

Summary: ICAC v Girdharry Khurun 2026 INT 81

Accused, a vehicle examiner at the National Land Transport Authority (“NLTA”), was prosecuted on two counts under sections 7 and 83 of the Prevention of Corruption Act (“PoCA”) for allegedly making use of his position as a public official to obtain gratification.

It was not disputed that he was a public official. The prosecution alleged that on 21 December 2015, Accused issued favourable vehicle examination reports without conducting the required physical inspections. In Count 1, he allegedly received Rs 200 in relation to vehicle 3248 NV 96. In Count 2, he allegedly obtained a benefit in the form of a discount (amounting to Rs 1,000 advantage) in exchange for issuing a favourable report for vehicle 4023 SP 06. The defence denied any wrongdoing, arguing that the prosecution had failed to prove gratification or corrupt intent beyond reasonable doubt and that any discount was part of normal business practice.

The main issue before the Court was whether the Accused had made use of his position as a public official to obtain gratification within the meaning of section 7 PoCA. This required the Court to determine whether there was sufficient evidence that (i) the Accused used his official position, and (ii) such use was for the purpose of obtaining a gratification. A further issue arose in relation to Count 1 as to whether the prosecution could rely on an out-of-court statement as decisive evidence without infringing Accused’s right to a fair trial. The applicability of the statutory presumption under section 83 PoCA also depended on whether prior proof of corrupt conduct had been established.

Section 7 PoCA creates the offence of a public official using his office for gratification, which consists of three elements as set out in **B Jhurry v ICAC and Anor 2015 SCJ 258**: the accused must be a public official, must have used his position, and must have done so to obtain gratification. “Gratification” is broadly defined under section 2 PoCA to include any gift, reward, discount or advantage. As explained in **N Joomeer v The State 2013 SCJ 413**, the offence lies in the abuse of office for such advantage, irrespective of whether the gratification is actually received, though receipt may strengthen the evidence. Section 83 PoCA provides for a presumption that any gratification is corrupt, but this presumption only arises once some evidence of corrupt behaviour has been established, as clarified in **Hanumunthadu v The State 2010 SCJ 288**. In relation to hearsay evidence, principles derived from **Simon Price v United Kingdom 2017 ECHR** and **Al-Khawaja and Tahery v United Kingdom** require that where a conviction is based solely or decisively on untested evidence, there must be sufficient counterbalancing safeguards to ensure fairness. Additionally, once the prosecution establishes a prima facie case, the evidential burden may shift to the Accused to rebut it, as stated in **Andoo v The Queen 1989 SCJ 257**.

In applying the law to Count 1, the Court found that the prosecution’s case rested primarily on the out-of-court statement of a witness who was unavailable for cross-examination. Although the statement was admitted, the Court held that little weight could be attached to it, especially as it was not supported by strong corroborative evidence. The absence of the vehicle from the attendance register was not decisive, given evidence that many vehicles were not recorded due to lapses by the security officer. Moreover, there was no clear identification that the person referred to in the statement was the Accused. In line with hearsay evidence, the Court concluded that the statement was effectively decisive but insufficiently reliable. Accordingly, the prosecution failed to prove its case beyond reasonable doubt, and the Accused was acquitted on Count 1.

In relation to Count 2, the Court relied on the direct testimony of a witness who stated that his vehicle was never brought for examination and that the Accused nonetheless facilitated the issuance of a fitness certificate. Although there were minor inconsistencies in the witness’s account, the Court found them immaterial and did not consider them to affect his credibility. The Court further held that the discount granted to the Accused constituted a “gratification” within the meaning of section 2 PoCA, rejecting the defence argument that it was merely a normal commercial discount. By agreeing to issue a favourable report

without a physical inspection, the Accused had clearly abused his position. Once this prima facie case of corrupt conduct was established, the presumption under section 83 PoCA arose, and the accused failed to rebut it, offering only an unsworn denial. Consequently, the Court found that the prosecution had proved the offence beyond reasonable doubt and convicted the accused on Count 2.