

IN THE INTERMEDIATE COURT (THE FINANCIAL CRIMES DIVISION)

CN 123/2020

IN THE MATTER OF:

THE INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)<sup>1</sup>

V

GUNSHYAM JEETUN

RULING

1. The accused stands charged before this court in an information containing a single count, for the offence of **bribery of public official** in breach of **Section 5 (1) (a) (2)** of the **Prevention of Corruption Act**. The accused pleaded not guilty to this offence and retained the services of counsel. On the 29<sup>th</sup> February 2024 when witness 8 Mr Nicolas Frederic Atchiane was being examined in chief by the prosecution about an article which had been published on the 29<sup>th</sup> March 2014 by the newspaper Samedi Plus and which had been shown to witness 8, the defence objected on the ground that:

*At this stage, I draw the Court's attention that the memory of the eye witness to an incident which is the subject matter of this case has been refreshed by the backdoor by the prosecution in a case which dated back to 2014 and this is most improper on the part of the prosecution.*

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<sup>1</sup> ICAC is now referred to as Financial Crimes Commission (FCC) under the Financial Crimes Commission Act 2023.

*I am therefore objecting to the evidence of this witness continuing on the basis of what he saw since it has now been established that he has read DOC HH in Court, in front of the Court and it has now been established, that is that article relates what the witness may have seen at the relevant time.*

2. Upon this motion being made, the prosecution moved that the matter be fixed for arguments. On the 27<sup>th</sup> March 2024, the defence and prosecution submitted their legal arguments on whether the witness memory had been refreshed through the "backdoor" and as such if this amounted to an improper course of action adopted by the prosecution.
3. The judgments of *Dip. C.P v The State 2021 SCJ 36*; *M.Bhuglah v The State 1995 SCJ 25*; *R.Jha v The State Criminal Appeal 4467 Of 201*; *Budloo v The State 2019 SCJ 256* and *Halsbury's Laws of England on Memory Refreshing (538)* were referred to the by defence and prosecution during the respective submissions.
4. This court has carefully considered the submissions made.
5. This is the court's decision.
6. On the 11<sup>th</sup> July 2007 the Intermediate Court (Bench composed of three Magistrates namely B. Marie Joseph (Vice President of the Intermediate Court) N.F. Ohsan-Bellepeau and R. D. Dabee (Intermediate Court Magistrates) delivered a ruling in the case *Police v Tirvengadhun Harry Krishan (Sir) & Ors 2007 INT 36* whereby it was contended by the defence (Mr Y. A. R Mohamed SC) the fact that Mr Tyack who was one of the main prosecution witnesses whose version may have been influenced by the escorting officer warranted a stay of proceedings. The court based on the submission of the prosecution represented by Mrs Manna pointed out that a fair trial was still possible because:

*Now, the evidence adduced in relation to the present motion falls short of showing blatant undue interference with Mr Tyack in the form of coaching, intimidation or otherwise with a view to fabricate evidence or inducing him to trim his evidence in a manner that is prejudicial*



*to the accused parties. As observed earlier the evidence could at most reveal a remote risk of interference with Mr Tyack. Such risk can be properly taken care of at the trial by the latitude given to defence counsel to cross-examine the witness, as is the case in all criminal trials. Counsel will thus have the opportunity to exercise the required vigilance and adopt the appropriate line of cross-examination when Mr Tyack testifies in order not only to impeach his credibility but also to bring to the attention of the Court any likelihood of fabricated or otherwise unreliable evidence, on his part, if counsel so chooses. We are therefore satisfied that the trial process is adequately equipped to deal with the complaint of the defence which has given rise to the present motion of stay of proceedings.*

7. In the present matter, bearing in mind the principle set out **Police v Tirvengadhun Harry Krishan (Sir) & Ors 2007 INT 36** to the effect that through cross-examination the witness credibility can be tested and also taking into account that in **Vythilingum v The State 2017 SCJ 379** the Supreme Court held that:

*Giving evidence in Court is not a memory test and failure to recollect with precision all the circumstances and details of an incident is understandable. What is important is for the Court to be satisfied that a witness is speaking the truth in substance.*

8. This court finds that the defence's objection is unwarranted. The objection is therefore overruled.

21.6.24  
A.JoyPaul

Intermediate Court Magistrate.

