

IN THE INTERMEDIATE COURT OF MAURITIUS [FINANCIAL CRIMES
DIVISION]

CN: 54/2020

Independent Commission Against Corruption

v/s

Jayeshwur Raj Dayal

Ruling

Accused stands charged with the offence of bribery by public official in breach of Section 4 (1) (a) (2) of the Prevention of Corruption Act. Accused pleaded not guilty to the charge and was assisted by Counsel.

Defence counsel objected to a motion of the prosecution to adduce evidence of an alleged conversation to the effect that this was related by the complainant to the officer and amounts to inadmissible hearsay evidence and secondly, he is objecting to the identity of the persons who have had the conversation.

The basic rule at common law is that hearsay is inadmissible in criminal proceedings. The hearsay rule was explained in the case of **Sharp** [1988] 1 WLR 7 by Lord Havers observed " *an assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted* " The rationale of excluding hearsay evidence as inadmissible as aptly put in by Lord Bridge of Harwich in **Blastand** is a recognition of the great difficulty of assessing whether, if any weight, can be properly given to a statement by a person whom the jury have not seen or heard and which has not been subject to any test of reliability by cross-examination We also find it pertinent to refer to the case of **Subramanian v/s Public Prosecutor** [1956] 1 WLR 965:

"It is hearsay and inadmissible where the object of the of the evidence is to establish the truth of what is contained in the statement"



We are of the view that contrary to ~~the~~ what was held in the case of Subramanian [supra] Mr Beeharry can give evidence that there was indeed a conversation which was held between the complainant and another person to the extent that the prosecution is not seeking to establish the truth of the conversation by doing so .

As regards to the second limb of his objection which is in respect of the identity of the person who had the alleged conversation with the complainant, we are the view that such evidence cannot be adduced by the Investigator Beeharry but by the complainant himself or by some expert witness who examines the phone since the identity of the person who allegedly had the conversation with complainant is contested by the defence. To admit this evidence would be prejudicial at this stage and also offend the rule of previous consistent statement.

For all the above reasons, the objection in respect of the fact that an alleged conversation was held between the complainant and another person is overruled and the objection as regards the identity of the person who allegedly had the conversation with the complainant is upheld.

Delivered by:

N Dauthoo

Vice President of Industrial Court

N Senevraya-Cunden

Magistrate of Intermediate Court [Financial Crimes Division]

This 23rd of August 2021