

Cause Number:1102/2017

IN THE INTERMEDIATE COURT OF MAURITIUS

In the matter of :-

POLICE

VS

QAIS BALLADIN

Judgment

1. Accused stands charged with Traffic D'Influence in breach of section 10(5) of the Prevention of Corruption Act .The accused pleaded not guilty to the charge and he was assisted by counsel.

CIRCUMSTANCES OF THE CASE

2. Witness no.6, Mr Chandradeo Manohur, produced a Letter dated 08/02/19 from District Council of Moka to confirm the status of accused and the Letter was marked as Doc A .He stated that accused was appointed as Planning and Development Inspector since 1st June 2012.
3. Witness no.1,SI Koossa, read and produced two out of court statements of the accused (Doc B and Doc B1 Refer). He testified to the fact that an identification exercise was not carried out as they could not find volunteers to carry out the exercise. He produced a Letter dated 18th November 2105 from Head of Land and Use Department which was marked as Doc C .

In cross-examination W1 confirmed that District Council of Moka has received a complaint which was referred to accused. The accused has attended spot and he observed that it was a well founded complaint as Mr Ragoodoo failed to keep the required statutory distance. He also confirmed that accused has issued a Notice to Mr Ragoodoo to stop construction. He testified to the fact that according to enquiry all the

procedures have been followed and the accused even took photos of the building showing that Mr Ragoodoo did not keep the statutory distance. He also stated that accused has submitted his report and photographs to his superior officer, Mr Soobrattee. W1 also stated that the report was sent to a committee to determine whether to prosecute or not and once it has been decided to prosecute then accused was only a witness in the case. He admitted that if Mr Ragoodoo has been fined by the Court thus the construction was not according to the plan approved by District Council. He stated that as per his enquiry it is the procedure that Inspectors attend spot alone.

4. Witness no.2, Mr Subratty, testified to the fact that as Head Planner he is in charged of the Planning Department of District Council Moka. In his department there are two Planning Inspectors, one Work Inspector and two Assistant Planning Inspectors.. He confirmed that accused is one of the Planning Inspector and the main duties of a planning Inspector is to carry out site visit and submit report for application of Building Land Use Permit. They also deal with complaints, applications for Morcellement Board Land Conversion Permit and they have to attend Court. Witness no.2 explained the procedures that need to be carried out in case there is a complaint.

Witness no.2 produced the Information and Service Centre Sheet dated 09/04/2015 and two photographs which were marked as Doc D collectively. Witness no.2 explained that a complaint was made through the Information Service Centre of the Council by Mr Vencalapati Joseph and it was referred to the Prosecutor. Witness no.2 also produced the Notice dated 21/04/15 and the Survey Plan which was marked as Doc E and Doc F respectively. Witness no.2 explained to the Court that the Notice was issued by the accused and in case of illegal construction the building must be restored to its original state.

In cross-examination witness no.2 confirmed that once the complaint was referred to the accused he has followed all the procedures. Witness no.2 explained that based on the report submitted by the accused he recommended legal action. He also

explained that as a witness accused has no power not to insist on the pulling down order.

5. Witness no.3 ,Mr Gunesh, testified to the fact that Mr Ragodoo(W4) informed him that the District Council of Moka declined to grant him a trading permit as his building has not been constructed as per the approved plan. As per the testimony of ,Mr Gunesh, Mr Ragodoo told him that an officer approached him and asked him for Rs4000 to obtain his trading licence.

6. Witness no.4, Mr Ragodoo(W4), deposed to the fact that when an officer questioned him he informed him that the accused never asked him for any money. He stated that one officer from District Council came at the construction site in 2011 or 2012 to verify whether the construction were made as per the approved plan . He deposed to the fact that he had to pay a fine for this case as he was not in possession of his original plan. After inconsistent statement was put to the witness he confirmed that accused came at his construction site and he served him a Notice. He stated that the accused came to see him on two occasions, the first time he informed W4 that his construction was not as per his plan and he must pull down. On the second occasion accused came at the construction site to verify the documents of W4. The prosecution put the inconsistent statement to W4 and the latter maintained that accused never asked him for Rs4000 to avoid the pulling order.

The Case was Closed For The Prosecution.

The accused did not adduce any evidence.

The Case was Closed for The Defence.

DETERMINATION

➤ The law

Section 10(5) of the Prevention of Corruption Act reads as follows-

“10. *Trafic d'influence*

(5) Any public official who solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.”

The prosecution has the duty to prove each element constituting the offence beyond reasonable doubt. The prosecution must prove the following elements in the present case:-

1. The accused was a Public Official;
2. The accused has solicited a gratification from any other person for himself or for any other person;
3. The gratification was solicited in order for accused to make use of his real or fictitious influence;
4. For the declarant to obtain a benefit from a public body; and
5. The guilty intention of the accused.

(1) Was accused a Public Official?

In respect of the first element it is not disputed that accused was a Planning and Development Inspector and this was confirmed by the evidence of Mr Manohur (W6) the Assistant Manager Human Resources who produced a Letter from District Council of Moka to confirm the status of the accused (Doc A Refers).

(2) Did Accused solicited gratification to make use of his real or fictitious influence?

Mr Ragodoo(W4) stated that the accused issued him with a Notice as his construction was not according to plan but the accused never asked him for any money to avoid a Pulling Down Order. When he was confronted with his statement dated 3/12/15 upon

which he identified his signature where he said that:” ca jour li ti servi ou papier la , quand Balladin li fine donne moi notice la, mo fine demande li be ki pou arriver aster et li finn dire moi ki sa pou alle la cour , Magistrat capave dire ou crase sa boute mo la caze ki illegal;la et aussi mo capave plaide coupable et payee ne l’amende . La Balladin dire moi donneli Rs4000 alle plaide coupable la cour tranquille et paye l’amende qui mo gagner , li pou fini faire necessaire pou qui mo la caze pas craser.”, witness Ragodoo stated that accused never said that to him . He maintained that accused never asked him for Rs4000 and only told him that he had to pay a fine if his construction is not according to the plan. It is clear that the prosecution failed to come to proof that accused has solicited any gratification from W4 .

Mr Gunesh testified to the fact that Mr Ragodoo (W4) informed him that one officer from District Council is asking him for Rs4000 to obtain a trading licence permit. Witness Ragodoo stated that accused never told him to give Rs4000 to avoid the Pulling Down Order. It is therefore clear that there is no evidence on record from which the Court can infer that accused solicited the gratification for him to use his influence, real or fictitious, so as to avoid the Pulling Down Order.

In the circumstances the Court finds that the prosecution has failed to adduce evidence to establish these elements of the offence of Traffic D’influence. Therefore, the Court need not address the other elements of the offence.

Conclusion

For all these reasons and after having considered all the facts and circumstances of the case the prosecution has failed to prove the charge against the accused . Therefore the Court dismisses the charge against the accused.



[Delivered by Magistrate Intermediate Court : N DAUHO]
[Delivered on 15th July 2020]

