KASORY S v INDEPENDENT COMMISSION AGAINST CORRUPTION & ANOR

2025 SCJ 205

IN THE SUPREME COURT OF MAURITIUS

Record No.: 8891

In the matter of:-

Sarvansingh Kasory

Appellant

v

1. Independent Commission Against Corruption

2. The Director of Public Prosecutions

Respondents

JUDGMENT

1. The appellant was convicted by the Intermediate Court for having used his position as a public officer for gratification, in breach of sections 7(1) and 83 of the Prevention of Corruption Act (PoCA). The prosecution averred that he had, on the 19th of August 2009, whilst being a police officer, wilfully, unlawfully and criminally, made use of his position for gratification for himself, i.e., he obtained Rs 400 from Koombhuge Bisnauthsing to prevent the latter's bail from being estreated.

2. **The version against the appellant** was that on the material day, while he was posted as Station Orderly at Pointe aux Sables Police Station, he informed Chief Inspector Kishtoo [who was in charge of the Station] that one Lanappe [Bisnauthsing's employee] had called in with a copy of a medical certificate for Bisnauthsing. The latter had to report to the Station every Saturday as one of his bail conditions. Another constable [PC Gowreea] was then instructed to proceed to Bisnauthsing's place together with Lanappe for verification.

3. Bisnauthsing stated before the trial court that he was issued with a medical certificate on the 18th of August 2009 after sustaining a fall. He gave the medical certificate to Lanappe to be submitted to the Police Station [where he had to report every Saturday] in case he could not report there. He was later informed that Lanappe had been arrested.

4. He further stated that at some point he received a phone call from the appellant who told him that he could make arrangements to avoid his bail from being estreated[1]. The latter had also asked for his home address as he wanted to meet him. The appellant eventually offered to help him in exchange for payment of Rs 2, 000. He then arranged to meet him after his shift on the same day.

5. Bisnauthsing went to report the matter to the ICAC [Independent Commission Against Corruption] before he called the appellant to tell him to come to his place. The ICAC officers verified the numbers on banknotes [in Bisnauthsing's possession] and waited in the house in a bathroom next to Bisnauthsing's bedroom.

6. During the ensuing encounter with the appellant, Bisnauthsing put Rs 400 in his hand and told him that he was going to fetch the rest of the money from his wife. The ICAC officers then came out of the bathroom and disclosed their identities to the appellant.

7. **The appellant's version**, as can be culled from the statements he gave to the police, was that on the 19th of August 2009, Bisnauthsing called him at about 11 00 a.m. and told him that they might be related. He also asked for the appellant's help as he was not well and he was being harassed by police. The appellant understood that Bisnauthsing was willing to give a bribe to the Chief Inspector. He nevertheless confirmed with a relative that he was related to Bisnauthsing before he called the latter who invited him for refreshments on the same afternoon. The appellant stated that Bisnauthsing in fact called him several times on that day and insisted for him to come to his place. He eventually agreed to meet him after 15 15 hours.

8. When he reached Bisnauthsing's place, the latter asked him to go into the bedroom. While they were talking there, Bisnauthsing removed Rs 400 from his pocket and gave it to him. He also told him that his wife would bring more money. The appellant asked him why he was giving him money and whether he was being given a bribe. Bisnauthsing then allegedly whispered something to the effect that he had been harassed by the police but that tables had now turned. The appellant added that Bisnauthsing had in fact thrown the money at his feet. He denied taking money or asking for gratification[2].

[1] Pp. 118, 136 & 136 of the brief.
[2] P. 376 of the brief.

9. The appellant also related that Bisnauthsing then opened the door to the bathroom and 3 men came out. He was told that he was under arrest although he was not informed of his constitutional rights. He denied asking for Rs 2, 000, or telling Bisnauthsing that he could help him with his court cases. He also denied that Bisnauthsing gave him Rs 400, that he had asked Bisnauthsing how much money there was, or that the latter had told him that he would obtain the rest of the money from his wife. He added that the ICAC officers could not have heard their conversation since they were separated by a thick door[3].

10. In a reasoned judgment, the learned Magistrate of the Intermediate Court found the appellant guilty as charged and sentenced him to undergo 12 months' imprisonment.

11. There are 13 grounds of appeal, which we reproduce below.

> **Ground 1**: Because the learned Magistrate was wrong to find that the appellant had obtained the sum of Rs 400 in the light of the evidence that there was no demand or solicitation of the sum of Rs 400 by the appellant.
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> **Ground 2**: Having regard to the evidence of the then wife of K Bisnauthsing and the evidence of the latter's employee, Jules Lanappe, the learned Magistrate misdirected herself as to the uncorroborated evidence of K Bisnauthsing.
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> **Ground 3**: The learned Magistrate failed to address her mind to the motive of the complainant, K Bisnauthsing who had an axe to grind with the police and with the appellant having regard to the incident at Pointe aux Sables Police Station earlier on the day in question.
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> **Ground 4**: The learned Magistrate erred when she found that the acts of the ICAC could not amount to an entrapment because the ICAC officers had explained that they were verifying a complaint which at that time could only be a complaint of "*soliciting*" and not one of "*obtaining*".
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> **Ground 5**: The learned Magistrate erred when she found that K Bisnauthsing was a credible witness notwithstanding her own finding that he (a) was "*corrosive*" (b) departed from his previous out of court statements and (c) evaded certain questions, added to his blatant inconsistencies during his testimony.

[3] P. 377 of the brief.

Ground 6: The learned Magistrate erred when she came to the conclusion that the evidence of K Bisnauthsing was corroborated by the three ICAC officers since their involvement was limited to the alleged remittance of the money in the bedroom only.

Ground 7: The learned Magistrate erred when she found proven that the three ICAC witnesses heard (a) the conversation between K Bisnauthsing and the appellant (b) Bisnauthsing saying to the appellant to "*take something*" (c) the appellant say "*how much there was*" and (d) saw the appellant drop "*bank notes*".

Ground 8: The learned Magistrate erred when she found that she could safely infer from the question of the appellant as to how much was being handed over to him that the appellant had solicited a bribe earlier.

Ground 9: The learned Magistrate erred inasmuch as she failed to make a finding as to an essential element of the offence, to wit: the "*obtaining*" as opposed to "*soliciting*".

Ground 10: The learned Magistrate erred when she failed to address her mind to the fact that although it was specifically averred that the gratification was for a specific act, to wit: "*to prevent the bail*" (*sic*) of K Bisnauthsing from being estreated, no evidence was ushered in to prove that averment.

Ground 11: The finding of the learned Magistrate that the appellant solicited and received gratification in the form of a sum of Rs 400 is flawed since there is no evidence that the appellant solicited and received the sum of Rs 400 as gratification.

Ground 12: The learned Magistrate misdirected herself in law when she found that there was only a "*strong prima facie case*" as opposed to a finding that the evidence ushered proved all the elements of the offence beyond reasonable doubt.

Ground 13: The learned Magistrate erred when she drew the inference that because there were calls made by the appellant to the complainant that this was "*indicative of something more*".

Grounds 1 & 11

12. Under these grounds, the appellant challenges the trial court's findings of fact that he had obtained, solicited or received the sum of Rs 400 as gratification from Bisnauthsing since there was no evidence that he had solicited that specific sum for gratification. It is argued that the only evidence in relation to solicitation of money came from Bisnauthsing, who was not a credible witness, and who deposed regarding a sum of Rs 2, 000.

13. We find that the prosecution essentially had to prove [under section 7(1) of the PoCA] that a public official had made use of his office or position to obtain a gratification, so that the act of soliciting money in any specific amount was not one of the constitutive elements to be established in order to secure a conviction. The learned Magistrate was therefore entitled, based on all the circumstantial evidence placed before her, and after she found Bisnauthsing to be a credible witness, to conclude that the remittance of the sum of Rs 400 to the appellant was the result of an earlier solicitation made by him to Bisnauthsing, albeit for a sum of Rs 2, 000.

14. **Grounds 1 and 11 therefore fail.**

Grounds 2, 5 & 6

15. These 3 grounds question the learned Magistrate's decision to act on Bisnauthsing's uncorroborated evidence, as well as her finding that his evidence was corroborated by the 3 ICAC officers, especially after observing that Bisnauthsing was "*corrosive*" and had departed from his previous statements to the police. He had also evaded questions and been inconsistent during his testimony.

16. The appellant submits that although the court could act on uncorroborated evidence, this was not desirable when the witness lacked credibility, had improper motives or interests of his own to serve, or where his evidence was not entirely satisfactory, as in the present case[4].

[4] Para. 24 of the appellant's skeleton arguments.

17. A careful reading of the judgment shows that the learned Magistrate in effect concluded that she could still act on Bisnauthsing's evidence after she discarded the version of Lanappe and Mrs Bisnauthsing whom she did not consider to be reliable witnesses for the reasons she gave in her judgment[5].

18. She also considered the arguments of the defence concerning Bisnauthsing's credibility and found that "*notwithstanding his tendency to be corrosive at times and departing from the version he gave in his statement, and evading certain questions of Learned defence counsel during cross-examination, his evidence on the material issues is credible*". She then concluded that she had no doubt that the witness was telling the truth when he related that the appellant had solicited a bribe of Rs 2, 000 from him on the 19th of August 2009 to prevent his bail from being estreated.

19. The appellant's skeleton arguments regarding the learned Magistrate's alleged misdirection on corroboration are consequently misconceived. Firstly, there was no statutory provision which prevented the court from acting on Bisnauthsing's uncorroborated evidence[6], especially after deciding that his evidence was reliable[7]. Secondly, our courts have constantly reaffirmed that it "*is a fallacy that evidence should be treated as a monolithic structure which must be either accepted or rejected en bloc*" since, on the contrary, "*it is the function of a trained magistrate to weigh and to criticize testimony so as to distinguish what may safely be accepted from what is tainted or doubtful*"[8]. Thirdly, it is well-established that not "*every inconsistency is serious and material inconsistencies need not affect **per se** the appreciation by a trial Court that a particular witness's testimony is true*"[9].

20. In the light of these principles, we find no reason to interfere with the learned Magistrate's decision to act on Bisnauthsing's evidence alone, once she found that his version on material issues was credible. She clearly had the advantage of seeing him depose under oath and of assessing the quality of his evidence.

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[5] P. 233 para. 24 of the judgment.
[6] **Paruit v R [1968 MR 37]**.
[7] **Botte and Others v The Queen [1968 MR 80]**.
[8] Per Rault SPJ and Goburdhun J in **Ramcharran v The Queen and Hoober v The Queen & Bhoyroo v Others [1977 MR 226].**
[9] **Saman G. v The State [2004 SCJ 3].**

21. **These two grounds cannot therefore succeed.**

Ground 3

22. It is averred under that ground that the learned Magistrate failed to address her mind to a possible motive by the complainant (Bisnauthsing) who had had an earlier incident at Pointe aux Sables Police Station.

23. We however agree with learned counsel for respondent no. 2 that this complaint is unfounded since this issue was clearly dealt with in the judgment and the trial court found that the appellant's participation in the enquiry about Bisnauthsing's medical certificate was very limited[10]. The alleged motive was rightly considered and accordingly properly set aside.

24. **Ground 3 has no merit and also fails.**

Ground 4

25. It is averred under that ground that the learned Magistrate erred when she failed to find that the acts of the ICAC officers amounted to entrapment as they had explained that they were verifying a complaint which could only be one of "*soliciting*", as opposed to one of "*obtaining*".

26. The appellant here argues that the charge was one of "*obtaining*" although the substance of the complaint to the ICAC was that the appellant had "*solicited*" money from the complainant, so that the issue of "*obtaining*" a gratification was the result of a carefully planned operation orchestrated by the declarant. The ICAC officers did not therefore act in good faith since the evidence showed that they had believed the declarant from the outset.[11]

27. We must first observe, as was rightly brought up by learned counsel for respondent no. 2, that this issue was properly addressed by the learned Magistrate who found that the appellant "*did solicit and receive a gratification in the form of the sum of Rs 400/- from Bisnauthsing on the material day*"[12].

[10] Para. 41 of the judgment, p. 237 of the brief.
[11] Para. 41 of the appellant's skeleton arguments.
[12] P. 234 of the brief, para. 1 & pp. 237-238 of the brief..

28. Insofar as the defence of entrapment is concerned, it is trite law that the State should not, through its agents, lure citizens into committing illegal acts and then seek to prosecute them for doing so as this would amount to entrapment which is an abuse of the process of the courts and a misuse of State power.[13] The following extract from paragraphs 21, 23 and 25 in **R v Loosely [2001] UKHL 53**, reproduced in **Parayag R. K. v The Independent Commission Against Corruption [2011 SCJ 309]**, illustrates the applicable principles:

> *21. ……. If the defendant already had the intent to commit a crime or a similar kind, then the police did no more than give him the opportunity to fulfil his existing intent. This is unobjectionable. If the defendant was already presently disposed to commit such a crime, should opportunity arise, that is not entrapment. That is not state-created crime. The matter stands differently if the defendant lacked such a predisposition, and the police were responsible for implanting the necessary intent.*
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> *…*
>
> *23. Accordingly, one has to look elsewhere for assistance in identifying the limits to the types of police conduct which, in any set of circumstances, are acceptable. On this a useful guide is to consider whether the police did no more than present the defendant with an unexceptional opportunity to commit a crime. I emphasise the word unexceptional. The yardstick for the purpose of this test is, in general, whether the police conduct preceding the commission of the offence was no more than might have been expected from others in the circumstances. Police conduct of this nature is not to be regarded as inciting or instigating crime, or luring a person into committing a crime. The police did no more than others could be expected to do. The police did not create crime artificially. …*
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> *…*
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> *25. Ultimately the overall consideration is always whether the conduct of the police or other law enforcement agency was so seriously improper as to bring the administration of justice into disrepute. …* [The underlining is ours].

29. In the light of the basic principles just referred to, we find that the learned Magistrate made a correct assessment of the evidence adduced at the trial and that there was nothing on record which could have led her to conclude that the conduct of the ICAC officers amounted to luring or inciting the appellant to commit a crime.

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[13] **Archbold 2007, para. 4-63.**

30. Once the learned Magistrate accepted that the versions adduced from Bisnauthsing and the ICAC officers were true, the only inference that she could draw was that the appellant had indeed asked for gratification in exchange for him helping Bisnauthsing. The latter then chose to immediately report the appellant to ICAC officers who set up an operation to find out whether the appellant's dishonest intentions were going to materialise. The ICAC witnesses and Bisnauthsing thus confirmed in court that the appellant attended the complainant's house, as agreed, in order to obtain the gratification sought earlier, and that he was caught red-handed whilst doing so. There could have been no entrapment by the ICAC officers in such circumstances.

31. **For these reasons, the learned Magistrate's conclusions on that score cannot be faulted and this ground of appeal must fail.**

Grounds 7 & 8

32. These two grounds challenge the learned Magistrate's findings of fact based on the version adduced from the 3 ICAC officers who stated that they heard the tenor of the conversation between Bisnauthsing and the appellant and that they also saw the latter drop bank notes on the floor. The appellant further contests the trial court's inference that the appellant must have earlier solicited a bribe because of the question he had asked regarding the amount of money handed over to him by Bisnauthsing. It is thus argued that the learned Magistrate failed to consider that the door between the bathroom and the bedroom was thick and would have made it difficult to hear or see what went on in the adjoining room[14].

33. The straight answer to the above arguments, as in all appeal cases, is that the trial court is always in a better position than the appellate court to determine issues of fact, especially when the trial court's findings are based on its own assessment of a witness's credibility. As was recently confirmed in **Savurimuttu S. v The State [2025 SCJ 19]**, "*A trial Court is in a much better position to carry out such an assessment since it has the undeniable advantage of seeing and hearing the witnesses*."

[14] Para. 44 of the appellant's skeleton arguments.

34. The following well-known extract from Lord Reid's judgment in **Benmax v Austin Motor Co Ltd (1955) 1 All E.R. 326**, was aptly reproduced:

> "*Apart from cases where an appeal is expressly limited to questions of law, an appellant is entitled to appeal against any finding of the trial judge, whether it be a finding of law, a finding of fact or a finding involving both law and fact. But the trial judge has seen and heard the witnesses, whereas the appeal court is denied that advantage and only has before it a written transcript of their evidence. No one would seek to minimise the advantage enjoyed by the trial judge in determining any question whether a witness is, or is not, trying to tell what he believes to be the truth, and it is only in rare cases that an appeal court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness. But the advantage of seeing and hearing a witness goes beyond that. The trial judge may be led to a conclusion about the reliability of a witness's memory or his powers of observation by material not available to an appeal court. Evidence may read well in print but may be rightly discounted by the trial judge or, on the other hand, he may rightly attach importance to evidence which reads badly in print. Of course, the weight of the other evidence may be such as to show that the judge must have formed a wrong impression, but an appeal court is, and should be, slow to reverse any finding which appears to be based on any such considerations.*"

35. In the same decision [**Savurimuttu**], Chan Kan Cheong and Teelock JJ. referred to **Henderson v Foxworth Investments Limited [2014] UKSC 41**, where the English Supreme Court held that "*in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified*."

36. We accordingly agree with respondent no. 2's submissions that the appellant failed to put forward any valid argument to support the contention that the learned Magistrate should not have acted on the versions of the ICAC officers or Bisnauthsing. The judgment clearly shows that all the evidence was exhaustively reviewed, including the versions of the 3 ICAC officers, following which the learned Magistrate reached the conclusion that the officers had all corroborated Bisnauthsing's version so that she could rely and act on their evidence.

37. We have seen nothing in the evidence adduced which could lead us to a different conclusion or to a finding that the learned Magistrate made a critical finding of fact without any basis.

38. **Grounds 7 and 8 must also fail for these reasons.**

Ground 9

39. It is contended under that ground that the learned Magistrate failed to make a finding regarding the "*essential element*" of "*obtaining*" and that an important element of the charge was that the appellant had "*obtained*" Rs 400 from Bisnauthsing [as opposed to "*soliciting*" that sum from him], and for which there is no evidence.

40. The appellant argues that the learned Magistrate erred when she found that "*it is immaterial that the bank notes were not secured from the person of the accused, as there is unrebutted evidence from witnesses Sookaram, Moonesawmy and Koussa that the accused had his right hand closed when they emerged from the bathroom and that the accused dropped bank notes to the floor – at spot P – when he stood up*."[15] The appellant further submits that the prosecution failed to establish that he had obtained the money constituting the gratification and that the only evidence adduced was that he had dropped the bank notes to the floor. It is thus contended that the "*obtaining*" of the money representing the bribe is an essential element of the offence and that the learned Magistrate had not "*established*"[16] that this money was indeed "*obtained*" by the appellant.

41. We must again find under that ground that the conclusions reached by the learned Magistrate cannot be impeached. She fittingly referred to the decision in **Jhurry B v The Independent Commission Against Corruption & Another [2015 SCJ 258]**, and restated the elements of the offence, namely (i) the person charged being a public official (ii) making use of his office or position as a public official (iii) to obtain a gratification either for himself or for another person.[17] The "*soliciting*" of any amount is not therefore an element of the offence.

[15] Para. 20 of the appellant's skeleton arguments.
[16] Para. 22 of the appellant's skeleton arguments.
[17] Para. 21 of the judgment at p. 232 of the brief.

42. We consequently reiterate our earlier observations and findings in respect of grounds 7 and 8[18] since the learned Magistrate was in a better position to assess the credibility of the witnesses who deposed before her. In the absence of any solid argument which could lead to a finding that the trial court made a wrong assessment of the facts, we hold that the learned Magistrate's conclusion that the appellant indeed obtained the sum of Rs 400 for gratification cannot be impeached.

43. **Ground 9 cannot succeed for these reasons.**

Ground 10

44. Under ground 10, the appellant avers that the learned Magistrate failed to address her mind to the fact that no evidence was adduced to prove that the alleged gratification was for the specific purpose of preventing Bisnauthsing's bail from being estreated, as averred in the information.

45. The appellant submits that "*no solid evidence was ushered to substantiate that averment*"[19] and that the only evidence in that respect was from the declarant who stated that the gratification had been obtained in exchange for the appellant signing in for him at the Police Station. It was argued that Bisnauthsing's version that officer Sewpal was trying to estreat his bail was so unclear and disjointed that it could not be relied upon, so that there was no clear evidence that the declarant's bail would have been estreated without the appellant's intervention, especially since the declarant had not yet failed to report to the police at the time.

46. As already outlined earlier in this judgment, there were only 3 constitutive elements which required proof by the prosecution. This ground is devoid of merits since Bisnauthsing did state during his examination-in-chief that the appellant had offered to help him to sign in for his bail[20] and had also mentioned during a phone conversation that Mr Sewpal was trying to have his bail estreated[21].

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[18] See paras. 33 to 37 of this judgment.
[19] Para. 47 of the appellant's skeleton arguments.
[20] P. 118 of the brief.
[21] P. 136 of the brief.

47. The learned Magistrate did consider that evidence and chose to act on Bisnauthsing's evidence, as clearly explained in her judgment.[22]

48. **Ground 10 must accordingly fail.**

Ground 12

49. Under that ground, the appellant complains of the learned Magistrate's statement that there was a "*strong prima facie case*" instead of making a finding that the offence had been proved beyond reasonable doubt, so that she had only partly applied the principles in **Andoo M. v The Queen [1989 MR 241]** (as clarified in **Annia T. v The State [2006 SCJ 262]**), and had failed "*to heed the caveat that the burden of proof remains that of proof beyond reasonable doubt*"[23].

50. It is argued that she was "*wrong to apply the principle in Andoo*"[24] and that only "*a "strong prima facie case" is not enough for the burden to shift on the Appellant to satisfy the Court that it should not act on the evidence by the Prosecution*."[25] The appellant further submits that the learned Magistrate then "*jumped to the conclusion*" that the prosecution had proved its case beyond reasonable doubt "*seemingly shifting the onus on the Appellant to rebut the case of the prosecution contrary to the caveat in **Andoo***"[26].

51. We have carefully read the learned Magistrate's 14-page judgment and we find that the short extract cited by the appellant [from paragraph 45 of her judgment] was regrettably singled out and taken out of context. That section of the judgment, when read as a whole, does not convey in any way that the learned Magistrate erred when she spelt out the applicable legal principles.

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[22] Pp. 237-238 of the brief.
[23] Para. 53 of the appellant's skeleton arguments.
[24] Para. 55 of the appellant's skeleton arguments.
[25] Para. 55 of the appellant's skeleton arguments.
[26] Para. 56 of the appellant's skeleton arguments.

52. She very aptly referred to the judgment of **Andoo** and quoted the following extract, namely "*Where the evidence for the prosecution establishes a strong and unshaken prima facie case and the accused chooses not to swear to his statement and expose himself to cross-examination, the trial Court is perfectly entitled to conclude that the Prosecution evidence remains unrebutted. It is of course true that the burden of proving the guilt of an accused squarely lies on the prosecution and that the accused is entitled to remain silent. His right of silence, however, is exercised at his risk and peril when, at the close of the case for the Prosecution, a prima facie case has been clearly established since the burden then shifts on him to satisfy the Court that it should not act on the evidence adduced by the Prosecution. …*".

53. The learned Magistrate then fittingly added[27] that the "*prosecution has established a strong prima facie case against the accused and I find that his unsworn statement does not rebut the case for the prosecution.*"

54. In the light of the clear reasoning adopted by the learned Magistrate and her correct reference to the relevant legal principles, we find that this ground has no merit at all.

55. **Ground 12 is clearly misconceived and cannot succeed.**

<u>Ground 13</u>

56. The appellant here finds fault with the inference by the learned Magistrate that the phone calls made by the appellant were "*indicative of something more*".

57. We again find that this ground is unduly selective of only part of the learned Magistrate's assessment to try and convey that she made an incorrect appreciation of the evidence adduced before her. The learned Magistrate in effect considered the appellant's version that he had called Bisnauthsing in response to the latter's phone call and because he thought they were related. She then explained in her judgment that the appellant's story was implausible since he had himself called Bisnauthsing on no less than nine occasions, so that this could only indicate something more than a mere wish to bond with a newly-found relative.

[27] Para. 45 of the judgment at p. 238 of the brief.

58. We agree with the learned Magistrate's analysis since she correctly addressed her mind to the facts before her and properly inferred that there was something over and above the unlikely account given by the appellant to the police, to which she could not therefore attach any weight.

59. **Ground 13 also has no merit.**

Sentence

60. It is undeniable that there has been considerable delay in the present matter. Although all the grounds of appeal against conviction have failed, the delay incurred must necessarily have an impact on the sentence of 12 months' imprisonment imposed by the trial court.[28]

61. In **Elaheebocus Haroon Rashid v State of Mauritius [2009 MR 323]**, the Judicial Committee of the Privy Council was of the view that in such cases there "*can be no question of setting aside the conviction*" and made reference to paragraph 39 of **Prakash Boolell v The State of Mauritius [2006] UKPC 46**, where the Board had found it unacceptable that a prison sentence imposed by the Intermediate Court should be put into operation 15 years after the commission of the offence "*unless the public interest affirmatively required a custodial sentence, even at this stage*." [The underlining is ours].

62. It was however found in **Elaheebocus** that the case involved "*altogether greater criminality than Boolell*" where a member of the Mauritian Bar was found guilty of passing a worthless cheque.

63. In **Elaheebocus**, it was thus observed that a total of 12 years had passed since the offence was committed and their Lordships considered that it would not be right to set aside the four-year sentence, bearing in mind, among other things, the injustice that this would represent in the eyes of the appellant's co-conspirators. They found that a modest reduction in the sentence to be served should be made to mark the constitutional breach and quashed the four-year sentence by substituting it for a term of three and a half years' penal servitude, to be served without further delay.

[28] P. 241 of the brief.

64. In the light of the foregoing, we are bound to acknowledge that the delay incurred since the commission of the offence in the present case must now be reflected in a reduction of the initial sentence imposed by the learned Magistrate.

65. We agree with the trial court that the offence committed by the appellant is serious and that the maximum penalty of 10 years' penal servitude gives an indication of the gravity of the charge. The facts reveal that the appellant was engaged in law enforcement duties and that he consciously chose to breach the oath he took as a police officer to obtain a bribe.

66. We have also borne in mind the remarks of Lord Bingham in **R v Howells (Craig) [1999 1 W.L.R. 307]**, whilst citing the observations of Rose L.J. in **Reg. v Ollerenshaw, The Times, 6 May 1998**, namely that "*When a court is considering imposing a comparatively short period of custody, that is of about 12 months or less, it should generally ask itself, particularly where the defendant has not previously been sentenced to custody, whether an even shorter period might be equally effective in protecting the interests of the public, and punishing and deterring the criminal. For example, there will be cases where, for these purposes, six months may be just as effective as nine, or two months may be just as effective as four. Such an approach is no less valid, in the light of today's prison overcrowding, than it was at the time of Reg. v. Bibi [1980] W.L.R. 1193.*"

67. In the light of these considerations and the legal principles just outlined, we find that a sentence of 6 months' imprisonment will meet the ends of justice and still discourage other public officers who may have similar intentions to engage in comparable misconduct.

68. All the grounds of appeal having failed, we dismiss the appeal and maintain the appellant's conviction. As a consequence of the delay, we however quash the original sentence of 12 months' imprisonment and substitute therefor a term of imprisonment of 6 months to be served without delay.

69. In the circumstances, we make no order for costs.

N. F. Oh San-Bellepeau
Judge

S. B. A Hamuth-Laulloo
Judge

This 19th of May 2025

Judgment delivered by Hon. N. F. Oh San- Bellepeau

For Appellant	**:**	**Mr R Appa Jala, Attorney-at-Law** **Mr G Glover, Senior Counsel**
For Respondent No. 1:		**Ms M B Chatoo, Attorney-at-Law** **Mr H Ponen, of Counsel**
For Respondent No. 2:		**Ms D Dabeesing-Ramlugun, Deputy Chief State Attorney** **Ms C Soobagrah, State Counsel**