, take the example of a particular mode of insider trading that is criminalised in, say, the US. If that particular mode of insider trading is *not* outlawed under our statutory provisions pertaining to trading in securities, or in any other penal legislation for that matter, evidence of such insider trading that took place in the US would not constitute a serious offence under the CDSA, given that none of the offences listed in the Second Schedule would cover such conduct. Add to that a case where the profits derived from such insider trading are transferred to Singapore and an accused person enters into an arrangement here which facilitates the retention or control of the moneys representing such profits (*eg*, remitting those profits to bank accounts in other countries). *Ex hypothesi*, if the Prosecution wishes to show that the moneys handled by such an accused person are derived from criminal conduct that occurred in the US, it would be unable to show any facts pointing towards the inference that any offence under the Second Schedule has been committed. It would then have to produce a foreign certificate stating the offence against US laws that was allegedly committed in the US, and produce some evidence that conduct constituting such an offence took place in the US. Even so, if the Prosecution is unable to point to any offence listed in the Second Schedule which would have been constituted by that conduct if it had occurred in Singapore, the moneys would not be considered benefits of criminal conduct under s 44(1)(*a*) of the CDSA, regardless of how surreptitiously or suspiciously the accused person had gone about handling those moneys.

63 Taking another example, suppose the profits of a syndicate-run brothel in Amsterdam are deposited in a bank account in Singapore. Suppose also that running a brothel in Amsterdam is perfectly legal. If a person has entered an arrangement which facilitates the retention of the profits, it is not sufficient, to make out an offence under s 44(1)(*a*) of the CDSA, that the management of a brothel is an offence under s 148 of the Women's Charter (Cap 353, 2009 Rev Ed) (which is included in the Second Schedule of the CDSA). The Prosecution will also have to produce a certificate purported to be issued by the Dutch government stating that it is an offence under the laws of the Netherlands. If it is unable to do so (and presumably it will be, if managing a brothel is not an offence in the Netherlands), then the Prosecution will not be able to prove that the moneys in the Singapore bank account are benefits of criminal conduct for the purposes of s 44(1)(*a*).

64 As can be seen from the illustrations above, a number of imponderables are involved where conduct occurring in a place outside Singapore is concerned. The analysis in each case will depend on the facts. The courts will have to take a pragmatic approach in dealing with these issues when they arise, always bearing in mind the inherent difficulties in proving the origins of money laundering activities.

How to prove "facilitation"

65 In contrast, it will generally not be difficult to establish that the impugned arrangement facilitated the retention or control by or on behalf of the other person of his benefits of criminal conduct, once all the other *actus reus* elements of s 44(1)(*a*) of the CDSA are made out.

66 This is because, given the broad meaning s 44(1)(*a*) gives to the concept of facilitation ("whether by concealment, removal from jurisdiction, transfer to nominees *or otherwise*" [emphasis added]), it is difficult to imagine how any arrangement would not facilitate the retention or control of the other person's benefits of criminal conduct.

Application to the present appeal against conviction

67 Turning now to the facts in this case, it is clear that the Prosecution has adduced evidence of some criminal conduct. Even though it has argued, both in the court below and on appeal, that under the terms of s 44(1)(*a*), it is not incumbent on the Prosecution to show that the moneys handled by the Appellant were indeed benefits of criminal conduct, it has in fact done so, *via* Nail's oral testimony as to the results of his team's investigations in the US (such as who had been arrested and the fact that those who had been arrested were convicted in the US for conspiracy to commit bank fraud) as well as the bank records produced by the Singapore banks showing the transfer of moneys from US bank accounts to the Singapore banks' accounts. I agree with the DJ that the certificates from the relevant courts in the US would have better served to prove that the bank fraud had occurred, but since there was no ground on which to discredit Nail, I too have no difficulty accepting his testimony that bank fraud, involving those US bank accounts from which moneys had been transferred to the Singapore banks' accounts in question, had occurred.

68 I am satisfied that, the Prosecution has adduced ample evidence that convincingly shows that the persons who committed the bank fraud procured the movement of those funds from the US bank accounts with the intention to dishonestly take those funds out of the possession of the rightful US bank account holders; in other words, theft (as it is defined in s 378 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code")) had occurred in the US. It could also be said that the persons who procured the transfer of moneys from the US bank accounts by impersonation had done so by deception and had fraudulently or dishonestly induced the bank officers in the US so deceived to deliver the moneys to the holders of the Singapore banks' accounts in question; in other words, cheating (as it is defined in s 415 of the Penal Code) had occurred. The moneys which were transferred into the Singapore bank accounts from the US bank accounts can be seen as "stolen property", *ie*, the property the possession whereof has been transferred by theft, or in respect of which cheating has been committed, *whether the transfer has been made or cheating has been committed within or without Singapore*, as defined under s 410(1) of the Penal Code.

69 According to the Appellant's statements to CAD, she received money from Aloysious on several occasions, acting under Mike's instructions on the telephone, and in circumstances which would have led any reasonable observer to surmise that some dishonest conduct was afoot, and that the moneys so handled were derived from such dishonest conduct. Thus, a compelling inference, given all the facts adduced by the Prosecution, would be that the moneys were dishonestly received into the Singapore bank accounts in question, including those opened under Aloysious's name. Dishonest receipt of stolen property is an offence under s 411(1) of the Penal Code, and is also included in the Second Schedule of the CDSA. Therefore, even without producing a foreign certificate, the Prosecution has adduced evidence that give rise to a logical inference that conduct constituting a serious offence under the Second Schedule has taken place and that the moneys handled by the

Appellant represented the benefits of such criminal conduct. In addition, the Prosecution's evidence also established that Michael had been engaged in, or had benefited from, criminal conduct.

70 Before going into the facts revealed in the Appellant's statements to the CAD that show that she had reasonable grounds to believe that the moneys she was dealing with were derived from criminal conduct, it would perhaps be useful, at this juncture, to reiterate briefly the local case law on the meaning of "reasonable grounds to believe". In *Ow Yew Beng v Public Prosecutor* [2003] 1 SLR(R) 536, the High Court held (at [10]) that having "reason to believe" involved a "lesser degree of conviction than certainty but a higher one than speculation". In applying the test, the court must assume the position of the actual individual involved (*ie*, including his knowledge and experience), but must reason (*ie*, infer from the facts known to such individual) from that position like an objective reasonable man (see *Koh Hak Boon and others v Public Prosecutor* [1993] 2 SLR(R) 733 at [13] and *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 61 at [87]).

71 Applying the test to the present facts, it is clear that the Appellant had reasonable grounds to believe that the moneys she was dealing with were the benefits of criminal conduct. First, the circumstances under which she was told by her brother, Richard, to follow Mike's instructions were extremely suspicious. Richard had told her that she would be taking money from "someone" and remitting it overseas and when she asked what money this was and who she would be remitting it to, she was told "not to worry". On no less than two occasions, prior to meeting the man claiming to be Mike, she followed his instructions to the letter. Second, the circumstances under which she received the moneys from Aloysious and Kesslar were extremely suspicious as well. The moneys were passed to her in large amounts of cash, and she was told by Mike to split up the remittances. Third, her admission in the statements that it "did cross [her] mind that it was fishy money" and her express unwillingness to tell her husband about all the various remittances that she had carried out on Mike's instructions for fear that her husband would "definitely not approve" are extremely telling of her state of mind: she clearly had reasonable grounds to believe that the moneys she was remitting were derived from criminal conduct. Finally, by the last assignment on 14 July 2008, she even told Mike that "this was getting a bit too far" and that she did not want to remit any more money. This clearly indicated that she thought that she was aiding in the retention of what she reasonably believed were benefits of criminal conduct; that indicated her hesitation and unwillingness to continue remitting moneys on Mike's instructions.

72 Therefore, I am of the view that the moneys remitted by the Appellant represented the benefits of criminal conduct, which conduct constituted a serious offence listed in the Second Schedule of the CDSA, and that that remittance constituted an arrangement which facilitated the retention and control of those benefits by Michael, who was a person who had engaged in or benefited from criminal conduct. In short, all the elements of the *actus reus* of s 44(1)(*a*) of the CDSA have been established. I am also of the view, in agreement with the DJ, that the Appellant had remitted the moneys having reasonable grounds to believe that that arrangement would facilitate the retention and control of such benefits of criminal conduct, and that the Appellant had reasonable grounds to believe that Michael had engaged in criminal conduct or had benefited from it. In other words, all the elements of the *mens rea* of s 44(1)(*a*) of the CDSA have been made out. Consequently, the Appellant was properly convicted under s 44(1)(*a*) of the CDSA.

73 I am also of the view that the appeal on sentence should be dismissed. In all, the Appellant had actively facilitated the retention by Michael of more than S$2 million – no small amount by any measure. The suspicious circumstances in which she had handled the moneys would have made it abundantly clear to her as well as to any reasonable observer that the moneys were tainted by some predicate improper criminal conduct from which they had been derived. Yet, she never sought an explanation from Michael, Aloysious or even Richard in any of her numerous communications with

them, nor did she even attempt to explain her conduct to the court. The irresistible inference to be drawn from her silence in court is that she had nothing positive to say in her own defence. Further, against the backdrop of Singapore's significant private banking and asset management sector and its standing as a major international financial centre in the Asia-Pacific region, there is a compelling need to deter would-be "money launderers who want to clean their ill-gotten gains" (see Sir James Sassoon, Keynote Address at the Seminar on Countering the Financing of Terrorism, 12 February 2008, <www.oecd.org/dataoecd/60/51/40144609.pdf> accessed on 26 April 2011). In the light of all these considerations, the aggregate sentence of nine months' imprisonment certainly cannot be said to be manifestly excessive. Indeed, had the Prosecution appealed against the sentence imposed I would not have been averse to seriously considering enhancing the sentence further as this is an area of offending that merits deterrent sentencing. A clear signal must be sent to those who might wish to conduct money laundering activities here that if they are apprehended, they will be firmly dealt with.

74 For the reasons stated above, the Appellant's appeals against conviction and sentence are dismissed.

Conclusion

75 In my view there is a compelling need to take a purposive and pragmatic approach in construing the CDSA. Money laundering is an indivisible part of international criminal activity and is detrimental to society. The unimpeded circulation of proceeds from crime will have a prejudicial effect on the fabric of society and the economy. The criminalisation of money laundering has as its objective the undermining of crime by removing from circulation the proceeds of predicate crimes. While individual rights have to be respected, nice technical arguments should not be allowed to mist Parliament's salutary objective of enhancing effective international cooperation in combating crime. This can only be done if the architecture of the CDSA is viewed as expressing Parliament's clear intention to facilitate rather than to impede the prosecution of money laundering offences and their like. The objective of all money laundering transactions is to mask the predicate offences from which the moneys are derived. Often the most difficult aspect for prosecutors is proving that the property concerned had a criminal origin. To insist on the strict proof of all the requirements necessary to establish such predicate offences (bearing in mind the thick fog that ordinarily envelops them, the difficulty in procuring witnesses and the absence of any express statutory direction to do so) would turn the CDSA into a charter for rogues.

76 It remains for me to thank all counsel involved in this matter for their assistance, conscientious research and the clarity with which they have presented their submissions. In particular, I would like to express my deep gratitude to Mr Goh Yihan for his helpful submissions. Despite having prepared them at short notice, his submissions were comprehensive, admirably researched and lucidly presented. I ought to also mention that I have been greatly assisted in my thought process by the cogent reasoning of the DJ in her grounds of decision.

[note: 1] Record of Proceedings, Exhibit P11

[note: 2] Record of Proceedings, Exhibit P15

[note: 3] Record of Proceedings, Notes of Evidence, 11 January 2010 at p 273