

IN THE INTERMEDIATE COURT (FINANCIAL CRIMES DIVISION)

CN 43/2020

In the matter of:

INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

V

GEANCHAND DEWDANEE

RULING

Background

1. The accused stands charged for the offence of bribery in breach of **Section 5 (1) (a) (2)** of the **Prevention of Corruption Act**. He has pleaded not guilty to the charge and retained the services of counsel. The trial has already started. On the 1st March 2024 prosecution witness No 3 stated the following in examination in chief:

A: Mais sa case la 2011, Votre Honneur.

Q : Oui donc ?

A : La nous 2024, be mo pas rappelle.

Q : Ou pas rappel ?

A : In fini faire plus qui 14 ans.

A handwritten signature in black ink, consisting of a large, stylized 'J' or 'K' shape with a long horizontal stroke extending to the right.

2. Subsequently, counsel for the prosecution moved to refresh the memory of witness 3 in these terms:

So, Your Honour, in light of the witness stating that he does not recollect the serial number of the note which he had secured from the accused, ok, I move to refresh the witness's memory in respect of that particular serial number of that Rs 200 note.

3. Counsel for the accused objected to this motion on the following grounds:

Now, at this stage I'm objecting at this course of action and to the effort where the memory of the witness being refreshed, despite 6 times the witness stating that he could not recollect the serial number and the fact that a long time has gone by. The reason being that ICAC or now the FCC, my friend is trying to refresh his memory from firstly a statement of ICAC which was put up recorded from the witness, one year after the events therefore there is no contemporaneity between that statement and the events, which took place more than a year before and secondly that the police officer put up, which is a document referred to that in statement of ICAC given on the 17th May 2012, that document was never confronted to my client, in the course of the enquiry by ICAC or by anyone else.

4. Arguments were heard on whether the memory of witness 3 should be refreshed on the 15/1/2025 and the 14/1/2025. On the 15/1/2025 the prosecution proceeded by calling witness 3 to demonstrate the contemporaneity of his out of court statement. The latter was cross-examined and re-examined accordingly. On the 14/1/2025 counsel made the final submissions. In a nutshell, the question that both the prosecution and the defence submitted upon is whether by allowing witness 3 to refresh his memory, that would be prejudicial to the accused.

Applicable principles and conclusion

5. This court has carefully taken into account the submissions of learned counsel and also the following principles outlined in **Halsbury's Laws of England > Criminal Procedure**



(Volume 27 (2021), paras 1-442; Volume 28 (2021), paras 443-938) > 10. Evidence and Witnesses > (9) Examination in Chief

A witness in criminal proceedings may be permitted to refresh his memory either in the course of his evidence or before going into the witness box. In practice, it would be almost impossible for a court to control the extent to which witnesses refresh their memories before testifying, and testimony would become more a test of memory than of truthfulness if witnesses were deprived of the opportunity of checking their recollection beforehand by reference to statements or notes made at a time closer to the events in question. Any rule purporting to deny witnesses prior access to their statements would tend to create difficulties for honest witnesses but do little to hamper dishonest witnesses.

A witness giving oral evidence in criminal proceedings about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time, if:

- (1) he states in his oral evidence that the document records his recollection of the matter at that earlier time; and*
- (2) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.*

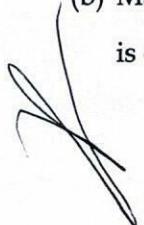
Similarly, where such a witness has previously given an oral account, of which a sound recording was made, and he states in that evidence that the account represented his recollection of the matter at the time, and where his recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of his oral evidence, and where a transcript has been made of the sound recording, he may, at any stage in the course of giving his evidence, refresh his memory of the matter from that transcript.

A document used by a witness to refresh his memory need not have been made by the witness personally, provided it was verified by him while the facts were relatively fresh in his memory. Where a witness has dictated a note to, for example, a police officer, he need not verify the original by inspecting it; it is enough if the officer reads back to the witness what he has written. Documents may be used to refresh memory even if they would not otherwise be admissible if tendered in evidence, and



there seems to be nothing to prevent copies of original documents being used for this purpose, whether or not the document or copy was admitted, provided that the statutory requirements are met.

It is not necessary that the witness should have any independent recollection of the facts to which he testifies and of which he seeks to refresh his memory, apart from the document to which he refers.

6. Essentially from the principles outlined in **Halsbury's Laws of England** the general rule is that a witness is allowed to refresh his memory on the following grounds:
 - (1) he states in his oral evidence that the document records his recollection of the matter at that earlier time; and
 - (2) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.
 7. That is, if the witness states that the document from which his memory will be refreshed records an accurate recollection and that it was done at a time when his recollection was closer to the event in question. The court should allow the witness to refresh his memory. Because as pointed out in **Halsbury's** a witness testimony should not be a "test of memory." In the present matter, witness 3 has given a statement to ICAC which reflects his version and close to the event in question.
 8. From the court record, witness 3 stated unequivocally that he cannot recollect. Witness 3 has also no axe to grind against the accused or has an interest of his own to serve. That is, he is a police witness.
 9. For these reasons, this court finds that witness 3 must be allowed to refresh his memory as the conditions outlined in **Halsbury's Laws of England** are met. This Court however orders that the refreshing memory exercise shall be subject to the following directions:
 - (a) Witness 3 cannot be lead in his questioning
 - (b) Matters which are in issue cannot be put to witness so as to suggest answers from him; that is only open and non leading questions will be allowed.
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10. The defence objection is set aside accordingly.

A. Joypaul

6.5.25

Intermediate Court Magistrate

Financial Crimes Division