

IN THE INTERMEDIATE COURT (FINANCIAL CRIMES DIVISION)

CN 43/2020

In the matter of:

INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

V

GEANCHAND DEWDANEE

RULING

Background

1. The accused stands charged for the offence of bribery in breach of **Section 5 (1) (a) (2)** of the **Prevention of Corruption Act**. He has pleaded not guilty to the charge and retained the services of counsel. The trial has already started. On the 24<sup>th</sup> August 2022 in cross-examination defence counsel explained in court that he wishes to put to the ICAC witness (witness 2 investigator Mohesh) who was testifying under oath, the latter's testimony which was made in court before another bench. The defence explained that the intention was to demonstrate the inconsistency. This course of action was objected to by the prosecution. Arguments were heard on this issue on the 7<sup>th</sup> November 2022.

Applicable principles and conclusion

2. This court has carefully taken into account the submissions of learned counsel and also the following principles outlined in Blackstone's Criminal Practice:

**Blackstone's Criminal Practice 2023/PART F EVIDENCE/Section F7 Cross-examination and Re-examination/RULES GOVERNING CONDUCT OF CROSS-EXAMINATION/General Restrictions**

**RULES GOVERNING CONDUCT OF CROSS-EXAMINATION**

**General Restrictions**

**F7.16**

*Cross-examination is a powerful weapon entrusted to counsel, and should be conducted with restraint and a measure of courtesy and consideration which a witness is entitled to expect in a court of law (Mechanical & General Inventions Co. Ltd v Austin [1935] AC 346, per Lord Sankey LC at pp. 359–60). Thus, it is no part of the duty of an advocate for the defence to embark on lengthy cross-examination on matters which are not really in issue (Kalia (1974) 60 Cr App R 200). See also Simmonds [1969] 1 QB 685 and Maynard (1979) 69 Cr App R 309. Likewise, questions should not be in the nature of comment on the facts; comments should be confined to speeches. Nor should questions be framed in such a way as to invite argument rather than elicit evidence on the facts in issue. Thus an advocate should avoid questions such as 'I suggest to you that ...' and 'Do you ask the jury to believe that ...'. Cross-examination should be confined to putting questions of fact. An advocate should not state what somebody else has said or is expected to say. The time for statements such as 'The defendant's recollection is ...' or 'The defendant will say ...' is the opening speech; such statements should not be made, or put in the form of a question, in cross-examination (Baldwin (1925) 18 Cr App R 175, per Lord Hewart CJ at pp. 178–9). The same restrictions apply to questions put by the judge (see Wilson [1991] Crim LR 838, where the judge asked D 'So this 12-year-old girl has made wicked lies about you?'). See also rC7.1 of the Code of Conduct for barristers in the BSB Handbook: 'Where you are acting as an advocate, your duty not to abuse your role includes the following obligations ... you must not make statements or ask questions merely to insult, humiliate or annoy a witness ...'. See also F7.21 and F7.22.*

*In addition to the powers of the trial judge in relation to the cross-examination of children and vulnerable witnesses (see F7.10 and D14.75), the judge has a general discretion to prevent any questions in cross-examination which the judge considers to be unnecessary, improper or oppressive. CrimPD I, para. 3D.2 (see Supplement, CPD.3D), recognises that, in addition to 'vulnerable' and 'intimidated' witnesses as defined in the YJCEA 1999, ss. 16 and 17, many other witnesses may require assistance, and indicates that the court must facilitate the participation of 'any person'. This includes enabling witnesses to give their best evidence, and the pre-trial and trial process should, so far as is necessary, be adapted to meet such ends.*

3. Applying the abovementioned principles, this court observes that in the present matter:
- (a) The defence has not explained whether the certified copies will be produced at a later stage (hence the question of authenticity of the document upon which the witness will be cross-examined).
  - (b) The defence has not indicated the purpose of eliciting this evidence when the witness can be confronted with his out of court statement to demonstrate any inconsistencies (the necessity of this cross-examination)
  - (c) The offence dates back to 2011 and allowing this line of cross-examination will unduly protract the present proceedings (risk of diverting from the facts in issue).

4. For these reasons, this court upholds the prosecution's objection.



A. Joypaul

Intermediate Court Magistrate

1/3/23

