

ICAC v Yan Shi

2023 INT 170

CN 32/22

**IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)**

In the matter of:

Independent Commission Against Corruption

v/s

Yan SHI

JUDGMENT

1. The accused has been prosecuted with the offence of Bribery of Public Official in breach of sections 5(1)(a), (2) & 83 of the Prevention of Corruption Act 2002. He pleaded not guilty to the Information and was represented by counsel, Mr A. K. Ujoodha and the prosecution was represented by Mr Guness for the ICAC. The accused being a Chinese national, had the benefit of an interpreter, Ms Zheng, throughout the proceedings.

CASE FOR THE PROSECUTION

2. Witness no.1, Mr Jaynaidoo Soobrayen, produced the defence statement of the accused, both the original and translated versions as **Docs A** and **A1**, respectively. During cross-examination, the witness stated that the case was referred to the ICAC by the police. The recording of the accused's defence statement was conducted by putting questions to him through the interpreter, witness no.5. The former's answers were given in Chinese Mandarin to the

interpreter who translated same to English. Both versions were recorded. The enquiry had been started by the police and an earlier defence statement from the accused had been recorded. The issue was raised as to whether the said statement was recorded in line with the Judges' Rules. As per the evidence of the enquiring officer, who did not record the statement, it was put up in presence of a translator and the version of the complainant was not confronted to the accused. It was only a record of the accused's version of events.

3. The accused had stated in the statement recorded by the police (Doc E) that he thought he was paying a fine 'like in China'. He reiterated at Q13 in Doc A1 recorded by the witness that he thought he was paying a fine. The witness stated that he did not enquire as to whether in China, one can pay a fine at the time and spot of contravention. During re-examination, the witness stated that he attended to any issue which might exist in the accused's first defence statement, in his second statement recorded by the ICAC.
4. Witness no.9, as deputised by the Commissioner of Police produced a letter certifying that witness no.7, PC Mootoo was a public official at the material time, as **Doc B**.
5. Witness no.2, SI Bholah at the ICAC, stated that his investigation started as a result of the arrest of a Chinese national effected by the police regarding an alleged case of bribery. He interviewed several witnesses in the case and a Rs1000 note was secured which was certified as genuine by the Bank of Mauritius.
6. Witness no.4, Mr Rajendra Mossai, was posted at the Divisional Support Unit Metropolitan South in 2021. He produced documents to the ICAC as part of the enquiry. He produced **Doc C**, being certified true copies of fixed penalty notices for not affixing a valid MVL and insurance vignette. Both bear the name of the accused and the vehicle with registration number S2188.
7. Witness no.7, PC Mootoo, stated he joined the Police Force in 2004 and in 2019 he was attached to the Divisional Traffic Police for regulating traffic. On 09.05.21, he was on duty along Mgr Leen Street, Port-Louis and he stopped a car bearing registration number S2188. The car failed to observe a red light. The driver of car, the accused, was booked for no affixation of valid MVL and insurance vignette. He confirmed Doc C. There was a female passenger in the front passenger seat.

8. The witness gave evidence to the effect that, at the material date and time, he observed the said private car's failure to stop at a red traffic light. He pursued the car on motorcycle, which promptly stopped. He verified the vignettes on the car's windscreen and saw that the MVL and insurance vignettes had expired. He had asked the driver to step out of the car and he was informed of the offences committed. The driver did not understand what he was saying. Then the driver, hence the accused, talked to the female passenger still seated in the car in a Chinese language. The witness did not understand the said language. The passenger gave a bank note of Rs1000 to the accused. The latter approached the witness and placed the bank note into the already opened satchel of the police officer. The accused gave him a tap on his shoulder saying 'Ok, Ok'.
9. Questions were put to the witness as to how did he know that the accused understood him at the time of contravention. He explained that when he informed the accused of the fact that the MVL and insurance vignettes are expired, the accused's demeanour gave him the impression that he already knew of that fact. The witness further stated that, according to him, the accused gave the money to forget about the two contraventions. When the accused put the money into his satchel, he informed the latter that he was committing the offence of bribing a police officer. The alleged accused's response was 'It's ok, it's ok'. When the accused saw that the witness maintained his position, he started to understand less and less the situation as per the PC Mootoo's version. The accused was brought to Line Barracks Police Station. At no point in time did PC Mootoo inform the accused of the amount of fine he had to pay for such offences.
10. At a subsequent sitting, the witness was called anew by the prosecution to produce the Rs1000 note which he received from the accused, as **Exhibit 1**.
11. During cross-examination, the witness stated that he spoke to the accused on the material day in English. He realised at some point that the accused did not understand what he was being told. The witness agreed that the accused was not conversant in English. When he informed the accused that he has committed the offence of bribery, he used the English language. He had stated in examination-in-chief that the accused panicked, but agreed that he did not mention same in his out of court statement, as he deemed it to be unnecessary.

He agreed that in his out of court statement he mentioned only once that the accused said 'Ok, Ok' to him, and not twice as he stated earlier in court.

12. The witness further stated that the accused did not specifically say to take the money as a bribe. He formed that opinion due to the way the accused placed the money in his satchel. On the same day, the accused was brought to the police station for a statement, and there the latter stated that he thought he was paying a fine.
13. Witness no.5, Mr Lee Ying Hua Lee Soo, is a registered interpreter with the Supreme Court of Mauritius. His services were retained by the ICAC to record the defence statement of the accused. He confirmed he was the interpreter for Doc A. The statement was recorded in Chinese Mandarin. Questions were put to the accused in English and translated to Chinese Mandarin. The answers were then given in Chinese Mandarin which he translated in English. The witness identified Doc A1.
14. During cross-examination, the witness confirmed that he put questions in Chinese Mandarin to the accused, which he recorded in his own handwriting (DocA). The statement was translated into English in the form of Doc A1. The latter document was typed by ICAC officers. There were two officers present in the room at the time of recording. An extract regarding the sequence of events on the day of offence was read by the witness in court. It was a faithful translation, albeit a long question put to the accused containing multiple issues. The witness replied affirmatively when asked whether the accused stated to him that he thought he was paying a fine in China. However, the answer 12 was read from the accused's translated defence statement and he stated that he thought he was paying a fine without the words 'in China'. The witness could not clearly say whether fines are paid immediately at the time of booking, as China has different rules for different regions.
15. During re-examination, the witness confirmed to some extent that the answers are those given by the accused and the statement was read over to the accused before he signed same.
16. Witness no.8, Mrs Guollan Hu gave evidence through an interpreter. She stated that she is acquainted to the accused without being a friend. On the material day, the accused was driving the car and she accompanied him as a passenger to Port-Louis. They were stopped by the police. The accused stepped

out of the car to confront the police officer. He thought it was a contravention. He took the money and handed it to the police officer. The accused simply asked her for the money without specifying the amount. He did not say anything else to her.

CASE FOR THE DEFENCE

17. The accused gave evidence under oath to the effect that he has been in Mauritius since 2019, working at a company as an engineer. He stated that on the material day, when he was stopped by the police officer, they spoke and he thought he had to pay a fine. He gave the officer Rs1000 to pay for the fine. He did not know that in Mauritius, fines are paid in a Court of law. It was the first time that had happened to him. In China (People's Republic of China), he once paid a fine at the spot where he was stopped and he was given a receipt. He only gave Rs1000 as he did not know what the exact amount was. If it was not enough, he would have added the required amount. As per his defence statement, he said sorry to the police officer because he was apologising for the fact that he encroached the yellow line. He agreed that he placed the Rs1000 bank note in the police officer's waist pouch. At all times, he thought he was paying a fine, which he officially did for the contravention at a later date.
18. During cross-examination, the accused agreed that he did not state in his defence statement that he asked the police officer the amount of fine he had to pay. He denied having given a bribe to the officer. He further denied that he said sorry to the police officer in relation to the offence of bribery that he allegedly committed.
19. The defence called PC 2050 Placathose, posted at Line Barracks Police Station, as a witness. The witness stated that he recorded a defence statement from the accused before the case was referred to the ICAC. He produced a copy of the statement as **Doc E**. The evidence on record shows that the said statement was recorded with the aid of an interpreter at the Police Station.

ASSESSMENT OF THE COURT

20. The following issues are not in dispute:

- a. The accused was stopped by the witness no.7, PC Mootoo, for road traffic offences.
- b. The accused gave Rs1000 to PC Mootoo on the spot.
- c. He placed the Rs1000 bank note into the open satchel of PC Mootoo.
- d. PC Mootoo was a public official.
- e. The accused has subsequently paid the fines for the said road traffic offences.

21. The law under section 5 of **Prevention of Corruption Act 2002 (POCA)** is as follows:

5. Bribery of public official

(1) Any person who gives, agrees to give, or offers a gratification to a public official for—

(a) doing, or for abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties;

(2) Notwithstanding section 83, where in any proceedings against any person for an offence under subsection (1), it is proved that the accused gave, agreed to give or offered gratification, it shall be presumed, until the contrary is proved, that the accused gave, agreed to give or offered the gratification for any of the purposes set out in subsection (1) (a) to (e).

22. A preliminary assessment would establish that the accused gave Rs1000 to a public official. The main issue which is disputed and which would represent the gist of the prosecution's or the defence's case, is whether the Rs1000 was given as a gratification or not.

23. The version of the accused from his evidence under oath and out of court defence statement is that he gave the Rs1000 to the police officer with the intention that he was paying the fine for the offences for which he thought he was being booked. He is a Chinese national. He does not speak or fluently understand the Creole or English languages. He, therefore, misread the interaction with PC Mootoo for failure to understand the words uttered by the latter.

24. Even if the sum of Rs1000 is property as defined under **section 2** of **POCA** for gratification, the transfer of such property cannot inexorably amount to gratification, unless the remittance is placed in its proper context, vide

Suneechara v The State 2007 SCJ 131. For instance, a legitimate transaction between the public official and the accused, which resulted in the remittance of Rs1000, would fail to satisfy the definition of gratification under section 2 of the Act, vide **Police v Seechurn 1980 MR 248, Jhurry v ICAC & Anor 2015 SCJ 258** and **ICAC v Seeneevassen 2012 SCJ 328.** Consequently, the purposes listed at section 5(1)(a) to (e) would not be applicable. By contrast, once the transfer of property from the accused to the public official has been effected in a suspicious, reprehensible or unlawful context, the presumptive purposes as listed under section 5(1) would be triggered. It is therefore inevitable that the mens rea, with which the accused gave the Rs1000 to PC Mootoo, is a relevant consideration when deciding whether the money constituted a 'gratification' or not.

25. The defence case theory is that the accused thought he was paying a fine on the spot, as he would allegedly have done in the People's Republic of China (China). He stated so in a defence statement (Doc E) recorded by the police, PC Placathose. Witness no.5, a registered interpreter from the Supreme Court, could not expressly state during cross-examination, that fines are generally paid at the spot and time of contravention in China. The road traffic rules vary in relation to the different regions of China. He hinted that, from personal experience, he might have done so when he was in China. There is no evidence of the official practice of payment of fines for road traffic offences in China. The defence has nevertheless laid emphasis on the Chinese procedural practice as a rebuttal to the gratification element advanced by the prosecution. The proposition is that since the accused has allegedly been used to the law in China, he thought of applying the same practice in Mauritius. Such contention has its limits. Each jurisdiction has its own specificities and, laws and customs cannot be assumed to be universally applicable. The accused has been in Mauritius since 2019 as a skilled worker. He has clearly been educated to a reasonably high degree of qualification, being an engineer. He has spent enough time in Mauritius to be aware that there are societal differences between Mauritius and China. That is not to say that every foreigner should be aware of the domestic laws and practices. When the act is incidental to creating an offence in law, the required intent must still be present in the foreigner's mind. But, in the same vein, it cannot be an automatic excuse that he or she was following an accepted foreign custom, and hence negate mens rea even where the act may lead to the commission of an offence. The surrounding circumstances of the case will have to be considered.

26. At this juncture, the point was raised by the defence with regards to a potential breach of Judges' Rules at the time of recording of the accused's defence statement. The point was raised in relation to the issue of whether fines were customarily paid 'in China' on the spot of contravention. As canvassed above, irrespective of whether fines are paid on the spot in China, the accused's mens rea in accordance with the laws of Mauritius has to be assessed. The fairness of trial is not impeached since the said issue is no longer a live one.

27. The accused stated that he is neither conversant in, nor understands the Creole and English languages. All his out of court statements were recorded with the aid of an interpreter. There is no evidence from the prosecution to show the contrary, despite the submission from the prosecution to the effect that the accused has lived in Mauritius for some time. Therefore, he must be fluent to some extent in the languages commonly used in Mauritius. That is misconceived. It would be a major leap into speculation if such is to be assumed. It is thus construed that the accused could not verbally communicate with PC Mootoo on the material day and it is unlikely that he understood the exact contraventions he was being booked for. However, the accused did get the gist that he had committed some kind of road traffic offences. In fact, in his defence statement, he said that he thought he had encroached the yellow line. At that point, the accused was handed over a bank note of Rs1000 by the car passenger at his request, folded it and placed it into the satchel of PC Mootoo. That act of placing the money into the satchel of a police officer, who was in the process of booking for a contravention, is not indicative of payment of a fine. By the accused's own admission, he was not aware of the amount of fine he had to pay. He gave Rs1000, allegedly thinking that if more was needed, he would have given more money. Had that been the case, the accused would have shown the money upfront to the police officer. Due to his inability to converse with PC Mootoo, he would have shown the money clearly and with physical gestures, try to enquire if it was enough. It is albeit noted that the accused in his defence statement (Doc A1) stated that he had only Rs1000 at that time. Placing the money directly into the satchel creates two points of difficulty for the accused. First, it reveals that the accused did not initially show any interest to enquire whether the money would be sufficient as full payment for the fine. Second, once the money was in the satchel, it is the cue that the accused did not expect any change in return if the Rs1000 exceeded the fine to be paid. It is manifest that the accused wanted it to be the end of the matter once he placed the money into the officer's satchel. Such is compounded by the fact that

the accused uttered the words 'Ok, Ok', with a tap on the shoulder of PC Mootoo.

28. PC Mootoo, witness no.5, gave evidence to the effect that the accused understood the situation when he was first stopped but panicked when he was informed of the commission of a bribery offence. The witness was lengthily cross-examined. He was coherent throughout his testimony and conveyed all the hallmarks of a witness of truth. I find that his observations of the accused's demeanour at the time of contravention can safely be relied upon.

29. I, therefore, find that the remittance of Rs1000 from the accused to the witness no.7, PC Mootoo, gave rise to a gratification. The prosecution has proved that such remittance was not effected in a legitimate way and was not an innocuous act. Since the act cannot be equated to the payment of a fine by the accused, the purpose 'for abstaining from doing an act in the execution of his duties', listed at **section 5(1)(a) of POCA** is presumed to have been proved. The prosecution has therefore proved all the elements of the offence beyond reasonable doubt. The accused is consequently found guilty as charged.

P K Rangasamy
Magistrate of the Intermediate Court
28.06.23