

ICAC V R. H. TOOFANY

2022 Intermediate Court (Financial Crime Division)

Cause No 130/20

ICAC

V

Reza Hussein TOOFANY

Charge: - Receiving Gift for a Corrupt Purpose. Breach of section 15(a) of the Prevention of Corruption Act.

JUDGMENT

Accused, **Reza Hussein TOOFANY**, Senior Labour Inspector, is charged for having in or about the month of October 2011 at the Club Med Albion Resort, did whilst being a public official solicit employment as Consultant from Holiday Village Management Services (Mauritius) Ltd (also known as Club Med), which company was under the supervision of the accused with regard to compliance with the relevant labour legislations.

CASE FOR THE PROSECUTION

Investigator Sultoo, witness No 1, produced two defence statements made by the accused; documents A and A1 refer.

Senior Investigator Abdool Raman, witness No 8, produced two further defence statements of the accused; documents A2 and A3 refer. He also produced a document showing the official status of the accused as being a Public Official, document B refers. The witness was further questioned as to the outcome of his enquiry and he answered but without giving any evidence in support of his contention. In cross examination, he stated that it was one Jean Noel Marie who was processing all the applications.

Mr Laval Edley ARMOOGUM, witness no.3, former Director at the Ministry of Labour explained that the accused was posted in the Special Migrant Workers Unit, and one of his duties was to ascertain that the conditions of employment of migrant workers were being complied with, at the Club Med hotel among other workplaces. He added that accused was never authorized to carry out private work with remuneration for Club Med hotel. In cross examination, he was shown a document by the defence and he agreed that in the years 2012 to 2014, accused went officially to Club Med, Albion on six occasions for routine visits.

Mrs Yasmeem Mamode Cassim, witness no.2, HR Manager at the Ministry of Labour produced the scheme of service of accused who was a Senior Labour Inspector, document C refers. According to her, one of the duties of accused was to provide advice and information on labour law to employers and employees and he was remunerated by the State for that. Accused was not authorized to carryout private work against remuneration.

Mr Sunil Kumar Koosul, witness no.4, Director of Human Resources at Club Med explained that accused often came to visit and inspect the hotel as a Labour Inspector; he used to give them advice on labour related laws. At some point in time the accused proposed to offer his services as consultant on labour law to the hotel against a remuneration of Rs 13,500 for three months and the proposal was agreed to by the hotel. In cross examination, he explained that accused was never involved in any of their exercises of recruiting Migrant workers. His version stood unrebutted in cross examination.

Mr Jean Marc Gregory Lacroche, witness no.7, stated that in 2011 he was working in the finance department of Club Med. He produced a list of payments made to accused, document D refers. It includes payments dated 01.03.2012 among others and Mr Toofany was paid Rs 13,500 each time. He inserted all the entries himself and the summary of payments has been extracted from the computer system of the hotel. He confirmed the authenticity of the document.

THE CASE FOR THE DEFENCE

The defence called PC Ballisson of the Passport and Immigration Office who stated that Yvon Jean Noel Marie, a resident of Roche Brunes has left the country on 19.04.2018 for Dubai and the date of return is unknown.

The version of accused is contained in his out of court statements, where he did not answer to questions relative to the charge when same were put to him; he has all throughout refused to answer to charges, save and except some rare occasions.

CASE ANALYSIS

Accused is being prosecuted under section 15(a) of the Prevention of Corruption Act 2002 , which provides as follows:

“Any public official who solicits, accepts or obtains a gratification for himself or for any other person-

- (a) from a person, whom he knows to have been, to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his functions or those of any public official to whom he is subordinate or of whom he is the superior; or
- (b)

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

Applying the law to the present case, I hold that the prosecution must prove the following elements: -

- a) That accused was a public official;
- b) That he Solicited from another person a gratification for himself; and
- c) that he knew to have a connection with his function

1st element - Accused party is a Public Official

In the beginning of all his out of court statements, accused has admitted that he was a Senior Labour and Industrial Relations Officer (see the occupation). Further, the official status of the accused as per document B is a substantive post as Senior Labour and Industrial Relations Officer at the Ministry of Labour and Industrial Relations, Employment and Training. The element of Public Official is thus proved.

2nd element – Accused solicited from another person a gratification for himself

The word “*gratification*” has been interpreted in section 2 of the Act and under sub-section (b) (ii) and it includes - “*the offer of an office, employment or other contract;*”

Witness Koosul explained that accused often carried out labour inspections at Club Med hotel. Accused proposed them to retain his services as consultant against a remuneration of Rs 13,500 for every three months and the management of Club Med agreed to effect payment in exchange of advices on Labour Law. It is therefore clear that accused solicited for an offer of employment, from Club Med Albion Resort, which action, constitute soliciting a gratification under PoCA as stated above.

Mr Lacroche, produced a list of payments made to accused and explained that among the payments, there is a first one dated 01.03.2012 showing sum of Rs 13,500 paid to the accused for his services as Consultant. This is clear from document D and its authenticity has been explained by the witness. It is therefore clear that accused received the gratification following his solicitation.

I am unable to agree with the submission of defence counsel that the prosecution has not proved that the solicitation took place in or about October 2011 as the witnesses called by the prosecution spoke of the year 2012 and for him 2012 is too remote when faced with an averment of “*on or about October 2011*”. The simple reason is that the legal advices were provided and payments started in 2012; but the solicitation was made before. Mr Koosul said that accused proposed to offer his services as consultant on labour law to the hotel against a remuneration of Rs 13,500 for three months. Mr Lacroche stated that there were a number of payments made to accused, and

these include a payment of Rs 13,500 made on 01.03.2012. Document D shows that the payment was effected to accused for services provided in October to December 2011; it stands to reason that for computing the three months to have started, the agreement must have been reached in or about the month of October 2011 and this would clearly fall within the averments of the information. The 2nd element is therefore proved.

3rd element – That the acts of accused had a connection with his functions and he knew of it.

Mrs Cassim stated that accused had to provide advice on labour law to employers and employees and this formed part of the list of duties and was remunerated for that. Further, accused never applied to the ministry to allow him to undertake private work in exchange of remuneration and was therefore not allowed to do so.

Mr Armoogum, former Director at the Ministry of Labour said that accused was responsible for inspections at Club Med Hotel, to ensure compliance with the law.

Witness Koosul explained that accused often carried out labour inspections at Club Med hotel.

It is therefore well established that one of the functions of accused was to visit Club Med hotel and accused knew well of it. All the surrounding circumstances of the case and the fact that accused solicited Rs 13,500 and was paid of it for giving legal advice shows his guilty knowledge. Accused did not adduce any evidence; in his out of court statement, he has agreed that Club Med has deposited sums of money in his account but it is only Jean Noel Marie who can explain those deposits. Defence called an officer of the Passport and Immigration Office to show that one Yvon Jean Noel Marie, a resident of Roche Brunes has left the country on 19.04.2018 for Dubai and the date of return is unknown. Otherwise, the defence chose to exercise his right of silence. In the absence of any defence and in a case where the prosecution has established unshaken evidence against an accused; the court is perfectly entitled to find the accused guilty as charged, vide **DPP v Khadaroo [2011 SCJ 33]**.

For all these reasons and after having considered the submission of both Counsels, I hold that the prosecution has proved its case beyond all reasonable doubt and I find accused guilty as charged.

Defence also submitted on the issue of delay to lodge the case; there was no motion for abuse of process and this will be taken due care when determining the appropriate sentence.


Delivered by Mr Vijay Appadoo

President Intermediate Court (Financial Crime Division).

13.07.2022.