

ICAC v S.Veerasawmy

2023 INT 4

IN THE INTERMEDIATE COURT (FINANCIAL CRIMES DIVISION)

CN 134/20

In the matter of:

THE INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

V

SOCKALINGUM VEERASAWMY

JUDGMENT

The Charge

1. The accused has pleaded not guilty and retained the services of counsel. He stands charged for the offence of **Traffic d'influence** in breach of **Section 10 (4)** of the **Prevention of Corruption Act 2002**.
2. The information reads as follows:

*That on or about the 06<sup>th</sup> November 2018 at Phoenix, in the District of Upper Plaines Wilhems, One SOCKALINGUM VEERASAWMY, also known as Azagen, 42 yrs, Job Contractor and residing at Bk M2, Circonstance, St Pierre did willfully, unlawfully and criminally solicit a gratification from another person for himself in order to make use of his influence to obtain a benefit from a public body.*

## PARTICULARS

*On or about the aforesaid date and place, the said Sockalingum VEERASAWMY introduced himself as an officer of the Financial Intelligence Unit (FIU) to one Sunilduth Jowaheer and solicited sum of Rs 100,000 from the latter, by making him believe that he is investigating in a case where the said Sunilduth Jowaheer is involved and as such, he, the said Sockalingum VEERASAWMY can use his influence upon his superior officer in order not to proceed with the arrest of the said Sunilduth Jowaheer.*

### **The applicable Law**

3. In **Peermamode M.R.A.F.E v The State & Ors 2022 SCJ 25** the appellant was convicted by the Intermediate Court under **Section 10 (4)** of the **Prevention of Corruption Act 2002**. Reaffirming the conviction on appeal, the Supreme Court held that the constituent elements of the offence of Traffic d'Influence are:

*There is no reason why the same principle cannot apply in the case of an offence under section 10(4) of the Act. We, therefore, take the view that the essential elements of the offence for which the appellant stood charged before the trial Court and which the prosecution had to prove were-*

- (i) the appellant solicited a gratification;*
- (ii) from another person;*
- (iii) for a person in order to use his influence; and*
- (iv) to obtain a benefit from a public body.*

*We endorse the views of learned Counsel for respondents nos. 1 and 2 that the words 'real or fictitious' do not create two different ways of committing the offence such that even if both are averred in one count it would not offend the rule against duplicity. As we have already stated, the words 'real' or 'fictitious' are not constitutive elements of the offence of Traffic d'influence under section 10(4) so that it is immaterial whether the appellant's influence on the Minister was 'real' or 'fictitious' and the prosecution was not required to prove same.*

4. In **JurisClasseur Pénal des Affaires at V° Corruption Fasc. 10 : CORRUPTION ACTIVE D'AGENTS PUBLICS NATIONAUX ET TRAFIC D'INFLUENCE ACTIF OU PASSIF, COMMIS PAR DES PARTICULIERS**<sup>1</sup> the following definition is provided for Trafic d'Influence :

*Définitions du trafic d'influence - Une terminologie semblable, cependant moins couramment utilisée, peut s'appliquer en matière de trafic d'influence. Le **trafic d'influence passif** est commis, soit par une personne exerçant une fonction officielle, soit aussi par une personne privée, qui se prévaut d'une influence réelle ou supposée et qui sollicite ou accepte des offres, promesses, dons, présents ou avantages quelconques en vue de faire obtenir au remettant des avantages ou faveurs de toute sorte, dont les pouvoirs publics sont prétendument les dispensateurs. Le **trafic d'influence actif** désigne les agissements d'un tiers qui propose des offres, promesses, dons, présents ou avantages quelconques, soit à une personne exerçant une fonction officielle, soit à un simple particulier, qu'il sait ou qu'il croit posséder une influence sur les pouvoirs publics, en vue d'obtenir d'eux un avantage ou une faveur. L'expression désigne également le tiers qui cède aux sollicitations qu'il reçoit, aux mêmes fins, d'une personne officielle ou d'un simple particulier.*

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<sup>1</sup> **André Vitu** - Professeur émérite à la faculté de droit, sciences économiques et gestion de Nancy and **Frédéric Stasiak** - Agrégé des facultés de droit, professeur à Nancy-université.

### Application of the legal principles to the evidence on record

5. In the present matter, the accused's version is that he does not deny having met with Mr Sunilduth Jowaheer (witness 2) on the material day. Hence, identification is not an issue. However, the accused sought to persuade this court both in defence counsel's submission and as mentioned in his out of court statement **DOC A** that he went to Sunilduth Jowaheer's workplace only because he wanted to borrow money. This Court must outright mention that this line of defence cannot be reconciled with the evidence on record because; the accused says that at the material time he was in dire financial difficulties. That is, he was penniless. But, if this court takes into account **DOC B** which is a car rental agreement. This court notes that the accused who was supposedly penniless at that time had rented a car from 25<sup>th</sup> June 2018 up to the 7<sup>th</sup> January 2019 for an approximate total amount of Rs 18,400. This court therefore has serious qualms about the accused's line of defence. Because no reasonable man would be able to believe that a penniless man would go and rent a car costing a substantial sum of money and take that very same car to meet up with someone to ask for money to borrow.
  
6. Furthermore, witness 2 Mr Jowaheer unequivocally explained that on the 6<sup>th</sup> November 2018 at around midday he was working at the Ministry of Education MITD Phoenix. He was informed by the receptionists that there were two men who had come over there to meet him. Mr Jowaheer said that he went downstairs and as he could not find anyone he decided to go for lunch. Thereupon, Mr Jowaheer was informed by the receptionists that those men would come back later. He added that he was surprised of this visit as he was unaware about this unexpected visit. After lunch, Mr Jowaheer stated that he went downstairs again whereby he met with the two men. The latter told him to accompany them to a car. And once in the car Mr Jowaheer said that the accused who was accompanied by

another person told him that [Page 19 and 20 of the transcript of court sitting 24<sup>th</sup> March 2022]:

*Zot in dire moi Kume sa ki mo pas gagne droit faire sa bisin amene bureau, bisin amene ou bureau pou faire l'enquete avec ou, bisin trappe ou ferme ou. Sa lere la mone ene tipe peur. Ti ene jour la veille divali mo bien rappelle. Zot dire moi kume sa ne to pou gagne probleme, to pou perdi to travail mais si nou amene toi nou ferme toi, to pou fermer, to banne fami tout pou gagne probleme mais mone inpe peur, sa jour la mone impe etonner kan panne la fine dire moi sa.*

7. Witness 2 added that the accused and the other person also asked for Rs 100,000 to do the following :

*Mo panne aller, mone descende mais lere la zot ine dire moi non ben nou capave dresse zaffaire la ek zot prend telephone mo pas kone ki sane la menti menti ou soit vrai meme zot ine telephone ene dimoune. Zot dire hein guette sa be missie la pe chose pe insister be eski nou capave dresse travail la.*

8. From the testimony of Witness 2 it is clear that the accused has acted as someone *qui se prévaut d'une influence réelle ou supposée et qui sollicite ou accepte des offres, promesses, dons, présents ou avantages quelconques en vue de faire obtenir au remettant des avantages ou faveurs de toute sorte, dont les pouvoirs publics sont prétendument les dispensateurs.* And in addition the defence of the accused is implausible.
9. For these reasons, this court reaches the conclusion that the prosecution has proved its case beyond reasonable doubt and finds the accused guilty as charged under **Section 10 (4)** of the **Prevention of Corruption Act 2002** and in line with the Judgment of **Peermamode M.R.A.F.E v The State & Ors 2022 SCJ 25.**

**A.Joypaul**

**Intermediate Court Magistrate (12/1/2023)**