

THE INTERMEDIATE COURT (FINANCIAL CRIMES DIVISION)

CN 19/2021

In the matter of:

INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

V

MEHVIN KUMAR BHUNJUN

JUDGMENT

The charge

1. The accused stands charged for the offence of **bribery by public official** in breach of **Section 4 (1) (b) & (2)** of the **Prevention of Corruption Act (POCA)**. The accused has pleaded not guilty and retained the services of counsel.
2. The prosecution's case as mentioned in the information reads as follows:

***THAT** on or about the 11th April 2019 at Jawaharlal Nehru hospital Police Post, Rose-Belle, in the district of Grand Port, one **MEHVIN KUMAR BHUNJUN**, 41 years, Police Constable Departmental No 9184 and residing at Royal Road, Malakoff, did willfully and criminally solicit from another person, a gratification for doing an act which is facilitated by his duties.*

PARTICULARS

*On or about the aforesaid date and place, the said **Mehvin Kumar BHUNJUN**, whilst being a Police Constable on official duty, solicited from one **Ashwini Hurpaul** the sum of Rs 1500/- in order to record a declaration in favour of the said Ashwini Hurpaul against one Swata Mungrah.*



3. From the statement of offence and the particulars mentioned in the abovementioned information, in a nutshell the prosecution's case is that police constable Mehvin Kumar Bhunjun (the accused) was on official duty at Jawaharlal Nehru Hospital on the 11th April 2019. The accused has willfully and criminally solicited from Ashwini Hurpaul (witness 7) Rs 1,500. This gratification was solicited by the accused to do an act which is facilitated by his duties namely in order to record a declaration in favour of witness 7 against one Swata Mungrah.
4. The issue is whether the prosecution has proved these facts in line with the elements of the offence under **Section 4 (1) (b)** of the **POCA** beyond reasonable doubt.

The applicable Law

5. **Section 4** of the POCA reads as follows:

PART II - CORRUPTION OFFENCES

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 –

(b) doing or abstaining from doing, or having done or abstained from doing, an act which is facilitated by his functions or duties;

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

6. For an offence to materialise under **section 4(1)(b)**, this court must be satisfied that in line with the judgments of **Boulet v The ICAC 2020 SCJ 106**; **Boyjoonauth v The State 2017 SCJ 378** and **Chinarassen v The State 2016 SCJ 79** that:
 - (a) The accused was a public official;
 - (b) that he had solicited from another person for himself a gratification for doing an act which is facilitated by his duties.



7. These elements are to be construed from the evidence adduced during a trial.

The evidence on record and the issues to be determined

8. In the present matter, it is undisputed that the accused was on official duty on the 11th April 2019 as police constable at the Jawaharlal Nehru Hospital (JNH) Police Post. This can be gathered from the testimony of witness 1 Mrs Bhoojawon HR executive. According to witness 1 the accused joined the police force on the 27th May 2002 and was confirmed in this post on the 27th May 2003. It is also undisputed that witness 7 went to the police desk in order to lodge a complaint. The facts which are disputed by the accused and which have been set out in his out of court statement dated 16th December 2020 **DOC B** and the accused court testimony is in relation to the following aspects:

- (a) The accused disputes having solicited money from witness 7.
 - (b) The accused disputes the identity of the person who was accompanying witness 7 at the material time on the 11th April 2019 namely whether it was the father or mother of witness 7.
 - (c) The accused disputes the conversation which took place between him and witness 7; namely whether a heated discussion arose between him and witness 7.
 - (d) The accused disputes having written on a page the name of Swata Mungrah.
 - (e) The accused disputes that he wrote on the rear of a book the name and phone number of witness 7.
9. Issues (a) to (d) mentioned above are important in order to demonstrate the contemporaneity of the acts done in furtherance of the act of alleged bribery of the accused as a public official and to determine whether there has been a breach of Section **section 4(1)(b)** of the POCA.



Analysis of the evidence on record

(a) The version of prosecution witness 7 against that of the accused under oath

10. During the trial the testimony of witness 7 sums up what is being reproached from the accused. Witness 7 gave evidence to the effect that on the 11th April 2019 she went to JNH police post to make a declaration. Witness 7 explains that:

A. Au fait quand mo fine alle l'hospital, quand mone fini passe avec docteur tout, docteur fine dire moi alle prend forme 58. Sa veut dire alle donne enn declaration la police. Mais quand mo fine sorti, ti ena enn cabine la police. Nouné rentre endans moi ek mo mama. Nouné rentre endans mais lera nous fine assize nous fine explik la police la kine arrive. Policier la dire coumsa li parrett ki zot pe coz vrai. Lera line dire nous coumsa mais donne li Rs 1500 li pou faire sa case la vine dans nous faveur¹.

11. This version was corroborated by witness 8 Mrs Reshma Hurpaul who is the mother of the accused. The father of witness 7 also testified that he never attended hospital in company of her daughter witness 7.

12. These versions are vehemently contested by the accused.

13. In fact, the accused at all times, from enquiry stage up to the trial maintained that the mother never attended hospital but it was rather the father of witness 7. The accused who testified under oath explained that:

A. Au faites, le 11 avril 2019, motipe travail second shift, c'est-à-dire 15.30 jusqua 23.30 moti poster dans Casualty JNH, kot motipe ale travail labas et a certaine moment, fine enan 2 madame ti vini, y compris, 2 madame c'est-à-dire Ashwinin Hurpaul et Shweta Phoolchand ti vine raport 1 case of assault.

¹ Page 32 of transcript of record of proceedings 1st August 2021

(b) The Court's observations

14. This court has struck a balance between the testimony of witnesses 7, 8 and 9 who are members of the same family and that of the accused in order to decide on the weight to attach to their respective versions.

15. First of all, this court has noted that the accused's defence is that witness 7 is motivated by frustration in these terms:

A. *Au faites, bon, vu ki mone fini faire 20 ans service dans la police, jamais mo fine gagne 1 remark, jamais mone fine gagne 1 case, c'est la premiere fois ki mone fine gagne 1 case, mone faire mo travail professionnellement, sans aukaine soliciting, bein si la personne fine dire ki mone sollicite sa, bein mo pas capav etre responsable pour so frustration, parski line fine encoler, line fine frustrer, ki faire mone fine prend so cousine so declaration, pane prend pour li. Etant donner, ki li pas kone jargon la police, c'est pour cela ki line frustrer, line faire sa, line faire sa avec moi.*

16. The first observation that this court need to make is that it is primordial in order to give appropriate consideration to the version of the prosecution witnesses and in order to discard the possibility of concoction on the part of the witnesses who are members of the same family that this court carefully assesses the version of the witnesses. At the outset this court needs to point out that although witness 7 who is the main prosecution witness testified about the incident that occurred however the latter omitted to say in examination in chief things that she had mentioned in her out of court statement. In cross-examination she was confronted with the fact that she had failed to mention *policier la fine ecrire mo nom lor ene livre par derriere et mo numero telephone*². She said " *mo tini mo declaration, li pane pran li, li pane ecrire nanier.*" Later on, witness 7 goes on to say that she did not understand what was being asked and that "*oui li ti ecrire mo nom*" and "*mo numero.*" But she again does not mention where it was written exactly. In fact, the general impression that this court had of witness 7 is that

² page 44 of record of proceedings of court sitting 1st August 2022



the latter's testimony cannot be relied upon because the possibility of concoction cannot be overlooked.

17. Thus, from the stalemate between the evidence on record between the prosecution witnesses and the accused, this court has the duty to assess the versions of the prosecution witnesses and that of the accused in light of other independent evidence whilst bearing in mind that the burden of proving that the accused committed the offence beyond reasonable doubt is on the prosecution.

CCTV footage and conclusion

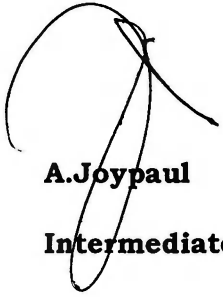
18. During the present proceedings, this court was informed by the prosecution witness 1 Investigator Peerboccus who is an experienced investigator that there was CCTV camera at the casualty ward where the alleged incident occurred. Witness 1 however added that:

A: In fact, the moment that the case has been reported to ICC, the retention time period for the cameras, which is actually 30 days, had already lapsed. So there was no point to go to check this CCTV.

19. In *Doherty* [2016] EWCA Crim 246 the importance of images or clips which may enable the court or jury to form their own view, rather than relying entirely on the witness was highlighted. In the present situation, this court is convinced that should these CCTV footages been made available the court would have been able to assess the manner events unfolded on the material day and that would have discarded all possibilities of concoction on the part of prosecution witnesses. In absence of such credible, independent evidence and also considering the seriousness of the offence if the accused were to be found guilty based only on the evidence of witnesses who may have an axe to grind this court finds that it would be unsafe to convict based on the evidence on record.



20. For these reasons, the accused is given the benefit of doubt and the charge is dismissed.



A. Joypaul
Intermediate Court Magistrate

12-9-23