

ICAC v Seerutun

2019 INT 95

CN1594/12

THE INTERMEDIATE COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

The Independent Commission Against Corruption

v/s

Seerutun Anil Kishore Singh

JUDGMENT

The Accused stands charged with 02 Counts of Bribery By Public Official, contrary to ss. 4(1)(a) and 83 of the Prevention Of Corruption Act (hereinafter referred to as POCA), under Counts 1 and 2.

The Accused pleaded Not Guilty to both Counts of the amended Information and was assisted by Learned Defence Counsel.

Learned Counsel for the Independent Commission Against Corruption (hereinafter referred to as ICAC) conducted the case for the Prosecution.

The Proceedings were held partly in English and partly in Creole.

The Prosecution Case

It was the case for the Prosecution that at the Civil Status Office of Curepipe, in the District of Upper Plaines Wilhems, the Accused, did whilst being a Public Official:

- 1) **Under Count 1:** On or about 08-11-11, wilfully, unlawfully, and criminally, obtain from another person, a gratification for doing an act in the execution of his duties.

Particulars: On or about the date and place aforesaid, the said Accused, whilst being a Senior Civil Status Officer, obtained sum of Rs200/- from one Manoj Doodee (hereinafter referred to as W4) in order to celebrate the latter's Civil Marriage; and

- 2) **Under Count 2:** On or about 18-11-11, wilfully, unlawfully, and criminally, obtain from another person, a gratification for doing an act in the execution of his duties.

Particulars: On or about the date and place aforesaid, the said Accused, whilst being a Senior Civil Status Officer, obtained sum of Rs300/- from W4 in order to celebrate the latter's Civil Marriage.

The Defence Case

The Accused denied the charges under both Counts in his unchallenged out-of-Court statement (Doc. B), explaining therein he found the said Rs300/- as per Count 2 under the Marriage Entry just after having celebrated W4's Civil Marriage. And as he was on his way to find W4, he saw ICAC Officers, panicked, and hid the said Bank Notes in his right sock, from where they were later secured.

The Accused elected to state from the Dock inter alia he had not committed the said offences, and only helped people. The Accused further stated that when he found the said money on the table, he went to find W4, through his Attendant, which was when the ICAC Officers came in and he realised he had been trapped, and in a moment of panic, he put the said money in his sock. The Accused went on to explain the present matter had left him vulnerable and in bad Health, with a tarnished reputation.

Mr William Mario Ayeloo (hereinafter referred to as the Defence Witness) deponed on behalf of the Accused.

Analysis

At the outset, the Court places it on Record that the Accused's statement (Doc B) and the Publication of Proposed Civil Marriage Entry (Doc. B) have both been marked as (Doc. B), and for ease of reference, the Accused's statement will be referred to as the Accused's statement

(Doc. B), and the Publication of Proposed Civil Marriage Entry (Doc. B) will be referred to as the Proposed Civil Marriage Entry (Doc. B).

The Court has duly analysed all the evidence on Record and all the circumstances of the present matter, and the Court has watched the demeanour of the Prosecution Witnesses and that of the Defence Witness with the utmost care. The Court has also given due consideration to the Submissions of both Learned Counsel.

In relation to both Counts, applying the principles set out in the Authority of **Hanumunthadu v The State & Anor** [2010 SCJ 288], which was cited with approval in the recent Authority of **Foondun v The State & Ors** [2018 SCJ 298], the Prosecution bear the burden of proving beyond reasonable doubt the following essential elements of the offence with which the Accused stands charged in the present matter:

- 1) The Accused was a Public Official;
- 2) The Accused obtained from W4 a gratification;
- 3) For celebrating W4's Civil Marriage;
- 4) That the obtention of the gratification was in relation to that act of celebration of Civil Marriage; and
- 5) That the said act of celebration of Civil Marriage formed part of the Accused's duties as a Public Official.

Not Disputed

The Court has duly considered all the unchallenged documents produced in the course of the Proceedings:

- 1) The Proposed Civil Marriage Entry (Doc. B);
- 2) The Civil Marriage Entry (Doc. C);
- 3) 01 Correspondence with stapled envelope from the Prime Minister's Office as to the Accused's official status (Doc. D); and
- 4) 01 piece of paper and attached envelope (Doc. E) with the Serial Numbers of the 02 Bank Notes in relation to Count 2.

The following matters were not in dispute:

- 1) In relation to both Counts, Identity was not put in issue;
- 2) In relation to both Counts, the Accused was a Public Official at the relevant time, in light of the Accused's own unchallenged version, contained in the Accused's statement (Folio 103260 of the Accused's statement (Doc. B)) and the unchallenged letter from the Prime Minister's Office as to the Accused's official status (Doc. D) to the effect the Accused holds a permanent and pensionable post of Senior Civil Status Officer since April 2007;
- 3) In relation to both Counts, the Accused's duties were mainly to celebrate Civil Marriages, as per the Accused's own version, contained in the Accused's statement (Folio 103260 of the Accused's statement (Doc. B)), which was unchallenged;
- 4) In relation to Count 1, the Accused prepared the Proposed Civil Marriage Entry (Doc. B) for W4 on the 08-11-11 at the Civil Status Office of Curepipe (Folio 103263 of the Accused's statement (Doc. B));
- 5) In relation to Count 2, it remained unchallenged the Accused had celebrated W4's Civil Marriage on 18-11-11 at the said place;
- 6) In relation to Count 2, the Accused was found with Rs300/- in his right sock, made up of 01 Rs100/- Bank Note and 01 Rs200/- Bank Note on 18-11-11 at the said place, as per the Accused's own unchallenged version, as contained in the Accused's statement (Folios 103265 and 103267 of the Accused's statement (Doc. B));
- 7) In relation to Count 2, the Serial Numbers of the said 02 Bank Notes secured from the Accused tallied with the Serial Numbers of the Bank Notes noted on the piece of paper (Doc. E) remitted to the ICAC by W4, which was not challenged by the Defence.

In light of all the above, the following essential elements of the offence under both Counts have been established:

- 1) The Accused was a Public Official, in light point 2) above; and
- 5) The said act of celebration of Civil Marriage formed part of the Accused's duties as a Public Official, in light of 3) above.

The Prosecution therefore bear the burden of proving the following remaining essential elements of the offence in the present matter, in relation to both Counts:

- 2) The Accused obtained from W4 a gratification;
- 3) For celebrating W4's Civil Marriage; and

- 4) That the obtention of the gratification was in relation to that act of celebration of Civil Marriage.

W4

From the outset, W4 deponed to the effect the Accused had asked him for money in order to celebrate his, i.e. W4's, Civil Marriage.

In relation to Count 1, in examination-in-Chief, upon his memory being refreshed as to the sum, W4 explained having given the Accused Rs200/-.

In relation to Count 2, in examination-in-Chief, W4 deponed to the effect he had given the Accused Rs300/- before the celebration of the Civil Marriage on 18-11-11, in order for the Accused to perform W4's Civil Marriage.

Under Both Counts

In examination-in-Chief, W4 spontaneously, explained that the Accused had asked for money to celebrate his Civil Marriage. Upon his memory being refreshed, W4 confirmed he remembered the Accused had asked for Rs500/- in order for him to celebrate his, i.e. W4's, Civil Marriage before 27-11-11. W4 then explained the Accused had requested for the said money at the Civil Status Office of Curepipe.

W4 then went on to explain he only had Rs200/-, which he gave to the Accused, in relation to Count 1, and that on 18-11-11, he gave the Accused Rs300/-, and the Civil Marriage was thereafter celebrated.

W4 was precise as to the fact he had remitted to the Accused Rs200/- in the 01st instance, and Rs300/- in the 02nd instance, in order for the Accused to perform his Civil Marriage.

W4 maintained throughout the Proceedings, that the Accused had requested the said money in order to celebrate his, i.e. W4's, Civil Marriage before 27-11-11.

In Cross-Examination, W4 admitted he could not say what was true, and what was not, as regards the contents of his statement he had given to the ICAC.

W4 in effect explained he had had an accident whilst playing Football, as a result of which he had got hurt, had been admitted to the Hospital, and had difficulties remembering things that had happened even 02 days earlier.

The Court has noted that W4's memory had to be refreshed on several issues. The Court is however of the considered view that this did not undermine W4's credibility, given W4 readily admitted there were things he could not remember, and appeared to have his memory genuinely jogged when his memory was refreshed by reference to his out-of-Court statements.

The Court also makes allowances for the passage of time, given W4 was deponing in 2017 and 2018 for incidents which had allegedly occurred in 2011, i.e. about 06 or 07 years earlier.

The Court also bears in mind that the testimony of a Witness is not a memory test, applying the principles set out in the Authority of **Ramjeet v The State** [\[2013 SCJ 4\]](#):

We are, however, of the view that this single contradiction is not of material importance, the more so that a deposition in Court is not a memory test. What is important is that the learned Magistrate was satisfied beyond reasonable doubt that the complainant and witness No.3 had in substance spoken the truth and that his findings were warranted by the evidence on record. In fact, a perusal of the Court record shows that they had confirmed each other's version in a remarkable manner although they were subjected to a thorough and searching cross-examination.

These principles were also set out in the more recent Authority of **Vythilingum v The State** [\[2017 SCJ 379\]](#):

Giving evidence in Court is not a memory test and failure to recollect with precision all the circumstances and details of an incident is understandable. What is important is for the Court to be satisfied that a witness is speaking the truth in substance.

Bearing in mind all the above, the Court is satisfied that W4 was a Witness of Truth, who spoke the Truth in substance, and the Court finds no reason not to accept W4's testimony, on which no doubt was cast, in light of all the matters highlighted below.

The Court is of the considered view that W4, without being prompted, deponed as to the central issue, i.e. that the Accused had asked W4 for money in order to celebrate his, i.e. W4's, Civil Marriage before 27-11-11, and that the lapses in W4's memory related to matters relating to the surrounding circumstances of the present matter, such as dates, but not limited to, the number of times he had been to the Civil Status Office of Curepipe, the sum of money he had remitted to the Accused, or as to whether the ICAC Officers had gone with him to the Civil Status Of Curepipe or not.

True it is that W4's memory was refreshed several times, that W4 departed from his out-of-Court statement, that W4 stated several times he did not remember too well the present alleged incident, and that he did not know what was written in his statement. However, at no point in time did W4 put in doubt the veracity of his out-of-court statement, and in fact stated that if he had signed same, then he accepted what was therein.

Although it is clear W4 had a failing memory, his readily admitting there were matters he did not remember, by his very stance in Court, W4 appeared to be a genuine Witness, his answering the questions put to him in a straightforward manner, without evading any.

Further, having watched W4 deponing in Court, the Court is convinced W4 was a Witness of Truth, who despite having clear difficulty in recollecting with precision all the circumstances of the present matter, deponed in a consistent and cogent manner as to the central essential aspects of the present matter. W4 spontaneously stated the reason he had been to the ICAC, i.e. that the Accused had asked for Rs500/- in order to celebrate his Civil Marriage before the 27-11-11, and that he had remitted Rs200/-, as this was the sum he had on his person at the time, to the Accused on 08-11-11, and that he had remitted to the Accused the balance of Rs300/- on the 18-11-11, following which his Civil Marriage was celebrated. W4 also spontaneously explained the Accused had requested the said money at the Civil Status Office of Curepipe.

The Court has noted the line of cross-examination adopted by the Defence, to the effect the idea of framing the Accused was formulated by W4's ex-Spouse. It was contended by the Defence that the said idea of framing the Accused was formulated by W4's Ex-Spouse once they were at the said Civil Status Office on 18-11-11, after having had an argument with the

Accused, and that the said idea of framing the Accused was in order to teach a lesson to the Accused, by leaving some money after the celebration of the Civil Marriage.

The said line of cross-examination does not, however, sit well with the unchallenged fact that W4 had given to the ICAC a statement as to the fact the Accused had asked for Rs500/- in order to celebrate W4's Civil Marriage before 27-11-11, prior to proceeding to the said Civil Status Office for the celebration of his Civil Marriage on 18-11-11.

It stands to reason that had the said idea of framing the Accused been formulated by W4's Ex-Spouse at the Civil Status Office on 18-11-11, there would have been no reason for W4 to proceed to the ICAC to give a statement before proceeding to the Civil Status Office for the celebration of his Civil Marriage.

Also, questions were put to W4 as to the fact that he had accepted whatever was written in his statement, whether it was true or not, as he was in a rush to go Home, as he had just got married. This questioning clearly related to a statement given by W4 after the said incident, and W4's answer in the affirmative that he had agreed to what was written in the said statement, whether it was true or not, only related to the said statement given after the said incident, and in no way affected the veracity of the statement W4 had given to the ICAC prior to proceeding to the Civil Status Office of Curepipe.

The Court was left in the dark as to the date on which W4 was allegedly injured following the said alleged Football incident. No independent evidence, documentary or otherwise, was forthcoming to substantiate the said contention.

At any rate, it is plainly apparent from the testimony of W4 that he did remember the salient facts of the present matter, and that when parts of his written out-of-Court statement were put to him, his memory was jogged.

Further, the Court is of the considered view W4's testimony was not put in doubt, given W4 was cross-examined inter alia in general terms, and in relation to his failing memory stemming from the said alleged Football accident, the date of which has remained unknown, and no specific question was put to W4 as to the central issues of the present matter, save for the idea of

framing W4 being hatched by W4's Ex-Spouse, which the Court does not accept for the reasons given above.

The Accused confirmed no fees were payable for the celebration of a Civil Marriage (Folio 103262 of the Accused's statement (Doc. B)). This coupled with the fact the Accused was found in possession of the 02 bank notes, the serial numbers of which tallied with the ones indicated on the piece of paper given to the ICAC by W4, clearly establish a direct link between the Accused and the present offence as per Count 2, and independently supports W4's testimony.

Gratification is defined as follows in s. 2 of the POCA:

“gratification”—

(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 [...].

No reason was advanced by the Accused as to why he had agreed to celebrate W4's Civil Marriage prior to 27-11-11, despite being annoyed with W4, bearing in mind in particular the Accused explained:

- 1) he had checked his diary and had made the required calculations and had found it was too short a delay for the said Civil Marriage to be celebrated prior to 27-11-11 (Folio 103261 of the Accused's statement (Doc. B));
- 2) he had checked his book and the computer system, and that there was no date for the Marriage to be celebrated before 27-11-11 (Folio 103262 of the Accused's statement (Doc. B)); and

- 3) he had, after verification, fixed the Civil Marriage for 18-11-11 at 10h00, given he had obtained confirmation from W4 he would go and leave all the required documents for Publication to the Mahébourg Civil Status himself.

In light of the above, the very fact the Accused nonetheless found an earlier date for the said Civil Marriage to be celebrated is suspicious in itself. Had there been in fact no date prior to 27-11-11, as contended by the Accused as indicated at 2) above, even if W4 had agreed to leave all required documents at the Mahébourg Civil Status himself, this should not have changed the fact there was no date for the said Civil Marriage to be celebrated.

The Court bears in mind the Accused's explanation he had hidden the said money in his right pocket as he panicked when he saw the ICAC Officers. Which begs the question why the Accused would have felt the need to hide the said money, had the Accused no Guilty conscience.

No evidence was adduced by the Defence in order to rebut the presumption as per s. 4(2) of the POCA. Further, no explanation was given as to why W4 would have levelled such allegations against the Accused, in particular bearing in mind the Civil Marriage of W4 was duly celebrated prior to 27-11-11, as W4 wished, and the fact the Accused confirmed he did not know W4 or his Ex-Spouse prior to the present matter (Folio 103261 of the Accused's statement (Doc. B)).

In light of all the above, the Court is of the considered view it has been established that the Accused obtained as gratification from W4 Rs200/- as per Count 1, and Rs300/- as per Count 2, and as per both Counts for doing an act in the execution of his duties, i.e. to celebrate W4's Civil Marriage, that the Accused did obtain the said gratification for the said act of celebrating W4's Civil Marriage.

W2 and W3

In relation To Both Counts

The testimony of CI Tengnah and DPS King (hereinafter referred to as W2 and W3 respectively) remained unchallenged as to the fact the Accused initially was reluctant and refused to be bodily searched.

The Defence did not cross-examine W2 or W3 as to the reply made by the Accused upon being cautioned, after the said money had been secured from his right sock. The Accused also, in his

unchallenged out-of-Court statement (the Accused's statement (Doc. B)) did not deny having said the said words, and only explained he did not remember whether he had said the said words or not (Folio 103265 of the Accused's statement (Doc. B)).

Locus

In relation To Both Counts

The Defence laid much emphasis on the locus, with a Motion being made for a Visit of the Locus, which was duly effected in the Interests of Justice.

It was the contention of the Defence that the Accused's Office had clear window, thereby reducing significantly the possibility of unlawful acts being committed, given the risk this might be seen by persons on the other side of the said clear window.

Although W2 confirmed that the Accused's Office "was exactly at the place where it was as at the date the offence occurred" (emphasis added), there is no evidence on Record to establish the said Office was in exactly the same state at the time of the site Visit as it was at the time in question, in particular as to the clear windows, bearing in mind W2's testimony there was no clear pane of glass.

Defence Witness

In relation To Both Counts

The Defence Witness inter alia confirmed having never received any written or verbal complaint against the Accused, and that he had recalled the Accused from Interdiction, as they needed experienced Officers.

Further, whilst explaining the procedures to be adopted for Civil Marriages, and that he had a dashboard on his computer system on which he could see all the operations in each Civil Status Office, the Defence Witness conceded he was not physically present in each and every Civil Status Office to see exactly what was happening.

In light of the said admission by the Defence Witness, coupled with the fact it was not the case for the Defence that the Defence Witness was present physically on the days and at the times in question in the Accused's office, it stands to reason it is not possible for the Defence Witness to say with certainty what had or had not taken place on the days, at the times, and at the place in question.

The Court therefore finds the Defence Witness's testimony does not assist the Defence in any significant manner in the present matter.

Miscellaneous

In relation To Both Counts

The issue of Entrapment was suggested in the Submissions of Learned Defence Counsel. The Court however finds no merit in the said Submissions of the Defence in the present matter, as it is clearly apparent from all the facts and circumstances of the present matter that the ICAC Officers, W2, W3, and/or W4 did not lead the Accused into committing the said offences as per both Counts. Rather, it is clearly borne out on Record that the Accused, of his own accord, asked for the said Rs500/- from W4 in order to celebrate W4's Civil Marriage before 27-11-11.

Further, although questions were put to SI Sewduth (hereinafter referred to as W7) as to the version given by W4's Brother, the Court is of the considered view same cannot be acted upon as this would be contrary to the Rules of Evidence, bearing in mind also W4's Brother was not called as a Witness in the course of the Proceedings.

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter, and all the matters highlighted above, the Court finds that the Prosecution has proven its case against the Accused on both Counts beyond reasonable doubt, and the Accused is therefore found Guilty as charged on both Counts.

[Delivered by: D. Gayan, Magistrate]

[Intermediate Court (Criminal Side)]

[Date: 22 May 2019]