FCD CN: FR/L63/2020

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

ICAC
(Now the Financial Crimes Commission pursuant to section 168 (1) of the Financial Crimes Commission Act 2023)

V

Ally Auckbur SAEB

JUDGMENT

A. BACKGROUND

1. Accused is being prosecuted for the offence of Bribery of Public Official in breach of **sections 5(1)(a) & (2) of the Prevention of Corruption Act** (the "**POCA**") for having, on the 18th July 2016, along New Trunk Road, Ebene, willfully, unlawfully and criminally offer to a public official, namely PC 10528 Chitbahal, a gratification of Rs. 50/- for abstaining from doing an act in the execution of his duties, i.e., not to establish any road traffic contravention against him.

2. Accused pleaded not guilty and was represented by Counsels, Mr. S. Mohamed and Mr. P. Modaykhan.

3. The case for the prosecution was conducted by Mr. H. Ponnen for the ICAC (now the Financial Crimes Commission).

B. CASE FOR THE PROSECUTION

4. Mrs. Babita Boojhawon (witness no.9), HR Executive for the Police Department, produced a memo in respect of the official status of PC 10528 Chitbahal (witness no.3) (**Doc A**). As at date, PC 10528 Chitbahal (witness no.3) is still in the police force.

5. SI Seewooduth (witness no.1) is the main enquiring officer in the present case. He produced a statement dated 08th February 2017 which he recorded from accused (**Doc B**). He explained that during the recording of that statement, accused was referred to another statement that he gave to the police on 18th July 2016 and which statement was recorded by PS 1644 Tourail (witness no.2). The statement recorded by PS 1644 Tourail (witness no.2) was also produced (**Doc B1**). He further explained that when the Commissioner of Police referred the present case to the ICAC, the ICAC conducted a fresh investigation into the matter.

6. During the cross-examination of SI Seewooduth (witness no.1), it came out that:

   a. PC 10528 Chitbahal (witness no.3) gave a declaration at Rose Hill police at 11.56 on 18th July 2016 whereas the statement recorded from accused on the same day (**Doc B1**), by PS 1644 Tourail (witness no.2), started at 11.00;

   b. there was no declaration in the occurrence book against accused when PS 1644 Tourail (witness no.2) recorded the statement (**Doc B1**) from him;

   c. he cannot explain why PC 10528 Chitbahal (witness no.3) only made the declaration at 11.56 when the incident occurred at 09.45 and a statement was being recorded from accused as from 11.00 on the same day (**Doc B1**);

   d. accused had made an allegation of bribery against PC 10528 Chitbahal (witness no.3) to the effect that he allegedly asked for Rs. 500/- from him. That allegation of bribery was not enquired at the level of the police. When the ICAC was referred the case, it made a fresh and independent investigation into the matter;

   e. PC 10528 Chitbahal (witness no.3) arrested accused and brought him to Rose Hill police station;

   f. PC 10528 Chitbahal (witness no.3) requested the assistance of PS 1644 Tourail (witness no.2) and PC 10213 Bautally (witness no.5) when the incident occurred and they both came on spot;

   g. PC 10213 Bautally (witness no.5) stated, in his statement dated 18th July 2016, that he requested accused to accompany them to the police station;

   h. though PS 1644 Tourail (witness no.2) was part of the arresting team, he did not witness any incident involving PC 10528 Chitbahal (witness no.3) and accused. Therefore, there was nothing wrong in him having recorded a statement, under warning, from accused;

i. the police officers were part of the Traffic Enforcement Squad (the "TES") and were using the Road Safety Unit Diary Book of Rose Hill police station. However, as per that Diary Book, nowhere is it mentioned that PC 10528 Chitbahal (witness no.3) reported a case of bribery against accused or that PS 1644 Tourail (witness no.2) arrested accused for such a case;

j. there is an entry, in the Diary Book of Rose Hill police station, inserted by PC 7932 Gunoory (witness no.6) to the effect that on 18th July 2016 at 10.17, PC 10528 Chitbahal (witness no.3), PS 1644 Tourail (witness no.2) and PC 10213 Bautally (witness no.5) reported a case of bribery against accused;

k. he recorded statements from one Mr. Aslam Abdool Hossen, Mr. Benjamin Jean Franco Tourelle and Mr. Jean Yannick Olivier Joorun;

l. in **Doc B1**, accused made an allegation of bribery of Rs. 500/- against PC 10528 Chitbahal (witness no.3). On 17th January 2017, at the ICAC, SI Nuckchady recorded a statement from PC 10528 Chitbahal (witness no.3). Latter was confronted with the allegation of accused to the effect that on 18th July 2016, he booked him for a contravention offence, told him that the fine was Rs. 2,000/- and accused told him that he had only Rs. 50/-. Then PC 10528 Chitbahal (witness no.3) solicited Rs. 500/- from accused who maintained that he had only Rs. 50/-. PC 10528 Chitbahal denied all those allegations;

m. in his statement of 18th July 2016, PC 10528 Chitbahal (witness no.3) did not mention that he contacted PS 1644 Tourail (witness no.2) and reported the incident and that PS 1644 Tourail (witness no.2) came on spot to give assistance. During the ICAC investigation, PC 10528 Chitbahal (witness no.3) could not provide an explanation as to this omission in his previous statement;

n. PC 10528 Chitbahal (witness no.3), in his statements, always maintained that PC 10693 Durhone (witness no.4) was by his side when he contravened accused;

o. PC 10693 Durhone (witness no.4), in his statement to the ICAC, stated that he saw accused remitting Rs. 50/- to PC 10528 Chitbahal (witness no.3) whereas in his statement to the police dated 18th July 2016, he mentioned that he saw accused giving a handshake to PC 10528 Chitbahal (witness no.3) and latter thereafter showed him the Rs. 50/- accused allegedly remitted to him. However, this discrepancy was not enquired into by the ICAC from PC 10693 Durhone (witness no.4);

o. PC 10213 Bautally (witness no.5), in his statement dated 18th July 2016, stated that PC 10528 Chitbahal (witness no.3) approached and told him that accused had committed a

contravention offence. Then PC 10528 Chitbahal (witness no.3) showed him accused driving licence containing a Rs. 50/- note;

p. PC 10213 Bautally (witness no.5), in his statement to the ICAC dated 29th August 2016, stated that he told accused to accompany them to Rose Hill police station. Accused stated *"boss fini sa par la meme, nous pas pour refaire sa encore"* but PC 10213 Bautally (witness no.5) maintained that accused had no option but to accompany them to the police station. However, in his statement to the police, PC 10213 Bautally (witness no.5) never mentioned that he warned accused of the offence of bribery nor did he mention that accused stated the above words;

q. PS 1644 Tourail (witness no.2) was posted at the TES. He did put an entry in the COTS system of Rose Hill police station since it was the nearest police station to where the offence took place;

r. PS 1644 Tourail (witness no.2), though part of the arresting team, recorded a statement from accused for bribery despite PC 10528 Chitbahal (witness no.3) having not yet made any declaration or given any statement; and

s. accused did mention that he had a witness, namely one Aslam, who saw PC 10528 Chitbahal (witness no.3) asking Rs. 500/- from him. No statement had been recorded from that Aslam during the police enquiry. However, the said Aslam stated to the ICAC that he did not hear PC 10528 Chitbahal (witness no.3) asking Rs. 500/- but that accused later told him that PC 10528 Chitbahal (witness no.3) asked for that money.

7. During the re-examination of SI Seewooduth (witness no.1), it came out that:

   a. the statement from accused (**Doc B1**) was recorded on 18th July 2016 at 11.00 whilst the statement of PC 10528 Chitbahal (witness no.3) into the allegation of bribery of Rs. 50/- had been recorded and completed on that same day at 10.30; and

   b. PC 10528 Chitbahal (witness no.3) had already arrested accused whilst PS 1644 Tourail (witness no.2) and PC 10213 Bautally (witness no.5) only accompanied accused, his witness, the lorry and the other two police officers to Rose Hill police station.

8. Chief Inspector Bahadoor (witness no.11), in July 2016, was in charge of the TES. He produced a Duty Roster of the TES for 18th July 2016 (**Doc C**). PS 1644 Tourail (witness no.2) was in charge of the shift and the officers mentioned in **Doc C** were under his supervision. He explained that it is the Chief Clerk who drafts the detail, which he peruses and signs on the Duty Roster. As for **Doc C**, he had signed it on the eve, i.e., 17th July 2016, to facilitate work

on the following day. He did not meet with any of the officers on 18th July 2016 despite **Doc C** mentioning *"I hereby certify that during my tour of duty, the duties were regularly and correctly performed and the constables were visited"*. He further explained that it was PS 1644 Tourail (witness no.2) who was in charge of the monitoring of duties and to check on the officers. The purpose of the Duty Roster is to know who are the officers performing duty on that day and the time and places they will be deployed.

9. PC 10528 Chitbahal (witness no.3) was posted at the TES and PS 1644 Tourail (witness no.2) was his supervising officer. On 18th July 2016, he was performing duty along New Trunk Road, Ebene, together with PC 10693 Durhone (witness no.4) when a goods vehicle, coming from the direction of Ebene and monitoring towards the New Trunk Road, crossed a continuous white line. He signaled the vehicle to stop and asked the driver about his driving licence. The driver produced his driving licence and PC 10528 Chitbahal (witness no.3) informed him of the offence. The driver came out of his vehicle and made a right-hand shake with him. PC 10528 Chitbahal (witness no.3) felt a foreign body in his right-hand palm and saw a Rs. 50/- note quarterly folded therein. He queried the driver about that money to which latter replied *"Prend sa pou ou, fini sa la mem"*. On spot, he cautioned and informed him of his constitutional rights and the offence of bribing a police officer to which he remained mute. He informed, through police radio, PS 1644 Tourail (witness no.2) of the incident. PC 10213 Bautally (witness no.5) and PS 1644 Tourail (witness no.2), together with him and PC 10693 Durhone (witness no.4), brought accused to Rose Hill police station. At the time he arrested accused, both the driving licence and the Rs. 50/- note were in his hands. He denied having told accused that the fine is Rs. 2000/- or about any fixed penalty notice. He produced the Rs. 50/- note that he secured from accused on that day (**Exhibit 1**). He also produced a plan of the locus which he drew (**Doc J**) in which **Spot A** is where he was, **Spot B** is where PC 10693 Durhone (witness no.4) was and **Spot C** is where goods vehicle bearing registration no: 1066 FB 16 was.

10. During the cross-examination of PC 10528 Chitbahal (witness no.3), it came out that:

    a. the incident happened at around 09.45 on 18th July 2016;

    b. he called at Rose Hill police station at 10.17 together with accused, PC 10693 Durhone (witness no.4), PC 10213 Bautally (witness no.5) and PS 1644 Tourail (witness no.2) and reported the matter to PC 7932 Gunoory (witness no.6) who electronically recorded same;

    c. he put up a statement at Rose Hill police station at 10.17 but only put up a declaration in respect of the incident at 11.50;

    d. he did not make any entry in respect of the offence of bribery in the COTS System at the TES because he had already made entries to that effect at Rose Hill police station;

e. the statement he gave at Rose Hill police station was witnessed by PC 10693 Durhone (witness no.4). He however conceded that PC 10693 Durhone (witness no.4) did not witness the recording of that statement but merely affixed his signature to it and therefore was a false entry;

f. he cannot remember if he showed PC 10693 Durhone (witness no.4) his statement before latter putting his statement;

g. after calling his supervisor, i.e., PS 1644 Tourail (witness no.2) on the police radio for assistance, latter came on spot and took charge of the whole operation but he did not make mention of this in his first statement. He could also not provide any explanation in that respect in his statement to the ICAC dated 17th January 2017;

h. accused alighted from his vehicle and shook his hands whilst PC 10693 Durhone (witness no.4) was coming from the other side of that vehicle. PC 10693 Durhone (witness no.4) did not see accused giving him money but only saw the handshake action. He put the money in the driving license which was in his left hand and showed it to PC 10693 Durhone (witness no.4);

i. he denied having told accused that the fine for the contravention was Rs. 2,000/- and that he asked for Rs. 500/- but accused told him that he had only Rs. 50/- which he remitted to him; and

j. accused rather gave him Rs. 50/- by stating *"prend sa pou ou ... fini sa la mem"*.

11. PC 10693 Durhone (witness no.4) was posted at the TES since May 2016. He was under the supervision of PS 1644 Tourail (witness no.2). On 18th July 2016 he was on duty together with PC 10528 Chitbahal (witness no.3) to perform stop and check along New Trunk Road, Ebene. They were near the HSBC building when they saw a goods vehicle coming from the direction of Ebene, crossed the continuous white line, and went onto the fast lane. PC 10528 Chitbahal (witness no.3) immediately signaled the driver to stop his vehicle, asked for his driving licence and informed him of the offence of crossing a continuous white line. The driver stated to PC 10528 Chitbahal (witness no.3) *"missier donne moi ene chance, prend sa pour ou"* and he saw the driver remitting a Rs. 50/- note to PC 10528 Chitbahal (witness no.3). When his previous inconsistent statement was put to him, he agreed that he only saw the driver giving PC 10528 Chitbahal (witness no.3) a handshake with his right hand and that accused rather stated *"prend ca pour ou, fini tout sa la même"*. PC 10528 Chitbahal (witness no.3) informed PS 1644 Tourail (witness no.2) of the offence and latter requested them to remain on spot. Later, PS 1644 Tourail (witness no.2) and PC 10213 Bautally (witness no.5) joined them and accused was brought to Rose Hill police station. He was at all times within hearing distance of PC 10528

Chitbahal (witness no.3) and he did not hear him asking accused for Rs. 500/- so as not to book him for the contravention offence. He did however hear PC 10528 Chitbahal (witness no.3) informing accused of the offence and its corresponding fine of Rs. 2,000/-.

12. During the cross examination of PC 10693 Durhone (witness no.4), it came out that:

    a. he, PC 10528 Chitbahal (witness no.3) and PC 10213 Bautally (witness no.5) were seated in the same room, on different tables, when putting their respective statements at Rose Hill police station on 18th July 2016;

    b. he signed as the person witnessing the statement which was put by PC 10528 Chitbahal (witness no.3) on 18th July 2016 at 10.30;

    c. PC 10528 Chitbahal (witness no.3) was enquiring into a matter which he himself had reported;

    d. he finished putting his statement on 18th July 2016 at 10.50 but he did not mention the time he started recording that statement;

    e. he was writing his statement at the same time PC 10528 Chitbahal (witness no.3) was writing his;

    f. de denied being a 'temoin de complaisance' and is deposing at to what he has seen on that day; and

    g. he did not mention in his statement of 18th July 2016 of any driving licence and Rs. 50/- note in it.

13. PC 10213 Bautally (witness no.5) was posted at the TES since 25th July 2015 and was under the supervision of PS 1644 Tourail (witness no.2). On 18th July 2016, he was on patrol along the New Trunk Road when he received a call from PC 10528 Chitbahal (witness no.3) requesting him to proceed to Ebene to give him a helping hand. On spot, PC 10528 Chitbahal (witness no.3) showed me a driving licence in a pouch in which there was a Rs. 50/-note. PC 10528 Chitbahal (witness no.3) told him that the money was given to him by accused since he had booked him for a contravention offence. He further stated that he questioned accused thereat and he replied *"boss fini sa par la même, mo pas pou refaire sa encore"*. They all proceeded to Rose Hill police station whereby they were met by PS 1644 Tourail (witness no.2).

14. During the cross examination of PC 10213 Bautally (witness no.5), it came out that:

a. he denied being a 'temoin de complaisance';

b. he put up a statement at Rose Hill police station on 18th July 2016 and which he finished at 10.55;

c. he did not witness the commission of the offence but only came on spot later whereby PC 10528 Chitbahal (witness no.3) gave him the driving licence which was in a pouch and which contained a Rs. 50/- note as he mentioned in his statement at Rose Hill police station;

d. PC 10528 Chitbahal (witness no.3) called him to give a helping hand on spot; and

e. he did not mention any driving licence or pouch in his statement to the ICAC.

15. PS 1644 Tourail (witness no.2) is the second in charge of the TES. His duties comprise, amongst others, to supervise police officers working under his shift at the TES. PC 10528 Chitbahal (witness no.3) was posted at the TES and was under his supervision. PS 1644 Tourail (witness no.2) identified a statement he recorded from accused on 18th July 2016, at 11.00, at Rose Hill police station (**Doc B1**). He explained that the Rs. 50/- note was sealed in an envelope and handed over to PC 10528 Chitbahal (witness no.3). As for the Duty Roster of 18th July 2016, it was Inspector Bahadoor who had assigned the duties. He identified **Doc C** as being the duty roster of the TES for 18th July 2016. He was in charge of the supervision of the officers mentioned therein, which included PC 10528 Chitbahal (witness no.3), PC 10693 Durhone (witness no.4) and PC 10213 Bautally (witness no.5). He verified their attendance and time of duty as mentioned in **Doc C**. On 18th July 2016, he was at Line Barracks, Port Louis, when at around 09.30 he was informed, by police radio, that PC 10528 Chitbahal (witness no.3) had stopped a lorry at Trianon, Rose Hill, and that the driver tried to give him a Rs. 50/- note. He asked PC 10213 Bautally (witness no.5) to give assistance to PC 10528 Chitbahal (witness no.3). He then proceeded on spot where he saw PC 10528 Chitbahal (witness no.3), PC 10693 Durhone (witness no.4), PC 10213 Bautally (witness no.5), a lorry together with accused and a passenger. On spot thereat, PC 10528 Chitbahal (witness no.3) informed him that the lorry driver tried to give him a Rs. 50/- note to evade being booked for a contravention offence. That Rs. 50/- note was in possession of PC 10528 Chitbahal (witness no.3). He thereafter drove them to Rose Hill police station. He recorded a statement from accused at 11.00 (**Doc B1**) whilst PC 10528 Chitbahal (witness no.3) had already given his statement at 10.30. PC 10528 Chitbahal (witness no.3) also drew up a plan of the locus. PS 1644 Tourail (witness no.2) produced photographs that he took of the locus one or two days after the incident, made printouts and included them in the police file (**Doc D**). There is no statement or Diary Book entry in respect of these photographs nor were same confronted to the accused.

16. During the cross-examination of PS 1644 Tourail (witness no.2), it came out that:

a. he gave four statements to the ICAC, namely on (i) 29th August 2016, (ii) 26th September 2016 (iii) 22nd November 2016 and (iv) 28th February 2017 respectively;

b. he produced a Diary Book extract of the Road Safety Unit of 18th July 2016 in respect of the duty parade at 07.08. Though his name is mentioned as the officer inserting that entry (**Doc E**), his signature is not to be found therein because it is an electronic Diary Book entry and that his name suffices without his signature;

c. he produced another Diary Book extract of the Road Safety Unit of 18th July 2016 at 07.44 (**Doc F**). In **Doc F**, though electronically generated, his signature is found therein. He explained that he had to sign it because there is the signature of another officer, namely, PC Seechurn, on that entry;

d. at the time he recorded a statement from accused on 18th July 2016 at Rose Hill police station at 11.00 (**Doc B1**), he already had the statement of PC 10528 Chitbahal (witness no.3) which had already been recorded. Although in 2016 all entries were made through the COTS system, the declaration of PC 10528 Chitbahal (witness no.3) was first taken in handwriting and then entered electronically in the system;

e. there is no entry made by PC 10528 Chitbahal (witness no.3) in the Diary Book of the TES in relation to the bribe allegedly offered by accused. Since it was reported at Rose Hill police station, there was no need to put an entry anew at the TES;

f. he did not put any statement at Rose Hill police station;

g. according to police Standing Orders, whenever an offence is detected or takes place, the police have to make an entry in the Occurrence Book and thereafter take the statement of any suspect;

h. he did not come across the statement of PC 10213 Bautally (witness no.5) but he is aware that latter gave assistance to PC 10528 Chitbahal (witness no.3) at the locus;

i. the statement of PC 10213 Bautally (witness no.5) is dated 18th July 2016 at 10.55, i.e., before the declaration of PC 10528 Chitbahal (witness no.3) at 11.56. PC 10213 Bautally, as a police officer, has access to a statement pad on which he can write his statement;

j. though the incident was reported to him, he did not put any statement at Rose Hill police station to narrate what was reported to him;

k. he conceded that PC 10213 Bautally (witness no.5), in his statement dated the 18th July 2016, stated that *"PC 10528 Chitbahal, approached me and informed me that the driver of the said vehicle, which I later got to know one Mr Saeb Ally Auckbur, had committed the offence of failing to comply with traffic sign to wit crossing continuous white line and he showed me the driving licence of the said driver which contained a 50-rupee note bearing serial number etc etc etc, of the bank note. I informed the driver of same and requested him to accompany us to Rose Hill police station for enquiry, which he complied voluntarily. I escorted the same vehicle to the said police station and on service motorcycle 156RM11, allocated to me. The driver stated to me on spot the following in creole, 'boss fini ca par la meme, mo pas pou re faire ca encore'"*;

l. he conceded that PC 10213 Bautally (witness no.5) stated that PC 10528 Chitbahal (witness no.3) showed him the driving licence which contained a Rs. 50/- note. But in his statement to the ICAC he mentioned that PC 10528 Chitbahal (witness no.3) reported to him that accused remitted to him a Rs. 50 /- note without any driving licence being mentioned;

m. he conceded that PC 10693 Durhone (witness no.4) gave a statement at Rose Hill police station at 10.50 on 18th July 2016 whereby he mentioned that "*I actually saw the driver gave PC Chitbahal a handshake with his right hand and PC Chitbahal showed to me a Rs50 banknote with a serial number folded quarterly*". He explained that, in his opinion, PC 10528 Chitbahal (witness no.3) must have secured the Rs. 50/- note and the driving licence of accused before the arrival of PC 10213 Bautally (witness no.5);

m. he informed the OPS Room of the incident and inserted an entry in the COTS System to that effect at 10.17 on 18th July 2016. But that entry does not reflect whether he had informed the OPS Room;

o. the statement given by PC 10528 Chitbahal (witness no.3) on 18th July 2016 at 10.17 at Rose Hill police station was witnessed by PC 10693 Durhone (witness no.4), who is a witness to the incident that occurred and later himself gave a statement as a witness;

p. there is in fact a COTS System at the TES but given they had already reported the matter at Rose Hill police station, there was no need to record in again at the TES;

q. during the recording of accused statement at Rose Hill police station (**Doc B1**), accused stated that PC 10528 Chitbahal (witness no.3) asked him Rs. 500/- to which he stated that he had only Rs. 50/-. However, he did not confront PC 10528 Chitbahal (witness no.3) with that allegation since he had to refer the matter to the ICAC because a police officer was being accused of bribery.

r. he did not put any entry in the COTS system or anywhere to the effect that there has been an allegation of bribery against PC 10528 Chitbahal (witness no.3) since the matter had to be referred to the ICAC;

s. he was the one who took photographs and inserted them in the police file though there is no date or signature therein;

t. despite the allegations made against PC 10528 Chitbahal (witness no.3) on 18th July 2016, he still made a plan of the locus on 20th July 2016; and

u. in respect of the Duty Roster (**Doc C**), though it is mentioned that the duties, by the officers mentioned therein, were correctly performed and that they were visited and found at all times alert, sober and fit for duty, he never visited them but only certified to same.

17. During re-examination, PS 1644 Tourail (witness no.2) stated that as per **Doc C**, the 18 officers at the TES were tasked to perform duty along M1 and M2, Grand Bay and that varies upon their posting. Furthermore, as per the statement of PC 10213 Bautally (witness no.5), latter mentioned that *"PC 10528, Cheebahaul approached me and informed me that the driver of said vehicle which I later got to know as one Mr Saeb Ally Auckbur, had committed the offence of failing to comply with Traffic Sign to way crossing continuous white line and he showed me the driving licence of the said driver which contained a fifty-rupee bank note bearing serial No. JB573953 and told me that the said driver tried to bribe him with same."*

18. PS 7932 Gunoory was posted as Rose Hill police station. On 18th July 2016 he was performing first shift duty from 07.15 to 15.20. At 10.17, the station orderly inserted a Diary Book entry No.67 (**Doc K**) to the effect that PS 1644 Tourail (witness no.2), PC 10528 Chitbahal (witness no.3) and PC 10213 Bautally (witness no.5) called in to report a case of bribery against accused.

C. CASE FOR DEFENCE

19. Accused did not depose under oath nor called any witness on his behalf. As per his unsworn version (**Doc B1**), he explains the circumstances of the remittance of the Rs. 50/- note as follows:

> *"La police finne vine acotte mo la porte chauffeur et li finne informe moi ki mo finne commette en offence a cotte mo finne traverse en la ligne blanc et ki mo pas ti aurait dit faire li. Li finne dire moi ki li pé prend moi ene contravention. mo finne dessane depuis dans mo camion et mo finne alle vers direction policier la ki ti pé ecrire dans so carnet et li finne dire moi*

ki lamanne la li deux milles roupies et moi mo ti ena cinquante roupies avec moi ki ti dans mo poche et ki mo finne mette dans mo la main droite et mo finne donne li ca cinquante roupies la. Policier ki ti pé ecrire dans so carnet et ki mo capave reconnaitre parski li dans station la police Rose-Hill, li finne demanne moi cinq cent roupies mo finne dire li mo pena et ki mo ena ziste cinquante roupies, mo finne enflé camion ti present kan policier la finne demmanne moi sa cinq cent roupie la. Mo enflé camion mo conne li par Aslam et mo pas conne so nom famille."

20. Accused maintained that version in his statement to the ICAC of 08th February 2017 (**Doc B**).

D. SUBMISSIONS

21. Learned Counsel for the prosecution submitted that there is a clear admission on the part of accused, in **Doc B1**, that he did offer Rs. 50/- to PC 10528 Chitbahal (witness no.3) and that the Court should analyze the whole of the evidence within its proper context in respect of what took place at Rose Hill police station.

22. On the other hand, Learned Counsel for accused submitted that accused merely gave money following a solicitation of Rs. 500/- by PC 10528 Chitbahal (witness no.3) and that in view of the numerous contradictions and unfairness of the police enquiry conducted at Rose Hill police station, the charge against accused should be dismissed.

E. THE LAW

23. **Section 5 (1) (a) of the POCA** provides:

"5. Bribery of public official

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

(a) doing, or for abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties;"

24. In the present case, the prosecution has to prove that:

i. accused wilfully, unlawfully and criminally offered a gratification, i.e., Rs. 50/-;
ii. to a public official, i.e., PC 10528 Chitbahal; and

iii. for abstaining from doing an act in the execution of his duties, i.e., so as not to establish any road traffic contravention against him.

F. ANALYSIS

i. accused wilfully, unlawfully and criminally offered a gratification, i.e., Rs. 50/-
ii. for abstaining from doing an act in the execution of his duties, i.e., so as not to establish any road traffic contravention against him

25. The depositions of the prosecution witnesses, namely, PC 10528 Chitbahal, PC 10693 Durhone (witness no.4), PC 10213 Bautally (witness no.5) and PS 1644 Tourail (witness no.2) show that the cross-examination of those witnesses was geared towards showing how the initial enquiry, at Rose Hill police station on 18th July 2016, was done unfairly. It was much emphasized that the declaration of PC 10528 Chitbahal, in respect of the case of bribery against accused, was only reported by him at 11.56 on 18th July 2016 whilst the statement of accused was already being recorded by PS 1644 Tourail (witness no.2) as from 11.00. Also, it was shown that the statement of PC 10528 Chitbahal was witnessed by PC 10693 Durhone (witness no.4) and that PS 1644 Tourail (witness no.2), though forming part of the arresting team, enquired into the case and took a statement from accused. Issues were also raised as to whether the police officers were in fact monitored as specified in the Duty Roster (**Doc C**).

26. However, as SI Seewooduth (witness no.1) explained, the ICAC conducted an independent enquiry into the matter after the case was referred to it by the Commissioner of Police. As such, the present case was lodged on the basis of the independent ICAC enquiry and not merely on the police enquiry conducted on 18th July 2016 by PS 1644 Tourail. It is noteworthy that the ICAC took statements anew from all the police officers concerned. As was stated in **The Queen v/s Amasimbi (1991) SCJ 210**:

> *"An unfair enquiry may be followed by a fair trial and a fair enquiry may in its turn lead to an unfair trial. The two notions are different and distinct and it would be a wrong proposition in law to say that there cannot be a fair trial without a fair enquiry.*
>
> ...
>
> *One should not read into it more than what it actually says. It does not say that where an enquiry is unfair (with whatever degree of unfairness) there cannot be a fair trial."*

27. In the present case, there is nothing to suggest that accused did not benefit from a fair trial despite Learned Counsel for accused emphasizing on the unfairness of the police enquiry conducted on 18th July 2016. On the contrary, the independent enquiry conducted by the ICAC and accused being satisfied with the statement he gave to the police on 18th July 2016 when interviewed anew by the ICAC (**Doc B**) shows that he did benefit from a fair enquiry. As can be seen from **Doc B**, accused stated, in presence of his counsel, the following:

> *"Q2: Ou apé montré moi original statement qui mo ti donne la police le 18 Juillet 2016 au station de police de Rose Hill de 11.00 hrs à 11.40 hrs après qui ti fini explike ou ou ban droit constitutionel (Folio 564357 to Folio 564361 shown). Ou officer L''ICAC (meaning SI Seewooduth ou finne lire sa l'enquete la avec moi.*
>
> *A2 : Mo confirmer qui c'est sa meme l'enquete ki mo ti donne a la police volontairement et mo aussi confirmé qui tous seki mo ti dire dan mo l'enquete li vrai et li bon. Mo ti signe mo l'enquete volontairement quand policier qui ti prend mo l'enquete la ti fini lire mo l'enquete avec moi. Mo pena aucaine objection qui l'ICAC servi sa statement qui mo ti donne la police le 18 Juillet 2016 pou le besoin de sa l'enquete et si bisin alle la cour."*

28. Moreover, any issue raised in respect of the Duty Roster (**Doc C**) is irrelevant since the presence of the police officers involved in the present case is not being disputed at all. Furthermore, there is indeed a Diary Book entry at Rose Hill police station, as explained by PS 7932 Gunoory, to the effect that PS 1644 Tourail (witness no.2), PC 10213 Bautally (witness no.5) and PC 10528 Chitbahal did report a case of bribery against accused on 18th July 2016 at 10.17 (**Doc K**).

29. Now, as per **Doc B1**, it is undisputed that accused, on 18th July 2016, made a clear admission to the effect that he did offer a Rs. 50/- note to PC 10528 Chitbahal after latter had informed him that the fine is Rs. 2000/-. It is noteworthy that none of the prosecution witnesses were confronted with any suggestion to the effect that accused did not offer a Rs. 50/- note to PC 10528 Chitbahal (witness no.3). However, it is the contention of accused that PC 10528 Chitbahal (witness no.3) asked him for Rs. 500/- first and he only thereafter gave latter a Rs. 50/- note being the only money he had in his possession.

30. However, PC 10528 Chitbahal (witness no.3) was unwavering on the fact that he never asked accused any Rs.500/- despite being subject to a lengthy cross-examination. PC 10693 Durhone (witness no.4) who was on duty together with PC 10528 Chitbahal (witness no.3) on 18th July 2016, to perform stop and check at New Trunk Road Ebene, stated that he never heard latter

asking Rs. 500/- from accused. He explained that he could hear properly since he was within hearing distance of PC 10528 Chitbahal (witness no.3) at that time. He also flatly denied being a 'temoin de complaisance' merely supporting a colleague. He rather stated that he was deposing as to what he perceived on that day. There is nothing on record as to why the Court should doubt the version of PC 10528 Chitbahal (witness no.3) and PC 10693 Durhone (witness no.4) on this particular issue. On the other hand, the Court is only in presence of the unsworn version of accused to the effect that PC 10528 Chitbahal (witness no.3) asked him for Rs. 500/-. The Court stands guided by the principle enunciated in **DPP v Toylocco (2022) SCJ 16** to the effect that:

> *"Regarding the unsworn statement of the respondent, it is only evidence what he told the police and the learned Magistrate erred when she referred to that unsworn version as the evidence on record.* ***Andoo v R [1989 SCJ 257]****. On the authority of* ***Boyjoonauth v The State & Anor [2017 SCJ 378]*** *it was clearly set out that sworn evidence carries more weight than unsworn evidence."*
> (underlining is mine)

31. Accused, in his statement dated 18th July 2016 (**Doc B1**), also stated that one Aslam, his lorry helper, was present when PC 10528 Chitbahal (witness no.3) allegedly asked him for Rs. 500/- . However, as explained by SI Seewooduth (witness no.1), the said Aslam, during the ICAC enquiry, stated that he did not hear personally PC 10528 Chitbahal (witness no.3) asking Rs. 500/- from accused. It was rather accused who later told him that PC 10528 Chitbahal (witness no.3) had asked him Rs. 500/-.

32. In view of the above, there is a clear and unequivocal admission from accused (**Doc B1**) that he did offer a Rs. 50/- note to PC 10528 Chitbahal (witness no.3). Now the purpose for which that Rs. 50/- note was offered, cannot by any stretch of imagination, be for the payment of the fine. Road traffic contravention fines are simply not paid directly to police officers on the road. Any ordinary person, especially the driver of a vehicle, must necessarily know that. The only reasonable inference, given the circumstances of the case, for which this Rs. 50/- note was offered was for PC 10528 Chitbahal (witness no.3) not to book accused for the contravention offence. The Court has no difficulty in believing both PC 10528 Chitbahal (witness no.3) and PC 10693 Durhone (witness no.4) to the effect that Rs. 500/- was never asked from accused by PC 10528 Chitbahal. Their unshaken testimonies, under oath, on this particular issue carry more weight than the unsworn version of accused especially when the enquiry revealed that the said Aslam did not support the version of accused. As such, the prosecution has proved, beyond reasonable doubt, that accused wilfully, unlawfully and criminally offered a gratification, i.e., Rs. 50/- for PC 10528 Chitbahal to abstain from doing an act in the execution of his duties, i.e., so as not to establish any road traffic contravention against him

ii. public official

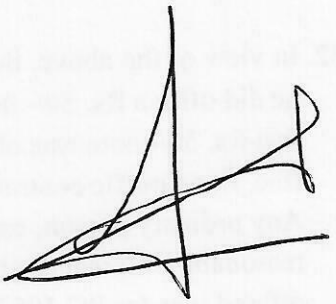
1. It is incumbent on the prosecution to prove that the Rs. 50/- was given to a public official. In that respect, **section 2 of the POCA** provides that:

> *""public official" - (a) means a Minister, a member of the National Assembly, a public officer, a local government officer, an employee or member of a local authority, a member of a Commission set up under the Constitution, an employee or member of a statutory corporation, or an employee or director of any Government company;"* (underlining is mine)

33. As per the testimony of Mrs. Babita Boojhawon (witness no.9) and **Doc A,** PC 10528 Chitbahal (witness no.3) was in the employment of the Mauritius Police Force at the time of the offence. He is, as at date, still in employment. As such, it is undisputed that PC 10528 Chitbahal (witness no.3) is a Public Official within the meaning of **section 2 of the POCA** and that the Rs. 50/- was therefore offered to PC 10528 Chitbahal (witness no.3) as a Public Official.

G. CONCLUSION

34. In view of the above, the Court concludes that the prosecution has proved its case, beyond reasonable doubt, against accused. Accused is accordingly found guilty under the one Count of the Information.



A.R.TAJOODEEN
Magistrate of the Intermediate Court (Financial Crimes Division)
15.09.2025