CUNAPUDY M. v THE STATE & ANOR

2021 SCJ 226

Record No. 8895

THE SUPREME COURT OF MAURITIUS

In the matter of:

Magadeven Cunapudy

Appellant

v

1. The State
2. The Independent Commission Against Corruption

Respondents

JUDGMENT

This is an appeal by the appellant against his conviction for the offence of public official using his office for a gratification for another person in breach of sections 7(1) and 84 of the Prevention of Corruption Act (the Act) with which he was charged before the Intermediate Court under three counts of an information.

Three other co-accused were charged separately in the same information for the offence of bribery of public official contrary to section 5(1)(b)(2) of the Act under three other counts.

The judgment is being challenged on no less than 15 grounds all of which were dropped at the hearing of the appeal except for grounds 1, 2, 4 and 5.

At the sitting of 1 October 2018, we granted the appellant's motion to add an additional ground to his initial grounds of appeal, the respondents having revised their initial stand and no longer objecting to the motion.

The additional ground reads-

"The Appellant was never asked to plead to the amended Information on the 5th of July 2011. The amendment to the Information was substantial and had created new elements to the offence to which the Appellant's plea had to be

recorded. The failure to record the plea after the Information was amended is fatal and the conviction cannot therefore stand. The failure to record the plea anew has rendered the proceedings a nullity and the conviction must be quashed."

We propose to consider first the additional ground of appeal which deals with the procedural aspect of the case. The argument of learned Counsel for the appellant in support of this additional ground was indeed very sparse. He merely submitted that the appellant ought to have been called upon to plead anew to the three counts after the prosecution had supplied particulars of the '*gratification*'. He then referred to the case of **Moossun T v The Independent Commission Against Corruption and Anor** [2013 SCJ 70] without more.

Counts IV, V and VI under which the appellant was prosecuted read as follows -

*"**COUNT IV***

*THAT on or about the 9th day of October 2008 at Vehicle Examination Centre, National Transport Authority, Forest Side in the District of Upper Plaine Wllhems one **MAGADEVEN CUNAPUDY**, alias Deven, 46 years, Vehicle Examiner at NTA and residing at Belle Terre Road, Highlands, Phoenix, did whilst being a public official, wilfully, unlawfully and criminally, make use of his position for a gratification for another person.*

PARTICULARS

*On the aforesaid date and place, the said **Magadeven Cunapudy**, whilst being a Vehicle Examiner, filled in and signed a favourable 'Vehicle Examination Report' in respect of Taxi car 5580 ZN 00, belonging to Mrs Woomawtee Ballgobin, without any physical inspection, for the issue of a certificate of fitness in respect of the said vehicle.*

COUNT V

*THAT on or about the aforesaid date and place the said **MAGADEVEN CUNAPUDY**, did whilst being a public official, wilfully, unlawfully and criminally, make use of his position for a gratification for another person.*

PARTICULARS

*On the aforesaid date and place, the said **Magadeven Cunapudy**, whilst being a Vehicle Examiner, filled in and signed a favourable 'Vehicle Examination Report' in respect of Taxi car 1858 ZF 93, belonging to one*

Lallchand Saleegram, without any physical inspection, for the issue of a certificate of fitness in respect of the said vehicle.

COUNT VI

*THAT on or about the aforesaid date and place the said **MAGADEVEN CUNAPUDY**, did whilst being a public official, wilfully, unlawfully and criminally, make use of his position for a gratification for another person.*

PARTICULARS

*On the aforesaid date and place, the said **Magadeven Cunapudy**, whilst being a Vehicle Examiner, filled in and signed a favourable 'Vehicle Examination Report' in respect of Taxi car 4168 ZL 98, belonging to one Shraddhanand Saleegram, without any physical inspection, for the issue of a certificate of fitness in respect of the said vehicle."*

The court record of the trial Court shows that at his trial the appellant was represented by counsel and he pleaded not guilty to the above three counts. A demand by his counsel for particulars of the '*gratification*' was met with an objection from the prosecution. The trial Court however ruled in favour of the defence's motion and ordered the prosecution to furnish *"…written and concise particulars in regard to the averment of 'gratification' as referred to in Counts 4, 5 and 6 of the information and the type of 'gratification' under section 2 POCA that the Prosecution intends to rely upon at Trial-stage."*

As a result of the ruling, in a letter dated 24 June 2011 filed at the sitting of 5 July 2011, counsel for the prosecution gave particulars of the *"gratification"* under the above counts. We shall refer to the particulars later on.

The trial of the case continued after the learned Magistrate had determined in a *Voir Dire* that the out of court statements of the three co-accused were admissible. The appellant did not give nor did he call evidence at the close of the case for the prosecution. In a judgment delivered on 30 November 2015 the learned Magistrate convicted the appellant under each of counts IV, V and VI after she was satisfied that the prosecution had proved its case beyond reasonable doubt under each of the counts. The learned Magistrate then sentenced the appellant to 12, 15 and 18 months' imprisonment respectively under each of counts IV, V and VI which she then suspended on condition that the appellant perform such community service as specified in the social enquiry report ordered by her.

For the purpose of determining the additional ground of appeal, we shall refer to the contents of the letter of 24 June 2011 which was filed before the trial Court on 5 July 2011 and which reads:

> *"Following ruling dated 02 May 2011 in the abovementioned matter, the particulars provided by the prosecution are as follows:*
>
> > *1. Under Count IV of the information, the particulars of "gratification" are: filling in and signing a favourable Vehicle Examination Report in respect of Taxi Car 5580 ZN 00 which was not **brought and** examined at the vehicle examination centre.*
> >
> > *2. Under Count V of the information, the particulars of "gratification" are: filling in and signing a favourable Vehicle Examination Report in respect of Taxi Car 1858 ZF 93 which was not brought and examined at the vehicle examination centre."*
> >
> > 3. *Under Count VI of the information, the particulars of "gratification" are: filling in and signing a favourable Vehicle Examination Report in respect of Taxi Car 4168 ZL 98 which was not **brought and** examined at the vehicle examination centre."*
> >
> > *4. The type of "gratification" under Counts IV, V and VI as per section 2 of the Prevention of Corruption Act 2002 is "an advantage **other than lawful remuneration**."*

The additional particulars given under count IV of the information were amended at the same sitting and the words ***"brought and"*** were deleted. The words ***"other than lawful remuneration"*** appearing in the particulars supplied under (4) were also deleted so that the sentence read "*The type of "gratification" under Counts IV, V and VI as per section 2 of the Prevention of Corruption Act 2002 is "an advantage".* The amendments were not objected to by counsel who appeared for the appellant.

A close reading of the description and particulars of the offence as originally worded under each of counts IV, V and VI conveyed that on 9 October 2008 the appellant, a Vehicle Examiner at the National Transport Authority Centre (the NTA), therefore a Public Official, wilfully, unlawfully and criminally made use of his position as Vehicle Examiner at the NTA and filled in and signed a favourable 'Vehicle Examination Report' in respect of three taxi cars bearing registration numbers 5580 ZN 00, 1858 ZF 93 and 4168 ZL 98 belonging respectively to one Mrs Woomawtee Ballgobin, Messrs Lallchand Saleegram and Shraddhanand Saleegram, without having carried out any physical inspection of the said

vehicles, and, on the basis of the favourable Vehicle Examination Reports, a certificate of fitness in respect of each of the taxi cars was issued.

A comparison of the original wordings of the statement and particulars of the offence and the particulars furnished by the prosecution on 5 July 2011 does not reveal any material difference. In fact the two sets of particulars are identical save for the use of the words **"examined**" and "**brought and examined"** in the particulars supplied on 5 July 2011 whereas in the original particulars the words used were "**without any physical inspection"**. As for the "*gratification"* it was said in the letter of 24 June 2011 that it was *"an advantage".*

The present case has to be distinguished from the case of **Moossun (supra)** referred to us by learned Counsel for the appellant. In **Moossun**, the appellant was charged under section 13(2) & (3) of the Act for having *"willfully, unlawfully and criminally, whilst being a public official* ***having*** *a* <u>*personal interest*</u> *in a decision which a public body is to take, did take part in proceedings of that public body relating to such decision".* In the course of the trial the information was amended and the word ***"having***" was deleted and replaced by *"whose relation had*".

On appeal the Supreme Court after adverting to the three possible ways of committing an offence under section 13(2) of the Act found that-

a) the relevant section of the law does not mention "relation" but "relative",

b) the term "relative" is given a specific meaning in section 2 of the Act which could not be automatically attributed to the word "relation",

c) the trial proceeded on the basis of an offence which does not exist in law, there being no offence under Section 13(2) & (3) of a public official taking part in proceedings of a public body when his "relation" has an interest in the decision of that body, and

d) even assuming the word "relative" has the exact same meaning as the word "relation" there was a fundamental procedural defect in that no plea was recorded from the appellant in respect of the new offence with which he was charged and on the basis of which he was convicted and sentenced.

The present case is therefore a far cry from the position in **Moossun**. The information was not defective in law. It was not the contention of the appellant in the present case that the original information was defective or that it did not disclose an offence known to the law. The information was not amended in the course of the hearing to disclose for the

first time an offence known to law such that there was a duty on the trial Court to put the amended charge to the appellant and to record his plea anew. Only particulars of the '*gratification'* were furnished and even in that respect, in the particulars supplied at the sitting of 5 July 2011, nothing new or of substance was averred which was not already found in the body of the original particulars. Likewise, the particulars supplied did not have for effect to alter the nature of the charge under the three counts or cure any defect in substance or in form. It cannot also be said that the appellant was convicted of a new offence in respect of which his plea had not been recorded or that he was not made aware of the charges against him. There was thus no need for the trial Magistrate to record the appellant's plea anew after the prosecution had supplied the particulars in compliance with her ruling. The plea taken on the basis of the original information was therefore perfectly valid.

We accordingly hold that there was no serious and fundamental procedural defect in the proceedings caused by the fact that the trial Court did not invite the appellant to plead anew to the information following the furnishing of the particulars sought by the defence. Nor do we find any irregularity which has affected the fairness of the trial or anything untoward as regards the integrity of the proceedings.

The additional ground is accordingly devoid of any merit and is set aside.

We shall now address the remaining grounds of appeal. Before doing so we find it appropriate to set out briefly the case for the prosecution as found proved by the learned Magistrate and on the basis of which she convicted and sentenced the appellant of the offence charged under each of counts IV, V and VI.

Following an anonymous tip-off to the Independent Commission Against Corruption (the "ICAC") a sting operation was carried out in the morning of 9 October 2008 at 09.45 hours at the NTA situated at Forest Side. The operation was headed by Chief Investigator Chung Yen and he was assisted by other officers. The tip-off was to the effect that one Preetambar Rajcoomarsing Aucharaz (accused no. 1) was going to obtain a certificate of fitness in respect of taxi car 5580 ZN 00 with the collaboration of an officer from the NTA without the said vehicle being physically examined.

Between 10 15 and 10 20 hours several ICAC officers including Chief Investigator Chung Yen were on the locus and kept watch outside and inside the NTA compound. Vehicle 5580 ZN 00 was found parked and unattended outside the compound of the NTA.

Later on, accused no. 1 was seen driving the vehicle through the main gate of the NTA compound which was controlled by a security officer. Accused no. 1 showed a receipt to the security officer who then allowed him access inside the compound. Accused no. 1 then drove the vehicle in the direction of the examination pits where vehicles are in practice examined by NTA officers. Accused no. 1 alighted from the vehicle and spoke to a few persons. He then drove to a spot, without his vehicle having been examined by any of the NTA officers, where certificates of fitness are delivered. Accused no. 1 again alighted from the vehicle and went inside the office. He later came back accompanied by three other persons amongst whom was one Lallchand Saleegram (accused no. 2). Both accused and the other passengers were intercepted by the ICAC officers while leaving the NTA compound.

It was established in evidence that accused no. 2 and Shraddhanand Saleegram (accused no. 3) are brothers. Accused no. 3 was not amongst the persons who were intercepted in taxi car 5580 ZN 00 whilst it was leaving the NTA compound. Accused no. 2 had in his possession two certificates of fitness in respect of vehicles 1858 ZF 93 and 4168 ZL 98. He also had in his possession documents pertaining to the two vehicles, amongst which were their certificates of insurance, registration books and Public Service Vehicle Licences. On being questioned, accused no. 2 stated to the ICAC officers that the two vehicles had not been brought to the NTA centre for physical inspection. He also stated that he had given Rs 400 to the appellant and had in return obtained the two certificates of fitness in respect of the vehicles. The prosecution witnesses maintained their version that the appellant had not examined the three vehicles.

The appellant admitted in his out of court statement that on the material day he was on duty at the NTA centre and that he had filled in and signed two Vehicle Examination Reports bearing respectively references 1505036 and 1505039 in respect of vehicles 1858 ZF 93 and 4168 ZL 98 issued in the names of Lallchand Saleegram and Shraddhanand Saleegram. He also admitted that it was on the basis of the said Vehicle Examination Reports that the two certificates of fitness were delivered. He explained that he had obtained the name of the owners of the two vehicles from the registration book of the vehicles.

The appellant denied that accused no. 1 was personally known to him and that he used to receive calls from the latter, and above all (i) that on 6 October 2008 accused no. 1 called him on his mobile to fix an appointment for taxi car 5580 ZN 00 to undergo a road

worthy test; (ii) that on 9 October 2008 accused no. 1 left him a 100 rupee note in his (accused no 1's) certificate of insurance; (iii) that he took the 100 rupee note and asked accused no. 1 to bring his taxi car in the examination pit and thereafter asked the latter to leave without having examined the vehicle; and (iv) that accused no. 1 introduced one Saleegram to him and asked him to help the latter ["*guette ene coup qui* […] *capave faire pour li…*"].

The appellant also denied the version of accused no. 2 and in particular that he was acquainted with him and that on 9 October 2008 accused no. 2 was at the NTA centre and at about 11 00 hours left 2 two hundred rupee notes for him in return of which he filled in and signed two vehicle examination reports in respect of taxi cars 1858 ZF 93 and 4168 ZL 98 without having examined the two vehicles.

The appellant maintained that he had personally examined taxi cars bearing registration numbers 5580 ZN 00, 1858 ZF 93 and 4168 ZL 98. According to the appellant a false charge had been levelled against him.

Amongst the witnesses called to depose before the learned Magistrate were one Vedanand Hazaree, a security officer who at the material time was posted at the main gate of the NTA centre. His evidence was to the effect that the NTA centre is opened to the public as from 9 am and is closed for lunch between noon and half past noon. At the material time, he was posted at the main gate and was responsible for recording in a diary/log book belonging to the NTA the time and registration number of all vehicles entering the compound of the NTA. He explained that it was his understanding that all vehicles entering the NTA must have a prior appointment for the roadworthy test. An appointment sheet wherein would be listed the registration number of all vehicles having appointments for roadworthy tests would be given to him in the morning. Vehicles would be allowed access inside the compound only after having paid a fee and upon production to him of a receipt from which he would crosscheck the registration number of the vehicle entering the compound.

The witness added that save for the entry regarding registration number of taxi car 5580 ZN 00 there were no entries regarding taxi cars 1858 ZF 93 and 4168 ZL 98. He explained that if no entry had been made in the diary/logbook regarding a vehicle which has entered the compound it would be because he may have at that particular moment left the main gate to answer calls of nature. He also added that he was the only officer controlling

the main gate and during his momentary absences no other security officer was at the main gate to record the registration number of vehicles entering the compound.

Evidence of three outgoing calls on 6 October 2008 between 10 25 and 12 01 hours from mobile number belonging to accused no. 1 to the mobile of the appellant was also adduced. Whilst the appellant did not deny in his statement that these calls had been made to him, he, however, added that he could not say why accused no. 1 would have called him. Evidence that a sum of Rs 800 was found and secured from the appellant's locker and a sum of Rs 150 from his pocket was also adduced.

Ground 1 reads as follows:-

"The Learned Magistrate erred in her assessment of the evidence because she has failed to take into account that the prosecution evidence was marred with material contradictions and inconsistencies that such material contradictions and inconsistencies have indeed irretrievably weakened the prosecution case."

In view of the above ground, we find it relevant to refer to the submissions that were made before the trial Court on behalf of the appellant. Reference was made to the time at which the main entrance of the NTA centre is opened to the public and the time that the ICAC officers started keeping watch and in that regard it was submitted that the evidence of the ICAC officers that they had not witnessed taxi cars 1858 ZF 93 and 4168 ZL98 entering the compound did not conclusively establish that the two vehicles had not entered the NTA compound between 9.00 a.m. and 10.50 a.m. and had not been examined before leaving the compound. It was also submitted that the evidence did not reveal that taxi car 5580 ZN 00 had not been examined. Reference was also made to the logbook and it was submitted that it was an unreliable piece of documentary evidence and was not proof that taxi cars 1858 ZF 93 and 4168 ZL 98 had not entered the NTA compound on 9 October 2008. With regard to the money secured from the appellant's locker and pocket, it was submitted that (a) there was no evidence from the ICAC officers that they had witnessed any remittance of money by the co-accused to the appellant, (b) the officer who had secured the sum of Rs 950 did not question accused no. 2 on the denominations of the notes that he had allegedly given to the appellant and (c) no adverse inference should be drawn from the fact that a sum of Rs 950 had been secured. It was finally submitted that the possibility that the two taxi cars subject matter of counts V and VI had entered the NTA compound, had been examined and had left before the arrival of the ICAC officers should not be discarded.

Counsel for the appellant then invited the learned Magistrate to dismiss the information against the appellant as the prosecution had failed to prove that taxi car 5580 ZN 00 had not been examined and taxi cars 1858 ZF 93 and 4168 ZL 98 had not been brought and examined at the Vehicle Examination Centre of the NTA.

We have reproduced the submissions that were made on behalf of the appellant before the trial Magistrate to show that no submissions regarding any inconsistencies and contradictions in the evidence adduced by the prosecution were highlighted by appellant's counsel. In any event as rightly pointed out by learned Counsel for respondent no. 2, the learned Magistrate was alive to the inconsistencies and contradictions which were referred to her by counsel who appeared for the co-accused. The learned Magistrate considered under the heading *""Inconsistencies" of witnesses as viewed by the defence of Accused Nos. 1, 2 & 3"* of her judgment the alleged contradictions and did not find them *"...to be so material that they irretrievably weaken or cast doubt on the Prosecution's case."* The learned Magistrate also noted that the witnesses for the prosecution were in 2014 and 2015 called to depose on events that had occurred in 2008. The finding of the learned Magistrate is unimpeachable on that score and we see no cause to intervene.

At any rate, as rightly submitted by learned Counsel for respondent no. 1, ground 1 is rather vague and uncertain. It is devoid of merit and is set aside.

Ground 2 reads as follows:-

> *"The Learned Magistrate erred in her assessment of the evidence because there is no proper clear finding as to why the testimonies of Accused Nos. 1,2 and 3 are most implausible and not worthy of belief."*

Considering that the learned Magistrate was right not to rely on the confessions of the co-accused in order to convict the appellant, she cannot be reproached for not having believed the version of the co-accused when they deposed before her and denied the version of the prosecution witnesses. The learned Magistrate gave reasons as to why they could not be believed. She found their "…*testimonies […] under oath* [were] *not of such magnitude that they cast doubt on the Prosecution's case."* She also found *"…their versions in denial of the charge/s were most implausible and the Court remained unconvinced by same."* The learned Magistrate had the benefit and advantage of closely watching and assessing the co-accused when they deposed before her and in particular their demeanour under cross-examination. The assessment of the credibility of the testifying witnesses is the

prerogative of the trial Court. Likewise, the findings of fact are within the sole province of the trial Court based on an appraisal of the reliability of the testifying witnesses and the evidence placed before the Court. The appellate Court is in that regard in a less advantageous position than the trial Court. It has been held time and again that unless the trial Court's decision, based on its own appraisal of the testimonies of witnesses and its own appreciation of the reliability of the evidence placed before it, is one which no reasonable trial Court properly directing itself could have reached, the appellate Court will not intervene. We find that the learned Magistrate's finding on the reliability of the version of the three co-accused in Court is not open to reproach.

We thus refer to the following extract from **Lalldeosing D v The State [2008 SCJ 151]** cited with approval in **Edoo M.B.T v The State [2015 SCJ 9]-**

> *"An appellate jurisdiction is ill-placed to intervene in a matter where the appeal is based on facts of which the trial court's appreciation remains sovereign unless the conclusion reached by the trial magistrate appears to be perverse."*

Commenting on the word 'perverse', the Court in **Edoo (supra)** stated-

> "*The word 'perverse' is not used here in its usual pejorative sense but is meant to convey the idea that the finding of the trial court is against the weight of the evidence adduced at the trial and is, thus, characterised by an abnormal or unacceptable tendency which is contrary to what is expected in the circumstances."*

The Court added:

> *"It is not because counsel does not agree with the analysis of the trial Magistrate or because counsel is of the opinion that the Magistrate should have taken another approach that he can rush to the appellate court and ask for the findings of facts to be upset. There is an objective element that has to be met. In the case of* ***Mootaloo*** **(supra)**, *the Supreme Court emphasised that there must be '****sufficient indications****' that the trial court failed to appreciate the facts properly. Additionally, the notion of a finding being 'perverse' carries with it the idea that the conclusions of the trial court are* ***'shown****' to be unacceptable…"*

We have therefore not been convinced by the arguments of learned Counsel for the appellant in support of ground 2 which is equally devoid of merit and is set aside.

Ground 4

"The Learned Magistrate erred in applying the principles as laid down in ***Lily v R. (1900) MR 32*** *because the burden of proving the guilt of Accused Nos 1, 2 and 3 beyond reasonable doubt is cast squarely on the prosecution until so much has been proved in evidence so as to justify the reasonable conclusion of their guilt."*

Ground 5

"The Learned Magistrate erred in applying ***DPP v Armont JP*** ***[1980 SCJ 338]*** *because in the light of the tenor of the evidence on record it cannot be said that the confessions of Accused Nos 1, 2 and 3 were direct and positive, and that the confessions of Accused Nos 1, 2 and 3 had been satisfactorily proved."*

We shall consider grounds 4 and 5 together. As correctly pointed out by learned counsel for respondent no. 1 these two grounds are misconceived. They in effect challenge the decision of the learned Magistrate to act on and admit in evidence the confessions of the co-accused who have not appealed against their convictions to find the charge proved against them. It is to be noted that the learned Magistrate made it very clear in her judgment that she was not relying on the contents of the statements and admissions of the co-accused in order to find the case against the appellant proved and to convict him.

The learned Magistrate relied essentially on the testimonies of the prosecution witnesses, in particular CI Cheng Yen and Hazaree. She was convinced of their reliability and that she could safely act upon their evidence to find the charge under each of counts IV, V and VI against the appellant proved beyond reasonable doubt. She did not, and rightly so, attach much importance to the suggestion of counsel that taxi cars 1858 ZF 93 and 4168 ZL 98 could have been examined and left before the arrival of the ICAC officers at the NTA centre.

The learned Magistrate considered the evidence adduced in respect of each of counts IV, V and VI separately. With regard to count IV, she accepted the sworn and tested testimony of CI Cheng Yen who kept watch on the movement of taxi car 5580 ZN 00 from the moment it entered the compound until it was intercepted and who stated that it was not examined. She however rejected the unsworn statement of the appellant that he had examined the said taxi car.

The learned Magistrate was also satisfied on the evidence placed before her that taxi cars subject matter of counts V and VI had not been brought to the NTA centre and could not possibly have been examined on 9 October 2008 as contended by the appellant. Indeed, apart from the oral evidence of the prosecution witnesses, there were other pointers to support and establish the version of the prosecution that taxi cars 1858 ZF 93 and 4168 ZL 98 were not brought at the NTA centre and were not examined by the appellant. Learned Counsel for respondent no. 1 painstakingly took us through the entries made on 9 October 2008 by witness Hazaree in the logbook of the NTA and which was produced before the trial Court. The logbook shows that entries in respect of incoming vehicles started as from 9 a.m. until 11.39 a.m. and that the time interval between each incoming vehicle varied between 1 to 3 minutes. Still according to the logbook, taxi car 5580 ZN 00 entered the NTA compound at 11.09 a.m whereas there is no entry regarding the other two taxi cars.

True it is that witness Hazaree stated in evidence that it was not impossible that vehicles could have had access inside the NTA compound during his momentary absences from the main gate so that the registration number of those vehicles would not be found in the logbook. However, the only reasonable and inescapable inference that can be drawn from the entries appearing in the logbook, in particular from the time interval between each vehicle entering the compound, is that on 9 October 2008 between 9 and 11.09 a.m taxi cars 1858 ZF 93 and 4168 ZL 98 did not pass the threshold of the main gate of the NTA centre. In the light of the entries made by witness Hazaree in the logbook, the suggestion that witness Hazaree could have temporarily left the main gate when the two vehicles allegedly entered the main gate must necessarily fall. Since the whole of the evidence adduced by the prosecution inevitably points to the fact that these two vehicles did not enter the NTA compound on 9 October 2008, they therefore could not have been examined by the appellant as he alleged to have done. The proposition that the appellant could have examined the two taxi cars before the arrival of the ICAC officers at the NTA centre cannot also stand and is in fact without substance.

The entries in the logbook which not only established that the two vehicles were not brought at the NTA centre on 9 October 2008 but also confirmed the oral evidence of the prosecution witnesses that there were no examinations of the vehicles, coupled with the appellant’s admission that he filled in and signed the two Vehicle Examination Reports pertaining to taxi cars 1858 ZF 93 and 4168 ZL 98, as well as evidence that two certificates of fitness were issued in respect of the two taxi cars on the basis of the favourable Vehicle Examination Reports, inexorably establish that on 9 October 2008 the appellant did not

examine the three taxi cars and that he made use of his position of Vehicle Examiner at the Vehicle Examination Centre of the NTA for the advantage of another person.

The learned Magistrate was accordingly correct and cannot be reproached for her finding that *"…the evidence on record vis a vis Accused No. 4 is above the mere prima facie."* The learned Magistrate cannot also be faulted for her finding that *"…since the vehicles under Counts 5 and 6 were not at NTA, they could not possibly have been examined by Accused No. 4 who nevertheless issued Certificates of Fitness for those cars on the material day – which were found in Accused No. 2's possession when the ICAC intercepted Accused No. 1's car. Indeed, it is not disputed by the defence that those Fitness Certificates were signed by Accused No. 4."*

For all the above reasons, we find no merit in grounds 4 and 5 of the grounds of appeal which are equally set aside. This appeal is frivolous and vexatious and we dismiss it with costs.

N. Devat
Judge

N. F. Oh San-Bellepeau
Judge

07 July 2021

Judgment delivered by Hon. N. Devat, Judge

For Appellant : **Mr K. Bokhoree, Attorney-at-Law**
Mr R. Valayden, of Counsel
Mr N. Dulloo, of Counsel

For Respondent No. 1: **Mrs D. Dabeesing Ramlugan, Principal State Attorney**
Mr M. Armoogum, Senior State Counsel

For Respondent No. 2: **Mr S. Sohawon, Attorney at Law**
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