ICAC v Girdharry Khurun

2026 INT 81

IN THE INTERMEDIATE COURT OF MAURITIUS
Financial Crimes Division

CN : FR/L5/2024

In the matter of:

The Independent Commission Against Corruption[1]

V

Girdharry KHURUN

JUDGMENT

The accused stands charged in respect of 2 counts with wilfully, unlawfully and criminally, whilst being a public official, making use of his position for a gratification for himself, in breach of sections 7 and 83 of the Prevention of Corruption Act.

He pleaded not guilty to the charges and he is represented by Mr R. Samputh.

Mr Ponen appeared for the prosecution.

On the 21st of December 2015, the Accused, vehicle examiner at the National Land Transport Authority (the NLTA), allegedly unlawfully made use of his position to issue favorable vehicle examination report without any physical vehicle examination in respect of vehicles 3248 NV 96 and obtained Rs 200 as gratification (Count 1) and 4023 SP 06 for a gratification of Rs 1,000 (Count 2).

That the accused was at the material time a vehicle examiner at the NLTA is not disputed. Various witnesses were called and several documents were produced during the trial. The defence did not choose to adduce any evidence at the close of the case for the prosecution. Both learned counsels offered comprehensive oral and written submissions.

It is the case for the prosecution that there is sufficient evidence of gratification. With regard to Count 1, the prosecution relied upon the out of Court statement of Witness 6, in which he stated that he gave Rs 200 to the Accused, submitting that the much weight should be attached to his version when taking into account other issues such as the missing vehicles from the Attendance record and the time taken for examination of each vehicle.

[1] By virtue of Section 168(1) of the Financial Crimes Commission Act 2023, promulgated on the 29th of March 2024, The Financial Crimes Commission has now replaced the ICAC.

As for Count 2, it was the prosecution's view that the version of witness 7 in court, despite bearing few inconsistencies, is reliable and true in substance, the inconsistencies can be attributed to passage of time and the stress of deposing in court.

Emphasis was also led on the procedure for verification of a vehicle at the examination center of Plaine Lauzun before a fitness certificate is issued. There is evidence on record that a vehicle must be physically examined and that not only the registration mark, but all other particulars, including chassis number, must tally with the registration book. It was revealed that the vehicle must proceed to the examination pit for the check up before the vehicle examiner gave his report.

It is the case for the defence that the prosecution has failed to establish beyond reasonable doubt the essential ingredient of the offence, namely the misuse of his office for gratification.

It is the defense's contention that the prosecution did not prove any gratification under Count 2, the issue being one of a discount made for works done at the place of the Accused, which discount is normally done for all clients. The mere allegation of receipt of money, without proof of corrupt purpose is therefore insufficient to ground a conviction under Section 7.

Since the fitness certificate is issued by a different officer, the accused cannot himself circumvent the procedure and issue such a certificate.

Whilst a presumption of corrupt purpose exists by virtue of Section 83 of the Act, such presumption operates after proof of solicitation or corrupt behaviour, causing the evidential burden to shift: **Hanumunthadu v The State and Anor 2010 SCJ 288**.

<u>The law</u>

Section 7 of the **POCA** reads as follows:

> "(*1) Subject to subsection (3),* ***any public official*** *who makes use of his office or position for a* ***gratification for himself*** *or another person shall commit an offence …"*

Section 7(1) POCA creates an offence which contains the following constitutive elements as laid down in **B Jhurry v ICAC and Anor 2015 SCJ 258:**

(1) The person charged is a public official;

(2) he made use of his office or position as a public official;

(3) in order to obtain a gratification either for himself or for another person.

<u>The person charged is a public official</u>

Section 2 of **The POCA** gives the following definition of a public official:

"*…a Minister, a member of the National Assembly, a public officer, a local government officer, an employee or a 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…"

The Interpretation and General Clauses Act 1974 defines a statutory corporation as a "*body incorporated by an Act*". Whilst initially established under the Road Traffic Act 1980, the NLTA is now governed by the NLTA Act 16 of 2019.

There is ample evidence that the accused joined the former National Transport Authority since the 15th of March 2007 and it is not disputed that at the material time, he was on duty at the Examination Centre of Plaine Lauzun[2]. It is therefore proven that he was a public official.

Made use of his office for gratification

Section 83 of the POCA states that "*In the course of a trial of an accused for a corruption offence, it shall be presumed that at the time a gratification was received, the recipient knew that such gratification was made for a corrupt purpose*."

Section 2 of the POCA defines "*gratification*" as "*a gift, reward, discount, premium or other advantage, other than lawful remuneration*".

In **B Jhurry v ICAC and Anor 2015 SCJ 258,** it was observed that the "*definition and meaning of "gratification", which has been inserted in section 2 of the Act, further buttresses the point that an offence would not lie in respect of any innocuous act. A criminal offence is only committed under section 7(1) of the Act where the public official makes use of his office or position in order to obtain a "gratification" within the meaning of "gratification" as set out in section 2 of the Act*".

The case of **N. Joomeer v The State 2013 SCJ 413** defines gratification as follows:

"…In fact, under this section of the law, it is not material that someone who is using his office or position should have actually obtained the gratification he is looking for. It is enough that he is abusing his office or position for the purpose of a gift, reward or other such advantages but also for an offer or promise, whether conditional or unconditional of such a gift, reward or other advantage.

The opprobrium lies in the abuse or misuse of the office or the position as a public officer for a gratification. Whether the gratification is received or accepted is not part of the elements of the offence even if the reception or the acceptance adds further evidential weight to prove that the abuse of office was "for gratification.""

Whether the accused made an abuse of his position as a vehicle examiner to issue a favourable vehicle examination report for vehicles 3248 NV 96 and 4023 SP 06 without undergoing any physical examination is the issue to be determined. That the Fitness certificate for these vehicles was not produced in court is not material since the evidence on record show that fitness certificates were issued. The evidence also shows that the role of the driver who brings his vehicle at the examination centre and the duties of the vehicle examiner are established and that no fitness can be attributed to a private vehicle if it was not brought for the test.

[2] Page 4 of sitting of 10th June 2024.

The evidence pertaining to the procedure for such physical vehicle examination was given by witness 4, Mr Bhowon. For a vehicle to undergo test at Plaine Lauzun Centre, there must be an appointment. The possibility of an outdoor examination exists but it clearly concerns goods vehicles and trailers, the procedure is different and the request must be sent to the Head Office at Cassis. On the scheduled date, the driver goes to the cashier together with the registration book and the reference of the appointment, to pay the fee for the examination, which was Rs 400 in 2015. He leaves his vehicle outside the compound of the Centre. Once the payment is made, the cashier retains the registration book and issues the driver with a receipt. After that, the driver takes his car inside the compound, through the entrance gate (there is one entrance gate and one exit gate) to the examination pit mentioned in his receipt. At the gate, A security officer notes down the registration number of the vehicle entering in an Attendance Book. The registration book is in the meantime forwarded to the vehicle examiner, according to examination pit given.

When the driver goes to the selected pit, the vehicle examiner proceeds to examine the vehicle by checking the registration book before proceeding with the physical check of the vehicle which is included in the Examination Report. Once the examination is done, the Examination Report is handed over to the driver who goes back to the office for the issue of a Fitness Certificate.

Normally it is the cashier who determine the examination pit upon issuing the receipt by putting a note on the receipt. Mr Bhowon confirmed that vehicle 3248 NV 96 was assigned Row 1, but that for vehicle 4023 SP 06, no row was mentioned. He could not confirmed which examination pit was assigned to the Accused on that day.

The vehicle Examiner's Report and the duplicate receipt with regard to each vehicle are on record, dated 21st December 2015 (Document B and B1, Document C and C1). It is not disputed that the test was paid for and receipts were issued. The Reports bear the name and signature of the accused and since they were favourable, both vehicles were given their fitness certificate.

The prosecution is also relying on the Attendance Book (Document D) of vehicles which went to the Centre on the material day. This Book is kept by the security officer (witness 5) who is posted at the entrance gate. She normally records all incoming vehicles without any stop for verification. For the material day, vehicles 3248 NV 96 and 4023 SP 06 are not mentioned in the attendance book. But these are not the only vehicles which are not mentioned in the Attendance Book. For that same day, 44 vehicles which were delivered the fitness certificate do not appear in her attendance book.

The fact that these vehicles are missing from the book would normally mean that they did not attend the centre, except for the explanation given by witness 5 that when she is not at her post or taking a break, vehicles keep coming in and therefore their number not recorded.

Count 1

The charge under this count relates to vehicle 3248 NV 96 and it is alleged that the accused received Rs 200 from Mr Backus (witness 6) to issue a favourable vehicle Examination report without undergoing any physical test.

The prosecution is basing its case on the vehicle examination report and the duplicate of receipt (Document B and B1) and the absence of the vehicle number from the attendance book to show that this vehicle was issued a fitness certificate without attending the fitness centre. This is a possible conclusion that one might reach. However, the standard of proof is beyond reasonable doubt and in that respect the version of witness 6 retains all its importance.

Witness 6 was not called and this Court previously allowed his out of court statement to be produced pursuant to **Section 188C (2) (b) of the Courts Act** as he is "*unfit to be a witness because of his …mental condition*", as per the ruling dated 11th September 2025. Having ruled that the statement was admissible, the issue is now to decide on the weight to be attached to the statement. To that end, subsection 4 of **Section 188C of the Courts Act** is relevant and it reads:

> *(4) In assessing the weight, if any, to be attached to a statement admitted in evidence under subsection (1), the Court shall have regard to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.*

The principles to be applied when a witness does not attend a trial were clarified in the case of **Simon Price v The United Kingdom 2017 ECHRR 17** at page 24, referring to **Al-Khawaja and Tahery v The United Kingdom 54 EHRR 23** in the following (to what is relevant here):

…

v. *According to the "sole or decisive rule", if the conviction of a defendant is solely or mainly based on evidence provided by witnesses whom the accused is unable to question at any stage of the proceedings, his defence rights are unduly restricted.* (emphasis is mine)

vi. *In this context, the word "decisive" should be narrowly understood as indicating evidence of such significance or importance as is likely to be determinative of the outcome of the case. Where the untested evidence of a witness is supported by other incriminating evidence, the assessment of whether it is decisive will depend on the strength of the supportive evidence: the stronger the other incriminating evidence, the less likely that the evidence of the absent witness will be treated as decisive.*

vii. *However, as Article 6 § 3 of the Convention should be interpreted in the context of an overall examination of the fairness of the proceedings, the sole or decisive rule should not be applied in an inflexible manner.*

viii. *In particular, where a hearsay statement is the sole or decisive evidence against a defendant, its admission as evidence will not automatically result in a breach of Article 6 § 1. At the same time, where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. Because of the dangers of the admission of such evidence, it*

would constitute a very important factor to balance in the scales and one which would require sufficient counterbalancing factors, including the existence of strong procedural safeguards. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance to the case.

Bearing in mind that a witness should as a general rule give evidence during trial, it is imperative to analyse all counter balancing factors. The Court will have to assess whether the untested evidence of witness 6 is supported by other incriminating evidence and the assessment of whether it is decisive depends on the strength of any supportive evidence. If the other incriminating evidence is strong, it is less likely that the evidence of witness 6 will be treated as decisive. The Court is alive to the potential disadvantage for the Accused who in principle should have the opportunity to challenge the evidence against him, to test the truthfulness and reliability of the evidence given by witnesses during oral examination.

In his statement dated 13/05/2016, given at the former ICAC (Document E), Witness 6 explained that on the material day, he brought car 3248 NV 96, belonging to his mother, to the Examination Centre at Plaine Lauzun. He went to pay for his fee of Rs 400 whilst his vehicle was outside. He then walked inside to see whether he knew someone to expediate the examination as he was tired and there was a long queue. He met one Karan whom he knew as vehicle examiner at NTA and asked him to "*trace sa pou moi lor vitesse*". He left all his papers with him as well as Rs 200, following which he told him to go in front to collect the fitness certificate, which he did.

He revealed that the vehicle did not go inside the Center and there was no physical examination done. The said Karan did not ask for money, but he gave him the money for his services.

The Accused did not adduce any evidence. In his out of court statement, he denied that received any money from Mr Backus and maintained that he examined the vehicle.

The only evidence in support of the prosecution case is the attendance book which do not bear the registration number of vehicle and tending to show that the vehicle did not go through the gate, inside the examination centre. In all, 44 vehicles were not recorded as having entered the premises for the test. It is the view of the prosecution that possibility of having such an amount of vehicles which did not go through the gatekeeper's record cannot result from a stand-still and cannot be a coincidence resulting in a pattern used by the Accused. Furthermore, the time taken by the accused (few seconds to one minute) to examine one vehicle cannot reflect the reality given the number of issues which need to be examined before clearance is given.

The reliance of such evidence however must be done with care.

There is evidence from witness 5 that whilst she was posted at the entrance of the Examination Centre and recorded all incoming vehicles, she sometimes moved from her place for various reasons resulting in incoming vehicles not being recorded in the book. Whilst 44 vehicles not being recorded for a day is of concern and the possibility of the vehicles not being there exists, but on its own, this is insufficient to conclusively prove that vehicle 3248 NV 96 did not gain

access inside the premises. As such, the court cannot consider that this evidence is strong enough to support the out of court version of the witness.

Apart from the unsworn version of the witness 6 to the effect that he gave money to one Karan, there is no evidence at all that it was Accused whom he was referring to and no evidence that the certificate was issued without any physical examination done. In such circumstances, the court finds that no weight can be attached to the unsworn version of witness 6 and there being no other evidence against the accused, the court holds that the prosecution has not proved its case beyond reasonable doubt and **dismisses this count against the accused**.

Count 2

In 2015, witness 7 was working at the Accused's place for the purpose of installing blinds. He had to renew the fitness certificate of his vehicle 4023 SP 06 and asked the Accused if he can do it. The accused agreed and asked him to bring the horsepower. Witness 7 also gave him Rs 400 for the fee. After two days, the accused gave him back the papers together with the fitness certificate. During that time, the vehicle remained in the possession of witness 7.

The Vehicle Examiner's Report for vehicle 4023 SP 06 and attached receipt (Document C and C1) are dated 21/12/15. The accused does not dispute that he signed on the report. His version as contained in his unsworn statement is "*mo pas d'accord*"[3].

It can be gathered from the testimony of witness 7 that his vehicle did not proceed for fitness examination. His testimony is heavily challenged by the defence in view of the inconsistencies it contains. The defence referred to the case of **Hauradhun R v The State 2010 SCJ 183** to substantiate its proposal that inconsistencies must be evaluated in context and may be fatal where material. Having considered his evidence and demeanour in Court, it can be gleaned that there are some aspects which he could not remember well and since they pertained to the works which were or were not carried out, they become immaterial. The inconsistencies are minor ones, not relating to the main issue and not affecting his overall credibility. He remained adamant that the vehicle was not brought for examination.

The circumstances leading to the obtention of the fitness certificate are likewise relevant. Witness 7 knew that the accused was working the National Transport Authority and asked if he can renew the fitness certificate. It took two days and the vehicle did not physically attend the Centre. After the works were carried out at the Accused's place, the accused asked witness 7 for a discount "*ene lisage*" and witness 7 agreed to make a further discount from Rs 6000 to Rs 5000. Despite the fact that witness 7 stated that it was not a "bribe" but only a discount, there is no doubt that it was not an innocuous act, falling within the precinct of gratification.

The case of **ICAC v Seeneevassen 2012 SCJ 658** should be distinguished. The defence referring to this case, submitted that the monies were received in a non-corrupt context and therefore no corruption offence lies. The Supreme Court held:

[3] Document A1

"*On the facts as found proved by the learned Magistrate, it cannot be said that the respondent was guilty of any corruption offence as he did not obtain or solicit any "gratification" as defined in section 2 of the Act. On the face of it, the respondent did not obtain or solicit "a gift, reward … … or other advantage". The respondent was merely remitted the money to pay for a debt and was acting as an agent; hence the finding of the learned Magistrate that he might have been guilty of embezzlement. We accordingly take the view that the learned Magistrate rightly concluded that the sums of money obtained under the first count and solicited under the second and fourth counts did not amount to gratification.*"

Within the meaning of gratification, it is sufficient that the person is using his position for any advantage. A discount is included in the definition of gratification given by section 2. When the accused accepted to issue the fitness certificate without the car being brought to the fitness centre and without a proper physical check, there is clearly an abuse of his office.

Having concluded that the version of witness 7 is credible, there is no evidence from the Accused, besides his unsworn version, to suggest the contrary so much so that there is no doubt that the discount was given in furtherance of a favour done "*ranne ene service'*.

The presumption that Section 83 carries, no doubt, comes in operation when the prosecution has put in the evidence of a corrupt behaviour. Since the court is satisfied that the prosecution has put in a prima facie case, it was incumbent upon the Accused to adduce some evidence to rebut the prima facie evidence: **Andoo V The Queen 1989 SCJ 257**.

In view of the above, the court holds that the prosecution has proved its case beyond reasonable doubt and finds **the Accused guilty as charged in respect of Count 2**.

B.R.Jannoo- Jaunbocus (Mrs.)
President
Intermediate Court (Financial Crimes Division)
This 8th April 2026.