FCD CN: 75/2020
CN: 116/2015

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIME DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

Ho Man Cheong Patrice Sylvio

JUDGMENT

1. The accused has been prosecuted for the offence of Corruption of Agent in breach of sections 16(1) & 83 of the Prevention of Corruption Act 2002, under 17 counts as laid in the Information. He pleaded not guilty to the Information and was represented by defence counsel, Mr Domingue SC, throughout the proceedings. Mr Jeeha appeared for the prosecution.

CASE FOR THE PROSECUTION

2. Witness no.1, the Senior Investigator of ICAC, produced the following documents:
   i. Defence statement of the accused (Doc A).
   ii. Letter dated 10.01.14 from Thomas Cook (Mauritius) Operations C. Ltd (Doc B) and its annexure (Doc B1).
   iii. Bank statement of the accused party (Doc C).

3. The witness further stated that the accused was a senior officer at the HSBC working in the Treasury Department. He was responsible in buying and selling foreign currencies and therefore he was dealing with numerous

financial institutions and Thomas Cook being one of them. From 2011 to 2013 the accused would receive a commission without the consent of the bank (HSBC) upon each transaction effected. The commissions were collected by the accused's wife and the money was credited partly in his Euros account and partly in Mauritian rupees account at the HSBC.

4. Under cross-examination, the witness could not answer as to the number of foreign currency transactions the accused was engaged with Thomas Cook for the year 2011. He stated that he only received 3 invoices during his enquiry which disclosed that the accused received commissions upon 3 transactions. Those invoices were provided by witness no.6, a representative of Thomas Cook to the ICAC. The defence put inconsistencies with regards to the dates of the second and third invoices, and their respective dates on Doc B1. The witness could not explain the inconsistencies. Doc B1 was compiled from the records of Thomas Cook. My Dyall, witness no.10 sent Docs B and B1 to ICAC but no statement was recorded from witness no.10. There was no enquiry as to which source Thomas Cook gathered the information from to compile Doc B1, nor was there enquiry as to whether the invoices tally with Doc B1. Furthermore the invoices are about transactions in USD and Mauritian rupees whereas Doc B1 shows transactions in Euros (except one in USD) which have been converted into Mauritian rupees.

5. During re-examination, the witness stated that he did not rely on the invoices to conduct the enquiry but on Doc B1 which was the document put to the accused at enquiry stage. According to the witness, the accused confessed to having received commissions in his defence statement.

6. Witness no.9, the then MLRO at the HSBC was shown a letter signed by him during examination-in-chief and produced as Doc D. The document is a description of the accused's bank accounts and the latter's schedule of work and positions he was employed for. The letter also states that the accused was not authorised to receive any commission on transactions effected by the HSBC and the HSBC was not aware of any foreign exchange transactions.

7. Under cross-examination, reference was made to the letter, Doc D where at page 3, it can be read 'we enclose copies of the following statements of accounts'. The witness was asked to identify those statements of accounts which were supposed to have been provided to the ICAC at enquiry stage. The witness answered that the statements are in Doc C, which is a composite

statement. However for those documents mentioned at page 5, paragraph (d) of Doc D, he stated that they should be with the ICAC. The prosecution was given time to carry out a search of those documents.

8. At the subsequent sitting, the witness still under cross-examination could not answer as to the documents stated as enclosed in Doc D. He further stated that his letter (Doc D) was written sequentially with the judges (disclosure) order.

9. Witness no.10 Mr Mohinder Dayal, the Chief Operating Officer at Thomas Cook was called by the prosecution. He confirmed the documents B and B1, as a summary of payments made to one Mrs Ho Man Cheong Lye Yok Leung (wife of the accused) from Thomas Cook for the period between 2011 and 2013. The contact person at the HSBC was the accused party. He stated that the payment represented commissions and those commissions were remitted to one Mrs. Lye Yok Leung Ho Man Cheong. At the time, the witness was not aware of the relationship between the said Mrs Ho Man Cheong and the accused party.

10. Under cross-examination, the witness revealed that the information laid out in the documents B and B1 were retrieved by one of the officers of Thomas Cook. Nevertheless, he could not name the officer in question, nor the exact date on which the information was retrieved and presented to him. He did state that the information was retrieved from records of invoices which emanate from the operations department of Thomas Cook. The witness was asked to compare the invoices and the listing found at document B1. There seemed to be a discrepancy between the reference numbers found on the invoices and Document B1. It is noted here that the court is not in possession of the said invoices and therefore any variance is difficult to be assessed.

11. Still under cross-examination, the witness further revealed that the information contained in Doc B1 was not compiled by him but by officers of Thomas Cook. There was no corresponding invoice for each of the first five transactions listed at Doc B1.

12. However he explained upon being re-examined by the prosecution that there would be discrepancies on the dates between the invoices and the listing at B1 because the invoices were obtained at times different to when the commissions were actually paid.

13. Witness no.2, Mrs Chuttarsing Soobarah, the then Fraud Risk Officer of the HSBC was tendered for cross-examination by the prosecution. As per evidence on record, she has produced documents to the ICAC at enquiry stage. Those documents referred to as USC1 to USC5 were shown to her. There seem to be discrepancies between USC1 and USC2. It is noted again that those documents have not been produced and therefore the court is unable to properly assess the importance of the said discrepancies.

CASE FOR DEFENCE

14. No evidence was adduced on behalf of the defence.

ASSESSMENT OF THE COURT

The law

15. Prevention of Corruption Act 2002 (POCA)

Section 16: Corruption of agent

(1) Any agent who, without the consent of his principal, solicits, accepts or obtains from any other person for himself or for any other person, a gratification for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business, or for having done or abstained from doing such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) Any person who gives or agrees to give or offers, a gratification to an agent for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business or for having done or abstained from doing such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

Section 83: Burden of proof

In the course of a trial of an accused for a corruption offence, it shall be presumed that at the time a gratification was received, the recipient knew that such gratification was made for a corrupt purpose.

16. It is not disputed that the accused has been in the employment of the HSBC at the material time. The accused party and the HSBC are therefore qualified as agent and principal respectively, as per the definitions provided under section 2 of POCA.

The issue of fair trial

17. The prosecution has heavily relied on the defence statement (Doc A) of the accused, both in laying the charges in the Information and in conducting its case at trial. The accused stated at Doc A that he was employed as a trader at the Treasury Department of the HSBC. He had the mandate to buy and sell foreign currencies at rates not detrimental to the HSBC. He was not authorised to claim any benefit from the bank's clients. He was approached by the chief executive of Thomas Cook in 2011. The negotiations resulted into the accused agreeing to have the HSBC buy foreign currencies from Thomas Cook and to supply same to Emirates. Emirates was an existed client of the HSBC. At the end of 2011, the representative of Thomas Cook proposed and agreed to give monetary rewards to the accused. The latter would be notified that the reward was ready after a deal was made. The accused's wife would collect the envelope filled with cash either in Euros or Mauritian rupees from Thomas Cook. The accused banked all moneys received from Thomas Cook in his HSBC accounts. Doc B1 (Annexure A) was shown to him at the time of recording of his defence statement. He confirmed that the deposits shown to him represent the rewards he received from Thomas Cook. It is noted therefore that the prosecution chose to lay the charges in the Information as per the factual admissions of the accused with regards to each dated deposits.

18. The contention of the defence is that such admissions cannot amount to a confession as the accused was unaware of the nature of the case against him. Having perused the defence statement of the accused (Doc A), it is clear that it was never expressed to the latter that he might have committed an offence under the law. The statement was recorded in the narrative. The accused candidly related the events between the representative of Thomas Cook and himself. The question is whether he was aware, at the time he made those admissions of fact, of the nature of the case that would be brought against him at trial. It is now settled through the cases **Jhootoo v State 2013 SCJ 373, Seetahul v State 2015 SCJ 328 and DPP v Lagesse 2018 SCJ 257**

that there is no requirement to confront the accused with a specific charge but rather the nature of the case that he has to meet at a subsequent trial. This would provide an accused party the opportunity to defend himself at enquiry stage if he wishes to do so. This further absolves the accused party from adducing evidence at trial, thereby not having to waive his right to silence.

19. Learned Senior Counsel for the defence did not challenge the admissibility of the defence statement but asserted the precept that if the statement is to be relied upon, the accused will not benefit from a fair trial. The right to a fair trial is enshrined under **section 10 of the Constitution**. It has been settled by the full bench of the Supreme Court since **Amasimbi v State 1992 SCJ 178**, that *"the concept of a fair trial guaranteed by section 10 of the Constitution implies fair and impartial enquiries into allegations of accused parties". With respect, we feel that, for the said of completeness, that sentence should have been so worded as to refer to "impartial enquiries into allegations of accused parties which may have a bearing on their innocence or guilt.* The general protection of a fair trial under section 10 is therefore extended to suspects after arrest at enquiry stage.

20. The section 10(2) of the Constitution more precisely paragraph (b) which confers on the accused the right to be informed of the nature of the charge, seemed to have equally been extended to suspects before trial by the Supreme Court in **Jhootoo v State 2013 SCJ 373**:

The appellant had a right to know in the first place the details of the case regarding the false statement. Nothing shows that it was ever put to him that he would be charged for an offence of giving a false statement in connection with a drug offence. Section 10 (2) provides that every person who is charged with a criminal offence ... shall be informed as soon as reasonably practicable, in a language that he understands, and, in detail, of the nature of the offence." That constitutional imperative has been breached in this case and a conviction cannot be based on that core irreducible minimum of fairness.

21. The above pronouncement was confirmed by the subsequent case **Seetahul v State 2015 SCJ 328**. It is manifest that the origin of section 10(2)(b) of our Constitution can be traced back to its European counterpart at **Article 6(3)(a) of the European Conventions on Human Rights (ECHR)**:
Everyone charged with a criminal offence has the following minimum rights:

a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him*;

The European case law seems to have extended such right to suspects and the wording of the above article is almost identical to our constitutional provision. In **Mattoccia v Italy (2003) 36 EHRR 47**, the argument was with regards to an imprecise judicial notification. It is noted that in the Italian jurisdiction, an investigating judge would send a prescribed document to notify the suspect of the likely charges to be laid against him. The following extracts are of relevance:

59. Paragraph 3 (a) of Article 6 points to the need for special attention to be paid to the notification of the "accusation" to the defendant; particulars of the offence play a crucial role in the criminal process, in that it is from the moment of their service that the suspect is formally put on notice of the factual and legal basis of the charges against him (see, mutatis mutandis, the Kamasinski v. Austria judgment of 19 December 1989, Series A no. 168, pp. 36-37, § 79).

This was further reiterated in subsequent pronouncements when the prosecution raised the possibility that the accused party can be made aware of the case he has to meet when communicated with the brief before trial. The court held the following:

65. The Government argued that an earlier request to that effect would have allowed the applicant to have at his disposal of all the necessary information at the trial. In the Court's view, even though the applicant could have sought access to the prosecution file in due time, that did not release the prosecution from its obligation to inform the accused promptly and in detail of the full accusation against him. That duty rests entirely on the prosecuting authority's shoulders and cannot be complied with passively by making information available without bringing it to the attention of the defence.

It naturally follows that the prosecution has to confront the suspect to the details of the case against him at enquiry stage so as to allow him to prepare an adequate defence, and thereby rendering applicable Article 6(3)(a) of the ECHR.

22. However, the more recent cases of **Boyjonauth v State 2018 SCJ 326** and **Jaulim v State 2022 SCJ 3** have reaffirmed the view of the Supreme Court in **Police v Roheman 2010 SCJ 415**, in that, section 10(2)(b) *does not refer*

to the right of a suspect who has not yet been formally charged but to the right of an accused party at trial. This right is satisfied by the reading of the information to the accused party at the stage of the plea. The dichotomy of rights pertaining to suspects and accused parties therefore remain. Nevertheless, it is undeniable that the right of the suspect to be informed of the nature of the offence or case against him exists.

23. **Section 5(2) of the Constitution** reads: *Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.* Apart from the usual warning given to the accused prior to him giving his statement, it is unclear whether the reasons for his arrest were made clear to him. He was only shown Doc B1 (Annexure A) and his bank statements which I will address later.

24. It is apposite to quote the interlocutory judgment of **State v Ruhumatally 2015 SCJ 384** on section 5(2):

It is not disputed that when a police officer has obtained enough evidence that a person has committed an arrestable offence, he should proceed to arrest that person. Section 5(2) of the Constitution, as set out above, then provides that the person shall be informed of the reason of his arrest. In practice, that would entail informing the person of the nature of the offence which he is suspected of having committed and for which he is being arrested.

25. The defence has relied on **Jhootoo (supra)** to submit on the premise that the precise charge has not been put to the accused at enquiry stage. It has to be noted that in the above case, the suspect was confronted with a case of drug dealing and the final charge at trial was one of giving false statements in relation to the drug case, which showed a marked difference to the nature of offence confronted to him during enquiry. The Supreme Court in **Seetahul (supra)** considered Jhootoo and addressed the issue in the following way:
It was not incumbant at the stage of the enquiry to put each and every element of the offence to the appellant. It suffices that the version of the complainant was put to him so that he was made aware of the case against him and the evidence on which it is based so as to enable him to prepare his defence.

26. The above was reiterated in **DPP v Lagesse (supra)** and it was held:

The baseline is therefore that the accused must be made aware of the case against him. What effectively does that imply? Quite clearly this will depend on the particular circumstances of each case, but evidently cannot mean the "charges as per the information lodged before the trial court" be put to him at the stage of enquiry.

Where there is a complaint, it would de facto imply that the suspect has to be confronted with that complaint; and if there were additional incriminating evidence gathered during the course of the enquiry those should be put to the suspect. Obviously, if the police as part of their enquiry do have incriminating evidence, the suspect has to be cautioned and informed of his right to be legally assisted, i.e. right against self-incrimination and right to be legally assisted. Here, it is good to highlight that if the two rights referred to above are to have any meaning, they have to be imparted to the suspect in a language which he understands.

27. It is unknown whether there was a complaint from the HSBC which would have triggered the investigation by the ICAC. At no point during the recording of the defence statement was it disclosed to the accused that there was any complaint or that the available evidence obtained might amount to the commission of a criminal offence. In other words, he was not informed what exactly was being reproached of him. The accused volunteered information which is related to the current charge laid against him. Hence the point from the defence is well taken in that the self-incriminating statements of the accused cannot amount to a confession to the current charge since he was not informed that he might have committed an offence, vide **Cangy v State 2019 SCJ 87**. Nevertheless, it cannot be denied that the accused has made admissions of fact. Admittedly the difference might be purely technical if those admissions are to be relied upon, since their weight in the balancing exercise might be significant. The question is whether such failures amount an unfair enquiry which may lead to an unfair trial.

28. Doc B1 (Annexure A) was shown to the accused during the recording of his defence statement. The document was provided by Thomas Cook and it represents the dated commissions obtained by the accused from Thomas Cook. Same is commented upon and confirmed by the accused himself. Hence there may not be a complaint as such, but the document forming the gist of the enquiry was shown to the accused. In my view it cannot be said that the facts and circumstances relevant to the nature of the case, vide **Seetahul**

(supra), have not been confronted to the accused. I therefore hold that the accused was made aware of the nature of the case that he has to meet. This is further supported when the accused stated that he was aware that he was not permitted to receive gifts or rewards for the work he was employed to do for the HSBC. Clearly after having received the usual warning, he must have known that he was a suspect and that the case revolved around his commissions. There is no requirement to inform the accused of the section of the law the prosecution might rely on or the constitutive elements of the offence.

29. However, this does not absolve the prosecution from having to inform a suspect as per the **Judges' Rules**. The relevant parts are Rules II and III and they can be read as follows:

Rule II:
'As soon as the police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms:
You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence."

Rule III:
(a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:-"Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence".

(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimizing harm or loss to some other persons or to the public or for clearing up an ambiguity in a previous answer or statement. Before any such questions are put the accused should be cautioned in these terms:-"I wish to put some questions to you about the offence with which you have been charged (or about the offence for

which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence". Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.

(c)When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.

30. It is clear that Rule II has been complied with since it represents the usual warning which has been given to the accused at the outset of the recording of his defence statement. On the other hand, Rule III(a) requires that if it transpires from the evidence gathered, that the accused, then suspect, may be prosecuted for an offence, he must be informed as such and the required caution is to be given as seen above. It is clear that the defence statement has subsequently prompted the formal charge against the accused since no further defence statement was recorded from the accused. Such rule safeguards the suspect against self-incrimination and upholds his right to silence. At no point during the recording of the defence statement, was the accused informed that he may be prosecuted for an offence. I find that there has been a breach of Rule III of the Judges' Rules. The consequence of such breach will now have to be considered.

31. **DPP v Lagesse** (supra) confirmed an established line of case law holding that not every breach will render a trial unfair;
The question which arises here is what was the duty of the Police when recording the statement of respondent No.3 (then accused No.3) at the enquiry stage and whether the duty has been breached, and if so to such an extent as to deprive the accused of a fair trial. It must also be borne in mind that not every breach will be considered as fatal (vide A Mohammed v The State [1999] 2 WLR 552 (Privy Council); ([1998] Lexis citation 3212) ...

32. The seriousness of the breach will determine its impact on the fairness of the trial when the surrounding circumstances are taken into account. The voluntariness of the defence statement is not in issue. The question is what would the accused have done differently had the caution been given to him that he could be prosecuted for an offence. Such approach was adopted in the

case **R.v. Kirifi(1992) LRC (Crim) 55** as cited by State v Coowar 1998 SCJ 64 where the following was stated:

There may be cases where, although the suspect has not been informed of his right, the conclusion can be drawn that such information would have made no difference: that even if told of his right he would nevertheless have made an admission.

33. This exercise obviously carries the danger of venturing into pure speculation territory. I shall restrict myself to the inferences that can be drawn from the facts on record. The accused was given the usual warning at the very outset of his defence statement. Any reasonable person considered as a suspect in that instance would have known something is being reproached of him. Due to the breach, he was not given a clear picture of what that was, even against the backdrop of the maxim 'ignorance of law is no excuse'. He volunteered the information even after being cautioned that whatever he says may be used as evidence against him. If at the end of the statement, he was indeed informed that he may have committed an offence and that he may be prosecuted for it, the only two outcomes would have been, either the accused remains silent or he puts up another defence statement for whatever purpose he deems fit. Either way, the accused's ability to prepare an adequate defence could not have been significantly affected. The lack of a possible second out-of-court statement is not prejudicial the accused to the extent that it would be fatal to the fairness of the whole proceedings. It is noted that no evidence or submission was offered on the issue of prejudice for the accused. I find that the breach is not serious enough to warrant a dismissal or a stay of proceedings on that ground. However, whenever there is a breach, such has to be accounted for. Therefore, the weight to be attached to the factual admissions made by the accused may be affected.

<u>Analysis of the evidence</u>

34. The constitutive elements of the offence under section 16(a) POCA and as laid in the Information are as follows:

a. An agent (The accused)
b. Has obtained a gratification from another (Thomas Cook)
c. For doing an act in relation to his principal's (HSBC) business

d. Without the consent of his principal.

35. As stated at paragraph 16 above, there is no difficulty to show that the accused was the agent and the HSBC, the principal for the purposes of section 16(a) POCA.

36. The definition of 'gratification' under section 2 of POCA is wide ranging and can be read as such:

(a) means a gift, reward, discount, premium or other advantage, other than lawful remuneration; and
(b) includes—
  (i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description;
  (ii) the offer of an office, employment or other contract;
  (iii) the payment, release or discharge of a loan, obligation or other liability; and
  (iv) the payment of inadequate consideration for goods or services;
(c) the offer or promise, whether conditional or unconditional, of a gratification;

37. The prosecution has relied on Doc B1, a document emanating from Thomas Cook to show that a series of payments have been made to the accused, through his wife. Witness no.10 Mr Mohinder Dayal, the Chief Operating Officer at Thomas Cook confirmed same in his testimony (paragraph 9 of Judgment). The payments were effected on specific dates as tallied in the list. I take note that the figures written in Euros, save one which was in USD, were then converted at the stated rates to Mauritian Rupees.

38. Document C consists of the composite bank statements of the accused which he has confirmed in his defence statement to show deposits in his Mauritian Rupee and Euro accounts, of commissions that he has received from Thomas Cook. He stated therefore that he banked those commissions in the said accounts on specific dates as described in his defence statements. It can be deduced that the prosecution relied on the said dates (17 in all) given by the accused to draft the 17 counts of the Information. Those dates provided by the accused can be traced back to the deposits with corresponding dates at Doc C (bank statements). There is therefore no issue with regards to the fact

that the accused has received monetary gifts from Thomas Cook which fall within the ambit of gratification as defined above. In fact that was not really disputed by the defence.

39. The main difficulty for the prosecution lies with the dates used for each count of the, Information. One of the elements of the offence is that the accused must have obtained a gratification. Doc B1 as the evidence from the prosecution would clearly suggest compiles the list of payments to the accused, through his wife, on specific dates. Those dates at B1 represent the time at which the accused has obtained his gifts and hence the gratifications. The dates under each count of the Information shows the time those monetary gifts have been banked, not solicited, accepted or obtained, to use the words contained in section 16(a) of the Act.

40. A perusal of Doc B1 and the deposits as per the bank statements (Doc C) shows that the figures and dates do not tally. The uncertainty which is thus created is that it is not clear whether the accused had been banking each and every commission that he received or that he has accumulated some and banked them in one go. Each count represents a distinct offence. We are therefore in a situation where the accused is unable to know as per the Information, when he has allegedly obtained one gratification which would have crystallised one offence. For instance the total amount of the commissions at Doc B1 has been stated to be Rs306,036 and the calculated amount of the total commissions received under all 17 counts of the Information is roughly Rs130,000. It is clear therefore that each count does not represent one gratification received for one deal between Thomas and HSBC as the dates and amounts do not correspond. In summary, it is clear from the evidence on record that the accused has not obtained the gratifications on the dates averred under each count and such is a material deficiency for the reasons given above. The court is unable to apply section 73 of the District and Intermediate Courts Act (Criminal) to amend the Information so as it may tally with the evidence.

41. Furthermore, the variance in the dates is linked to an issue raised and submitted upon by the defence. The third element of the offence as I have listed at paragraph 34(c) above is that the agent must have done an act in relation to his principal's business. Therefore the receipt of the gratification must be as a result of a transaction which is linked to the principal's business. There is evidence from witness no.10, the Chief Operating Officer

from Thomas Cook that the monetary gifts were attributable to 'deals' or transactions made between Thomas Cook and HSBC. Equally the accused, in his defence statement, stated that he received commissions from Thomas Cook as rewards for the purchase of USD from Thomas Cook to supply Emirates. He further explained that there was a negotiation with Thomas Cook for each deal to be effected. There is no evidence from the prosecution of any particular transaction which can be individually linked to each gratification. Additionally, witness no.9, the then MLRO of the HSBC produced Doc D and confirmed paragraph (e) which states that the HSBC is not aware of any foreign exchange transactions sent by Thomas Cook to the HSBC. In isolation, this point might not have been operative enough for the defence because there is evidence that there were transactions albeit not identified. However when taken together with the fact that the dates of each count were not those as to when the gratifications were obtained, the accused is prejudiced further in that it is not clear for how many transactions he has received commissions. If he had done only a handful of transactions with Thomas Cook, was paid a certain amount of money which he had divided up and banked 17 times, according to the prosecution, he has committed 17 offences. I hold that that possibility is highly prejudicial to the accused. This is besides the fact that the offence is not committed when the accused banked X amount of monetary gifts when he had obtained Y amount of monetary gifts on a different date.

42. I have already made the pronouncement that due to the variance in the dates of obtaining the gratifications as opposed to banking some of them and the fact that no evidence was adduced to link each count with one or more transactions, the prosecution has failed to prove the commission of the offence under each count. Moreover there is a real danger that the accused has been unable to prepare an adequate defence with the way the Information has been laid against him and has thus suffered prejudice. The said prejudice is further compounded by my finding of breach of Judges' Rules above. Since the weight of the accused's defence statement has been reduced, the whole of the prosecution case rests on unsteady ground.

43. Having considered the whole of the evidence on record and carried out the required balancing exercise, I find that it would be unsafe to convict the accused. He is therefore given the benefit of the doubt and the case is dismissed.

K P Rangasamy
Magistrate of the Intermediate Court

23 May 2022

For the Prosecution : Mr S. Jeeha, of counsel for ICAC

For the Accused : Mr A. Domingue, Senior Counsel