

ICAC v RAMDONEE VISHNUDEO

2021 INT 97

IN THE INTERMEDIATE COURT OF MAURITIUS
(CRIMINAL DIVISION)

Cause Number 785/2012

In the matter of:

THE INDEPENDENT COMMISSION AGAINST CORRUPTION

v

VISHNUDEO RAMDONEE

Judgment

1. The present matter relates to a corruption offence, namely 'Trafic D'influence', in breach of Section 10 (5) of the Prevention of Corruption Act 2002, against Vishnudeo Ramdonee (the accused), a barrister, appointed as Legal Counsel in the Legal Services Department of the Mauritius Revenue Authority (MRA).
 - 1.1. The accused chaired an Objection Committee (the Committee) at the MRA, the purpose of which, was, inter alia, to hear objections to the renewal of 'liquor licences'.
 - 1.2. One Navin Gojudhur (the complainant), holder of a licence for 'Retailer of Liquor and Alcoholic Products (on and off)', appeared before the Committee on 01 December 2011, in relation to an objection to the renewal of his licence due to expire on 31 December 2011.
 - 1.3. It is averred in the information preferred against him, that, the accused had, on or about 03 January 2012, whilst being the Legal Counsel and Chairperson of an Objection Committee at the MRA, solicited money in the sum of Rs.10 000 for himself, from the complainant, in order to set aside the objection against the renewal of the latter's liquor licence.

2. The accused has pleaded not guilty to the charge and he was legally represented throughout the proceedings.
3. In a nutshell, the undisputed facts of this case are these. The Court will proceed to set out in some detail the set-up of the Committee when hearing objections, the ensuing procedures, and the involvement of the main protagonists, so that the surrounding circumstances in which the allegations made by the complainant led to the accused and the evidence relied upon by the prosecution, may be fully understood and appropriately put in context.
 - 3.1. The Committee which sat on 01 December 2011, had as Chairperson the accused, and two members in the persons of Mrs. Wade, the then Head of the Registration and Information Unit of the Operational Services Department of the MRA, and Mr. Purmessur, the then Team Leader of the Excise Department of the MRA. The two other persons who attended the Committee were the complainant and the latter's brother who was objecting for the renewal of the licence. All five of them were seated around a table, with the Chairperson in the middle of the two members. The Chairperson did the questioning and the hearing lasted for about twenty minutes.
 - 3.2. After the hearing, the accused informed the Committee that he would have to effect a site visit at the licensed premises of the complainant found along Royal Road, Rivière du Poste. Of note, there were no set procedures governing site visits but such visits, would usually be carried out when a decision cannot be made straightaway, before seeing the premises concerned. In such situation, the Chairperson would be accompanied by an officer of the MRA who deals with the issuing and renewal of licences. The accused was generally accompanied by one Mr. Bhowany.
 - 3.3. Mr. P. Bhowany, was at the material time, a Technical Officer, in charge of the registration of liquor licences at the Registration Department of the MRA. He was also involved in convening parties before the Committee; monitoring at the reception the attendance of the parties to the hearing and ushering them to the Committee Room; handing over files to the Chairperson of the Committee after the hearing; and arranging for and accompanying the Chairperson during required site visits to licensed premises before a final decision was reached.

- 3.3.1. As far as site visits are concerned, Mr. Bhowany would arrange for a vehicle of the MRA and a driver to proceed to the licensed premises or in case of unavailability of a driver, he would himself drive the MRA vehicle. When the accused was not physically present on the premises of the MRA, Mr. Bhowany would liaise with him over the phone on his personal number and he would pick up the accused at a convened spot.
- 3.4. A site visit to the licensed premises of the complainant was scheduled on 09 December 2011. As per the attendance records of the accused kept at the MRA, the accused had not clocked in, for unknown reasons, on that day. Mr. Bhowany picked up the accused at New Grove as arranged, but no site visit could be made as the premises were closed. The accused and Mr. Bhowany proceeded with other site visits scheduled for that day.
- 3.5. On 05 January 2012, two phone calls were exchanged between the phone number used by the complainant (7453803) and the one on which the accused was contacted for official purposes by the MRA (7982245). It can be gauged from the itemized bill from Emtel that at 10:43:14, 7982245 had called 7453803 and at 10:45:31, 7453803 had called 7982245 for a duration of '41' and '77' respectively, presumably seconds. Both calls were made in Souillac.
- 3.6. On Friday 06 January 2012, the complainant came to the MRA and he unsuccessfully tried to pay for the renewal of his licence. Of note, a licensee had a moratorium of 14 days after the expiry of his licence, for renewal without incurring any penalty. He was informed by Mr. Bhowany that the Committee had not yet handed down its Ruling, to which he became angry, the more so in view of his previous failed attempts to settle for the renewal of the licence a day or two before. Another phone call was made, where 7453803 had called 7982245 from 'PLS ARC BLG'. The accused did not clock in on that day, for unknown reasons.
- 3.7. On the same day, after having met with Mr. Bhowany, the complainant went to see superior officers at the MRA and reported a corruption offence. Mrs. Wade was consequently called to attend to a complaint made by Mr. Navin Gojudhur against Mr. Bhowany.

- 3.7.1. She met the complainant who was accompanied by his brother in law, a police officer, in the interview room. The complainant told her that one Mr. Bhowany visited his place and solicited money for the renewal of his licence.
 - 3.7.2. Mrs. Wade questioned him about the description of the said person to which the complainant replied it was one Mr. Bhowany. Mrs. Wade was baffled that such a thing could have happened. She questioned the complainant about the identity of the said Mr. Bhowany. The complainant gave a general description of that person as being slim, tall, and with hair on his head. Such description did not match the features of Mr. Bhowany, who was almost bald. Mrs. Wade consequently queried from the complainant whether the person against whom he was complaining was present during the Committee, to which he replied in the affirmative and upon being further questioned, the complainant indicated to Mrs. Wade the seat where the Chairperson was seated. Whilst they were exiting the interview room, Mr. Bhowany was seen coming in after lunch; upon being asked by Mrs. Wade whether 'it was this Mr. Bhowany' (sic), the complainant replied in the negative.
- 3.8. The matter was referred to the Internal Affairs of the MRA; an investigation was carried out, and on 16 January 2012, a report setting out all the steps taken during the enquiry at the MRA including an identification exercise and the versions of the complainant, Mr. Bhowany, and Mrs. Wade, was consequently drawn up. The matter was reported to the Independent Commission Against Corruption (ICAC) and the report from the Internal Affairs was included.
- 3.9. The Ruling of the Committee which was communicated by the accused on 09 January 2012 was in favour of renewing the liquor licence held by the complainant.
- 3.10. The complainant went to the MRA on 09 January 2012. Mr. Bhowany informed him that his licence had been renewed.
- 3.11. The accused was arrested on 10 February 2012.
4. The complainant explained in Court how he attended the Committee which comprised *inter alia* of 'Mr. Ramdonee' and 'Mrs. Wade'. He has throughout his testimony referred

to the person who had (a) effected a site visit on the licensed premises on the early afternoon of 03 January 2012 and thereat solicited from him a bribe of Rs.10 000 to renew his licence; and (b) called him on his mobile phone on 05 January 2012 in relation to the money solicited and whom the complainant called back on the same day as he could not gather the said sum and whom the complainant again called on 06 January to query about the renewal of the licence, as 'Mr. Ramdonee'.

5. The tenor of the evidence in chief of the complainant when he refers to Mr. Ramdonee and Mr. Bhowany tends to suggest that he was very well aware about their respective identity. He tried to explain way his initial allegation against Mr. Bhowany as being on account of a simple confusion on his part.

- 5.1. The corruption complaint made by the complainant to the MRA was at all material times against one 'Mr. Bhowany'. The complainant however claims that, when Mr. Bhowany introduced himself and the members of the Committee by their names, on the day of the hearing, a confusion arose. He allegedly made a confusion between Mr. Bhowany and Mr. Ramdonee, i.e. he thought that Mr. Ramdonee was called Mr. Bhowany and vice versa. But he purportedly cleared such confusion when an identification exercise was subsequently held.

6. The crux of the present matter is therefore whether the 'Mr. Bhowany' against whom the allegations of corruption were first levelled by the complainant to the MRA and the 'Mr. Ramdonee', the complainant has subsequently been referring to throughout his testimony, are in truth and in fact, first, one and same person, and second, the accused. To that end, the surrounding circumstances in which the complainant came to know them by sight and name, and the manner in which the alleged confusion in the names was purportedly cleared, assume all their importance. It is pertinent to note at this stage that, it is not for instance the case for the prosecution, that the person who had allegedly solicited the bribe passed himself for Mr. Bhowany.

- 6.1. The evidence shows that the names Bhowany and Ramdonee are not fictitious ones; both Mr. Bhowany and Mr. Ramdonee physically exist; they were working at the MRA at the material time; and they were respectively involved in the administrative and decision-making process of the Committee which had to determine the renewal of the complainant's liquor licence.

- 6.2. It is also not disputed that the complainant, Mr. Bhowany, and Mr. Ramdonee were at the very least, visually known to each other, in view of their unchallenged encounter during the Committee, prior to the corruption allegations levelled on 06 January 2012.
- 6.3. In fact, the first encounter between Mr. Bhowany and the complainant dates back to 2007 when the latter had applied to the MRA for the transfer of the licence held by his mother on his (the complainant) name. Mr. Bhowany had visited the said premises since then. Furthermore, as part of routine visits carried out to licensed premises, Mr. Bhowany had visited the premises of the complainant some months or about a year before the hearing on 01 December 2011. The complainant claims to know Mr. Bhowany very well and he was aware that Mr. Bhowany was posted in the department dealing with site visits of licensed premises. Indeed, the complainant agreed in cross examination that when he was informed at the cashier of the MRA that the Ruling of the Committee was still pending, he went to see the person whom he knew there, namely, Mr. Bhowany and the complainant knew where his office was.
- 6.3.1. Although one may possibly argue that the complainant could have known Mr. Bhowany very well by sight and not necessarily by name, such possibility is rendered negligible by the tenor of the conversation between Mrs. Wade and the complainant at the time the complaint was made. According to Mrs. Wade, the complainant "*complained about the persons asking him for money for the renewal of his licence and he told me it was one Mr. Bhowanee and he said because he knows Mr. Bhowanee and he says it is not the same Mr. Bhowanee, it is another Mr. Bhowanee...*"(sic).
- 6.3.2. No evidence was led as to the number of Mr. Bhowany working at the MRA at the material time. Furthermore, the complainant was not asked to give to the Court the physical description of the person who had allegedly solicited a bribe from him.
- 6.4. The complainant claims to know the name Ramdonee and the person carrying that name since 01 December 2011, when Mr. Bhowany had introduced them during the Committee. He had also spoken to Mr. Ramdonee over the phone on 05 January 2012; he knew about the identity of the person who had called

him because that the person had introduced himself and he had recognized his voice.

- 6.4.1. The complainant however unequivocally admitted in cross examination that (a) his allegations at the MRA were levelled against Mr. Bhowany, (b) it was only when he had met Mrs. Wade that the latter told him it was not Mr. Bhowany, (c) she was the one who gave the name 'Ramdonee' to the complainant, and (d) he did not know the name 'Ramdonee' before that. Indeed, when he was asked « *li ki finne donne ou sa nom Ramdonee la?* », he replied « *oui oui* »; « *Avant ça ou pas ti conne sa nom Ramdonee la ?* », answer « *non* ».
- 6.4.2. The prosecution has tried to save the day in re-examination as to when was the first time the complainant came to know about the name Ramdonee. Little weight can however be attached to the answer given, namely, it was when the complainant appeared before the Committee, i.e. on 01 December 2011, given that the tenor of a previous question which was objected to by the Defence and consequently withdrawn by the prosecution, gave a strong cue the witness as to the answer to provide to the subsequent question which was put to him.
- 6.4.3. It is noteworthy that mention was made in the report from the Internal Affairs Division of the MRA, "*It was at that moment that Mrs. Wade disclosed to him, him is the complainant, that the officer who interrogated him in the meeting of the 01 December 2011 was the chairperson and his name was Mr. Ramdonee.*" Now, true it is that the report has not been placed before this Court and such evidence was elicited through the main enquiring officer who was favoured with such report in the course of the enquiry into the present matter. This being said, such statement, although not admissible for the truth of its contents, shows that such a statement had been made and would be consistent with answers of the complainant in cross examination as to the manner he came to know about the name 'Ramdonee'.
- 6.4.4. The evidence of Mrs. Wade further indicates that she had through leading questions prompted the complainant to identify the accused as the person who had allegedly solicited the bribe.

6.4.4.1. The extract of the evidence of Mrs. Wade quoted at paragraph 6.3.1. above continues as follows “...*That is when I asked him for the description of the person and he told me that slim and with hair on his head and Mr. Bhowanee is partly bald, almost and I asked him also if the person he was telling me about was present at the committee of the Objection Committee, he said yes and I asked him where he was sitting and he showed me the place where the Chairperson was sitting.*” (Emphasis added)

7. The main protagonists on whose testimony the prosecution has relied as far as the identity of the person who had allegedly solicited a bribe from the complainant, is concerned, are Mrs. Wade, Mr. Bhowany, and the complainant. On the whole, the following shortcomings have been noted in their evidence, namely:

7.1. Mr. Bhowany and the complainant were generally on the defensive when they were examined about their previous encounters and they tried to play down being acquainted to each other prior to the hearing of 01 December 2011.

7.2. The versions of Mr. Bhowany and that of the complainant differ as to the place and the circumstances leading to their encounter at the MRA on 06 January 2012. Such inconsistency was not explained away.

7.2.1. The former essentially explained that he was at the cashier in the entrance hall of the MRA attending to members of the public when he noticed the complainant sitting; Mr. Bhowany went to see him and informed him that his licence cannot be renewed as the Ruling of the Committee was still pending.

7.2.2. The complainant for his part stated that he when he called at the cashier of the MRA on that day, he was asked to go upstairs for clearance; he met Mr. Bhowany in his office; and was informed by the latter that the Ruling had not yet been handed down.

7.3. The complainant did not come up in a straightforward manner as to the circumstances he came to know about the name ‘Ramdonee’ in view of the

tenor of his testimony in chief and his admissions during cross examination as considered at paragraph 6.4 and its respective sub-paragraphs above.

- 7.4. The complainant neither turned down the alleged corrupt invitation of Mr. Ramdonee on the spot nor did he report the same forthwith to the authorities. The evidence on record indicates that his brother in law was a police officer and the latter had accompanied him when he made the complaint to Mrs. Wade. He undisputedly came to the MRA on one or two occasions before 06 January 2012; he met with Mr. Bhowany but did not report the alleged corrupt solicitation; and it was only after he had been told that the Ruling had not yet been handed down and grew vexed, that he decided to report the matter to the MRA; and the tenor of such complaint is now well-known.
 - 7.4.1. Of note, there is nothing on record to suggest that the corruption complaint was brought to the attention of the accused before the handing down of the Ruling which was favourable to the complainant.
 - 7.4.2. The complainant was informed by Mr. Bhowany on 09 January 2012 that his licence had been renewed. It is apposite to note that the Ruling of the Committee does not bear the signature of all the three persons named as signatory thereon. Indeed, the signature of the accused is dated 09 January 2012; that of Mrs. Wade dated 16 January 2012 and coincidentally the same date as the Internal Affairs Report in the present matter (notwithstanding the fact that the Ruling was sent to Mrs. Wade on 09 January 2012); and Mr. Purmessur claims to have never been given the Ruling to explain the absence of his signature on the same.
- 7.5. The real reason which prompted Mrs. Wade to question the complainant further about the identity of the said Mr. Bhowany is not clear. Was it because the complainant had referred to two 'Mr. Bhowany' as suggested in the extract quoted at paragraph 6.3.1 above, or was it because of the description given which did not match all the features of Mr. Bhowany, or was it because Mrs. Wade had known Mr. Bhowany for a long time and she could not believe her ears as suggested in cross examination and it baffled her that this could have happened, or was it because all of the above?

7.5.1. Notwithstanding such lack of clarity and the motive behind Mrs. Wade questioning and prompting the complainant in the manner she did, it can be safely concluded that it was not the complainant who 'produced' the accused by his name or otherwise to the MRA but the MRA who has led the complainant to the accused.

7.6. The versions of Mrs. Wade and that of the complainant, assessed in detail earlier, are not free from imperfections regarding the identity of the person who had allegedly committed the corruption offence. The initial complaint referred to a person by a name other than the accused's. Mrs. Wade embarked on questioning and prompting the complainant on leading and specific details, when she enquired from him whether the suspect was present during the Committee; she thereafter supplied the name of the accused to the complainant; and she summarily excluded Mr. Bhowany from the equation, impliedly by prompting the complainant in the manner she did, and expressly when she casually asked the complainant whether he was referring to that Mr. Bhowany when they saw the latter coming back from lunch. When the complainant deposed in Court he referred to Mr. Ramdonee throughout in an attempt to exclude the possibility of a mistaken identification.

7.6.1. If the complainant were to be believed that he knew Mr. Bhowany very well as considered at paragraphs 6.3 and 6.3.1 above and he also knew Mr. Ramdonee as set out at paragraph 6.4, there would be no reasonable ground for the alleged confusion when the complainant reported the matter to the MRA.

7.6.2. The Court observes that there is some similarity in the phonetic pronunciation of the last two syllables of the two impugned names. This being said, in the absence of any explanation put forward by the complainant to justify the how and the why of the alleged confusion, this Court would do no more than speculate if it were to probe into such issue further.

7.6.3. Assuming that the complainant was really confused as he wants this court to believe, the resulting unfairness and prejudice to the accused in the manner in which the identity of Mr. Ramdonee was disclosed and attributed, is manifest and self-explanatory. The resulting prejudice to the accused

from the lack of care in ensuring that the complainant's attention was not directed to any individual in particular outweighs the probative value of such identification/recognition evidence.

7.6.4. The present matter is not one where the complainant had voluntarily come up with spontaneous and unprompted indications leading to the accused and it was only the name that he did not know or he was told about; hence it was only the attribution of the surname found upon hearsay. This is a case where, the impropriety, found in the manner in which the presence of the person allegedly soliciting a bribe in the Committee and the name of Mr. Ramdonee had emerged through leading questions and was put in the mouth of the complainant, has tainted and compromised the mind of the latter since the very beginning. Reliance on such evidence would in the circumstances jeopardise the right of the accused to a fair trial as guaranteed under the Constitution.

7.6.5. Hence, irrespective of the angle from which the evidence led by the prosecution, as to the name and identity of the person against whom the allegation of corruption was made, is approached, such evidence cannot be safely relied upon to conclude that the person who had allegedly solicited a bribe from the complainant was one Mr. Ramdonee and that, that Mr. Ramdonee is the accused in the present matter.

8. The only identification exercise done in connection with the present matter was the one carried out by the Internal Affairs at the MRA. This Court has however disallowed any evidence being led in relation to the Internal Affairs investigation, regarding an alleged identification of the accused by the complainant, in its Ruling of 16 November 2020. The main reason underlying such finding being that the circumstances culminating in such exercise and the manner in which it was gathered did not meet the threshold criteria for its production before a court of law without jeopardizing the right of the accused to a fair trial as guaranteed under the Constitution.

8.1. No pre-trial identification exercise, visual or otherwise, was carried out during the investigation by the prosecuting authorities either. Following an exchange of correspondences between the then legal advisers of the accused and the ICAC, querying *inter alia* about the statutory provisions under which ICAC was proposing to record a written statement from the accused and the powers of

ICAC to conduct an identification exercise, ICAC drew its own conclusions on the conduct of the accused and unilaterally concluded the investigation. About two months later, the Office of the Director of Public Prosecutions referred back the casefile to ICAC for further enquiry to be conducted. As a result, the main enquiring officer met the accused at La Rosa, informing the latter that he was needed for an interview and the recording of his statement. The accused was also informed that an identification would be carried out on spot at La Rosa. The accused declined to give any written statement and/or participate in any identification exercise, as he was entitled to do.

8.1.1. No evidence was led about the procedures and details of the proposed identification exercise to be carried out, at La Rosa. Courts have, in general, sought to ensure that identification evidence is gathered in 'controlled circumstances'. In the absence of any evidence to suggest that ICAC had organized an identification exercise with all the required safeguards to avoid any unfairness to a suspect and a miscarriage of justice down the line, it is doubtful whether the proposed identification process followed the rules with due regard to the constitutional rights of the accused.

8.1.2. In the light of the above, it would be improper for this Court to draw any adverse inference from the accused's refusal and/or failure to participate in the proposed identification exercise.

8.2. Following the Ruling of this Court on the issue of identification and the Defence giving advance notice to the prosecution that it would object to any dock identification of the accused, no such identification was attempted either.

9. The accused did not clock in for unknown reasons on five occasions between 01 December 2011 and 26 January 2012. Of those five instances, he did not clock in on the day he went for the site visit with Mr. Bhowany to the licensed premises of the complainant on 09 December 2011; the day he had allegedly visited the complainant on 03 January 2012; and on 06 January 2012 when the complainant came to the MRA. The phone calls between the complainant and Mr. Ramdonee, as averred by the complainant in the course of his testimony are supported by the itemized bill from Emtel. Furthermore, the contents of the Ruling of the Committee, which had been handed down by the accused on 09 January 2012, show that a site visit was effected

to the licensed premises and a description of the place was given. I note that reference to '*we had paid visit...*' is made in the Ruling.

- 9.1. Such evidence establishes beyond doubt that the accused was not at the MRA on the day he is alleged to have visited the premises of the complainant; there has been three calls between the number on which the MRA usually contacted the accused for official purposes and that of the complainant on the dates mentioned by the complainant in his testimony; and the accused had indeed effected a site visit to the licensed premises.
- 9.2. The principle governing the probative value to be attached to circumstantial evidence is to the effect that '*it is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.*'¹ Circumstantial evidence '*works by cumulatively, in geometrical progression, eliminating other possibilities.*'²
- 9.3. On the state of the evidence before this Court, although it can be said that the facts established at paragraph 9.1 are in line with the version of the complainant on such facts, they are of themselves not such as to exclude other co-existing possibilities or such as to lead to the irresistible inference that such link between the accused and the complainant could only have been in relation to the alleged solicitation for a bribe.
- 9.4. When the sum total of the evidence in the present case is taken into account, more particularly, (a) the compromised and tainted evidence of the complainant in view of the manner he has been tutored regarding the identity of Mr. Ramdonee; (b) the unreliability of the complainant, whose account is open to challenge by reason of the divergences between his version and that of Mr. Bhowany, the insufficiently, if at all, explained confusion when he reported the alleged corruption case to the MRA, and his lack of spontaneity in reporting the corruption offence and the sequence of events which prompted him to do so and; (c) the other gaps left in the evidence led by the prosecution considered

¹ **Teper v R [1952] AC 480** per Lord Norman **at page 489**

² **DPP v Kilbourne [1973] AC 729** per Lord Simon **at page 758**

earlier, it would, in the circumstances unreasonable and illegitimate to draw any inference of the accused's guilt from such established facts.

10. For all the above reasons, I find that the prosecution has failed to prove its case beyond reasonable doubt. The accused is given the benefit of the doubt and the information against him is accordingly dismissed.

A.HAMUTH (Miss)

**Ag. Vice President, Intermediate Court (Criminal Division)
Delivered on: 26 August 2021**