**ICAC V Rajcoomar Ram and Satyanand Bhoyroo - CN 17/20**

The accused parties were charged under five counts for the offence of bribery by public official under sections 4 (1) (b) and 4 (2) of the Prevention of Corruption Act [“POCA”]. Accused 1 was charged under counts 1 to 4 and Accused 2 was charged under count 5. Both accused have pleaded not guilty to the charge.

**Facts:**

Accused No 1 being a public official has obtained a personal gratification from one Mr Bhardoiaj Maunthrooa (witness 3) in the sums of Rs 25, 000, Rs 35, 000, Rs 10, 000 and Rs 25, 000 respectively, on several occasions during the year starting from 2002 to 2006.

Accused 2 being a public official has solicited a personal gratification of 20 % commission in respect of tender 34/ 2006-2007 from witness 3.

The Prosecution’s case is that both accused had obtained bribe money and solicited a 20 % commission and according to the prosecution this related to the approval of the tender submitted by witness 3 and the subsequent contract obtained by the latter regarding uniforms for the Fire Services.

**Court Analysis:**

The Court referred to the case of **Gowry v ICAC SCJ 499** to illustrate the elements of offence under section 4 (1) (b) of POCA which the prosecution must prove, namely, the appellant was a public official; he had accepted from another person for himself a gratification for doing an act which is facilitated by his duties.

The Court has also considered the case of **Mahadeo V ICAC 2017 SCJ 295** where the prosecution’s case rested mainly on the testimony of the main witness one Mr Desai and the conviction was quashed because the latter’s testimony was found to be unsafe.

In the present matter, the bone of the contention concerns whether the testimony of witness 3 can be relied upon as being credible, trustworthy, and coherent in order to reach the conclusion that the prosecution had proved its case beyond reasonable doubt.

It is to be noted that the other witnesses that the prosecution has called did not testify on the act of bribery but have only produced documentary evidence.

During the cross examination of witness 3 the court observed that there were inconsistencies in the testimony of the witness 3. The versions which witness 3 came up in court were never mentioned at enquiry stage. They are facts which any reasonable witness would have mentioned in an out of court statement.

**Held:**

From the testimony of witness 3 the Court concluded that the latter is not a credible, coherent, and trustworthy witness. The Court cannot safely rely on the testimony of witness 3 to convict Accused 1 and 2.

Moreover, the court observed that the demeanor of witness 3 in the witness box was poor and the major inconsistencies and the serious “omissions” in his out of court statement shows that he may have an axe to grind against the accused parties.

Thus, Accused 1 and 2 were given the benefit of the doubt under the five counts.