

Cause Number:600/13

IN THE INTERMEDIATE COURT OF MAURITIUS

In the matter of :-

POLICE

VS

PUSSKARSINGH RAMLUGUN

Ruling

1. Accused stands charged with the offence of Public Official using his office for gratification in breach of section 7(1) of the Prevention of Corruption Act. The accused pleaded not guilty to the charge and he was assisted by counsel.
2. At the close of the case for the prosecution, defence counsel made a submission of no case to answer and the matter was fixed for argument. Before going into the arguments, it is relevant to set out the evidence relied upon by the prosecution to substantiate its case.

FACTS

3. Witness no.14, Mrs Beedasy, produced a letter from the Irrigation Authority dated 07/12/11 which indicated that the accused had joined Irrigation Authority on 17/03/1984 as "Irrigeur". The letter was marked as Doc A and she stated that the last posting of the accused was 'driver in acting capacity.'
4. Witness no.15 was called and testified as follows :
 - (i)Following a Judge's Order Mauritius Telecom has communicated Itemised Bill for mobile phone bearing numbers 7887977, 7597728 for the period of 15/10/11 up to 30/11/11;

- (ii) The mobile number 7887977 is in the name of Ramlagun Pusksarsingh and mobile number 7597728 in the name of one Nilesh Jootna;
- (iii) On 28/11/11 at 9.11 hours there was a call from mobile phone number 7597728 to mobile number 7887977;
- (iv) On 25/11/11 at 9.46 hours there was a call from mobile phone number 7597728 to mobile number 7887977;
- (v) There was an incoming call from mobile number 7887977 to mobile number 7597728;
- (vi) On 23/11/11 there was a call from mobile number 7597728 to mobile number 7887977.

She produced the Itemised Bill and the Letter which were marked as Doc B-Doc B1.

5. Witness no.16, Pc Ramroop deposed to the fact that on 07/12/11 at 9.40 hours he carried out a reconstruction exercise in the present matter under the supervision of witness no.1. He took nine photographs under the instructions of witness no.1 . He produced one album photo containing nine photographs which were marked as Doc C- Doc C1- Doc C9. He stated that photograph Doc C1-Doc C4 were taken in presence of witness no.4, witness no.2 and witness no.3. The photographs Doc C5-Doc C8 were taken in presence of accused and his counsel and photograph Doc C9 was taken in presence of witness no.3.

6. Witness no.17, Cpl Hurgobin, testified to the fact that on 07/12/11 at 9.40 hours he carried out a reconstruction exercise at Branch Road Fond du Sac. Under the instructions of witness no.1 and in presence of accused, witness no.4, witness no.2, witness no.3 and Mr Purgass he took down notes and measurements following which he put up a plan of the locus. He identified the plan and the Legend and produced same which were marked as Doc D- Doc D1- Doc D2. He stated that plan marked as Doc D1 is an accurate image of the spot.

7. Witness no.25, Mr Teeluckdharry, produced one sealed plastic bag containing one Rs1000 Bank Note and one Rs500 Bank Note and was marked collectively as Exhibit 1.

8. Investigator Jaykurrun, witness no.18, identified Exhibit 1 and confirmed that no one has tampered with the said Exhibit.
9. Witness no.19, CI Sawmy, produced statement dated 28/11/11, 07/12/11, 17/07/12 and 27/09/12 which were marked as Doc E, Doc E1, Doc E2 and Doc E3 respectively
10. Mr Beejan, witness no.7, testified to the fact that he joined Irrigation Authority in 2005 as Operation Officer and in 2011 he was posted at the sub-office of Plaine des Papayes. He was responsible for Block 2 and Block 3 and he was responsible for overall irrigation. His duty consists of being in charge of irrigation equipment, to schedule irrigation operation and to record complaints or request of planters. He confirmed that in 2011 accused was working as acting gangman and acting driver in Block 3. He stated that the main duty of the gangman is to be responsible for the operation on the site. He stated that their duty is to mantle and dismantle the sprinkler on the water hydrant and they must open and close the water hydrant. He said that the accused was working in a team. He stated that the water hydrant belongs to the Irrigation Authority and no other person is authorized to open the water hydrant. He explained that if an officer in the grade of gangman discovers water theft he should inform the supervisor and the latter will go and check the site to determine whether it is a genuine case. After investigation the supervisor would report the matter to the police. He stated that he would investigate the matter as to why there was water theft because the Irrigation Authority does allow planters to use the water for certain purposes. He said that there was no case of water theft against Mr Jootna, witness no.4. He maintained that he did not give any instructions to the accused to speak to Mr Jootna concerning any case of water theft in or about November 2011.

Under cross-examination he stated that he cannot confirm the status of the accused as per letter dated 7th December 2011 [Doc A Refers] as this is for the administrative department to carry out this exercise. The letter [Doc A Refers] was shown to the witness and he confirmed that the accused was employed as Acting driver.

In re-examination he stated that the substantive post of the accused at the Irrigation Authority was Irrigreur.

11. Witness no.21, Ex-Investigator Sookun, testified to the fact that on 07/12/11 he witnessed SI Domun recording the defence statement of the accused [Doc E 1 Refers]. He identified and read the statement in Court.

12. Witness no.2, CI Chung Yen, testified to the fact that on 28th November 2011 he carried out a sting operation and he confirmed that he was not involved in any other part of the enquiry. He stated that on 28th November 2011 he was instructed by his superior officer to conduct a sting and control remittance operation following the request of witness no.4, Mr Jootna for a case of bribery against his person. He proceeded with Investigator Purgaus, Pc Sandoram and other officers at Fond du Sac and reached there at 8.25 hours. When he reached Fond du Sac he met with witness no.4 who showed to him a white envelope containing one Mauritian bank note of Rs1,000 bearing number AZ221434 and Mauritian Bank Note of Rs500 bearing number AQ656565. He stated that upon solicitation of the accused witness no.4 intended to remit this envelope containing the money to the latter. He stated that the team of officer remained in the agricultural field of witness no.4 and waited for the accused to come. At 9.20 or 9.25 hours he saw a white van with the name of Irrigation Authority printed on the door stopped near the orchard and there was only a driver in the vehicle. He saw Mr Jootna walking towards the white van and spoke to the driver. After a couple of seconds he saw Mr Jootna removing a white envelope with his right hand from his right pocket of his trousers which he remitted to the driver who took it with his left hand. After witnessing the event the driver drove away and Mr Jootnah came back to his orchard. The team got into their vehicle and pursued the vehicle of the Irrigation Authority. They pursued the vehicle for about 500 meters and signaled it to stop. He alighted from the vehicle of ICAC, informed accused of his identity and the purpose of his intervention. He informed the accused that he was an ICAC officer and he was here following an allegation of a case of bribery. He informed the accused that he was a suspect, informed him of his constitutional rights and that a bodily search would have to be carried out on his person to which he agreed. He

instructed Pc Sandoram to carry out the bodily search on the accused in his presence. Pc Sandoram removed from the left sock of the driver a white envelope. Pc Sandoram opened the envelope and he found Rs1000 bank note and the Rs500 bank note which Mr Jootna showed to them previously. He cautioned the accused, informed him of his constitutional rights and he replied as follows: "donne moi ene chance monsieur." He said that the driver gave his name as Mr Ramlugun. He asked the accused to give the name of his supervisor so that an officer of the Irrigation Authority could collect the vehicle as accused was needed for enquiry purposes. He said that an officer from Irrigation Authority came to collect the van and accused voluntarily accompanied the ICAC officer. He maintained that he had cautioned the accused on two occasions and the latter was perfectly aware of what was happening. He stated that on their way out of the orchard, Mr Jootna was standing by his orchard and he came towards the van and he identified Mr Ramlugun as being the person to whom he gave the money.

In cross-examination he stated that he was not aware that in statement dated 28th November 2011 accused denied having said "monsieur donne moi enn chance." He maintained that accused replied "monsieur donne moi ene chance" to him.

13. Witness no.22, Pc Purgaus, testified to the fact that on 28th November 2011 he formed part of the team directed by CI Cheung Yen who stopped the accused in an agricultural field at Fond du Sac. He stated that during the remittance exercise an envelope was found in the left sock of the accused and the envelope contained a Rs1000 bank note and Rs500 bank note. Then accused was duly cautioned, he was informed of the allegation and he answered as follows: "monsieur donne moi ene chance". Pc Sandoram kept the envelope containing the bank notes as Exhibit.

Under cross-examination he maintained that he was present when accused said "monsieur donne moi ene chance "after they had removed the envelope from his sock.

14. Witness no.8, Mr Ramphul, deposed to the fact that he has been working at Irrigation Authority as Irrigeur since 17th March 1984. He stated that in 2011 he was working as supervisor and his main duty consisted of site visits of the orchard of planters. He explained that there is a complaints book in which the complaints of the planters are recorded. He said that once the complaint is recorded there is an investigation and then appropriate actions are taken. He confirmed that Mr Jootna is a planter and for the purpose of Irrigation he is found in Block 3. He stated that in 2011 he did not receive any complaints in respect of Mr Jootnah.

15. Witness no.24 testified to the fact that in 2011 he was working as driver at Triolet Bus Service. He stated that he was owner of a field found at Branch road Fond du Sac. He stated that the Irrigation Authority would irrigate the field and if they fail to irrigate the field he would report the matter to the office. In 2005 and 2006 he made complaints to the Irrigation Authority as part of the field was not irrigated properly. He stated that in 2011 he did not make any complaints against Mr Nilesh Jootnah.

16. Witness no.4, Mr Jootnah, testified to the fact that in November 2011 one Mr Ramlugun approached him and told him that there was an irrigation case which was reported at Plaines des Papayes police station and a police officer residing at Barbeau is asking for Rs1,500 to resolve the case. He explained that he found it strange that a person from Morcellement St Andre would go and drop Rs1,500 at Barleau .He explained that there is leakage in the field in respect of irrigation but this has nothing to do with him. He testified to the fact that Mr Ramlugun asked him money to remit to a police officer so as to file a police case against him. He stated that he did not have the intention to remit the money to Mr Ramlugun however he decided to trap him. He went to ICAC to give a deposition and the ICAC team decided to set a sting operation. He explained that on 28th November 2011 in the morning he was in company of his brother in the field and ICAC dressed like planters were also present in the field. He also stated that before starting the sting operation he gave a statement in respect of the number of the bank notes. He also explained that he put one Rs1000 bank note and one Rs500 bank When Mr Ramlugun came in his 4 x 4 which was an official van for Irrigation Authority he had to go on the

road to talk to him. Then Mr Ramlugun asked him whether he was on possession of the Rs1,500 and he remitted the money to Mr Ramlugun. As per the testimony of witness no.4 Mr Ramlugun remained in his 4X4 and he was alone. He stated that once Mr Ramlugun received the money he drove away. He said that he did not see where Mr Ramlugun kept the money. He denied the fact that he had borrowed money from the accused as at that time he did not have any financial problem . He said that he had never borrowed Rs1,500 from the accused.

In cross-examination witness no.4 maintained that the money which he remitted to the accused was to be remitted to a police officer to file a case against witness no.4. He also stated that accused came at his place to collect the money to remit the sum of money to the police officer. He maintained that he did not borrow any money from the accused.

Case Closed For Prosecution

The Court has duly considered the submission of no case to answer in the light of the evidence of the prosecution and the arguments of both counsel.

DETERMINATION

➤ LAW

17. In the case of **R v Galbraith [1981] 2 ALL ER 1060** Lord Lane laid down the following guidelines to be followed in considering a submission of no case to answer, which we propose to apply in the present matter:

“How then should the judge approach a submission of “no case”? (1) if there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the Crown’s evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the Crown’s evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability, or other matter which are generally speaking within the province of the jury”

The case of DPP v Afsar A.A.Ebrahim [2017] SCJ 334 cited the case of Chief Constable of Police of Northern Ireland v LO [2005] NICA 3 in respect of the test to be applied where a submission of no case to answer is made before a Magistrate sitting without a jury and the passage is reproduced hereunder:

*“The correct approach to be adopted by the learned Magistrate upon a submission of no case was laid down in **Chief Constable of the Police Service of Northern Ireland v LO** [supra], where the case law was reviewed and where it was held that:*

“(2) The exercise on which a magistrate or judge sitting without a jury at the direction stage had to embark, in order to decide that a case should not be allowed to proceed, was to consider whether the prosecution evidence, taken at its highest, was such that he was convinced that there were no circumstances in which he could properly convict. Where evidence of the offence charged had been given, the judge could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict. Such a consideration was unlikely to occur other than at the direction stage when an assessment of the strength of the evidence against the accused would most conveniently be made.”

...

*“[14] The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in **R v Galbraith** ([1981] 2 All ER 1060). The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is a tribunal of fact. It is important to note that the judge should not ask himself the question at the close of the prosecution case, ‘do I have reasonable doubt?’. The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict.”*”

The case of DPP v A.A.Ebrahim [Supra] also held as follows :

*“The decision in **DPP v Dawoonarain** [supra], is consistent with these principles since it was held in that case that it is trite law that at the stage of a submission of no case to answer there need only be a prima facie case and that Magistrates should be careful in their rulings not to use words which could suggest that they are looking for evidence enabling them to determine conclusively the existence of a fact.”*

Therefore, in determining the merits of the submissions of no case to answer, the Court must be satisfied that:

- (1) either there is no evidence that the offences charged have been committed by the accused;
- (2) or that the evidence is such that even taken at its best the accused cannot be properly convicted.

In addition as stated in the case of DPP v A.A.Ebrahim [Supra] the evidence of the prosecution must show that there is a prima facie case against the accused .

18. Accused is charged with the offence of public official using his office for gratification and as stated in the case Jhurry v ICAC [2015] SCJ 258 the prosecution must establish the following elements:

“(1) The person charged is a public official;

(2) he made use of his office or position as a public official;

(3) in order to obtain a gratification either for himself or for another person.”

19. *Was the accused a public official in November 2011?*

It is undisputed that the accused had joined Irrigation Authority on 17/03/1984 as an Irrigreur [Doc. A Refers] and Mrs Beedassy stated that the last posting of the accused was driver in acting capacity. It is clear that he is a public official within the meaning of section 2 of the POCA at the material time

20. *Did the accused make use of his position as a public official?*

As per the testimony of witness no.7 the duties of the accused consisted of attending calls, opening water hydrants and irrigating the fields upon request. He explained that if as a gangman the accused received a complaint about the theft of water he has to report it to the head of the department. As per the letter produced [Doc A Refers] accused was posted as Acting Driver from 21st August 2000 to 28th November 2011. As per the evidence of witness no.4 accused asked him to give Rs1,500 to give to a police officer to file a case against him. The payment of Rs1,500 was given to the accused to be remitted to a police officer to ensure that the case against witness no.4 is filed. The accused in his

capacity as a driver does not have the power to file a police case. The particulars of the information are as follows:

“In or about the aforesaid month and place, the said Pusksarsingh Ramlugun, whilst being the Acting Driver at the Irrigation Authority obtained from one Nilesh Jootna, sum of Rs 1,500 which was allegedly destined to a police officer investigating into a case of larceny of water against the said Nilesh Jootna.”

The argument of the prosecution is that the accused being an officer of the Irrigation Authority made use of his position to induce a planter to believe that a case of water theft has been reported against him and money had to be remitted to him so that the police case be set aside. There is evidence on record that he made witness no.4 believe that there was a police case against him but this is not sufficient to establish this element. He must use his position to obtain the gratification i.e the Rs1,500. This was made clear in the case of **ICAC v Seeneevassen [2012] SCJ 328** where it was held as follows :

“Moreover, the first count charged the respondent with making use of his position to obtain the sum of Rs 2,600. There is no evidence, however, that the respondent obtained the money because he was a police officer. Section 7 of the Act seems to cater for the situation where a public official uses his position, for example, to award a contract to a company in which he and his spouse own all the shares: vide section 7(2). As indicated above, the respondent did not obtain any “gratification” as the money was remitted to him as an agent – and not as a police officer – to pay for a debt.”

As per the evidence, witness no.4 had to remit to the accused the sum of Rs1,500 to remit to a police officer who resides in Barleau to file the police case. The fact remains that as an acting driver he could not use his position to file a police case. Hypothetically if the accused had requested witness no.4 to give him Rs1,500 and he will not report the matter to his supervisor then he would have used his position to ensure that no enquiry is carried out about the alleged water theft.

21. *Obtaining gratification for himself*

There is undisputed evidence on record that witness no.4 has remitted the sum of Rs1500 to the accused on the material day and this version was confirmed by witness no.2 CI Chung Yen who conducted the sting operation. However the fact that he has received Rs1,500 does not show that he made use of his position as acting driver to file a police case against witness no.4.

22. Conclusion

After carrying out an assessment of the strength of evidence led by the prosecution the Court is of the opinion that “there are no circumstances in which she could properly convict”, Chief Constable of the Police Service of Northern Ireland v LO [supra].

That being the case the motion of submission of no case to answer should succeed.



**[Delivered by Ag Vice President Intermediate Court (Civil Div) :
N DAUHOO]**

[Delivered on 10th December 2021]