



[2014] UKPC 27

**Privy Council Appeal No 0083 of 2013**

**JUDGMENT**

**Beezadhur (Appellant) vThe Independent Commission against Corruption and another  
(Respondents)**

**From The Supreme Court of Mauritius**

**before**

**Lady Hale**

**Lord Kerr**

**Lord Reed**

**Lord Carnwath**

**Lord Hodge**

**JUDGMENT DELIVERED BY**

**Lord Carnwath**

**ON**

**7 August 2014**

**Heard on 9 and 10 July 2014**

Appellant

Satyawan Kailash Trilochun

Javed Allybokus

Ashwina Pittea

(Instructed by Roshan Rajroop)

First Respondent

Kaushik Goburdhun

Ms P Bissoonauthsing

(Instructed by Sultan Sohawon)

Second Respo

Geoffrey Co

Rashid Ahr

Edward Riss

(Instructed

Royds Solic

**LORD CARNWATH:**

1.

This is an appeal against the judgment of the Supreme Court (N. Devat J and D. Chan Kan Cheong J), of 28 June 2013, dismissing the appellant's appeal against conviction and sentence for five offences contrary to Sections 5(1) and 8 of the Financial and Anti-Money Laundering Act ("the 2002 Act"). Leave was granted by the Board on 29 October 2013. The appeal raises two issues:

(i) On which party does the onus of proof lie regarding the application of exemptions under section 5(2) of the Act?

(ii) What is meant by the words "lawful business activities" in the definition of "exempt transaction" in section 2 of that Act?

### **The statutory provisions**

2.

The 2002 Act took effect on 10 June 2002, replacing similar provisions in the Economic Crime and Anti-Money Laundering Act 2000. Section 5 of the Act (replacing section 20 of the 2000 Act), as amended, provides:

#### **"5. Limitation of payment in cash**

(1) Notwithstanding section 37 of the Bank of Mauritius Act 2004, but subject to subsection (2), any person who makes or accepts any payment in cash in excess of 500,000 rupees or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.

(2) Subsection (1) shall not apply to an exempt transaction."

3.

"Exempt transaction" is defined by section 2:

" 'exempt transaction' means a transaction -

(a) between the Bank of Mauritius and any other person;

(b) between a bank and another bank;

(c) between a bank and a financial institution;

(d) between a bank or a financial institution and a customer where -

(i) the customer is, at the time the transaction takes place, an established customer of the bank or financial institution; and

(ii) the transaction consists of a deposit into, or withdrawal from, an account maintained by the Customer with the bank or financial institution, where the transaction does not exceed an amount that is commensurate with the lawful business activities of the customer; or

(e) between such other persons as may be prescribed;" (emphasis added)

The issue in this case turns on the construction of exemption (d), in particular the italicised words.

4.

It is to be noted that since the Supreme Court decision in this case exemption (d) has been amended with effect from 12 December 2013 by the Economic and Financial Measures (Miscellaneous

Provisions) Act (Act 27 of 2013), in particular to omit the reference to “business” activities. It now reads:

“(d) between a bank or a financial institution and a customer where –

(i) the transaction does not exceed an amount that is commensurate with the lawful activities of the customer, and –

(A) the customer is, at the time the transaction takes place, an established customer of the bank or financial institution; and

(B) the transaction consists of a deposit into, or withdrawal from, an account of a customer with the bank or financial institution; or

(ii) the chief executive officer or chief operating officer of the bank or financial institution, as the case may be, personally approves the transaction in accordance with any guidelines, instructions or rules issued by a supervisory authority in relation to exempt transactions;...”

Background to the legislation

5.

Mr Geoffrey Cox QC (for the State of Mauritius) invites the Board to consider the statute against its background of international pressure to combat economic crime and money laundering, including recommendations that cash transactions should be closely monitored and controlled.

6.

The 2000 Act had been a response to such international criticism, including by the Financial Action Task Force (or FATF), a body set up in 1989 by the G7 countries to examine measures to combat money laundering. FATF had also drawn attention to the risks posed by large cash transactions in the economy. Its “Forty recommendations...on money-laundering” (in the 1990 and 1996 versions) had included:

“Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.

Countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers.”

7.

The Bill on which the 2000 Act and later the 2002 Act were based was itself the result of detailed consideration over a number of years with expert advice from overseas, including a report from Professor Norton of London University in 1998. His report included a detailed review of the draft Bill (section IV A), of which he commented:

“The draft Anti-Money Laundering and Economic Crime Bill legislation represents an excellent effort to underlie the development of a framework to protect the bank and non-bank financial systems from systemic invasion and corruption by domestic and international criminal organisations.”

His review of the provisions relating to cash transactions, including the exemptions (section IV B 2(a), made no specific comment on the wording of the exemption now in issue, but he spoke more generally of the need for flexibility -

“... to ensure that the exempt transactions provision is not abused, but nonetheless sets forth ‘bright line tests’ to identify particular institutions where money laundering operations are highly unlikely or non-existent...”

8.

The general purpose of the Act was later described by the Supreme Court in *Abongo v The State* [2009] SCJ 81, cited in part in *Meeajun v State*[2011] SCJ 141, para 26:

“[The 2002 Act was meant] essentially for the purpose of combating money laundering offences which had the potential of adversely affecting the social and economic set up, both at national and international level to such an extent that they may constitute serious threats not only to the financial system but also to national security, the rule of law and the democratic roots of society. By enacting sections 5,6 and 8 of the Act, the policy of the legislator was clearly designed to achieve the compelling objective of safeguarding the national and international financial system against any disruptive intrusion which may be caused by the perpetrators of certain criminal activities...”

9.

The appellant does not challenge the general objectives of the legislation, but questions whether they require an unduly narrow reading of the exemption in issue in this case. That view gains some support from the added flexibility introduced by the amendment in 2013, as noted above, made apparently in response to the Supreme Court decision in this case.

### **The facts**

10.

The appellant gave unchallenged evidence as to the background and circumstances of the payments.

11.

He had left Mauritius in 1959 for the United Kingdom, where he still lives. He was employed there in the National Health Service, and in 1962 married a nurse working in the same service. When they both retired in 2004, they obtained a total lump sum of £ 80,000. Since then, he has been receiving a monthly pension of £2,000 and his wife of £ 1,500. He has been coming to Mauritius regularly since 1995 and on each visit, he brought his “pocket money” in cash.

12.

The money in question all came from his savings and pension and those of his wife, all of which were initially deposited into his joint bank account with his wife in the United Kingdom. The purpose of the money was to provide for retirement in Mauritius and he intended to invest that money in Mauritius. He has other deposits in financial institutions in Mauritius, paid for initially by cheques drawn on the State Bank of Mauritius. He owns a house in Mauritius.

13.

Of the specific cash transactions which were the subject of the charges his evidence was:

(i) On the 14 June 2002 he made a cash deposit of Rs 600,000 into his State Bank of Mauritius account;

(ii) On the 12 February 2003, he withdrew 90,000 Euros, representing Rs 2,708,820. This withdrawal funded the purchase of a property in Spain.

(iii) On the 11 January 2006, he made a cash deposit of Rs 500,000 into his State Bank of Mauritius account.

(iv) On the 17 January 2006, he made a cash deposit of Rs 500,000 into his State Bank of Mauritius account.

(v) On the 10 January 2007, he made a cash deposit of Rs 820,000 into his State Bank of Mauritius account. He initially changed £7,500 at Shibani Finance Co. Ltd, obtaining Rs 495,750 and added the difference of Rs 324,250 before depositing the total into his bank account.

14.

In the intermediate court, the magistrate accepted that the money in question did not have a “tainted” origin, but was the fruit of his savings. However, he held that the Act did not require the prosecution to aver in the information that the money emanated from tainted origins. The appellant did not at that stage argue that the transactions were “exempt” under section 5(2). The magistrate found the appellant guilty as charged and sentenced him to pay a fine of Rs 10,000 under each of the five counts, and costs of Rs 500.

15.

His appeal to the Supreme Court was dismissed. The court held that the burden had been on him to bring himself within exemption (d), which he had not sought to do, but that in any event the exemption was not applicable to his case. “Business activities” meant “activities which are money making or profit making, in short commercial activities and purposes” (p 17). Further he had not shown that he was an “established customer” of the bank.

### **The issues**

16.

As already noted, the grounds of appeal raise two issues: burden of proof and construction of exemption (d). It is convenient to deal first with the issue of construction, which in the Board’s view is determinative against the appeal. However, the issue of burden of proof may be of some general importance and has been fully argued. Accordingly it will be appropriate to express some conclusions on it.

#### **Lawful business activities**

17.

The Supreme Court held that the word “business” in this context had the effect of limiting the scope of the exemption to “money making or profit making activities of a commercial or professional nature” (p 17). It was designed for businesses which routinely handle large amounts of cash as part of their normal operations:

“As rightly pointed out [by counsel], there are supermarkets, hypermarkets or businesses of similar nature which everyday deal with and deposit substantial amounts of cash exceeding Rs 500,000. Now such businesses would be everyday contravening section 5 were it not for the defence of ‘exempt transaction’. It is precisely with these businesses in mind that the legislator has thought it fit to provide for a form of exemption to those engaged in activities which necessarily involve dealing in cash beyond the prohibited limit...” (p 17)

Consequently, it had no application to private or personal transactions, even if otherwise lawful and morally unobjectionable, such as those of the appellant.

18.

Mr Trilochun argues that this interpretation is too narrow. He submits that the word “business” is apt to describe a person’s regular occupation, profession or trade, whether or not “commercial” in the sense used by the Supreme Court. It could cover, for example, a major charity collecting donations in cash and depositing them with its regular bank. That would be a “lawful business activity”, even if not commercial. In the same way, the appellant’s “business” was his occupation as a retired nurse, and all the impugned transactions were commensurate with his lawful activities in that occupation.

19.

The Board is inclined to agree that the Supreme Court’s interpretation may have been too narrow, in so far as it restricted the phrase to commercial or “money-making” activities. Mr Cox accepted that a charity collecting donations, in Mr Trilochun’s example, would be covered by the exemption, but he suggested that the Supreme Court’s reference to “money-making” was wide enough to embrace such an activity. Whether or not the Supreme Court’s language can be stretched to that extent, the Board sees no difficulty in treating money-raising activity by a charity as a “business activity” in the ordinary meaning of that expression.

20.

In *Town Investments Ltd v Department of the Environment* [1978] AC 359, 383 (concerning the term “business tenancy” in UK counter-inflation legislation), Lord Diplock described the word “business” as an “etymological chameleon” which suited its meaning to the context in which it was found, and whose dictionary meanings (in the words of Lindley L.J. in *Rolls v. Miller*(1884) 27 Ch.D. 71, 88) embraced “almost anything which is an occupation, as distinguished from a pleasure...”. In the Court of Appeal in the same case ([1976] 1 WLR 1126, 1149 Buckley LJ (preferring the metaphor “protean”) had suggested that it was “easier to say what is not ‘business’ than what is”, and that it was “to a great extent a question of degree” and dependent on the character of the particular activity. He gave some examples:

“Purely domestic activities are not ‘business’. Purely recreational activities are not in my opinion ‘business’ unless, maybe, when carried on by a body of persons... Nor, I think, are purely cultural pursuits, distinct from a business of providing education. A commercial element may not be essential... a serious undertaking earnestly pursued for the purpose of fulfilling a social obligation may constitute a business, even if not undertaken for profit....”

21.

Although no conclusive guidance is to be found in authorities under other statutes or in legal dictionaries, in none of them has Mr Trilochun been able to find support for treating the occupation of a retired nurse as a “business activity” in any context comparable to the present. It is unnecessary to attempt a complete definition of the expression “business activities” in the 2002 Act, either for the purposes of this case, or (following its amendment) for the future. It is enough to express agreement with the Supreme Court that, on the ordinary meaning of that term, the appellant’s activities are not within it. Indeed, to hold otherwise would deprive the word “business” of any meaning in the definition.

22.

The wording of the exemption must be looked at as a whole. It is concerned with “business activities” not just business in a loose general sense. Furthermore the emphasis is, not so much on the business

activities as such, as on the nature and amount of the cash transactions, which must be “commensurate” with the activities of that business. This tends to support the Supreme Court’s view that the exemption is directed at businesses, typically in the retail trade, in which substantial cash transactions are a routine activity and provide an appropriate comparison for the transactions in issue.

23.

Nothing in the background or purposes of the statute calls for a wider interpretation. Strict control of cash transactions was clearly seen as an important part of the strategy for countering financial abuse. The exemptions were narrowly defined, being directed principally at transactions under the control of the central bank, or between recognised banks and financial institutions. The last category extends the exemption more widely, while still subject to some control by the banks, but it is not surprising to find it limited to businesses with a pattern of cash transactions, as opposed to the public at large.

24.

On this issue therefore the appeal must fail.

### **Burden of proof**

25.

Section 10 of the Constitution provides:

“(2) Every person who is charged with a criminal offence –

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

...

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –

(a) subsection (2)(a), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;...”

26.

Section 10 gives expression to a fundamental rule of the common law, that the general burden of proof in criminal cases lies on the prosecution. That rule is subject to a well-established exception, the best known statement of which is probably in the judgment of Lawton LJ in *Reg. v. Edwards* [1975] Q.B. 27, 39-40. He described the line of authority which “over the centuries” had evolved an exception to the fundamental rule:

“This exception... is limited to offences arising under enactments which prohibit the doing of an act save in specified circumstances or by persons of specified classes or with specified qualifications or with the licence or permission of specified authorities. Whenever the prosecution seeks to rely on this exception, the court must construe the enactment under which the charge is laid. If the true construction is that the enactment prohibits the doing of acts, subject to provisos, exemptions and the like, then the prosecution can rely upon the exception.”

The exception has been held equally relevant where the general rule is enshrined in a constitutional provision (see *A-G for Hong Kong v Le Kwong-kut* [1993] AC 951, 968-70, relating to article 11(1) of the Hong Kong Bill of Rights, which provided: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”)

27.

The same approach has been followed by the Supreme Court of Mauritius in a number of decisions, which it also relied on in the present case. They have treated section 10(11)(a) of the Constitution as giving effect to the exception. Thus in *Police v Moorbannoo* (1972) MR 22, 25-26 the Court said:

“The principle which section 10(11)(a) of the Constitution aims at expressing in a compendious and general form may be expounded thus. To say that an accused party is to be presumed innocent is really to say that the burden is on the prosecution to prove every ingredient of the charge against him. It has long ago been realised, however, that if that rule were strictly adhered to, many acts or omissions which the Legislature deems of the utmost importance to prohibit for the public good would have to be left unpunished, because the prohibition would be incapable of enforcement, and there has from early times been elaborated a qualification to the rule which is, that facts which bring a defendant within the ambit of a particular exception, if they are peculiarly or exclusively within his knowledge, should be regarded as matters which it is for him to establish.”

Similarly in *Police v Fra* (1975) MR 157, 158-159, the court said:

“It is also permissible for the legislature, subject to [the Constitution], to make the doing of any particular act an offence, save in specified circumstances, or by persons of specified classes, or with special qualifications or with the permission of license of specified authorities; the effect of the enactment being in such a case to prohibit either expressly or by necessary implication the doing of the act in question subject to a proviso, exception, excuse or qualification, and the burden of proving that the proviso and the like applies being placed on the contravener. Such an enactment would not infringe subsection (2)(a) of section 10 of the Constitution and is expressly allowed by subsection (11)(a) of that section, which provides that a law that imposes upon a person charged with a criminal offence the burden of proving particular facts is not inconsistent with the presumption of innocence protected by subsection (2)(a)”.

28.

These passages were quoted and applied by the Supreme Court in *Abongo v The State* [2009] SCJ 81 (in the context of the 2002 Act itself), and more recently in *Fakira A.G v The State* 2012 SCJ 466, in which reference was made also to *R v Edwards*. In *Fakira* reference was also made to section 125(2) of the District and Intermediate Courts (Criminal Jurisdiction) Act, which can be seen as expressing the same principle in statutory form:

“Any exception, exemption, proviso or qualification, whether it does or does not accompany the description of the offence in the law creating such offence, may be proved by the defendant but need not be specified in the information or proved by the prosecutor”

29.

In the present case, Mr Trilochun for the appellant does not question the general principle as embodied in section 10(11)(a), but relies on what he says are two qualifications:

(i) Following the Supreme Court in *Moorbannoo*, it should be treated as placing the burden of proof on the defendant only in respect of matters “peculiarly or exclusively within his knowledge”.

(ii) On its proper construction, section 10(11)(a) only applies where “the law in question” expressly imposes upon the person charged the burden of proof.

30.



In his closing submissions he made what appeared to be a wholly new point: that the principles stated in *R v Edwards* (1975) were inapplicable in Mauritius, because the judgment post-dated the 1968 Constitution and was therefore no part of the system of law established under it. The Board sees no merit in this argument. The varied sources of the law of Mauritius have been discussed in other cases (see eg *Ahnee v DPP* [1999] 2 AC 294), but that debate has no relevance in the present context. As made clear in the judgment of Lawton LJ in *Edwards* the principles there discussed derived from authorities developed “over the centuries” and long before the 1968 Constitution. As recognised by the Supreme Court, they are reflected in section 10 of the Constitution itself, and in the Board’s view are a legitimate aid to its interpretation.

31.

Under his first suggested qualification, he argues that the issues arising under exemption (d) - that is whether the appellant was an established customer, and whether the amount was commensurate with his lawful activities - were not matters “peculiarly or exclusively” within his knowledge. Both the bank and the prosecuting authorities had the means to obtain the necessary knowledge. Under its “Know Your Customer” procedure the bank was or should have been able to investigate such matters as a customer’s sources of income, his businesses activities, his living standard, and the number of times and the purpose for which he travels during a year. Under section 17(c) of the 2002 Act, the prosecuting authority had the power to seek a court order for records held by a bank, and obtained such an order in this case for the appellant’s bank statements.

32.

The Board cannot accept this submission. Exclusivity of knowledge, as such, is not an essential requirement for the application of the exception. The important issue is -

“the extent to which the burden on the accused relates to facts which, if they exist, are readily provable by him as matters within his own knowledge or to which he has ready access.” (*R v Johnstone* [2003] 1 WLR 1736 para 50 per Lord Nicholls).

This clearly applies to the customers’ knowledge of his status as an established customer of a bank, of the nature and purpose of his own cash transactions, and of whether they were commensurate with his lawful activities in general. It is not affected by the possibility that the prosecuting authority may be able to obtain some of the information indirectly by a court order for disclosure of bank records.

33.

On the other hand the fact that the bank, which was the other party to the cash transaction, had, or could have had, access to information about its customer’s activities is nothing in point. That information may be as important for the bank in relying on exemption (d) as for the customer. It has to be borne in mind that the offence is committed by both the person who makes the cash payment and the person who accepts. There is no exemption for banks as such in their dealings with their customers. Indeed the shared responsibility of the bank and its customer for ensuring that a cash transaction is covered by the exemption appears to be an important aspect of the statutory scheme.

34.

In support of his second qualification, Mr Trilochun pointed to a number of statutes in which it was expressly provided that the burden of proof in respect of particular matters lay on the defendant. In the leading case of *Moorbannoo*, for example, the relevant statute (Electricity Ordinance s 32) imposed criminal liability on any person who “without lawful authority or excuse, the proof whereof shall lie on him... abstracts, consumes or uses energy...” (emphasis added). Mr Trilochun went as far

as to submit that similar wording could be found in the statutes in issue in all the cases in which section 10(11)(a) had been applied by the Supreme Court.

35.

It is unfortunate that the last point appears to have been made for the first time in his oral submissions to the Board. It was not therefore addressed by the Supreme Court, which would have been better equipped than the Board to put it to a general test. However, the point does not appear as part of the reasoning of that court in any of the judgments to which the Board has been referred. It appears to be falsified by at least one of them. In *Fakira* (above), the alleged offence (under section 258(1) of the Criminal Code) was that of sequestration “without any order from the constituted authorities”. The section contained no specific reference to a burden of proof placed on the defendant. However, the Supreme Court held, relying on section 10(11)(a) and *Moorbannoo*, that it was not necessary for the prosecution to prove absence of such an order.

36.

In agreement with the Supreme Court in the cases to which reference has been made, the Board reads section 10(11)(a) as intended to give constitutional effect to the common law principle enunciated in cases such as *R v Edwards*. It applies whenever the relevant law (“the law in question”), interpreted in the light of that principle, has the effect of placing the burden of proof on the defendant. If that effect is clear from the form of the provision in issue, it does not need to be spelt out in express terms. In the present case, the structure and content of the statutory offence and of the specific exemptions are in the Board’s view clearly designed to bring into play the *Edwards* principle. The Supreme Court was right to hold that, in accordance with section 10(11)(a), it was for the defendant to show that the transaction was within one of the exempt categories.

### **Conclusion**

37.

The Board has considerable sympathy for the appellant. It is accepted that the source of his cash deposits was entirely legitimate, as was the reason for his cash withdrawal. There is no reason to believe that he had any intention to break the law. At the time of the first transaction the 2002 Act had only been in operation for a matter of days, and, although the 2000 Act had contained similar restrictions, it is not clear how much publicity had been given to them. Furthermore, one might have expected that his bank which certainly would have known the law, would have drawn it to his attention and refused either to accept his deposits (if not the first, then certainly the second, third and fourth times) or to pay out the cash. (Indeed, on the material before the Board, it is unclear why he alone was prosecuted for an offence, which on the face of it was also committed by the bank. In response to questions from the Board, Counsel for ICAC (the first respondent) was unable to explain why no prosecution had apparently been taken against the bank. In the absence of any representative of the bank it would be wrong to comment further.) Although there is no appeal against sentence, we would observe that in the circumstances as we know them the penalty seems harsh and consideration could properly have been given to a non-penal disposal.

38.

In conclusion the Board sees no alternative but to dismiss the appeal and uphold the convictions.

### **LORD KERR (DISSENTING):**

39.

I agree with the judgment of the majority on the issue of the burden of proof. The provisions in section 10(11)(a) of the Constitution are dispositive of that issue. But the consequence of fixing the appellant with the burden of proving that the transactions in which he engaged were exempt from section 5(1) of the 2002 Act must surely be that a generous approach should be taken to the availability of the exemption under section 5(2) of the Act.

40.

Bennion on Statutory Interpretation, 5th ed, 2008 at Section 182 states:

“Strict and liberal construction.

(1) Where the legal thrust of an enactment yields an adverse result, the interpretative factors may on balance indicate that the court should curtail its application. This is known as strict construction.

(2) Where the legal thrust of an enactment yields a beneficent result, the interpretative factors may on balance indicate that the court should widen its application. This is known as liberal construction.

(3) The same construction may be strict from one point of view but liberal from another.”

This has been frequently approved, most recently by the Privy Council in *Selassie v The Queen*[2013] UKPC 29 per Lord Wilson at [17].

41.

That the legislature did not intend that the activities of an innocent person such as the appellant should be criminalised is put beyond doubt by the rapid amendment of section 5 of the 2002 Act by the Economic and Financial Measures (Miscellaneous Provisions) Act (Act 27 of 2013). True it is that amending legislation does not necessarily provide an insight into the intention of Parliament in enacting the original provision. But it seems to me to be wholly unrealistic to ignore the fact that the legislature moved so quickly to correct what it must have perceived as an unintended consequence of the original Act. In this connection I should say that I do not consider that the fact that the legislation had been considered by experts before it was enacted is at all relevant. It is abundantly apparent that none of these experts had adverted to the anomaly that this case has thrown up. Their contribution did not inhibit, much less deter, Parliament from putting right the obvious wrong which the appellant’s conviction had exposed.

42.

Business can be read as meaning occupation, profession or trade, as the appellant has argued. ‘Activities’ can be regarded as the transactions involved in carrying out one’s occupation etc. This may not be the conventional connotation but it is certainly a possible one and, in keeping with the rule enunciated by Bennion, if it is possible, then it should be adopted.

43.

The Oxford English Dictionary provides these definitions of ‘business’: “(a) a person’s official or professional duties as a whole; one’s regular, habitual or stated profession, trade or occupation; (b) an instance of this: a particular occupation or means of earning a living; a trade, profession or pursuit.” The transactions which are the subject of the charges against the appellant involved use of money which was earned in the course of his profession. “Business activities” and “business” can both be interpreted as involving commercial activity. What the appellant was engaged in was certainly commercial, in the broader sense of that term. If I deposit money in my bank account, I am doing business with my bankers. While that action may not immediately appear to constitute business activities, it is not an unduly strained meaning of the term.

44.

Quite apart from this, interpretation of section 5(2) to include normal transactions with one's bank involving the deposit of money earned from one's work avoids the absurdity that charities would commit an offence if they have a successful collection and deposit the proceeds in an account. The respondents' attempts to suggest that, on the interpretation that they commend, this consequence could be avoided seem to me entirely implausible. Moreover, none of the policy objectives of the legislation is any less well served if the exemption extends beyond the world of commerce. Cash in hand businesses are more likely to be used for money laundering but it does not make sense to confine the exemption solely to them.

45.

I would therefore have allowed the appeal.