



Neutral Citation Number: [2021] EWHC 2594 (Admin)

Case No: CO/4613/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28/09/2021

**Before :**

**MRS JUSTICE CUTTS DBE**

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**Between :**

**R (on the application of SHUYU CAO)**

**Claimant**

**- and -**

**CENTRAL CRIMINAL COURT**

**Defendant**

**-and-**

**COMMISSIONER OF POLICE FOR THE  
METROPOLIS**

**Interested  
Party**

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**The Claimant was represented by Simon Farrell QC.  
The Defendant was not represented.  
The Interested party was represented by Dominic Bardill**

Hearing date: 7 September 2021

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**Approved Judgment**

**Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be listed on 28<sup>th</sup> September 2021 at 10:00.**

**Mrs Justice Cutts DBE :**

1. This is a renewed application for permission, following refusal by the single judge, to judicially review the decision of HHJ Leonard QC and a lay Bench dated 28<sup>th</sup> August 2019 to order forfeiture of approximately £71,000, 1,790 Euros and \$2,568 pursuant to s.298 of the Proceeds of Crime Act 2002 (POCA).
2. The claimant is a Chinese national who at all material times was a student in the UK. On 12 October 2016 his house was searched by police officers who were concerned in a money laundering investigation. Officers seized the cash to which I have already alluded. £59,980 of the cash was found folded in plastic bags within a metal suitcase. The claimant has never been prosecuted for money laundering or any other offence. Application was made for forfeiture of the cash found. On 3<sup>rd</sup> December 2018 the City of London Magistrates Court granted the Interested Party's application. The claimant appealed to the Crown Court under s.299 of POCA.
3. The appeal, which lasted a day, was of course a complete re-hearing. There was evidence before the court that the claimant had received a total deposit into his bank account of £824,393.58 in varying amounts and at various banks throughout the country. He told the police during the search that this came from his friends, family and his mother. He did not answer questions in interview but gave a prepared statement in which he said, "My mum sends me money directly and other people pay money into my account...The cash at my address is not criminal property to my knowledge."

**Legal Framework**

4. By s.298(2) Proceeds of Crime Act 2002:

*The court or sheriff may order the forfeiture of the cash or any part of it if satisfied that the cash or part-*

*(a) is recoverable property; or*

*(b) is intended by any person for use in unlawful conduct.*

5. Section 304(1) provides that “*property obtained through unlawful conduct is recoverable property*”.

6. S.241 of the Act defines “unlawful conduct” and provides:

*(1) Conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part.*

*(2) Conduct which-*

*(a) Occurs in a country or territory outside the United Kingdom is unlawful conduct and is unlawful under the criminal law applying in that country or territory, and*

*(b) if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part, is also unlawful conduct.*

*(3) The court or sheriff must decide on the balance of probabilities whether it is proved-*

*a) that any matters alleged to constitute unlawful conduct have occurred, or-*

*b) that any person intended to use any [property] in unlawful conduct.*

7. In relation to “property obtained through unlawful conduct”, s.242 provides:

*(1) A person obtains property through unlawful conduct (whether his own conduct or another’s) if he obtains property by or in return for the conduct.*

*(2) In deciding whether any property was obtained through unlawful conduct-*

*(a)...*

*(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.*

8. S.340(2) of the Proceeds of Crime Act interprets “criminal conduct” as conduct which-

*(a) constitutes an offence in any part of the United Kingdom; or*

*(b) would constitute an offence in any part of the United Kingdom if it occurred there.*

### **Proceedings in the Crown Court**

9. The respondent to the appeal (the Interested Party to this claim) asserted that the criminal conduct in this case was one of money laundering. They relied upon the following evidence (taken from the judgment):

- a. The physical evidence of the way in which the money was kept. It was submitted that if, as the appellant claimed, he relied on cash to fund his and his brother’s education and extravagant lifestyle, why was it being stored wrapped in plastic and in a suitcase in his home? He had bank accounts into which other cash deposits were made. It was unusual for someone of the appellant’s obvious intelligence and commercial background to keep cash at home rather than in the bank.
- b. Photographs of two torn bank notes were found on his computer. This is a well-known device used by money launderers to match two parties to a transaction.
- c. There were frequent large deposits of cash into his bank account.
- d. The deposits were from all over the country.
- e. There was evidence of some payments being made within minutes of each other into the account. This is a technique commonly used to avoid detection

of deposits which might, were they larger, be automatically identified by a bank as suspicious transactions.

- f. There were numerous photographs of bundles of money found in the appellant's possession.
- g. The appellant was connected to a lady named Fen Chen who had been arrested and stood trial for money laundering. He assisted her with bail after her arrest. She was connected to a foreign exchange bureau named Huiton which was used to transfer money between Mrs Qian Wen (the appellant's mother) and the appellant.
- h. The appellant kept no records of what had been transferred.
- i. The possible explanation for the cash amount of £70K being money that his mother brought in from China did not stand up to examination. If it was destined for a property transaction in Cyprus it would have been shared amongst a group with whom Mrs Wen was travelling and be in Euros, not Sterling.
- j. There was a significant difference in the evidence which the appellant gave in the Magistrates Court about his having the money in his possession for two weeks and his evidence in the appeal that he had held the cash for six months.
- k. The explanation for the transfer of RMB 1,000,000 from his grandmother was from the appellant that she had been successful on the stock exchange but according to his mother was from a payment made to his grandmother who had sold her body parts.
- l. Mrs Qian Wen gave evidence of an account which she held jointly with her son, something that had never come to light before.

10. The claimant, his mother and his brother gave evidence during the appeal hearing. It was argued on his behalf that:

- a. The suggestion that the £70K was criminal property was based on suspicion rather than hard evidence.
- b. After a three-year investigation and handing the case to the NCA no criminal charge had been laid against the appellant and the authorities could provide no explanation for any criminal origin of the money.
- c. Although Fen was convicted, one of her co-defendants had been acquitted. Not all those connected to her had been convicted (on the criminal standard) of money laundering.
- d. The appellant needed money to support himself and his siblings. He also needed to show that he had £200,000 in capital to meet UK immigration rules when applying for a Tier 1 (Entrepreneur) visa.
- e. The variety of banks into which money was paid is indicative of the scheme which was presented to the appellant to allow money to be transferred into the UK by back to back deals in China and here in London. The difficulty with transferring money led to Mrs Wen bringing cash into the country when she came here. She brought £8,000 in January and a further £45,000 in April 2016.
- f. Large sums had been entering the UK to buy homes and pay for university education.
- g. There was no reason why he should not store the money in zip lock bags. The transfer of money into his account from various different branches is also consistent with movement of money from China. He was able to keep a simple account of what he had received from his bank statements.
- h. His explanation for the torn notes was consistent with a man who wanted to make sure that he was not short-changed by the exchange bureau; he did it to

ensure that he had a record of the notes which should be replaced. The evidence of a payment in of an amount of money which was short of a round number by £5 was supportive of that.

- i. Even if the transactions amounting to £800,000 looked suspicious it was the £70,000 which was the subject matter of the application.
- j. If he was party to money laundering why did he report Fen's activities to the police when he did not receive the money he was expecting? The evidence did not support any intimate connection with her.

11. In its judgment the Court accepted that the appellant received substantial sums of money from abroad. They made allowance for the circumstances of wealth surrounding the family but they did not accept that this could account for all the money that had entered the appellant's account or for the money found in his home in October 2016. The Court had considered the analysis of the appellant's bank accounts from 2014-2017. It did not bear out the high standard of living that the appellant claimed that he and his fiancée had enjoyed. The Court did not accept the appellant's account of the provenance of the money or his reasons for keeping it wrapped in the suitcase, namely, to preserve the interior of the suitcase. Further, the Court did not accept that, on the evidence they had seen, the appellant would not have kept meticulous records of the money he received.

12. The Court accepted that the police could not give them an explanation for the source of the cash but it was sure that it represented the proceeds of money laundering. The whole purpose of money laundering was to make its origins impossible to detect. It rejected the explanations given for how the £70,000 was amassed and did not accept that it was money originally intended for the purchase of a property in Cyprus. It was satisfied on the balance of probabilities that the money was recoverable.

### **Grounds of challenge**



13. The claimant applies for permission to bring judicial review proceedings on four grounds:

- a. First that the Crown Court made an error of law and/or failed to take into account a relevant consideration in that it omitted to satisfy itself that the underlying misconduct said to have generated the cash seized constituted an offence under UK law and not merely an offence under foreign law. Mr Farrell QC, who represents the claimant, submits:
  - i. that it was insufficient for the Court to identify money laundering as the sole offence. Money laundering presupposes the commission of a predicate criminal offence that renders the money that is laundered “criminal”. The Crown Court failed to identify in any way what that predicate offence was.
  - ii. Mr Farrell QC accepts that it is not ordinarily necessary to specify the predicate offence for the purposes of proving money laundering but submits that special considerations arise in a case such as this which he argues has an international element. It was necessary by reason of s.340(2) of POCA for the Court to be satisfied that the money in question stemmed from one or other crime that was either committed within UK territory or would have constituted an offence under UK law if it occurred here.
  - iii. This he submits is of especial importance in cases such as this where the application for forfeiture relies predominantly on allegedly suspicious methods of dealing with money. This, he contends, is because such methods are also readily explicable by the wish to conceal what is a crime in a foreign country, such as the evasion of exchange controls.
  - iv. Mr Farrell QC argues that the international element was plain in this case by reason that the claimant himself and many of the others involved are Chinese nationals or resident there; it was accepted that

the claimant was receiving at least some funds from abroad and was his evidence that he received the great majority of the cash subject to the application from abroad; the claimant and his mother were trying to evade Chinese exchange controls and the cash seized included foreign currencies.

- v. The Crown Court failed to address the issue of whether or not any predicate conduct amounted to an offence within UK and not merely foreign law. Accordingly it failed to direct itself properly as to the offence of money laundering, specifically the definition of “criminal property” and/or failed to take into account a relevant consideration, namely to the extent that any conduct was suspicious that could be explained by the commission of an offence existing under foreign law only.
  
- b. Next, Mr Farrell QC submits that the Crown Court erred in law in failing properly to direct itself as to the approach to be applied when the predicate offence for money laundering is not identified in any way. He submits that the case of *R v Anwoir [2009] 1 WLR 980* enables an offence of money laundering to be established only if the evidence is such as to give rise to an “irresistible inference that [the property] can only be derived from crime”. He acknowledges that the standard of proof is on the balance of probabilities but submits that does not displace the wording from this judgment. The Crown Court in this case omitted to properly direct itself in this regard. It is not right to say that the only inference to be drawn from the suspicious circumstances in which the money was kept that the money was obtained through an offence under UK law as opposed to an offence under Chinese law alone.
  
- c. Third Mr Farrell QC submits that it was irrational on the part of the Crown Court to conclude in the absence of any identified predicate offence that the cash seized must have been obtained through money laundering. The claimant gave plausible explanations for receiving large sums of money and the Court accepted that he received such from legitimate sources. The Court failed to give a sufficient basis on which it could have rationally come to the

conclusions that it did.

- d. Finally Mr Farrell QC submits that the Crown Court's judgment is irrational and marred by a failure to distinguish between the various sums of cash in different denominations seized from different locations within the premises. Even if the Court was entitled to conclude that the cash in the suitcase was the product of money laundering it was irrational to come to the same conclusion in relation to the other sums seized.

14. In oral submissions, Mr Farrell QC accepted that the Crown Court had the benefit of hearing evidence from the claimant and his mother concerning the source of the cash. He submits however that the Court should have stated the test (that cogent evidence was required to prove that the provenance of the funds was money laundering), applied it and given reasons why it reached the conclusion that it did. The Court failed to do so.

### **Interested Party response**

15. Mr Bardill, on behalf of the Metropolitan Police submits that the grounds of challenge are unarguable and that permission for judicial review should be refused. In particular he submits:

- a. The Crown Court was satisfied, having heard evidence, that the cash in question derived from money laundering. This covers a number of offences which are or would be criminal offences in the UK. The Court therefore did make the necessary finding and it was not necessary for it to go further. The argument that the cash may have come to the UK in breach of exchange controls in China was never advanced by the Appellant at the hearing. In any event the evidence was overwhelming and that possibility was unlikely and implausible.
- b. In relation to ground 2 he submits that the evidence taken as a whole does give rise to an irresistible inference that the cash was derived from money laundering. The test is whether that is the only reasonable inference. This was

passed in this case.

- c. Ground 3 arises from grounds 1 and 2 and is therefore also unarguable.
- d. The evidence in relation to the non-sterling cash and that found outside of the suitcase was still overwhelming and the Court came to a conclusion it was entitled to make. The decision of the Court was entirely rational.

16. In oral submissions Mr Bardill submitted that even if I considered that the test should have been set out by the Crown Court and that the judgment should have been more detailed, permission should nonetheless be refused on the basis that the same result would have ensued.

## **Conclusion**

17. I am grateful for the clear and detailed submissions from both parties.

18. I have considered the submissions made in support of the application with care but I am not persuaded that the grounds advanced are arguable. I come to this conclusion for the following reasons:

- a. The source of the seized cash was the matter in dispute at the appeal in the Crown Court. The Court had the advantage of hearing the evidence of the claimant, his mother and his brother on this issue. The Court was well placed to determine the credibility of those witnesses and whether it accepted their evidence. It is clear from the judgment that it did not.
- b. It was not necessary for the Court to make specific findings about the nature of the predicate offence provided there was evidence upon which the court could rely to make a finding that the cash was criminal property.
- c. The judgment of the Court did not specifically state that cogent evidence was necessary before it could make a finding that the cash seized came from money laundering. It would have been better had it done so. However, as both

parties concede, it is not necessary to so state provided the correct test was applied. It is plain from reading the judgment as a whole that the Court was sure that the cash was the proceeds of money laundering. The judgment makes clear that it had “made every allowance for cultural differences that may exist in China” in coming to that conclusion. I do not consider it arguable that the Court failed to exercise special care and caution before determining the issues. The findings it made amounted to cogent evidence to support the decision it reached.

- d. Whilst the Court did rely on the way in which the cash was stored in reaching the conclusion that it was the proceeds of money laundering that was not the sole reason for that conclusion. The prosecution submissions on the evidence were set out in the judgment. The Court specifically accepted those submissions in addition to setting out further reasons for its conclusions in paragraphs 12-18. Reliance on the judgment in *Wiese v The UK Border Agency* [2012] EWHC 2549 (Admin) does not provide great assistance to the Claimant in this regard. As Underhill J (as he then was) made clear at paragraph 39, his decision was fact specific. In that case he concluded that there were no additional circumstances beyond the carrying of the cash itself to render an inference that it was obtained through money laundering and an entirely plausible explanation had been put forward. In the present case there was other evidence in addition to the location of the cash to render the inference that it was obtained through money laundering. The Court had found the explanation given in evidence to be implausible. There was ample evidence to support the Court’s conclusion.
- e. It follows that the contention that the Court’s finding was irrational is, in my view unarguable. Further it was unnecessary for the court to make separate findings in relation to the sums of cash found other than in the suitcase.

19. Permission for judicial review is accordingly refused.