



Trinity Term
[2026] UKPC 28
Privy Council Appeal No 0086 of 2024

JUDGMENT

**Margot Serra and Ors (Appellants) v Attorney
General for Gibraltar (Respondent)**

From the Court of Appeal of Gibraltar

before

**Lord Lloyd-Jones
Lady Simler
Lord Snowden**

**JUDGMENT GIVEN ON
15 July 2026**

Heard on 15 July 2026

Appellant

Ian Winter KC

(Instructed by Charles Gomez & Co (Gibraltar))

Respondent

Christian Rocca KC

Kerrin Drago

(Instructed by Charles Russell Speechlys)

LORD LLOYD-JONES:

1. On 30 June 2023 Dudley CJ made a recovery order pursuant to Part V of the Proceeds of Crime Act 2015 against the five appellants in respect of three items of property (1) Flat 8, Sunrise Court, Gibraltar; (2) Commercial Units 1, 2 and 3, Water Gardens, Gibraltar; and (3) a Gibraltar taxi licence, Number 65; ([2023] Gib LR 511). It was the prosecution case that each of the three items of property was or represented property obtained through unlawful conduct, namely drug trafficking.

2. The order was made as a result of an investigation by the authorities in Gibraltar, in co-operation with the Spanish authorities, into the activities of Mr Clint Serra, the fifth appellant, to whom all the other appellants are related or connected. Under a European Arrest Warrant issued in September 2019, Mr Serra was accused of having imported large quantities of drugs into Spain, and identified as the leader of a criminal group.

3. On 19 April 2024 the Court of Appeal for Gibraltar, Sir Maurice Kay P, Sir Nigel Davis and Sir Adrian Fulford JJA, dismissed an appeal against the order of the Chief Justice; ([2024] Gib LR 251).

4. The appellants now appeal against that dismissal to His Majesty in Council as of right pursuant to section 66 of the Gibraltar Constitution Order of 2006.

5. By order dated 5 September 2025, the Court of Appeal, acting pursuant to section 4 of the Gibraltar (Appeals to Privy Council) Order 1985, formally granted leave to appeal to the Judicial Committee of the Privy Council and made an order that security for costs in the sum of £20,000 be lodged in the Supreme Court Fund by the appellants within 56 days of the order. That appeal as of right was available because the matter in dispute on the appeal is of a value of £50,000 or upwards. (See section 22A of the Court of Appeal Act.)

6. The central issue on this appeal is whether the three items of property were or represented property obtained through unlawful conduct within Part V, in particular sections 69 to 72, of the Proceeds of Crime Act.

7. It is common ground before us that the burden of proof is on the prosecution and the standard of proof is the civil standard, the balance of probabilities. The Chief Justice held that the test was satisfied. The Court of Appeal upheld that decision.

Legislative scheme

8. Part V of the Proceeds of Crime Act provides in relevant part:

“69(1) This Part has effect for the purposes of–

(a) enabling the Attorney General to recover, in civil proceedings before the Court, property which is, or represents, property obtained through unlawful conduct,

(b) ...

(2) The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property...

70(1) Conduct occurring in Gibraltar is unlawful conduct if it is unlawful under the criminal law of Gibraltar.

(2) Conduct which occurs in a country or territory other than Gibraltar and is unlawful under the criminal law applying in that country or territory is also unlawful conduct.

(2A)...

(3) The court must decide on a balance of probabilities whether it is proved–

(a) that any matter alleged to constitute unlawful conduct has occurred, or

(b) that any person intended to use any cash in unlawful conduct...

71(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) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct–

(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.”

9. Section 72 provides that proceedings for a recovery order may be taken by the Attorney General against any person who he thinks holds recoverable property.

10. Section 136 provides in relevant part in relation to recoverable property:

“136(1) Property obtained through unlawful conduct is recoverable property.

(2) If property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.”

The appeal

11. The appellants now seek to advance two grounds of appeal.

Ground 1. The Court of Appeal for Gibraltar erred in failing to decide that the words in section 71(1) of the Proceeds of Crime Act 2015, “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” require evidence of some actual unlawful conduct predating the acquisition of the property, the subject of an application for a Part V Proceeds of Crime Act Civil Recovery Order, by or in

return for which unlawful conduct the property was acquired; instead deciding that evidence of unlawful conduct post the acquisition of the property, plus evidence of suspicious circumstances surrounding its acquisition and/or a lack of explanation as to the legitimate source of the funds used to acquire it, is sufficient for the making of a Civil Recovery Order.

Ground 2. The Court of Appeal for Gibraltar erred in deciding that evidence of actual unlawful conduct pre-dating the acquisition of the property, the subject of an application for a Part V Proceeds of Crime Act Civil Recovery Order, could be inferred from post-acquisition unlawful conduct plus mere suspicious circumstances surrounding its acquisition and absent an explanation as to the legitimate source of the funds used to acquire it.

The rule in *Devi v Roy*

12. It is the long-established practice of the Board not to entertain appeals which seek to overturn concurrent findings of fact made by the lower courts save in exceptional circumstances (*Devi v Roy* [1946] AC 508). The Board will not normally undertake a review by way of a second appeal against concurrent findings of fact by the courts below.

13. In *Sancus Financial Holdings Ltd v Holm* [2022] UKPC 41; [2022] 1 WLR 5181, Lord Briggs and Lord Kitchin JJSC, delivering the judgment of the Board, explained the rationale of the rule (at para 5):

“There are several reasons for this practice. First, where the practice is applied, the reliability of the trial judge's findings will already have been subjected to careful review by a properly constituted and experienced court of appeal. In that way the aspect of access to justice constituted by the availability of an appeal will generally already have been satisfied. Secondly, as Lord Burrows JSC explained in [*Dass v Marchand (Practice Note)* [2021] 1 WLR 1788] (where two courts, one of them appellate) have agreed upon a finding of fact, it is inherently unlikely that a second appellate court will be well-placed to disagree with both of them with any degree of confidence. Thirdly, the parties are entitled to expect a reasonable degree of finality in litigation, at least where no contentious point of law of wider public importance is engaged. Fourthly, the minute examination of the detailed evidence underlying findings of fact is an expensive and time-consuming process likely to strain the Board's limited resources, if it has to be undertaken with any frequency. Finally (although of no particular relevance to

the present case), fact finding will often benefit from the deeper understanding which the local courts are likely to have of custom and culture by comparison with the Board...”

14. The Practice Directions of the Judicial Committee of the Privy Council, paragraphs 4.30 to 4.32, establish a procedure to be followed where there is an issue as to whether the rule in *Devi v Roy* applies. In this case the single member of the court who considered the pending appeal directed that the appeal be listed for a case management hearing to consider whether the appeal should be dismissed on the ground that it falls foul of the rule in *Devi v Roy*. That hearing has taken place by video link this morning and we are grateful to all counsel for their submissions.

15. At the start of the hearing we invited Mr Winter KC, on behalf of the appellants, to address us on the *Devi v Roy* issue. He submits that there is here no evidence to the civil standard capable of showing that the property in question was or represented property obtained through unlawful conduct. In particular he submits that there is no evidence of involvement on the part of the fifth appellant in drug trafficking prior to the dates of acquisition of the three items of property with which we are concerned. It is said that the evidence referred to in the European Arrest Warrant all post-dates the acquisition of the relevant property. In this regard we would draw attention to the specific point, accepted in the skeleton argument on behalf of the appellants, that it is clear from section 71(1) that section 136(1) of the Proceeds of Crime Act is only satisfied where a person obtains property by or in return for unlawful conduct, but that it is not necessary to prove that the unlawful 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.

16. The essential question for consideration on the proposed appeal is whether the three items of identified property were, or represented, property obtained through unlawful conduct. The question is simply whether there was evidence which satisfied, or was capable of satisfying, the statutory test.

17. The Chief Justice (at para 74 of his judgment) made a clear implicit finding that Clint Serra, the fifth appellant, was involved in drug trafficking before the period covered by the European Arrest Warrant, that is before March 2019, and before the acquisition of each of the three items of property.

18. In his comprehensive judgment in the Court of Appeal, Sir Nigel Davis came to the same conclusion and explained why there was ample evidence to support the judge's conclusion that Clint Serra was involved in drug trafficking prior to the acquisition of these properties and that they were derived from the proceeds of drug trafficking. He considered (at para 45) that the Chief Justice, reviewing the totality of the evidence on

the requisite global approach, had concluded as a fact that each property in question had been obtained through Clint Serra's unlawful conduct (viz. drug trafficking) that is by, or in return for, such conduct. That was a permissible inference founded on the judge's primary findings of fact.

19. Referring to *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48, Sir Nigel Davis considered there was no proper basis for interfering with the judge's evaluative conclusion on the facts that the three items of property comprised recoverable property for the purposes of Part V of the Proceeds of Crime Act. Moreover, Sir Nigel went on to say (at para 50):

“In the present case there was in my opinion, ample material on which the judge could properly infer, on the balance of probabilities that the properties in question had been obtained through the prior unlawful conduct, viz drug trafficking of Clint: occurring not just prior to the 26th of March 2019 - the starting date of the specific criminality identified in the European Arrest Warrant itself - but also prior to the obtaining of the properties in question. In so concluding, moreover, the judge palpably had not relied ‘solely’ on the evidence as to lack of legitimate income to fund the acquisitions nor on the lack of any explanation.”

20. This conclusion of the Chief Justice is a finding of fact. That remains the case notwithstanding that it may have been reached by inference from other findings of primary fact.

21. Despite the way in which Mr Winter has formulated his submissions to us this morning, the grounds of appeal do not, in our view, involve a question of law. Although the grounds are framed as matters of law, the point they seek to advance is, in substance, that the evidence relied upon by the courts below was insufficient, and that further evidence was required specifically identifying actual drug trafficking before the acquisition of the properties and connecting that conduct with the properties. There is nothing in the wording of section 71(1) of the Proceeds of Crime Act 2015 to support the requirement suggested by Mr Winter, and in reality, the complaint concerns whether the evidence which was before the courts below, considered cumulatively, was sufficient to satisfy the statutory requirements on the balance of probabilities. That can be determined in the appellants' favour only by the Board substituting a different assessment of the evidence for the concurrent findings of fact made below.

22. In coming to his conclusion on this factual issue, Sir Nigel Davis was affirming the findings of fact made by the Chief Justice. These are concurrent findings of fact. In

our view, the case falls squarely within the rule in *Devi v Roy*. Furthermore, it is our view that there was ample evidence on which the Chief Justice could properly conclude that the three properties concerned were, or represented, property obtained through drug trafficking. In particular, it was entirely legitimate for the Chief Justice to infer from the evidence before him that Clint Serra was engaged in drug trafficking before the dates of acquisition of the relevant properties.

23. On behalf of the appellant Mr Winter does not submit that any special circumstances apply in this case which would take the proposed appeals out of the scope of the rule in *Devi v Roy*, if it is otherwise applicable.

24. The Board recognises that this is an appeal as of right in respect of which leave has been granted by the Court of Appeal in Gibraltar. Nevertheless, the Board has the power to strike out an appeal which is not properly arguable or is otherwise abusive: see *Consolidated Contractors International Company SAL v Masri*, [2011] UKPC 29, at paras 3 and 15; *Water and Sewerage Authority of Trinidad and Tobago v Sahadath*, [2022] UKPC 56, at paras 31 and 32. An appeal from a decision based on concurrent findings of fact will fall in this category unless an arguable case is made out that there are special circumstances justifying departure from the Board's settled practice not to entertain a further appeal. No such case has been advanced here. For the reasons set out above, the appeal is not properly arguable.

25. As a result, the Board will humbly advise His Majesty that this appeal should be dismissed.