

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

1. Rajendra RAGGOO
2. Yogeshwarsing PRYAM

JUDGMENT

1. The accused parties have been prosecuted together, with the offence of Bribery of Public Official in breach of sections 5(1)(b) & (2) of the Prevention of Corruption Act 2002. They both pleaded not guilty to the Information and were inops consilii throughout the proceedings. The prosecution was represented by Mr Ponen for the then ICAC.

CASE FOR THE PROSECUTION

2. Witness no.3, PC Mannaram, produced two booklets of four photographs each as **Doc A (A1 to A4)** and **Doc B (B1 to B4)**. The photographs were taken in presence of the accused parties at Royal Road Montagne Longue and Dawrka Street Montagne Longue.
3. Witness no.2, Investigator Pravesh Jaykurun, produced the defence statement of accused no.1 as **Doc C**. He stated that he worked at the complaints section of the then ICAC and the accused no.1 came in to provide information related to the current case.



4. During cross-examination from the accused no.1, the witness denied the allegation that the accused no.1 was given a guarantee that he will be used as a witness in the case and not be prosecuted. The witness stated that the accused no.1 made a complaint in presence of his legal representative and he was informed of his constitutional rights when he put up his defence statement. The witness did not give any guarantee to the accused no.1. He reiterated that he was involved only in the recording the accused's complaint and defence statement.
5. Witness no.1, Investigator Lobin, stated that he was the main enquiring officer in the case. He produced the second defence statement of accused no1, as **Doc C1**. He further produced three defence statements from accused no.2 as **Docs D, D1 and D2**.

He commented on the photographs as follows: Doc B1 shows the place where both accused parties met DI Derochoonee. Doc B2 shows the shop 'Smart Price Electronics'. Doc B3 shows the place where Rs25,000 was allegedly remitted to DI Derochoonee. He further stated that on 23.12.20, accused no.2 handed over his mobile phone, of make Samsung Galaxy Note 9, in presence of ICAC officers. The said mobile phone was examined and the phone numbers 59440312 under the name of 'DI Derock' and 52509111 under the name of 'Inspecteur Der' were stored in it.

6. Under cross-examination from accused no.1, the latter confronted the witness to the fact that he was promised that he would not be prosecuted by be used as a witness in the case against DI Derochoonee. The witness denied any promise made. The issue that there should have been a provisional charge lodged against the accused, had the authorities intended to prosecute him, but there was none in this case. The witness replied that there was no issue of bail for the accused as he was not a risk in at pre-trial stage. The accused went voluntarily to put up a statement, so there was no risk of absconding and the accused stated that he would cooperate. The accused reiterated that there was no provisional charge because he was promised that he would be used as a witness in the case.
7. The accused no.2 cross-examined the witness to the effect that he was detained in prison where he put up his statement for this case and he was promised to be released. The witness replied that the accused no.2 was detained for another case, so he could not have been promised to be released for another case. But



after his release, he went to the ICAC to put up another statement. The witness agreed that, as per the out of court statement of accused no.2, DI Derochoonee asked him for money. During re-examination, the witness stated that the version that the accused recounted in prison is part of the defence statements produced in court. He stated that with regards to provisional charges for ICAC cases, suspects are arrested and brought before court after there is sufficient evidence that he may have committed an offence, not before.

8. Witness no.4, ASP Gukhool, stated that he was posted at the Central Investigation Division (CID) Northern Division in September 2019 and he supervised CID of Terre Rouge. He briefly described his duties for the northern division. For the year 2019, he stated that one former DI Derochoonee was in charge of the CID of Terre Rouge. According to him, Mr Derochoonee worked more or less on his own. He did not report much of his work in his region. For the case of 'Dreamprice' he was not aware of the situation until ten days after the facts. He learned it from 'Facebook' and he contacted Mr Derochoonee. The latter explained to him the case, and surprised that he was not informed of it beforehand, the witness gave instructions to effect arrests upon the individuals involved. He referred to accused no.2 as one of the individuals involved in the said case. After having given his instructions, the witness was unaware of the unfolding of the enquiry thereafter. He denied having asked or received money in relation to the said case.
9. Under cross-examination from accused no.1, the witness stated that he viewed a video footage on social media, i.e. 'Facebook', showing a violent altercation involving numerous individuals, before ordering arrests. He admitted that he did not view the complete footage from CCTV cameras found on the spot. He was transferred from his posting before the end of the enquiry. However, he stated that upon the viewing of the footage on social media, it was sufficient to effect arrests. On the material day, he used his mobile phone to contact the one Mr Derochoonee to give his orders. The accused no.2 alleged that the witness stated in court that he came to know about the situation eight days after the event. The witness denied same and stated that it was about three or four weeks after, that he put up an operation to effect the arrests. He could not answer the allegations that the accused no.2 was physically attacked by other individuals and police officers asked for money in relation to the case.
10. Witness no.5, Mrs Sharmila Geeruthsing, stated that Mr Huriduth Derochoonee joined the police force on 10.02.92 as a police constable. He was



promoted to inspector on 02.02.17. On 14.09.19, Mr Derochoonee was still in post and he was interdicted on 20.08.21.

CASE FOR THE DEFENCE

11. The accused no.1 made a statement from the dock. He stated that he did eight months on remand for the connected case enquired by the police. After his release, he went to the then ICAC and explained the case where DI Derochoonee was involved. He incriminated the one DI Derochoonee and alleged the evidence required to bring a case against him. He was guaranteed that he would become a witness in the case against DI Derochoonee and that was the reason that there was no provisional case against him, which would have been the normal course of action. He explained the circumstances in which he gave the Rs25,000. DI Derochoonee phoned him and asked for a meeting at the former's place of residence. He was informed that the case against him and the person, now accused no.2, will be lodged against them. However, he was asked to pay Rs100,000 so as not to effect arrests of their workers. Some were elderly individuals. He refused at first, but he was told that the money was for persons above Mr Derochoonee's paygrade. The accused stated that he felt that he had no choice and took Rs25,000 which he had kept in the glove box of his car and handed it over to Mr Derochoonee. He further explained that he paid the money only not to arrest his workers because they were not involved in the case. Furthermore, with regards to the police case, he alleged that he did his job, he acted in self-defense.
12. The accused no.2 gave evidence under solemn affirmation. He stated that he was a director in Blue Arctic Services, which is a company dealing in security services. He seemed to mean that he was in sole control of the accompany. He stated that the said company did not have a permit to carry out security services. He was working for 'Dreamprice' offering security services. He apprehended numerous thieves. He worked in the area of Terre-Rouge, and as such Mr Derochoonee approached him, together with one SP Jhummun and one SP Arnasala. The accused lengthily described his phone conversations and face to face meetings with Mr Derochoonee regarding the case at 'Dreamprice'. He was told that his workers would be arrested. He did not have a permit for his security business. He was told to pay Rs100,000 but initially refused. Mr Derochoonee then threatened to arrest his workers, as opposed to the accused himself. The latter finally gave him Rs25,000 because he was forced to do so.



He was visited by ICAC officers when he was in prison. He gave his statements when he was released and he was informed that he would be used as a witness in the case against Mr Derochoonee. There was no provisional case lodged against him.

13. Under cross-examination, the accused no.2 confirmed that he put up three statements at the ICAC. An extract from his defence statement, Doc B1, was read to him, starting at folio 247437. The gist of the version of the accused no.2 at Doc B1, was that Mr Derochoonee accepted the Rs25,000 so that both accused parties and their workers are not arrested. He stated that one Mr Shafeek Mungroo did the same job as security for 'Dreamprice'. There was an altercation with the one Mr Mungroo at 'Dreamprice', together with a number of other individuals. Both accused parties assaulted eighteen persons, allegedly in self-defence. As a result of the said incident, the accused went to the police station for enquiry purposes and he was let go on the day. He stated that the other protagonists of the fight were vengefully looking for him, as per the information given to him by the police. The accused was asked to comment on the photographs produced. He maintained that he never said that he gave money so as not to arrest him, despite the fact that the extract from his defence statement was read to him in court.

ASSESSMENT OF THE COURT

14. Both accused parties are jointly charged with the offence of bribery under sections 5(1)(b) & 2 of the Prevention of Corruption Act (POCA) which is reproduced below:

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

(b) doing or abstaining from doing, or for having done or abstained from doing, an act which is facilitated by his functions or duties;

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(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).*



15. It is not disputed that both accused parties gave the one Mr Derochoonee the sum of Rs25,000. Mr Derochoonee was a Police Inspector at the material time and was in charge of CID of Terre-Rouge as per the evidence of witness no.4. It is further agreed that the two accused parties were involved in a case of assault with premeditation where a group of security officers including the accused parties had assaulted each other. Irrespective of the outcome of the said police case, both accused parties were arrested. Before the said arrests, the sum of Rs25,000 was given to Mr Derochoonee. The payment of the sum of money was thus related to the assault case, nicknamed the 'Dreamprice' case. It is manifest that the remittance of Rs25,000 by the accused parties to a public official cannot be viewed as a legitimate transaction or which would have arisen in the normal course of the public official's duties. I therefore find that the remittance of the said sum of money is qualified as a 'gratification' as per the definition enacted under **section 2 of POCA**.
16. The only contention against the prosecution's case by the defence is that the Rs25,000 was given to Mr Derochoonee so that their workers or employees are not arrested in connection with the 'Dreamprice' case. Both accused parties gave evidence to the alleged fact that their own arrests were not the reason for the payment of the money, but rather the arrests of their employees. In fact, the accused parties stated in court that they told Mr Derochoonee to arrest them, but not their employees. Hence the defence case is that the accuseds acted under duress as they were forced to pay the said sum of money.
17. The Information has been particularised and paraphrased as such; the two accused parties unlawfully gave Rs25,000 to Police Inspector Derochoonee to do needful so that the two accused parties, and other persons are not arrested in a case referred to Terre Rouge CID for investigation. It is clear that the only contested averment in the Information is that the two accused parties are not to be arrested. The rest of the particulars have been admitted or not disputed by the accused parties. The case for the prosecution has been set out in the Information. Indeed, the offence of bribery under the above relevant section is crystallised as soon as the accused parties give a gratification to Mr Derochoonee, a public official, to abstain from doing an act which is facilitated by his functions or duties. The abstention of the act in question here, is not to effect arrests on the two accused parties and their employees. Effecting arrests whenever there is reasonable suspicion that an arrestable offence has been committed, is part of the duties of a police officer. It matters not, whether there



is one or more individuals who are suspected to have committed the offence. It is manifest that, the suspects for the 'Dreamprice' case seem to have been the two accused parties and their employees. The act of not arresting the said employees alone, represent an incentive for the accused parties to give the gratification, and there are confessions from both, to that effect. The contention that the employees were not involved in the assault case is speculative at this stage, since there is evidence to show that two groups of individuals in the security business were involved in the altercation. Based on the confessions of the accused parties with regards to the act of not arresting their workers, the offence as laid in the Information, would have been committed.

18. Nevertheless, it is clear from the evidence on record that, after the remittance of the money to Mr Derochoonee, the two accused parties were not arrested in relation to the 'Dreamprice' case. In fact, the accused no.1 stated in his defence statement at Doc C, that Mr Derochoonee spoke on the phone to one police officer, named Seewoo, putting a good word for them, clearly interfering in the normal process of the investigation. The two accused parties were arrested only through the intervention of witness no.4, ASP Gukhool, when the latter saw a video on 'Facebook' and enquired about the case from Mr Derochoonee. The fact that the gratification did not ultimately come to fruition is not relevant to the commission of the offence. The accused no.2 did not withstand the test of cross-examination when the extract at folio 247440 of Doc D1, was confronted to him, where he stated that "*Derochoonee finne d'accord pour prend sa Rs25,000 la pou pas arrete nous et nous banes zommes*". I find that the circumstantial evidence points to the fact that the gratification was given so as not to effect arrests upon the accused parties and their workers.

19. The issue of duress was raised by the defence. The contention is that the accused parties were forced to give the sum of Rs25,000, as failure to do so would have resulted in the arrests of their employees.

20. The principles of duress or "contrainte" were considered by the Supreme Court in the case **Seegobin v The State 2002 SCJ 163** where the following was held:

For the defence of "contrainte" to succeed the appellant must have been "contraint par une force à laquelle il n'a pu résister" (section 42 of the Criminal Code, French version) and "la force contraignante doit entraîner une impossibilité réelle de se conformer à la loi ..." (Marc Puech, *Droit Pénal*)



Général, (Litec 1988 ed.), paragraph 1171 cited in State v Dilmamode & Ors (supra) at p. 204). And we agree with the learned Judge in State v Dilmamode & Ors (supra) that in both England and France, the law in this connection, as a matter of public policy, limits the defence by means of an objective criterion in terms of reasonableness, a defendant being required "to have the self control reasonably to be expected of the ordinary citizen in the situation", in the words of Lord Lane in R v Graham [1982 74 Cr. App. R 235].

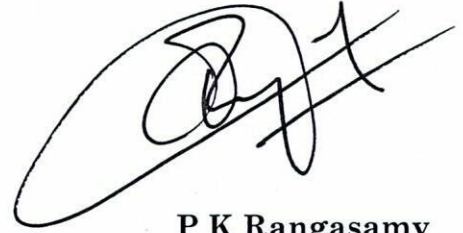
In **Seerungen Salachee v The State 1998 SCJ 492**, the principles set out in Dalloz Code Pénal article 64 notes 34 and 36 were cited as follows:

36. Menace – Lorsque la contrainte résulte d'une menace, le bénéficiaire de l'article 64 ne peut être invoqué qu'autant que le péril qu'elle fait craindre est imminent et qu'elle met celui qui en est l'objet dans la nécessité ou de commettre l'infraction ou de subir les violences dont il est menacé. Crim. 28 déc.1900, DP 1901. 1.91, note Le Poittevin; S. 1903. 1.254. C'est donc à bon droit que les juges ont refusé de prendre en considération la simple allégation d'une menace qui n'était ni pressante, ni assez directe pour enlever au prévenu sa liberté d'esprit. Crim. 29 déc. 1949, préc.

21. It suffices to consider the general principles of duress in this case, without the need to scrutinise the categories of 'contrainte morale ou physique'. The test is an objective one. The threat exerted on the accused parties must have been imminent and so coercive that it resulted in a real impossibility for the accused parties to do anything else than to pay the gratification.
22. The object of the duress, as per the defence case theory, was the threat of arrest of the persons working for the accused parties. It is in the evidence of the latter that it became apparent that they made a cost benefit analysis in balancing the expense of paying legal representatives to represent their workers in court, and the immediate payment of a bribe. They went further to negotiate the quantum of the gratification reducing it from Rs100,000 to Rs25,000. Such is compounded by the fact that the accused parties in the past, had given, as gifts, whisky bottles to the one Mr Derochoonee. I thus find that the accused parties cannot benefit from the defence of duress since they were not in any imminent danger of being coerced out of their free will.
23. The fact that both accused parties had voluntarily given statements to the then ICAC, which triggered the enquiry to the current case is not relevant to conviction, but can only be of use in the sentencing process.



24. For the above reasons, I hold that the prosecution has proved its case beyond reasonable doubt and both accused parties are consequently found guilty as charged.

A handwritten signature in black ink, consisting of a large, stylized loop followed by several vertical strokes, positioned above the printed name.

P K Rangasamy
Magistrate of the Intermediate Court
13.02.25

