

ICAC

V

Djamil Abdool Raman

Charge: Bribery by Public Official. Breach of sections 4(1)(a) (2) of the Prevention of Corruption Act 2002.

JUDGMENT

Accused is charged for the offence of "Bribery by Public Official"; he has pleaded not guilty and was represented by counsel. The particulars of the charge are that accused, whilst being a Police Constable who was on official duty did solicit from one Mr Jayraz Bahadoor the sum of Rs 500 for himself in order not to establish two road traffic contraventions against the said Bahadoor.

The case for the prosecution

This is a case which has been started before another Learned Magistrate, who has been posted out and the case is being started anew.

Senior investigator Sonahee identified-

- a. three out of court statements made by accused and same were marked anew as AA, AA1 and AA2;
- b. Seven documents, which were marked documents AB, AB1 to AB 6. (concerning to the entries made by the accused in relation to the contraventions he established)

CI Tengnah deposed as to the identification exercise held where complainant identified the accused; at any rate, the identity of accused is not in dispute. Mrs Kriti Bhoolkha Jhotee, testified as to the status of the accused, who is a police constable; this also this is not disputed.

The case for the prosecution rests mainly on the evidence of the complainant Mr Jayraz Bahadoor. He has explained that on 30.12.2015, he was riding his motorcycle at Riviere Du Rempart, when he was stopped by police officers travelling in a Police van; two police officers came out of the van; he identified the accused as being the one who contravened him as he

was not wearing a crash helmet, whereas the other police officer (PC Sowamber) did nothing but said to the accused "*be guetter toi*". He apologized to the accused but was nevertheless contravened; He was asked for his driving licence and as he was not in possession of the document, a second contravention was established. He further alleged that the accused asked him for Rs 500 to arrange for the contraventions but he refused. Accused issued him with a PF 3 to produce his licence for inspection, which he did on the same day but he did not report the alleged solicitation for money at the station. He explained the delay in reporting the case to ICAC as he went to the office of ICAC at Port Louis but same was found closed on two occasions, he was then informed that ICAC has relocated at Redit and on another day, he went to ICAC and reported the present case; he was also delayed because his daughter visited him from England. In cross examination he maintained his version and explained that the other officer (PC Sowamber) did nothing in the contravention and just left to return to the van; he also maintained that at the time of the contravention, accused was alone with him.

Other witnesses

PC Sowamber, was called as witness by the Prosecution and he explained that he was present all throughout the exercise when accused was contravening Mr Bahadoor and he assisted him by noting the particulars of the Insurance policy. As he was inconsistent with a previous statement, the prosecution moved to put the inconsistency to him, he was very confusing but his final version was that the exercise of establishing the contravention took 2 minutes, he stayed with accused and they both returned to the van at the same time. Mr Bahadoor tendered his apologies to accused and there was no other conversation between them. In cross examination, he gave a lie to Mr Bahadoor who said that, he (PC Sowamber) did nothing but said to the accused "*be guetter toi*" and left the spot to enter in the van. He added that accused never solicited any bribe from Mr Bahadoor. Further, this version was not challenged in reexamination by the prosecution, although it was a new issue and could have been cleared up by the prosecution or at least challenged.

Prosecution also called PC Luckhee who was driving the police van at the time of the contravention. He said that PC Sowamber went out with accused to establish the contravention; PC Sowamber returned after about 5 minutes and accused followed about one minute later; then he rectified to say that PC Sowamber and accused returned together. In cross examination, he said that he did not hear accused soliciting any bribe from Mr Bahadoor; again, this version was not questioned in reexamination.

The case for the defence



Accused did not adduce any evidence and his version is contained in his out of court statement which is a denial.

Findings

The law provides as follows-

4. Bribery by public official

(1) Any public official who solicits, accepts, or obtains from another person, for himself or for any other person, a gratification for –

(a) Doing or abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties;

(b)

(c)

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

The elements of the offence in the present circumstances are: -

- 1) Accused was a public official;
- 2) he solicited, for himself, a gratification from another person;
- 3) in order to abstain from doing an act, in the execution of his duties.

1) Accused was a public official

In his out of Court statement, Accused has admitted that he is a Police Constable. Further, document AC confirms his status of being a public official. The first element is therefore proved.

2) Accused solicited a gratification from another person

Counsel for the prosecution has submitted that reliance should be placed on the testimony of witness Bahadour, I do agree that witness Bahadour deposed in a straight forward and convincing manner and his version stood unrebutted. However, he was not the sole witness who deposed on factual issues; I also find that the prosecution called two other witnesses which impacted severely on the evidence of Mr Bahadour and these are as follows:

PC Sowamber said that he was present all throughout the exercise when accused was contravening Mr Bahadour and they both returned to the van at the same time; he gave a lie to Mr Bahadour (the main prosecution witness) who said that he (PC Sowamber) did nothing



but entered in the van after having said to the accused "*be guetter toi*". Further, he said that accused never solicited any bribe from Mr Bahadoor and this version was not challenged by the prosecution.

PC Luckhee said that PC Sowamber and accused went out together to establish the contravention; PC Sowamber returned after about 5 minutes and followed by accused less than one minute later; upon further questioning by the prosecution, he changed to say that PC Sowamber and accused returned at the same time. In cross examination, he said that he did not hear accused soliciting any bribe from Mr Bahadoor; again, this version was not challenged by the prosecution.

PC Sowamber and PC Luckhee have brought severe doubts in the case of the prosecution in as much as. It could well be that accused was not left alone with the complainant and there was no act of solicitation. PC Sowamber said that accused never solicited any bribe from Mr Bahadoor and this version was not challenged by the prosecution; therefore, it could be true that there was no solicitation. Lastly, PC Luckhee said that he did not hear accused soliciting any bribe from Mr Bahadoor; again, this version was not challenged by the prosecution. Therefore, it could well be that he has not heard the solicitation, but it could also be that there was no solicitation.

There is doubt as to whether there has been any solicitation by the accused.

3) in order to abstain from doing an act in the execution of his duties

In the present case, accused has reported the complainant, therefore he has not abstained from doing an act in the execution of his duties. However, he could have abstained from reporting the complainant and this is precisely what has been alleged by the complainant; he said that accused solicited Rs 500 so as not to establish the contraventions. However, like it has been pointed out, PC Sowamber deposed and said that there was no such proposal and PC Luckhee stated that he did not hear any such suggestion.

It cannot be said that the prosecution has proved the second and third elements beyond reasonable doubt. All these doubts go to the favour of the accused and the charge is dismissed.

Delivered by Mr Vijay Appadoo

President Intermediate Court (Financial Crime Division).

07.10.2021.

