

ICAC v R Rambarassah Judgment

2023 INT 233

FCD CN: FR/L101/2020

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

ICAC

V

Rohitanund RAMBARASSAH

JUDGMENT

A. BACKGROUND

1. Accused is being prosecuted for the offence of Public Official Using His Position for Gratification in breach of section 7 of the Prevention of Corruption Act 2002 (hereinafter referred to as the 'POCA'). He pleaded not guilty and was represented by Counsel, Mr. S. Ghoorah during the trial.
2. The case for the prosecution was conducted by Mr. Ponen for the ICAC.

B. CASE FOR THE PROSECUTION

3. Mr. Manoj Seesunkur, an IT Officer of the Mauritius Telecom (witness no.9), produced a list of calls exchanged between landline phone numbers 2839890, 2839081 and 4547031 for the period 20.12.2017 to 22.12.2017 – Doc A refers. Landline number 2839890 is registered on the name of one Jaynarain Bachwa, landline number 2839081 is registered on the name of Dir D. Venkatasamy Friendship College, and landline number 4547031 is registered on the name of PSSA respectively.
4. Mrs. Asha Devi Soobrun of the State Bank of Mauritius (witness no.11) produced a letter containing the bank account number held by accused at the bank – Doc B refers. The bank account number is 03536200063786.

5. Two statements were recorded from accused on 29th November 2019 and 10th March 2020 respectively. These were produced by CI Audit (witness no.1), the main enquiring officer – Doc C and Doc C1 refer.
6. 04th December 2019, CI Burkatally (witness no.2) carried out an identification exercise by way of direct confrontation between accused and Mrs. Gita Devi Bachwa (witness no.3). Mrs. Gita Devi Bachwa (witness no.3) identified and pointed to accused by stating “ala li la” as the very person she mentioned in her statement to the ICAC.
7. According to Miss Kalianee Khadoo (witness no.10), an office management assistant at the National Transport Authority, Mrs. Gita Devi Bachwa (witness no.3) was the registered owner of car bearing registration number 1573 MY 02 since 28th December 2009. That car was sold to one Rudy Wesley Bijmohun on 12th October 2016. Mrs. Gita Devi Bachwa (witness no.3) also became owner of motor vehicle bearing registration number B1259 on 30th June 2016 – Doc D, Doc E and Doc F refer.
8. As an internal auditor of the PSEA, Mr. Rajendra Sawmy (witness no.7) reviews the return of travel grants for private secondary schools’ staffs. For the year 2016-2017, he noticed that one Mrs. Gita Devi Bachwa (witness no.3) was claiming travel grant on motor vehicle bearing registration number B1259. However, on the Human Resource Management System, motor vehicle bearing registration number 1573 MY 02 was registered for that purpose. He queried accused to that effect since he was dealing with the file of Mrs. Gita Devi Bachwa (witness no.3). That discrepancy was cleared as accused produced a copy of the horse power for motor vehicle bearing registration number B1259. Accordingly, he did not make mention of this discrepancy in his report – Doc G refers.
9. As per the returns of officers eligible for travel grant produced by Mrs. Renata Ramen (witness no.5), a college clerk at Friendship Girls College - Doc J, J1 and J2 refer - Mrs. Gita Devi Bachwa (witness no.3) was claiming travel grant on motor vehicle bearing registration number B1259 as from October 2016. Before that, she was claiming travel grant on motor vehicle bearing registration number 1573 MY 02.
10. Mr. Nishal Shyam Kumar Gajadhur (witness no.4), secretary at the Private Secondary Education Authority (PSEA), explained that the PSEA is responsible for the payment of travel grants to private secondary schools’ staffs. The PSEA was previously known as the PSSA. Mrs. Gita Devi Bachwa (witness no.3) was getting travel grant for motor vehicle bearing registration number 1573 MY 02 since the year 2011. On 18th April 2016, she applied for a car loan from the PSEA for the purchase of a motor vehicle, namely a Nissan Qashqai 1.6 – Doc L1-NG 5/23 refers. The car loan was approved on 22nd June 2016 – Doc L1- NG5/20 refers. He also produced an employee logbook of the PSEA for the 21st December 2017 which shows

that accused attended work at 08.25 am and left at 16.00 pm on that day – Doc P refers. Also, the phones at the PSEA are connected to the PABX system irrespective of the user.

11. Mr. Radha Krushnananda Sunnassee (witness no.6) was an Assistant Manager in the Financial Operations section of the PSEA in 2017. That section is responsible for the processing of travel grant and other allowances payable to private secondary schools' staff. Applications for travel grants are allocated, by that department, to different officers. Accused was the officer responsible for the file of Mrs. Gita Devi Bachwa (witness no.3). As per the records of the PSEA, Mrs. Gita Devi Bachwa (witness no.3) was initially drawing travel grant for motor vehicle bearing registration number 1573 MY 02. Since October 2016, she was drawing travel grant on motor vehicle bearing registration number B1259. Any staff drawing travel grant must inform the PSEA, through the manager of his/her respective secondary school, of any change or sale of vehicle. Any discrepancy noted with respect to travel grant must be reported to him by the responsible officer. In the present case, accused never reported any discrepancy with respect to the file of Mrs. Gita Devi Bachwa (witness no.3). He also explained that there was no issue of overpayment but only a change of vehicle by Mrs. Gita Devi Bachwa (witness no.3). What was important is that Mrs. Gita Devi Bachwa (witness no.3) was, at all times, the owner of a motor vehicle for the purposes of travel grant allocated to her. Upon being queried, accused showed him a letter from Mrs. Gita Devi Bachwa (witness no.3) dated 27th July 2016 – Doc N refers. He also stated that every officer has their own telephone one his table.
12. Mrs. Gita Devi Bachwa (witness no.3) is a teacher at Friendship Girls College. She was initially the owner of motor vehicle bearing registration number 1573 MY 02 on which she was drawing travel grant from the PSEA. By way of a car loan from the PSEA, she bought a Nissan Qashqai bearing registration number B1259 on 30th June 2016. On 09th August 2016, she sold her car bearing registration number 1573 MY 02 to a colleague, one Shravan Kumar Suntoo. However, the said Shravan Kumar Suntoo did not inform the NTA of that sale because he was waiting to take reception of another car he had ordered. Mrs. Gita Devi Bachwa (witness no.3) had informed the college administration of this change of car because college staff does not deal directly with the PSEA. On 21st December 2017, she was informed by one Mrs. Caullee of Friendship Girls College, that one Mr. Rambarassah from the PSSA (which is now the PSEA) was looking for her. She phoned to landline number 4547031 and her call was transmitted to the said Mr. Rambarassah who told her that she did not follow the procedure for change of car. She was requested by the said Mr. Rambarassah to come and meet him immediately at the PSSA with a copy of the deed of sale, horse power and a letter for the sale of car. She, together with her husband, went to the PSSA on the very day whereby they were led to an office on the ground floor. She entered that office whilst her husband stayed outside. Mr. Rambarassah entered the said office and they both sat around a table whereby Mr. Rambarassah told her again that she did follow the procedure for change of car. He also showed her several files of persons in similar situation and informed her that she will have to pay Rs. 60,000/-. She remitted to him the documents requested including a letter which she wrote and signed. She

dated that letter 27.07.2016 as directed by Mr. Rambarassah. She identified that letter as Doc N. She explained that the phone number written on it was her own phone number. It was written by Mr. Rambarassah himself after he asked Mrs. Gita Devi Bachwa (witness no.3) her phone number. Mr. Rambarassah then spoke in a low tone and told her that he will see what he can do with the auditor, who is his friend, and asked her to wait outside. Mr. Rambarassah then went away. When he later came back, he told Mrs. Gita Devi Bachwa (witness no.3) to go home since his auditor friend was in a meeting. He asked her to phone him at 3pm. Whilst going home, she narrated to her husband the conversation she had with Mr. Rambarassah who told her to "...donne la peine...". Her husband told her that it seemed that Mr. Rambarassah was looking for a bribe. Around 3pm, she phoned at the PSSA and talked to Mr. Rambarassah. She recognized the voice as being from the same person she spoke on the phone in the morning and met personally during the day. He told her that his auditor friend did not want to do anything and that she will have to pay Rs. 72,000/- instead of Rs. 60,000/-. However, if she gave his auditor friend "...so la peine..." of Rs. 5,000/-, the matter could be resolved. Mr. Rambarassah then asked her to credit that sum in a bank account. He gave her a bank account number which she wrote down on a piece of paper. She remitted that piece of paper to the ICAC on 06th July 2018 - Doc T refers. She confirmed that during the enquiry, she identified the said Mr. Rambarassah as the person who solicited the Rs. 5000/-. In Court, she also identified accused as being the said Mr. Rambarassah.

C. CASE FOR DEFENCE

13. Accused deposed under oath and maintained that what he said in his statements to the ICAC is the truth. He does not know Mrs. Gita Devi Bachwa (witness no.3) nor does he remember having dealt with her. He denied having solicited Rs. 5000/- from her. He also denied having given his bank account number to her. His bank account number is very personal and he would not give it to anyone. He explained that his bank account number and his bank statements are found in his office or drawer and is accessible by his colleagues. According to him, Mrs. Gita Devi Bachwa (witness no.3) has put a false allegation against him due to jealousy since he was due to get promoted and to retire soon. However, he conceded that his superior officer was much younger than him and his scope for promotion, at his age, was more or less non-existent. He also conceded that he never mentioned this fact in his statement to the ICAC. He further conceded that the letter of Mrs. Gita Devi Bachwa (witness no.3) – Doc N refers – was with him. He however did not remember whether Mrs. Gita Devi Bachwa (witness no.3) left it with him personally or at the Registry. He admitted that the handwriting, with respect to the phone number on the letter, is his.

D. THE SUBMISSIONS

14. Counsel for the prosecution and counsel for the accused made oral submissions and also filed written submissions.
15. The crux of the prosecution's submissions is that the version of Mrs. Gita Devi Bachwa (witness no.3) is worthy of belief. Therefore, on the basis of her testimony in Court, the prosecution has proved its case beyond reasonable doubt.
16. On the other hand, the crux of the Counsel for accused's submissions is that due to the numerous shortcomings in the prosecution case, the accused should be given the benefit of the doubt.

E. ANALYSIS

17. Section 7 (1) of the POCA provides:

“7. Public official using his office for gratification

(1) Subject to subsection (3), any public official who makes use of his office or position for a gratification for himself or another person shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.”

18. In the present case, the prosecution bears the burden of proving, beyond reasonable doubt, that accused:
 - (i) was a public official;
 - (ii) willfully, unlawfully and criminally made use of his position;
 - (iii) for a gratification for himself or another person, i.e., he solicited a sum of Rs. 5,000/- from one Mrs. Gita Devi Bachwa, so as to allegedly regularize a matter concerning travel grant in latter's favour (as per the particulars in the Information).

I. PUBLIC OFFICIAL

19. As per his own admission (Doc C and his testimony under oath), testimonies of Mr. Rajendra Sawmy (witness no.7), Mr. Nishal Shyam Kumar Gajadhur (witness no.4), Mr. Radha Krushnananda Sunnassee (witness no.6) and Doc P, it is undisputed that accused was working for the PSEA, i.e., an employee of the PSEA.

20. Section 2 of the POCA provides that:

“public official” - (a) means a Minister, a member of the National Assembly, a public officer, a local government officer, an employee or member of a local authority, a member of a Commission set up under the Constitution, an employee or member of a statutory corporation, or an employee or director of any Government company;” (underlining is mine)

21. As per section 2 of the Interpretation and General Clauses Act:

““statutory corporation” means a body incorporated by an Act.”

22. Section 3 of the Private Secondary Education Authority Act 1976 provides:

“3 Establishment of the Authority

(1) There is established for the purposes of this Act the Private Secondary Education Authority.

(2) The Authority shall be a body corporate.”

23. Since the PSEA is a body corporate established by an Act, it falls within the meaning of statutory corporation as provided for by the Interpretation and General Clauses Act. Therefore, accused, being an employee of the PSEA at the material time, is deemed to be a public official for the purposes of sections 2 and 7 of the POCA.

II. WILLFUL AND UNLAWFUL USE OF POSITION

III. FOR A GRATIFICATION FOR HIMSELF OR ANOTHER PERSON

24. The above two elements of the offence rest largely on the testimony of Mrs. Gita Devi Bachwa (witness no.3) and will be analyzed together.

25. Mrs. Gita Devi Bachwa (witness no.3) gave an account of events as to what happened on 21st December 2017. She was firstly informed by Mrs. Caullee of Friendship Girls College that one Mr. Rambarassah of the PSEA was looking for her. She phoned to landline number 4547031 and talked to the said Mr. Rambarassah. She then went to meet Mr. Rambarassah at the PSEA.

Following that meeting, Mr. Rambarassah asked her to phone him at around 3pm on that very day. She again phoned Mr. Rambarassah at around 3pm. Doc A, which is a document from the Mauritius Telecom, shows that telephone number (i) 2839890 is registered on the name of one Jaynarain Bachwa, (ii) 2839081 is registered on the name of Dir D. Venkatasamy Friendship College, and (iii) 4547031 is registered on the name of the PSSA (now the PSEA). This document also reveals that there was a call from telephone number 2839081 to telephone number 2839890 on 21st December 2017 at 09.13. Thereafter, there was a call from telephone number 2839890 to telephone number 4547031 on 21st December 2017 at 09.34. Finally, there was a call from telephone number 2839890 to telephone number 4547031 on 21st December 2017 at 15.14. Though there is no evidence as to the Jaynarain Bachwa mentioned in Doc A, Mrs. Gita Devi Bachwa (witness no.3) stated that her phone number 2839890 was inserted by accused on Doc N. This was also admitted by accused. Clearly, the sequence of events of the different telephone calls exchanged by Mrs. Gita Devi Bachwa (witness no.3) on 21st December 2017 are coherent with the evidence from the Mauritius Telecom (witness no.9), namely Doc A.

26. According to Mrs. Gita Devi Bachwa (witness no.3), accused met her, at the PSEA, on 21st December 2017 as an officer of the PSEA who was dealing with her file. Accused even showed her several other files of people in similar situation like hers. She also remitted to accused a letter. The date of the letter was dictated to her by accused. Accused asked Mrs. Gita Devi Bachwa (witness no.3) her telephone number and wrote it down on the letter as 2839890. Accused thereafter told her that things could be sorted out by his auditor friend. The letter was produced and marked as Doc N and is addressed to none but Mr. Rambarassah. Telephone number 2839890 is present on it and accused has admitted it as being his handwriting. The letter being addressed to accused himself and bearing his handwriting with respect to the telephone number cannot but support the version of Mrs. Gita Devi Bachwa (witness no.3) to the effect that it must have been directly remitted to accused by her. The absence of any reference of Friendship Girls College on that letter further supports the version of Mrs. Gita Devi Bachwa (witness no.3). Indeed, if that letter had transited through the Friendship Girls College's administration, there would have been at least an entry, at the level of the PSEA, to the effect that it was received from that particular college. Similar, if that letter had been remitted at the Registry of the PSEA by Mrs. Gita Devi Bachwa (witness no.3), that letter would have been in the file together with an entry to that effect. However, as per the testimony of Mr. Radha Krushnananda Sunnassee (witness no.6), the letter was not in the file but was with the accused and bears no indication that it was received by the Registry.
27. Mrs. Gita Devi Bachwa (witness no.3) explained that whilst going home after meeting accused, she told her husband about the conversation she had with him to the effect that he told her to "...donne la peine" in order to sort things out by his auditor friend. They understood that accused was asking for a bribe. Things became clearer when she phoned accused at around

3pm. During that phone conversation, accused told her that she had now had to pay Rs. 72,000/- instead on Rs. 60,000/- but that the matter could be sorted out if she gave his auditor friend his "...la peine..." of Rs. 5000/-. Accused told her to make a transfer of Rs. 5000/- in his bank account number. Accused gave her a bank account number which she wrote down on a piece of paper which she identified and produced as Doc T. However, she did not agree to give any bribe to accused and reported the matter to the ICAC.

28. Doc T makes mention of: "Mr Rambarasa: PSEA – Travel Grant. A/C No: 03536200063786." Doc B, produced by Mrs. Asha Devi Soobrun, a representative of the State Bank of Mauritius (witness no.11), confirms that accused does hold bank account number 03536200063786 at the said bank. This again supports the version Mrs. Gita Devi Bachwa's (witness no.3). On the other hand, accused denied having given his bank account number to Mrs. Gita Devi Bachwa (witness no.3). He stated that he would not give his bank account number to anyone since it is very personal. However, his bank account number and his bank statements are found in his office or drawer and are easily accessible by his colleagues. The Court finds this explanation of accused to be devoid of any merit. One's bank account number, being not only personal but also involving security issues, are not unnecessarily given to anyone. Logic and common sense would also dictate that one does not nonchalantly leave unattended his personal bank account number and bank statements on his office table or drawer where they are easily accessible to other colleagues. Such an explanation from accused is not worthy of belief the more so when Mrs. Gita Devi Bachwa (witness no.3) maintained, all throughout her testimony, that she dealt only with accused and no one else on the 21st December 2017.

29. Now, the conduct of accused, namely:

- (i) meeting with Mrs. Gita Devi Bachwa (witness no.3) at the PSEA on 21st December 2017 as an officer of the PSEA who was dealing with her file together with the two telephone conversations he had with her;
- (ii) telling Mrs. Gita Devi Bachwa (witness no.3) that the matter could be sorted out if a sum of Rs. 5000/- is paid;
- (iii) the fact that he wrote down the telephone number of Mrs. Gita Devi Bachwa (witness no.3) on the letter (Doc N); and
- (iv) the letter (Doc N) being addressed and personally remitted to him by Mrs. Gita Devi Bachwa (witness no.3),

shows clearly that he was knowingly and unlawfully making use of his position at the PSEA when talking to Mrs. Gita Devi Bachwa (witness no.3) and telling her that the matter could be sorted out. He portrayed himself as someone, at the PSEA, who could do something about that situation, i.e., issue of travel grant.

30. Gratification is defined in section 2 (a) of the POCA as to mean a gift, reward, discount, premium or other advantage, other than lawful remuneration. It is irrelevant whether or not that gratification has in fact been received or accepted – See **N Joomeer v The State [2013] SCJ 413**.

31. In **Mungree M. v The State [2013] SCJ 468**, the full bench of the Supreme Court analyzed the purport of the expressions ‘for himself or for any other person’ in section 393 (1) of the then Penal Code Ordinance as interpreted in *DPP v Coureur and anor [1982] MR 72*. It was held that:

“Two aspects of the judgment in Coureur were identified as calling for close scrutiny:

- (i) the decision that it was immaterial to aver in the information, and to prove in evidence, whether the alleged solicitation was for the benefit of the accused or any other person; and*
- (ii) the decision that after the accused had been charged with the offence under sect. 393(1) of the Penal Code Ordinance with particulars that the respondents had received the reward “for themselves,” they could be found guilty of the offence charged upon the prosecution failing to establish that they had received the rewards for themselves rather than for any other person.*

We have no difficulty in agreeing with the stand of Miss Bisnauthsing and Mr. Mootoo, who appeared, respectively before the present Bench for respondent No. 2 and respondents Nos. 1 and 3, that the decision at (i) above was correct. However, the decision at (ii) above in Coureur was arrived at without consideration of the provisions of section 10 of the Constitution relating to the rights of the accused to be informed in detail of the charge lying against him and be given full opportunity to prepare his defence. Both Miss Bisnauthsing and Mr. Mootoo had to concede - and rightly so – that they could not refute the argument that there was a possibility that an accused party charged with an offence particularised in a certain manner could be misled if in fact the alleged offence, according to the evidence, should have been particularised in a different manner, as in the present case. They also rightly conceded that they could not refute the argument that the accused in the present case has been convicted, as charged, of an offence which, as particularised, was not shown by the evidence to have been committed by him. Indeed, the offence of which the accused in the present case was convicted was that he had solicited a

gratification for officers of a District Council, and the evidence fell short of proving that. In the circumstances, the learned Magistrate could not, in our view, convict the accused “as charged”, nor could she convict the accused of the offence with different particulars without having the information amended and giving to the accused the opportunity of pleading anew, cross-examining further relevant witnesses and adducing evidence in relation to the differently particularised charge.”

32. It was submitted by Counsel for accused that the expression “...la peine...” could mean anything and not necessarily money. That argument should fail for two reasons. Firstly, Mrs. Gita Devi Bachwa (witness no.3) stated that she understood that it meant a bribe after talking to her husband whilst going home after having met accused at the PSEA. Secondly, during the second phone conversation, accused told her, in an unequivocal manner, that “...la peine...” would be Rs. 5000/-. Therefore, “...la peine...”, as per the version of Mrs. Gita Devi Bachwa (witness no.3), can only mean the Rs. 5000/- solicited by accused and nothing else.
33. Counsel for accused also submitted that since the conversation whereby accused allegedly solicited Rs. 5000/- from Mrs. Gita Devi Bachwa (witness no.3) took place on the phone, there is no certainty that it was in fact accused who solicited that money from her. True it is that, as per the version of Mrs. Gita Devi Bachwa (witness no.3), the solicitation of Rs. 5000/- took place on the phone. However, the Court is of the view that it can safely rely on the testimony of Mrs. Gita Devi Bachwa (witness no.3) to the effect that it was accused who solicited that Rs. 5000/- for the following reasons:
- (i) Mrs. Gita Devi Bachwa (witness no.3) was informed that it was one Mr. Rambarassah who was looking for her at the PSEA;
 - (ii) when she phoned at the PSEA, she asked for none but the said Mr. Rambarassah and talked to him for a first time on the phone;
 - (iii) she met the said Mr. Rambarassah, as requested by latter himself, at the PSEA on the same day whereby she spoke to him;
 - (iv) as requested by Mr. Rambarassah again, she phoned at the PSEA in the afternoon and asked for Mr. Rambarassah and talked to him;
 - (v) she explained that she was sure that she recognized the voice of Rambarassah during the second phone conversation since she had spoken to him twice on the same day, one of which was on the phone;
 - (vi) she identified, in Court, that it was accused whom she met as the said Mr. Rambarassah at the PSEA;
 - (vii) the incident occurred within a couple of hours on the same day. There was not a long-time lapse between the different conversations which renders the risk of not recognizing the voice of accused meaningful;

- (viii) since Mrs. Gita Devi Bachwa (witness no.3) every time phoned at the PSEA, upon request of accused himself, and asked to speak to him, she must have been put into communication with none but only the accused, the more so when each officer does have a phone on their table as stated by Mr. Radha Krushnananda Sunnassee (witness no.6);
- (ix) the fact that during the second phone conversation, accused used the similar expression "...la peine..." as when he met Mrs. Gita Devi Bachwa (witness no.3) at the PSEA; and
- (x) accused being the person who met Mrs. Gita Devi Bachwa (witness no.3) at the PSEA after the first phone conversation and the bank account number as per Doc T, leaves no doubt that it must have been accused talking on the phone on the second occasion and soliciting the Rs. 5000/-.

34. As per the testimony of Mrs. Gita Devi Bachwa (witness no.3), accused solicited Rs. 5000/- to sort out matter so that she would not have to pay a sum of Rs. 72,000/-. The matter to be sorted can only be in relation to travel grant since, from the first phone conversation, accused told her that she did not follow the procedure for change of car. Therefore, accused did solicit a sum of Rs. 5000/- to regularize a matter concerning travel grant in favour of Mrs. Gita Devi Bachwa (witness no.3) as particularized in the information.

35. It is irrelevant whether or not that sum of Rs. 5000/- was in fact deposited into the bank account of accused – see **Joomeer (supra)**.

36. The Court notes that it has been averred in the information that accused made use of his position for a gratification "...for himself or another person...". Since it is immaterial to aver and prove in evidence that accused solicited the gratification for himself or for another person - see **Mungree (supra)** – the fact that these expressions have been averred in the information would be mere surplusage unless accused could have been misled in his defence. In the present case, the particulars, as averred in the information, is only in respect of the solicitation of Rs. 5000/- simpliciter. Moreover, in the statement given by accused, the evidence confronted and the charge put to him was equally in relation to the solicitation of Rs. 5000/- simpliciter – Doc C refers. As such, it cannot be said that accused could have been misled in his defence. Therefore, it is sufficient for the prosecution to have proved that accused did solicit a sum of Rs. 5000/- as per the testimony of Mrs. Gita Devi Bachwa (witness no.3) irrespective of whether that money would be for himself or for another person.

37. The Court is also alive to the fact that the present case rests mainly on the testimony of Mrs. Gita Devi Bachwa (witness no.3). A Court can always rely on the testimony of only one witness provided such a witness is a credible one having regards the overall circumstances of the case. As already explained above, the Court has no difficulty in relying on the testimony of Mrs. Gita Devi Bachwa (witness no.3). Moreover, the fact that she was still claiming travel grant on

motor vehicle registration number 1573 MY 02 when she had already sold that vehicle to one Shravan Kumar Suntoo on 09th August 2016 cannot affect her credibility. This is because, according to Mr. Radha Krushnananda Sunnassee (witness no.6), there was no issue of overpayment as she was already the owner of another car, namely a Nissan Qashqai bearing registration number B1259, since 30th June 2016. Equally, the fact that she did not mention in her statement that accused told her twice (and not only once as per her statement) the bank account number during the second phone conversation, cannot affect her credibility since it is an immaterial departure from her statement the more so when that bank account number matches that of accused. Again, the fact that she did not mention, in her statement, that accused told her in a low tone, at the PSEA, that the matter could be sorted out is immaterial. What is important is the fact that accused did tell her that the matter could be sorted out irrespective of the tone in which that was said. During the course of the enquiry, she unequivocally identified accused, by way of a direct confrontation exercise, as the very person she dealt with at the PSEA and mentioned in his statement to the ICAC – Doc C1 refers. Though it was put to Mrs. Gita Devi Bachwa (witness no.3) that since there were several phones at the PSEA and that different persons may use them, she maintained that she talked to accused on two occasions on the phone and met with him once at the PSEA on that day.

38. On the other hand, the Court has also considered the version of accused under oath and his statements given during the course of the enquiry whereby he has denied having solicited Rs. 5000/ from Mrs. Gita Devi Bachwa (witness no.3). As already stated above, his explanation as to the presence of his bank account number on Doc T is devoid of any merit. Equally devoid of any merit is his explanation that Mrs. Gita Devi Bachwa (witness no.3) might have put a false allegation against him out of jealousy since there is no iota of evidence that they were known to each other or any bad blood existed between them. The Court has also noted that accused simply did not remember anything with respect to any conversation or meeting with Mrs. Gita Devi Bachwa (witness no.3) though admitting that it is his handwriting on Doc N. As such, the Court does not consider the version and explanation of accused as worthy of belief.

F. CONCLUSION

39. The Court is of the view that the prosecution has proved all the elements of the present offence beyond reasonable doubt and accused is accordingly found guilty as charged.

A.R.TAJOODEEN
Ag Magistrate of the Intermediate Court (Financial Crimes Division)
30.08.2023