

ICAC V/S S GOOLAMUN

2022 INT 41

IN THE INTERMEDIATE COURT OF MAURITIUS [FINANCIAL CRIMES DIVISION]

CN: 1/2020

Independent Commission Against Corruption

v/s

Sawkut Goolamun

Judgment

Accused stands charged with the offence of having wilfully, unlawfully and criminally obtained a gratification from a person in order to make use of his influence, real or fictitious, to obtain a benefit from a public body in breach of sections 10 (4) and 83 of the Prevention of Corruption Act 2002. He pleaded not guilty to the charge and was assisted by counsel at the trial.

Case for the prosecution

2 statements of Accused were read and produced in court by Mr Sirop.

The main features of Mr Amjad Ally Peerboccus' testimony are as follows:

In January 2004, he was working at the NTA. At that stage he stated that he could not recall the incident which occurred. His memory was refreshed with the leave of the court. He agreed that one Mr Haukhory reported to him and Mr Khedun that a person had during the month of August 2004 asked him the sum of Rs 5000 in order to provide him with a B carrier's licence and renew the motor vehicle licence [MVL] of his van. He then added that if a person has no B Carrier's licence, the fee for the renewal of the MVL is Rs 8000 and that when the NTA officer asked Mr Haukhory to pay Rs 8000 for the renewal of the MVL, the latter stated that he had a B carrier's licence. He explained that the owner of a

goods vehicle must necessarily produce a B carrier's licence in addition to other documents before he can be issued with a MVL. He added that it is imperative to have B carrier's licence to obtain MVL. He agreed having mentioned that Mr Haulkory did not have a B carrier's licence according to the records of the NTA. He maintained that it was not possible to obtain an MVL without a B carriers' licence. In cross-examination, he stated that he did not verify the horse power of the vehicle to check who was the owner of the vehicle at the time.

The gist of Mr Nassir Ally Khadun's testimony is as follows:

Mr Haulkhory came to the office to apply for a motor vehicle licence and reported to him that a person had asked him for a sum of money so that he could obtain a B carrier's licence in respect of vehicle 3693 AG 00. He agreed having mentioned in an earlier statement that the said vehicle was owned by Santa Madina on the 13th of April 2004 and that the vehicle is classified as goods vehicle. The procedure to obtain a MVL for a Goods vehicle is to produce a horse power and the B carriers' licence. He stressed that it is imperative to have a B carrier's licence. He agreed having mentioned that the records at the NTA have revealed that no application for a B carriers' licence has been made by Mr Haulkory or on his behalf. In cross-examination, he stated only the NTA can issue a B carrier's licence.

The main features of Mr Abdoul Reshad Haulkory's testimony are that he purchased van 3693 AG 00 from one Mrs Santa. When the van was transferred in his name, he had to obtain a B carrier's licence so that he could be issued with the MVL. He contacted Accused so that the latter could help him obtain his B carrier's licence and MVL. He added that Accused did propose to help him with all the steps. He subsequently left all the documents with him. Consequently, he left a sum of money with the Accused. When he was asked whether the money was only for the MVL to be issued, he stated it was also for the B carrier's licence. He could not recall how much he money he gave the Accused and stated that it was between Rs 5000 and Rs 8000. He added that Accsued has some contacts at the NTA. He gave him the money on two occasions. Eventually, Accused remitted the MVL and horse power to the declarant's daughter. He then went to the police station and made a false entry that his documents have been lost since he needed the B carriers' licence. He declared that his horse power, MVL and B Carriers licence had been lost. He

was given a memo by the police. He then proceeded to the NTA and presented the memo to the NTA to obtain the relevant documents. He was only issued with a MVL. He was not given the B carrier's licence. He decided to make a complaint against the Accused. In cross-examination, he conceded having lied to the police and stated that he did so because he needed to present a memo to the NTA to obtain a B carrier's licence, and MVL. He conceded that he presented the memo from the police to the NTA and he made the NTA officer believe that he had lost the MVL, B carriers' licence and horse power. In the same breath, he stated that as soon as he presented the memo to the NTA officer, they had the proof. When he was asked why he took the memo to the NTA, he stated that it was to obtain his MVL, and B carrier's licence and that without the memo, he cannot obtain those documents. He conceded that he did mention the name of Accused to Mr Khedun but then stated that he could not recall whether he mentioned Accused's name. He agreed that all his vehicles used to be insured with Accused's company and that he used to pay Accused since Accused used to arrange everything in respect of his insurance policy and MVL. He maintained that he gave money to Accused so that the latter could pay his MVL and B Carrier's licence but that he did not obtain any B carrier's licence from him. In re-examination, he stated that he cannot obtain the MVL without a B carrier's licence.

Miss Oume Haulkory testified that Accused handed over some documents to her which she had to give to her father. She could not recall which documents were handed over. Her memory was refreshed with leave of the court. She admitted having mentioned that Accused handed over to her an original horse power of vehicle 3693 AG 00, a motor vehicle licence and a certificate of insurance in respect of the same vehicle. In cross-examination, she stated that Accused only handed over the documents to her.

The defence chose not to adduce any evidence.

Accused in his unsworn statement has denied the charge against him. His version is that he did take Rs 8000 from the declarant since the latter owed him money in respect of other vehicles which were insured with his company.

Analysis and findings:

Since the case for the prosecution rests mainly on the testimony of Mr Haulkory, an important question is whether he is credible witness whose version can be safely relied upon. When gauging the credibility of Mr Haulkory, I have considered the fact that the alleged offence has occurred several years ago and that any lapse of memory on the part of the declarant is understandable. Let alone those memory lapses, there are certain disturbing features in his testimony which seriously undermine his version. Firstly, he lied to the police to obtain a memo to the effect that he had lost all his documents. . Instead of querying the Accused as regards the absence of the B carriers' licence, Mr Haulkory embarked on a devious plan in a desperate attempt to obtain a B carrier's licence. Worse, he tried to use the memo at the level of the NTA to obtain the said documents. It goes without saying that the memo which was based on a blatant lie cannot constitute proof that he had lost the documents. His statement: *"as soon as I presented the memo, they had proof"* indicates that he is not trustworthy and that his testimony ought to be treated with utmost care and caution.

As a matter of fact, the version of Mr Haulkory taken at its best reveals that the circumstances in which the money was remitted to the declarant by Accused leave serious doubts that the money constitutes a gratification with a view to obtaining a benefit from a public body. It can be gathered from the testimony of Mr Haulkory that he went to see the Accused to obtain his help and the latter proposed to help him to obtain a B carrier's licence. The relevant part of declarant's testimony clearly indicates that Accused never asked him for any specific sum of money but rather, that declarant gave him money and all the relevant documents so that he could assist him in obtaining a B carrier's licence. It must not be overlooked that the declarant himself agreed in cross-examination that Accused has always helped him in respect of application or renewal of MVL and insurance of policy. Furthermore, there is in fact no evidence on record that declarant was not entitled to a B carrier's licence. Hence, it was perfectly in order for Mr Haulkory to make an application for a B carrier's licence, be it by himself or with the help of another person after having submitted all the relevant documents and paid the fees.

I have borne in mind the submissions of Learned Counsel for the prosecution that mens rea can be inferred from the fact that the sum of money which was remitted to the Accused is higher than the normal fee which was due to be paid. I am unable to subscribe to such submission for the following reasons. Firstly, it must be pointed out that there is no

indication from the evidence of the exact amount of money which is required to be paid for the application of MVL and B carriers' licence. It is only apparent from the evidence of Mr Peerboccus that in the absence of a B carrier's licence, the fee due for the renewal of the MVL is Rs 8000. It would be difficult for this court to infer from the evidence that Accused had the necessary mens rea in the absence of evidence as regards the exact fees which are required to be paid to obtain the MVL and the B carrier's licence. Hence, I find that mens rea for the offence of traffic d'influence cannot be inferred from the evidence.

For the above reasons, I find it unsafe to rely on the declarant's version to convict the Accused. I therefore dismiss the charge against Accused.

N Senevrayar-Cunden (Mrs)

[Delivered by N Senevrayar-Cunden, Magistrate of Intermediate Court]

[Delivered this 16th of February 2022]