

ICAC V Ashwin Raja Toolseeya 2024 INT 5

Law: Prevention of Corruption Act 2002 (POCA)

Section: Section 10 (5)

Offence: Traffic d'Influence

Plea: Not guilty

Facts: Accused holds a permanent and pensionable post of Project Supervisor at the National Computer Board ('NCB'). ICAC initiated an enquiry in the matter following a complaint made by Miss Poojakumari Ramjattan (witness no. 3).

Witness no.3 was the president of Techno Woman Organization ('TWO'), a non-governmental organization. TWO was promoting women in the field of technology.

TWO was promoting women in the field of technology and had been accredited by the MQA, as a training institution, since July 2014. On 10 June 2015 TWO sent a letter to several ministries in respect of a project relating to training courses in website design, PHP and CCNA. TWO, together with the NCB, were to carry out the project with an initial amount of 432 candidates.

On 16 March 2016 she sent a letter of complaint, against accused, to the ICAC. She explained that accused told her two or three times "... *de faire labouche doux et nous bisin reste bien avec bann misse la haut ...*". Since the project was not materializing and that the registration of TWO was about to be cancelled, she understood that "... *faire labouche doux ...*" meant that accused was asking for a bribe in order to make the project work. Witness no.3 also explained that accused did not say more than "... *simplement reste bien avec ban missiés la haut la et fer la bouche doux ...*". She could neither tell the date or year in which nor the exact place where, accused allegedly told those words. It also came to light that the project did not materialize.

ICAC investigator conceded that the complaint made by witness no.3 came only four months after the alleged act of solicitation. He also conceded that the only evidence against accused is the allegations of witness no.3 and Mr. Vishal Nowbuth (witness no.4).

As per the allegations the act of solicitation was for a percentage of the amount of the project and that accused never solicited Rs. 200,000/- as particularized in the Information. However, ICAC investigator explained that the Rs. 200,000/- does represent the 10% solicitation as alleged by witness no.4 since the amount of the project was Rs. 2 million.

The submissions of both prosecution and defence were geared towards showing that the main witnesses for the prosecution were either credible or not.

The prosecution submitted that both witness no.3 and witness no.4 were credible witnesses and that the Court can rely on their respective testimonies to find that the case against accused has been proved beyond reasonable doubt.

On the other hand, the defence highlighted the numerous contradictions and shortcomings in the testimonies of both witness no.3 and witness no.4 and submitted that it would be unsafe for the Court to rely on such testimonies.

In the present case, the prosecution must prove, beyond reasonable doubt, that:

I. accused was a public official;

II. accused wilfully solicited a gratification from another person, i.e., a sum of Rs. 200,000/- from one Poojakumari Ramjattan and one Vishal Nowbuth; and

III. in order to make use of his influence to obtain a benefit from a public body, i.e., to obtain the approval of the Mauritius Qualification Authority (MQA) for Techno Woman Organisation to be offered the training contract to deliver the Cisco Certified Network Associate (CCNA) Course.

I. accused was a public official;

It was established that accused, being an employee of the NCB at the material time, is deemed to be a public official.

II. accused wilfully solicited a gratification from another person, i.e., a sum of Rs. 200,000/- from one Poojakumari Ramjattan and one Vishal Nowbuth;

It is undisputed that the case for the prosecution rests solely on the testimony of those two witnesses. Witness no.3, during her testimony, stated that accused said no more than “... *simplement reste bien avec ban missiés la haut la et fer la bouche doux ...*” which she understood that accused was asking for a bribe.

On the other hand, witness no.4 stated that it was during another meeting that accused explicitly asked for 20% of the value of the project amounting to Rs. 200,000/-.

However, witness no.3 testimony resolves to the fact that accused did not say more than “... *simplement reste bien avec ban missiés la haut la et fer la bouche doux ...*”.

The prosecution, not having confronted witness no.3 with any previous inconsistent statement on this issue, has led that material part of her testimony to be diametrically different from that of witness no.4 who stated that accused solicited 20% amounting to Rs. 200,000.

Held:

Both witnesses have been more than scrumpy in their respective testimonies. Given that 7 years has elapsed since the alleged act of solicitation, it is understandable that a witness may not remember certain things, including exact dates and time. However, the place where accused allegedly made the solicitation of Rs. 200,000 would be a conspicuous occurring that should normally be easily remembered.

However, witness no.3 could not remember the place where accused allegedly stated “...*reste bien avec ban missiés la haut la et fer la bouche doux ...*”. Witness no.4, on the other hand, could not remember the place where accused allegedly solicited the Rs. 200,000. He could merely remember that accused asked for Rs. 200,000/- and nothing more. He could neither narrate nor remember the conversation which must have taken place.

The testimony of both witness no.3 and witness no.4 in respect of the alleged solicitation of Rs. 200,000 is material and goes to the crux of whether accused did solicit that sum of money from them.

In fact, witness no.3 did not depose at all in relation to the alleged act of solicitation which was confronted to accused. On the other hand, witness no.4 seriously contradicted himself as to what happened after that money was allegedly solicited by accused. His version on this issue, as explained earlier, was not only different in chief and during cross examination but was also different from his version he gave to the ICAC. He could not even relate the conversation which took place between accused, himself and witness no.3 when accused allegedly solicited Rs. 200,000. Witness no.4, in fact, conceded that he does not remember anything of that conversation. To remember, verbatim, such a conversation would surely be a herculean task that is not expected from a witness.

However, such a witness would be expected to relate, at least ‘*en gross modo*’ the conversation which took place. It cannot and does not suffice that a witness merely remembers 20% and Rs. 200,000/- in respect of the act of solicitation. The conversation, be it ‘*en grosso modo*’, which brought along the act of solicitation is material for the Court to assess the overall credibility of such a witness.

Given the material contradictions and scantiness in the testimony of both witnesses, the Court found it unsafe to rely on such testimonies to find that that accused solicited a sum of Rs.200,000. The Court also found it quite disturbing that, as per the letter sent to the ICAC by witness no.3, there is no mention of the percentage of the contract amount nor Rs. 200,000 allegedly solicited by accused. That would normally be an important piece of information that one would expect to find in that letter.

The Court concluded that the prosecution has failed to prove, beyond reasonable doubt, that accused solicited a sum of Rs. 200,000 from witness no.3 and witness no.4.

III. in order to make use of his influence to obtain a benefit from a public body, i.e., to obtain the approval of the Mauritius Qualification Authority (MQA) for Techno Woman Organisation to be offered the training contract to deliver the Cisco Certified Network Associate (CCNA) Course.

Given that the prosecution has failed to prove, beyond reasonable doubt, that accused solicited a sum of Rs. 200,000 from witness no.3 and witness no.4, the Court did not proceed to make a determination on this aspect.

The charge against accused is dismissed.