

ICAC VS ROODUR SALIM RAZA

2019 INT 80

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Cause Number: 959/18

THE INTERMEDIATE COURT OF MAURITIUS

(Criminal Division)

In the matter of:-

ICAC

VS

ROODUR SALIM RAZA

JUDGMENT

INTRODUCTION

The Accused stands charged under 6 Counts of the Information with the offence of corruption of agent in breach of section 16(2) of the Prevention of Corruption Act 2002. He pleaded not guilty and was not assisted by Counsel.

The particulars of the charge against the Accused are that on the 27th October 2004, the 17th December 2004, the 12th August 2005, the 18th August 2005, the 11th November 2005 and the 17th November 2005, the Accused gave money to one James Vurdien, Lease Manager at Global Direct Leasing Company Ltd (GDL), so that the latter would submit a favourable appraisal report to the Credit Sanction Committee for his lease to purchase a car to be duly approved.

Count 1 concerned car bearing registration number 6136 ZN 00, Count 2 concerned car bearing registration number 7031 ZN 99, Counts 3 and 4 concerned car registration number N 121, Counts 5 and 6 concerned car registration number 6676 ZN 03.

THE FACTS

In relation to the present case, the Accused gave 4 statements to the police. These statements were given following another case in which the Accused was involved. He revealed how he managed to get a loan from GDL to buy 4 cars although he did not have a fixed income nor a bank account on his name.

He explained that in relation to the 1st car, make Nissan and bearing registration number 6136 ZN 00, he went to GDL situate on the 2nd floor of Harbour View building. Thereat, he met the assistant manager, Mr Vurdien. He showed the car's quotation to Mr Vurdien and the latter asked him for the following documents to process the loan, namely his bank statement, his payslip, his identity card and a proof of address. The Accused undertook to provide his identity card and his proof of address but informed Mr Vurdien that he did not work and hence had no payslip or a bank statement.

It is the version of the Accused that Mr Vurdien agreed to approve his loan without the payslip or the bank statement in exchange of the sum of Rs 20,000. After 2 days, he met with Mr Vurdien who had already approved his loan and the Accused remitted to him the sum of Rs 20,000 as agreed.

The Accused signed the necessary contracts. It is his contention that Mr Vurdien informed him that he could buy other cars and apply for a loan but he would have to remit the sum of Rs 20,000 for every transaction since Mr Vurdien needed money for his son's studies. Subsequently, the Accused bought 3 other cars and Mr Vurdien approved his loans although the Accused was not effecting repayment for the loan of the first car. For each and every time the loan was approved on the 3 subsequent occasions, the Accused remitted the sum of Rs 20,000. The registration number for the 3 other cars were 7031 ZN 99 which the Accused registered on the name of his wife, N 121 which the Accused again registered on his wife's name and 6676 ZN 03, make Mazda.

The Accused averred that for the 4th car, that is the Mazda car bearing registration number 6676 ZN 03, Mr Vurdien caused a loan of Rs 1.9 million to be approved and for which the Accused had to effect a repayment of Rs 60,000 monthly. In relation to the 4 loans, the Accused made a repayment on one or two occasions to lure the management of GDL.

In addition, Mr Vurdien gave the Accused two cheques, one in the sum of Rs 325,000 and the other in the sum of Rs 400,000, which the Accused cashed and gave the money back to

Mr Vurdien to process his loan. The Accused conceded that he gave the money to Mr Vurdien as a bribe.

OBSERVATIONS

I have assessed the evidence on record. The Accused is charged with the offence of corruption of agent in breach of section 16(2) of the Prevention of Corruption Act (POCA) which reads as follows:

“Any person who gives or agrees to give or offers, a gratification to an agent for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal’s affairs or business or for having done or abstained from doing such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years”.

The charge against the Accused is that he gave a gratification to an agent for doing an act in relation to his principal’s business. The essential elements which the Prosecution has to prove is:

- (i) An agent;
- (ii) A gratification;
- (iii) Mens rea

The background of the case

The undisputed documentary evidence in this case reveals that the Accused contracted loans from GDL for the purchase of cars. File GDL 491 is in relation to vehicle number 6136 ZN 00, file GDL 549 is in relation to vehicle number 7031 ZN 99, file GDL 692 is in relation to vehicle number N 121 and file 737 is in relation to vehicle number 6676 ZN 03.

It is apparent from the documents produced that GDL is a company which provided loans. It held committees for the credit sanction and the representatives of GDL were

responsible to sanction the credit facilities to customers. On the 1st November 2004, the committee sanctioned a lease facility of Rs 260,000 to the Accused in relation to car number 6136 ZN 00, on the 3rd December 2004, the committee sanctioned a lease facility of Rs 230,000 to the Accused's wife in relation to car number 7031 ZN 99, on the 17th August 2005, the committee sanctioned a lease facility of Rs 1,300,000 to the Accused's wife in relation to car number N 121 and in December 2005, the committee sanctioned a lease facility of Rs 1,900,000 to the Accused in relation to car number 6676 ZN 03. The Prosecution also produced payment vouchers to evidence that the loans were disbursed to the Accused. Although some cars were registered on the name of the wife of the Accused, it is the Accused who negotiated and contracted the loans.

An agent

It is clear from the documentary evidence adduced that GDL is a company which provided loans for the purchase of properties. Mr Vurdien was a representative of the company since he was present for all the credit sanction committees. He signed a lease facility agreement in favour of the Accused in relation to car number 6136 ZN 00 in file GDL 491 as well as a letter informing the Accused about the approval of his application for a financial lease, in his capacity as an administrative officer on the 27th October 2004, in file GDL 491.

In file GDL 549 which concerns car number 7031 ZN 99, Mr Vurdien signed another letter in his capacity as administrative officer of GDL on the 17th December 2004 to inform the Accused's wife of the approval of the application for a financial lease.

In file GDL 692, Mr Vurdien signed a letter addressed to Mr Soopramanien on the 28th September 2007 in his capacity as the recovery manager of GDL. In the same file, there is a letter signed by Mr Vurdien in his capacity as an administrative officer of GDL addressed to the Accused's wife in relation to the approval of her application for financial lease facilities.

In file GDL 737, there is a letter signed by Mr Vurdien in his capacity as administrative officer and dated the 9th November 2005 informing the Accused that his application for financial lease facilities has been approved.

The relevancy of the letters signed by Mr Vurdien is that the latter acted in his capacity as an administrative officer or recovery manager of GDL. In the Prevention of Corruption Act, an agent is defined as "*any person employed by or acting for another person*". In view of the fact

that Mr Vurdien was the administrative officer or recovery manager of GDL, it stands to reason that he was employed by GDL or acted for GDL in relation to facilities extended to the Accused. I therefore find that Mr Vurdien is an agent of GDL.

Gratification

The Accused confessed in his statement given to the police that he remitted to Mr Vurdien, the sum of Rs 20,000 on 4 occasions for the purchase of 4 cars as well as the sums of Rs 325,000 on one occasion and the sum of Rs 400,000 on another occasion. Although the credit facilities in relation to car numbers 7031 ZN 99 and N 121 were in the name of his wife, he maintained that he was the one to give money to Mr Vurdien to approve his loan and his wife was unaware of same. He confirmed that he gave his statements voluntarily.

Although he mentioned in Court, that one Mr Sookun used him by issuing him a lease, he maintained the veracity of his statements given to the Prosecuting authority and hence confirmed that he gave money to Mr Vurdien who approved his loan with GDL. The question to be asked is whether the Accused gave a gratification.

It is clear that money would form part of the definition of gratification. However, *“the word “gratification” which is defined in section 2 of the POCA must be applied in its proper context”*. **(RE: SUNECHARA O. v. THE STATE (2007) SCJ 131)**. It ought to be interpreted in line with the dicta in the case of **JHURRY B VS THE ICAC & ANOR (2015) SCJ 258** namely that for the purposes of the Prevention of Corruption Act, the term gratification would find its application if it is effected within the context of a criminal action, that is, if the Accused gave the money to Mr Vurdien unlawfully.

In the present case, the Accused acknowledged that he gave the money to Mr Vurdien such that his loan could be approved. He was fully aware that he did not hold the necessary documents to apply for the loan nor had the financial means to obtain or repay the loan. In fact, he conceded that he hardly effected any payment towards the loan. The Accused produced different bank accounts to lure GDL about his financial means. The main enquiring officer confirmed that the Accused produced the bank statement of a Minor containing only Rs 832.20

in support of his application. He even cashed cheques of GDL to sustain his transactions before remitting the money to Mr Vurdien. Therefore, it stands to reason that the Accused was indulging in money transactions with Mr Vurdien by giving money to the latter so that Mr Vurdien could cause his loans to be approved despite the fact that he did not qualify for the loans. The unlawfulness of the gift stems from the fact that the application and grant of the loans were unlawful since the Accused failed to produce the necessary documents, the financial means or the repayment capacity. He indulged in unlawful transactions to lure GDL about his capacity as a debtor. The gift of Rs 20,000 on 4 occasions or the sums of Rs 325,000 and Rs 400,000 were unlawful transactions, committed for the purpose of securing a loan and luring GDL. I therefore find that the money given by the Accused amounts to a gratification which is defined under the POCA as *“a gift, reward, discount, premium or other advantage, other than lawful remuneration”*.

Mens rea

The reason why the Accused gave the sum of Rs 20,000 on 4 occasions as well as the sums of Rs 325,000 and Rs 400,000 to Mr Vurdien was for the purpose of Mr Vurdien sanctioning his credit facilities at GDL. He acted with the knowledge that the gratification would be used in his favour for the approval of his loans. Hence, the gratification was given in relation to the affairs of GDL, such that the company would issue loans. In other words, the gratification was given such that the agent would approve the loans provided by GDL.

The Accused knew all along that the exchange for his gratification would be a pecuniary advantage in his favour. In so doing, he purchased 4 cars from the loans approved by the agent of GDL. The gratification caused his loan to be approved. In fact, he even went to the extent to state that he brought other clients to Mr Vurdien such that I can safely deduce that the Accused had the mens rea to commit the present offence since he well knew of his gain in exchange of a gratification. I therefore find that the Accused had the necessary intention to corrupt an agent, by giving a gratification to Mr Vurdien who then approved credit lease facilities provided by GDL in favour of the Accused to enable his lease for the purchase of cars to be approved.

CONCLUSION

I have noted that the Accused confessed to the commission of the offences in his statements given to the police. He acknowledged that he gave gratification to an agent of GDL for the latter to sanction his leasing credit facilities with GDL. I have borne in mind the dicta in the case of **DPP VS J.P.AUMONT (1989) SCJ 338** wherein the Court laid down as follows:

“A voluntary confession by an accused party that was direct and positive and had been satisfactorily proved was the best evidence that could be produced by the prosecution against the accused”.

In view of the confession of the Accused as well as the reliable evidence of the Prosecution, I find that the Prosecution has proved its case beyond reasonable doubt. I find the Accused guilty as charged under all 6 Counts for the offence of corruption of agent in breach of section 16(2) of the Prevention of Corruption Act 2002.

Judgment delivered by: M.GAYAN-JAULIMSING, Magistrate, Intermediate Court

Judgment delivered on: 2nd May 2019