

**NUNHUCK M.S v THE STATE & ORS**

**2019 SCJ 44**  
**Record No. 9035**

**THE SUPREME COURT OF MAURITIUS**

In the matter of:-

**M.S. Nunhuck**

**Appellant**

**v**

- 1. The State**
- 2. The Independent Commission against Corruption**
- 3. The Director of Public Prosecutions**

**Respondents**

**JUDGMENT**

The appellant was convicted before the Intermediate Court for an offence of “*Bribery by Public Official*” in breach of section 4(1)(a)(2) and section 83 of the Prevention of Corruption Act. He was sentenced to undergo 6 months’ imprisonment and to pay Rs 500 costs.

There were initially 5 grounds of appeal out of which grounds 1 and 5 have been dropped. There are also 5 additional grounds of appeal which have been subsequently lodged.

The appellant was charged for having, whilst being a public official, wilfully and unlawfully obtained for himself from another person, a gratification for abstaining from doing an act in the execution of his duties. The particulars of the offence are that on 1 June 2009, whilst being a Police Corporal posted to the “Police de l’Environnement”, he obtained from one Emamdhully a sum of 1,000 rupees so as to avoid the latter from being booked for a contravention for the dumping of soil from his lorry.

Witness Emamdhully related in Court the circumstances in which he was made to remit a sum of 1,000 rupees to the appellant. He was driving his lorry with a load of soil along a sugar-cane track when he was stopped by 2 police officers who were in a police vehicle. The appellant, who was one of the officers, confronted him insistingly with the fact that he had dumped soil from his lorry on the land of one Fon Sing but that he would not

book him for the offence on condition that he has to "*faire ene l'usage*". He understood that the appellant was asking for money in order not to book him. He had 200 rupees in his possession but the appellant refused to accept the sum of 200 rupees and asked for 1,000 rupees.

Still according to Emamdhully, on Monday 1 June 2009 at about 10.00 hrs, appellant called him on his mobile phone and asked him at what time he would be able to get the money from him. Emamdhully explained that he immediately went to the office of the Independent Commission Against Commission (ICAC) to report the matter. Whilst he was there, appellant called him again to arrange for their meeting. He showed to the ICAC officers a 1,000-rupee note bearing number AK815191, which he placed in an envelope. He then proceeded to the premises of the Mahatma Gandhi State Secondary School at Le Réduit where the appellant was waiting for him in the rear parking. Appellant alighted from his vehicle and came towards Emamdhully. As he shook the appellant's hand, he handed over the envelope containing the 1,000-rupee note to him. Appellant returned to his vehicle but he was stopped near the entrance of the parking by ICAC officers whilst he was driving away in his vehicle. Emamdhully stated that the appellant asked for the 1,000 rupees to be remitted to him in return for his abstaining from booking Emamdhully for dumping the soil from his lorry.

The appellant did not give any evidence in Court. In the statements which he gave to the police, he denied the allegations levelled against him. His version as set out in the statements which were produced in Court may be summed up as follows: on 30 May 2009, he was on duty in uniform in company of PC Appadoo in a police vehicle. They saw a lorry being driven along St Jean bypass which was emitting black smoke. Appellant stopped the lorry further ahead near Pellegrin. He was the only one to alight from the vehicle and to speak to the lorry driver who gave his name as Hossein. He did not book him for any offence and Hossein told him that he would do the needful to repair the lorry.

On 1 June 2009, he was on duty in another police vehicle in company of PC Nilmadhub. Hossein called him on his mobile phone to inform him that he was having his lorry repaired and that he would bring it to Réduit for him to verify. He refused to accede to his request. But later at about 13.25 hours, he phoned Hossein on his mobile phone in order to tell him that he would verify the lorry and they arranged to meet in the parking of the Mahatma Gandhi SSS at Le Réduit. He proceeded to that place. He saw Hossein but

without his lorry. He remained in his vehicle as Hossein approached him and tried to hand over an envelope to him. He refused to accept the bribe and the envelope fell on the road at the entrance of the parking. He asked Hossein to pick up the envelope but as he was leaving he was stopped by 2 men who had immediately approached his vehicle. They identified themselves as ICAC officers and asked him to move out of the vehicle and to accompany them to the ICAC office for enquiry. One of the officers picked up the envelope and Hossein formally identified him in the presence of the ICAC officers.

He denied the version of witness Emamdully. He denied that he told Hussein that the fine for dumping soil on the land was about 25,000 rupees but that he would let him go 'si to faire ene l'usage'. He also denied that he refused to take 200 rupees and asked for 1,000- rupees in order not to book Hossein. He admitted that Hossein asked for his phone number and that he called him again on Monday. According to him he rang him in order to ask him to repair his vehicle and added that he also asked Hossein to carry a load of soil for him. That is the reason why, according to him, he wanted to confirm that his lorry was roadworthy. He also denied that he called Hossein some 30 minutes later in order to tell him that 1,000 rupees would not be enough but that he needed 5,000 rupees which he had to share with his friends. He called Hossein on 1 June 2009 at 8.52 a.m, not to ask for money, but to ask him whether he had repaired his lorry and would be able to carry a load of soil which one Moonien would give to him. He admitted that he made a call to Hossein on 1 June 2009 at around 1.30 p.m and that they arranged to meet in the parking of Mahatma Gandhi State Secondary School at Le Réduit in five minutes but he added that the meeting was only to confirm the time of the trip for his load of soil.

Appellant denied that when he reached the parking, he got out of his vehicle and took from Hossein an envelope containing the 1,000-rupee note, which he took in his right hand and put in his right trousers' pocket before he left in his van. According to his statement, he was inside his vehicle when Hossein approached him and he talked to Hossein about his trip. Hossein took out the envelope in order to give it to him. But he did not take the envelope which fell down on the road. He thought that Hossein wanted to entrap him and he tried to drive away when he was stopped by 2 ICAC officers. He added that the window was up and the air conditioning was on and one of the ICAC officers, PS Jugroop picked up the envelope which was lying on the road.

He denied the version of ICAC officers Jugroop and Chung Yen and he also denied the version of PC Nilmadhub that he got out of the police vehicle in order to talk to someone in the parking. He added that he cannot say why Hossein levelled all these allegations against him.

All the grounds of appeal essentially question the appreciation of the evidence by the learned Magistrate. Grounds 1 and 5 were dropped. It was submitted under ground 2 that the learned Magistrate was wrong to have found that the appellant threw the envelope through the window after he had received it from Emamdhully in view of the testimony of PC Nilmadhub who had stated that at no time did he see the appellant throwing any envelope through the van's window. Counsel argued by reference to the evidence that the windows of the police van were raised and that the doors were locked on account of the air-conditioning. Counsel also submitted that the learned Magistrate erred in stating that PC Nilmadhub was engrossed in updating his reports since it cannot be said that he was all the time concentrating on his reports.

The learned Magistrate chose to act upon the testimony of both ICAC officers, witnesses PS Jugroop and CI Chung Yen, who were involved in a sting operation on 1 June 2009 following the declaration of Emamdhully. Emamdhully went in his own vehicle to the parking of the Mahatma Gandhi State Secondary School in order to meet the appellant. They kept watch whilst hiding at a spot which was about 20 metres away. They both saw the appellant walking from the police vehicle in order to meet and speak to Emamdhully. They saw Emamdhully remitting the envelope in which he had previously placed in their presence a 1,000-rupee bank note bearing serial number AK815191. The appellant took it with his right hand and put it into his right pocket before moving back into the police vehicle. They rushed towards the vehicle and signaled the appellant to stop as he was driving off. As soon as he saw them, the appellant threw the envelope out of the driver's window and it fell on the road.

Both witnesses confirmed in Court that at the time appellant was throwing out the envelope, the driver's window had been lowered. PS Jugroop picked up the envelope and found that it contained the 1,000-rupee note bearing serial number AK815191. When PS Jugroop cautioned the appellant on the spot, he asked the ICAC officers to see what they could do for him invoking the fact that he had a wife and children [*“Missié donne moi ene chance, guetter qui ou capave faire, mo ena fame ek zenfant”*].

We have examined the evidence on record in the light of the submissions made by counsel and we see no reason to interfere with the learned Magistrate's conclusion that witnesses Chung Yen and Jugroop are reliable witnesses and that their evidence corroborate the version of witness Emamdhully. They in fact both maintained that they saw Emamdhully giving an envelope to the appellant which the appellant threw out of his van's window when they signaled him to stop.

The learned Magistrate was fully alive to the contention of the appellant and PC Nilmadhub that the windows were closed in view of the fact that the air conditioning was on. The learned Magistrate referred to the fact that PC Nilmadhub was at that time involved in the updating of his reports. PC Nilmadhub had indeed indicated in Court that he remained in the police van and was seated in the passenger seat. He was, however, updating his reports by inserting entries in the complaint register in respect of all the requests which he had attended to on that day. As appellant opened the door and proceeded to meet Emamdhully, he continued to insert his entries in the register. PC Nilmadhub further stated in the course of his cross-examination that all the windows should be kept in a raised position when the air conditioning system was on and that he did not see the appellant pulling down the window and throwing anything out.

The learned Magistrate carried out an elaborate analysis of the testimony of witnesses Emamdhully, Chung Yen and Jugroop who were all subjected to a searching cross-examination by learned Counsel for the defence.

We find no fault in the conclusive finding of the learned Magistrate that the version of PC Nilmadhub and the appellant on that issue cannot stand when pitched against the evidence of witnesses Chung Yen and Jugroop that they saw the appellant throwing out the envelope containing the 1,000-rupee note through the driver's window.

Ground 2 must accordingly fail.

It was submitted under ground 3 that the learned Magistrate made a wrong appreciation of the evidence on record as to the meeting which took place between the appellant and Emamdhully on 30 May 2009. Counsel submitted that the learned Magistrate failed to give due consideration to the version of PC Appadoo which contradicted that of

witness Emamdhully in several material respects. According to witness Emamdhully he walked to the police van to talk to the appellant and it was there that appellant asked for the bribe.

The learned Magistrate addressed her mind and examined in full the version of PC Appadoo who was in company of the appellant in the police vehicle which PC Appadoo was driving. According to PC Appadoo, on 30 May 2009 they saw a lorry emitting black smoke near Shoprite. The appellant asked him to approach the lorry so that he would stop it and issue a notice. After the lorry had stopped, appellant went out to meet the driver whilst he (PC Appadoo) stayed in the vehicle. When he came back, the appellant informed him that he could not issue the notice as he did not have the booklet for issuing notices. He added that he had informed the driver of the offence and had asked him to repair his vehicle. Witness Appadoo could not throw any light on the tenor of the conversation between appellant and Emamdhully as he remained throughout at the steering wheel of the police vehicle.

We do not find any merit in the submissions of counsel in support of this ground . Following an exhaustive analysis of the whole of the evidence, the learned Magistrate chose to accept the version of witness Emamdhully as to his meeting with the appellant on 30 May 2009. This version was not contradicted in any material respect by the testimony of witness PC Appadoo. We do not consider that the contradictions between the version of witness Emamdhully and PC Appadoo as highlighted by learned Counsel for the appellant could in the least affect the correctness of the appreciation of the evidence by the learned Magistrate. We find no fault in the decision of the learned Magistrate to accept as true the version of witness Emamdhully concerning his meeting and the tenor of his conversation with the appellant on 30 May 2009.

Ground 3 must also fail.

Ground 4 and additional grounds 1, 2 and 3 also challenge the Magistrate's assessment of witness Emamdhully's credibility. It was submitted by learned Counsel for the appellant that the learned Magistrate's erred in her assessment of the credibility to be attached to the version of witness Emamdhully and in finding that the evidence of the prosecution remained unchallenged.

Counsel argued that the learned Magistrate was wrong to find that witness Emamdhully “*was not very well educated*” as there was no evidence of his poor education. We are of the view that it was perfectly legitimate for the learned Magistrate, who had the opportunity of seeing and hearing the witness over a long span of time whilst he was being examined and intensely cross-examined in Court to form an opinion as to his credibility and level of education.

Learned Counsel for the appellant also laid much stress on the fact that the learned Magistrate failed to consider that witness Emamdhully had lied when he said that he failed to attend Court on one occasion because he had to travel to perform pilgrimage (oumrah). According to counsel’s submission, Doc M which was produced by the Passport and Immigration Officer showed that the witness had only travelled to Dubai and not to Mecca. It must first be observed that the witness was never confronted with such an allegation in the course of his cross-examination. Furthermore, the testimony of witness Ramsurn from the Passport and Immigration Office cannot be interpreted to exclude that the witness travelled to other destinations from Dubai after he had travelled from Mauritius to Dubai. In any event, it is common knowledge that at that time persons travelling to Saudi Arabia to perform pilgrimage could travel via Dubai, from where they would take a separate flight to Saudi Arabia.

This evidence, as well as the other instances to which counsel for appellant made reference in support of his submissions that the evidence of witness Emamdhully was not credible, did not relate to any of the material issues which the trial Magistrate had to determine. The learned Magistrate in considering the issue of the overall truthfulness and credibility of witness Emamdhully and the alleged inconsistencies in his evidence came to the following conclusion “*I find that notwithstanding his tendency to depart at times from the version he gave in his statements, and not answering certain questions of learned defence counsel during cross-examination, his evidence on the material issues is credible. I do not doubt that he is telling the truth when he said that the accused informed him that he had committed an offence of dumping soil and solicited and obtained a bribe of Rs 1,000/- from him on 30 May and 1 June 2009, to abstain from issuing him with a contravention*”.

We have found no valid reason to interfere with the decision of the Magistrate to accept as true and reliable the testimony of witness Emamdhully in connection with all the material issues which incriminated the appellant with the commission of the offence. There

was indeed no serious inconsistency which was of a nature to impeach the credibility of witness Emamdhully.

The credibility of witness Emamdhully is indeed further reinforced by the justified finding of the learned Magistrate that both witnesses Inspector Chung Yen and PS Jugroop had fully corroborated the version of witness Emamdhully in all material respects.

Learned Counsel for the appellant also laid much emphasis under additional ground 1 on the fact that the wife of witness Emamdhully was seen leaving Court on 2 or more occasions during the trial in order to speak to her spouse who was standing outside Court. Learned Counsel for the appellant sought reliance upon the case of **Babet v The Queen** [[1979 MR 222](#)] to argue that this has tainted the trial with such unfairness that the only recourse would be to quash the conviction and order a retrial of the case.

Emamdhully explained in Court that his wife who suffers from chronic low backache is unable to sit for a long time and could not remain seated during the whole of a long hearing. The witness added that she never spoke to her when she came out of the court room.

The facts of this case are easily distinguishable and very much different from those which arose in the case of **Babet (supra)**. In that case counsel who was retained by a witness for the prosecution appeared at the trial as one of the counsel for the accused. The evidence showed that he had done so in order to act as a spy in order to discover what were the plans of the defence and betray the plans of the defence to the witnesses for the prosecution, who had also retained his services.

In the present matter, the spouse of witness Emamdhully was not a witness in the case and there was nothing that prevented her from being present in Court during the hearing. Nor is there the least indication that she communicated with her spouse about evidential matters which she heard whilst in Court in a manner which could impact upon the fairness of the trial.

It was submitted under additional grounds 2 and 3 that the learned Magistrate erred in finding that the prosecution evidence remained unchallenged inasmuch as prosecution witnesses had given the lie to witness Emamdhully.



The learned Magistrate examined carefully and in a detailed manner all the evidential issues which had been raised by the defence arising from the testimony of both PC Appadoo and PC Nilmadhub and in relation to all the alleged contradictions and shortcomings in the prosecution's version. The learned Magistrate referred extensively to the evidence which lend support to her decision to reject PC Appadoo's contention that he could have heard the conversation between appellant and Emamdully on 30 May 2009 and that he would have seen the handing of money to the appellant, if there had been any. Likewise she explicitly pointed out how the evidence of both witnesses Chung Yen and Jugroop forcefully rebutted any claim by PC Nilmadhub that the appellant was not cautioned when he was stopped in his van by the ICAC officers on 1 June 2009.

We see no reason to interfere with the learned Magistrate's appreciation of the evidence which is fully borne out by the tenor of the evidence on record.

The learned Magistrate also rejected any suggestion of entrapment. Rightly so in our view, since the ICAC officers and Emamdully did not lead the appellant into committing the offence. The evidence has indeed established that it was the appellant who, on his own accord asked for the bribe and proceeded to the parking of the Mahatma Gandhi State Secondary School Moka in order to collect same from Emamdully.

The ICAC officers did no more than keep a close watch in order to ensure that the appellant did not get away following the commission of the offence.

We accordingly find no merits in any of the arguments raised under ground 4 and under additional grounds 1, 2 and 3 which must also fail.

It was submitted by Counsel for the appellant under additional ground 4 that the learned Magistrate erred in concluding that the failure of the ICAC officers to enquire from Mr Moonien whether he had offered soil to the appellant was immaterial. Whether the appellant had indeed obtained a load of soil from Mr Moonien or not is obviously immaterial to the determination of the essential question which was whether appellant had solicited and obtained a bribe from Emamdully in order not to book him for an offence.

Additional ground 4 therefore also fails.

Additional ground 5 reads as follows:

*“The learned Magistrate should have taken into consideration the fact that the declarant had stated in evidence that he only supposed Appellant was to contravene him and never hold him that he was to take him into contravention”.*

That ground is clearly misconceived inasmuch as witness Emamdhully clearly stated in Court that appellant insisted that he had dumped soil on Fon Sing’s property and that he would abstain from booking him in exchange for a bribe. This is unambiguously conveyed by witness Emamdhully when he stated in Court *“ça veut dire si mo donne li cash la, li laisse moi aller”*.

All the grounds of appeal having failed, the appeal is dismissed with costs.

**A. Caunhye  
Judge**

**G. Jugessur-Manna  
Judge**

**08 February 2019**

**Judgment delivered by Hon. A. Caunhye, Puisne Judge**

**For Appellant : Mrs Attorney A. Ragavoodoo  
Mr Y. Mohamed, SC**

**For Respondent No. 1&3: Mrs D. Dabeesing Ramlugan, SSA  
Mr D. Bhatoo, of Counsel**

**For Respondent No. 2:**      **Mr Attorney S. Sohawon,  
Mr H.Ponen, of Counsel, together with  
Mrs A. Rangasamy-Parsooramen, of Counsel**