

2026 INT 136

FCD CN 56/2020  
CN 789/2018

IN THE INTERMEDIATE COURT OF MAURITIUS  
(FINANCIAL CRIMES DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

Dhinesh SEEBURRUN

JUDGMENT

1. The accused has been prosecuted for the offence of; a public official using his office for gratification under 2 counts of the Information, in breach of sections 7(1) and 83 of the Prevention of Corruption Act 2002 (POCA). The accused pleaded not guilty to the Information and was represented by Mr A. Domingue SC and Mr S. Servansingh of counsel, throughout the proceedings. Mr H. Ponon, of counsel represented the prosecution.
2. It is noted that the case has been transferred to the Financial Crimes Division of the Intermediate Court, from the Criminal Division of the Intermediate Court.

**CASE FOR THE PROSECUTION**

3. Witness no.16, PC Iyaloo, produced a booklet of four photos as Docs A (A1 to A4). He stated under cross-examination that the photos were all taken in the same spot. He was instructed by CI Jokhoo, witness no.15.

4. Witness no.14, Mrs Rajni Ramprasad, was deputed by the Ministry of Public Infrastructure (MPI) gave evidence as to the accused's official status at the Ministry. He was promoted to temporary lead architect on 16.08.18. He was the principal architect in October 2014 until the time of trial. She produced **Docs B, B1 and B2**.
5. Witness no.15, CI Jokhoo, identified Docs A (A1 to A4). He explained that, in company of individuals, he went to Tourtereux Avenue, Flic-en-Flac. The purpose was for witness nos. 8, 9 and 13 to indicate certain spots as mentioned in their respective statements. He produced **Doc C**, explaining the photos.
6. Under cross-examination, he stated that he was the supervising officer of the enquiry. Defence statements of the accused were recorded in his presence and he also put questions to the accused. The house of the accused was not inspected during the enquiry. The reason was that the witnesses alleged that they deposited the tiles at the accused's residence, but no further information was gathered as to what happened to the tiles thereafter. The exercise of taking photographs took place between 14:18 and 14:38 in presence of three witnesses. Each gave indications separately. Their respective names were Moura, Jasmin and Ramloul. The individual who stated that he delivered the ceramic tiles to the accused's house said that he did so on 02.11.14. He subsequently changed the said date. The witness no.15 agreed that he changed the date when confronted with the invoices. Mr Jasmin relied on the date which was corrected by the supplier.
7. Witness no.1, Senior Investigator Koussa, was the main enquiring officer in the case. He recorded two defence statements from the accused, which he produced as **Docs D and D1**. The accused provided the investigators several documents, which the witness produced as follows:

**Doc E** – Acknowledgement of payment / Receipt dated 07.12.15.

**Doc E1** – Bank statement of the accused's account – 28.10.15 to 21.11.15.

**Doc E2** – Photocopies of the accused's passport (4 pages).

**Doc E3** – Certificate from the Entrepreneurship Development Institute of India.

8. Under cross-examination, it was borne out that the alleged date of delivery of tiles confronted to the accused at Doc D, was 02.11.14. The latter stated that he was not in Mauritius on that date. That assertion was confirmed through investigation and by the documents provided by the accused himself. The witness stated that he thereafter enquired from the suppliers as to the date which was alleged. They

stated that they made a mistake as to the date. He could not remember the name of the person who made a mistake, but a statement was recorded from that person. He produced an affidavit listing the dates at which statements were recorded from witnesses during the enquiry, vide **Doc F**. The last statement was recorded on 18.05.16 and the matter was referred to the Office of the Director of Public Prosecutions on 11.07.18. The witness gave somewhat muddled answers as to when the investigation was completed. He concluded that the investigation was over when the file was submitted to the Commission for a decision. But he could not answer how long after completion of the enquiry, was the matter referred to the legal division.

9. Witness no.3, Mrs Vidia Appadoo, was the Deputy Permanent Secretary of the Ministry of Education at the material time. She was also the Chairperson of the Departmental Bid Committee of the Ministry. One of her duties was to oversee the procurement process at the Ministry. She provided information to the then ICAC regarding a project of the Ministry in 2013. A tender was launched on 26.08.13 which was processed by the Central Procurement Board (CPB). The contract for the project was awarded to a joint venture comprising of Govindramen Construction & Sons Ltd ('GCS Ltd') and Divine Buildings Co. Ltd for the sum of Rs77,963,972.50. She produced a letter to that effect as **Doc G**. She also produced a certified copy of the said contract as **Doc H**. She further produced **Doc J**, the Bid Evaluation Report of the Ministry of Education. The project was managed by the Infrastructure Management Unit of the Ministry of Education, but supervised by the formerly known Ministry of Public Infrastructure ('MPI').
10. Under cross-examination, the witness stated that the person responsible for the project was Mr Nogassur, manager of procurement and supply. He issued **Doc G**. There were nine bidders and the lowest bidder, bidder no.3 (the joint venture) was selected. She was at the Ministry in 2015, and as at 17.12.15 the project was yet to be completed.
11. Witness no.10, Mr Niraj Jealal, was the manager of Africa Supplies and Services Ltd (ASAS) at the time he put up his statement in 2016. The company dealt in the distribution of ceramic tiles and sanitary wares. Its showroom was found at the ESM Building, Petite Riviere, and thereafter at La Tour Koenig. Govindramen Constructions and Sons Ltd ('GCS Ltd') was a client of the company. The contact persons were Mr K. Govindramen and one employee, Mr Jean Pierre Moura. They were the only ones who could take delivery of tiles and sanitary wares for their construction sites. Payment was dealt with only by Mr Govindramen. GCS Ltd

was contracted to carry out the construction of a government school at Flacq, for which they purchased a large quantity of ceramic tiles. The witness produced **Doc K**, an email he received from Mr Jean Pierre Moura regarding the supply of tiles. He further produced the following documents:

- a. **Doc L** – An invoice showing the sale of the tiles to GCS Ltd, dated 30.09.14, for the amount of Rs23,621. That amount was settled after the investigation for this case had started.
- b. **Doc M** – A delivery note showing the delivery of the tiles to Mr Jean Pierre Moura by lorry bearing number S1162. The date should read 02.10.14, instead of 02.11.14.
- c. **Docs M1 to M10** – These are ten delivery notes dated from 01.10.14 to 02.10.14.
- d. **Docs N to N3** – These are four BIN cards, also known as stock cards, showing the details of all products delivered or received in stock.

12. Under cross-examination, the witness agreed that the email, **Doc K**, was addressed personally to him by Mr Jean Pierre Moura (W8). The latter represented GCS Ltd and he placed the order for the tiles, among other orders. The VAT invoice, **Doc L**, was prepared by the finance department, more precisely, Mrs Sonam Noyan. The invoice was issued on the same day of the order, on 13.09.14. The site mentioned was the Flacq government school. The delivery was made according to the terms at **Doc M**, which was prepared by witness no.11, the logistic officer. The quantity of white tiles ordered as per **Doc M** was 880, and 800 were supplied as per **Doc K**. The rest of the items were supplied as per the quantity ordered. A total of 1580 tiles were ordered and 1500 were delivered. The delivery notes and that of goods were purely the province of witness no.8. The witness confirmed the procedures involving the receiver and the supplier of the goods. The original of **Doc M** was handed to Mr Jean Pierre Moura, the receiver of the goods. He produced **Doc P**, a statement of account bearing the figure Rs23,621. He agreed that the company was invoiced for an excess number of 80 tiles. One of those tiles was priced at Rs13 plus VAT. Payment was effected on the 24.06.16 for Rs25,000, which included interests. The amount of interests charged in that case was Rs2519.57, which is 10% per year, as from 30 days after delivery. He stated that the delivery date was 02.10.14 and not 02.11.14. The witness obtained **Doc P** from Mr Noyan. It was put to the witness that there were discrepancies in the calculation of interests and the stated figures at **Doc P**. However, the witness did not prepare the document and could not comment on same. Docs AG and AG1

were shown to the witness, and he could not confirm that the documents were issued by his company.

13. Witness no.12, Mr Jugdutt Jaulim, was the storekeeper at Africa Supplies and Services Ltd ('ASAS') since 2007. He managed the stock at the said company. He confirmed that he inserted the entries on Docs N to N3, the BIN or stock cards. When a client ordered goods from the company, he would issue a delivery note as per the terms of the invoice. The client would sign on the delivery note. He confirmed the contents of Docs L and M. There were four items on the invoice which resulted in the four BIN cards.
14. Under cross-examination, the witness admitted that he corrected the date on Doc M8 from 02.11.14 to 02.10.14. He also agreed that there was a mistake at Doc N that 800 tiles were delivered instead of the 880 that was inserted.
15. Witness no.11, Mr Ramrajsing Moonowah, worked at 'ASAS' in 2014. The witness identified his own handwriting and signature on a delivery note No. 5512 (Doc M) for a shipment of various coloured 20 by 20 ceramic wall tiles to Govindramen Construction and Sons Limited, which was collected by Jean-Pierre Mourra in truck number S1162. He made a mistake as to the number of tiles ordered, being 880 instead of the stated 800.
16. Witness no.7, Ms Smeeta Ragoolam, stated that in 2016, she was a registered architect at the MPI. In 2014, she joined the team of architects supervising project for the construction of the extension to the Rajcoomar Gujadhur School and the New Special Educational Needs School at Flacq, hereinafter as 'the project'. The accused was project architect who was in charge of the site. She assisted him in his work whether on site or off site. Concerning the said project, she was called to attend some meetings, but not all of them and she was unaware of the individuals who would meet the accused for the project. She saw Mr Jean Pierre coming out of the office of the accused on one occasion but she could not remember the date.
17. During cross-examination, the witness was confronted with her out-of-court statement. The first issue was whether she saw Mr Mourra in the office of the accused or in the corridor outside the office. It is unclear as to why the defence chose to elicit such evidence when she had stated in examination-in-chief that she saw Mr Mourra coming out of the accused's office. The second issue was whether she was invited for a meeting with Mr Mourra and the accused, as per her out-of-

court statement. She stated that she did not attend such meeting, and she could not remember whether she was invited for a meeting or not.

18. Witness no.5, Mr Pravind Kumar Gupt Domah, was the chief architect at the MPI in 2016, in the then architect section. All other architects within a group were under his responsibility. The accused was a principal architect and worked under his supervision. He was the contract administrator for 'the project'. As the contract administrator, Mr. Domah was responsible for overseeing all contractual issues and ensuring compliance with the contract's stipulations. Meanwhile, the direct on-site supervision and monitoring of the works were carried out by the accused.
  
19. The process of certification of payment begins when the contractor submits a payment claim for the work considered payable. Upon receiving the claim, the witness normally requests the Quantity Surveyor ('QS') to prepare an assessment and payment certificate. The QS liaises with the supervising architect (the accused) and the project engineer to assess the amount payable. This assessment is strictly based on the progress and quality of work and materials on-site. Once the assessment is complete, both the QS and the project engineer sign the certificate. The signed certificate is forwarded to the Director Architect, who then forwards it to the witness for inclusion in the project's valuation file. Before granting final approval, the witness routes the file to the supervising/project architect, the accused, to submit their views, comments, and confirmation via a minute. Once the witness is satisfied with the supervising architect's feedback, they sign, approve, and release the certificate for payment. The approved certificate is sent to the client, The Ministry of Education, to process the actual payment, and a copy is issued to the contractor. In case there is a disagreement regarding the certified value, the matter is discussed and agreed upon between the witness and the supervising architect. If changes are required, it is referred back to the QS to re-assess and re-submit the valuation. A certified copy of the minute sheets from the valuation file was produced as **Doc Q**.
  
20. There were twelve payment certificates for construction claims submitted by GCS Ltd and the witness confirmed all twelve by 12.10.15. The accused had no objections to the certification and release of payment for 10 out of the 12 certificates. When the claims for certificates nos.7 and 8 were received, the accused was abroad. The accused gave his views and recommendations for a revised certificate no.9. As far as materials are concerned, the accused as project architect, was responsible to verify and confirm compliance to specifications for samples given by the contractors and as per the tender documents. For items

involving tiles and aluminium openings, recommendations of a committee, comprising of the chief and project architects, are submitted to the deputy director of architects for final approval. A letter dated 14.02.14 was produced as **Doc R**. The letter listed the items for which GCS Ltd wished to submit samples. The letter further enclosed a minute from the accused as "*Please file and bill same to undersigned urgently*". The samples were received. The notes of meeting were produced as **Doc S**. Mr Domah, the accused and Ms Ramgoolam (W7) were the members present. The witness further produced a letter dated 25.07.14 from the MPI to GCS Ltd as **Doc T**. The letter was signed by the accused as project architect. He added that no officer from the MPI was authorised to request and/or accept any material from a contractor or subcontractor for private use.

21. During cross-examination, the witness was shown Doc Q, minute 32. He agreed that he endorsed minute 32 at minute 33. He was shown a document dated 17.03.15 which will subsequently be produced by witness no.17. He confirmed the contents of the document as referred to him. He stated that following the liquidated and ascertained damages, the contractor did not challenge the decision.
22. Witness no.17, Mr Yasdev Kistomohun, stated that at the time of 'the project', he was the Assistant Permanent Secretary posted at the Infrastructure Management Unit of the Ministry of Education. The unit was responsible for the maintenance and construction of new schools and renovation of existing schools. Regarding 'the project', the unit was responsible for the follow-up until completion. The work started on 22.01.13 and was expected to be completed in 2016. The work was supervised by the project manager, the accused, together with Mr Domah and Miss Meenowa, the QS. Staff from the Ministry of Education ensured that the work was done as per specifications. Payment was effected when the payment certificates were signed by the architects involved, including the accused. The witness produced 12 certified copies of payment certificates as Docs U to U11. He also produced a brief of the project as **Doc V**.
23. Under cross-examination, the witness agreed that at Doc S, the proper appellation for the accused should have been architect, and not project manager. The accused did not sign any of Docs U to U11. It is noted that the court record mistakenly refers to Doc R1 to R11.
24. Witness no.13, Mr Ramesh Ramloul, was the sole director and shareholder of a company, Compagnie Menuiserie de l'Ocean Indien, subcontracted by GCS Ltd to work on 'the project'. The company dealt in aluminium products, such as doors,

windows and like openings. The company was to supply such openings to GCS Ltd. Both Mr Moura (W8) and Mr Govindramen were involved in the negotiations. The former dealt with the technical aspects and the latter with payment. A price of Rs3.2M was agreed. Aside from work on 'the project', that is, at the government school at Flacq, the witness stated that he was requested by Mr Moura (following confrontation of a previous inconsistent statement) to do works at the place of the accused. The work was to be carried out at Flic-en-Flac, at the residence of the accused to replace aluminium openings with new ones.

25. The witness went on site to prepare a scope of work, where he met with the accused. He gave the latter a quote which he produced as **Doc W**. The quote was to the amount of Rs316,724. His client was GCS Ltd, which effected the full payment. The witness produced **Doc Y**, a receipt addressed to GCS Ltd showing a breakdown of the payment for the sum of Rs316,724. The work at the accused's residence was completed in the month of December 2015. An email between Mr Moura and the witness was produced as **Doc Z**. He met the accused multiple times on site at his residence. At no point in time, they discussed the price of the renovations. The witness was aware that the accused was an architect at the MPI. He identified his signature on **Doc E**. He stated that the document was prepared by the accused. The accused insisted that the witness sign it. The latter signed the document in the accused's office at the MPI in December 2015. When the witness objected that it wasn't logical to sign for money he hadn't received, the accused reassured him that it was purely "just for a record" to balance internal accounts with Mr Govindraven. The witness explicitly stated that the Rs 200,000 figure was incorrect and that no such payment was ever received or deposited into his bank account. He further noted that his company is VAT-registered and normally issues official VAT invoices and records transactions in a cash book. The signed document in question (**Doc E**) was highly irregular because it was on plain paper and completely lacked the company's official header/letterhead.

26. The witness produced **Docs AA** and **AA1**. They are two VAT invoices from the witness' company. He stated that they were payments from GCS Ltd for his carried on 'the project' at Flacq, but a portion of the payment could have been for his work at the property of the accused. He further produced **Doc AB**, the bank statement of his company showing an inward transfer of Rs500,000 from GCS Ltd on 29.10.14. Another bank statement from Banque des Mascareignes was produced as **Doc AB** showing an inward transfer of Rs500,000 from GCS Ltd on 13.11.15.

27. Under cross-examination, the witness agreed that he received two payments of Rs500,000 from GCS Ltd for his work at Flacq, as per Docs AA and AA1. They do not represent the total payment for all his work but he could not remember what was the total amount of payment he received. An extract from his out-of-court statement was read to him to the effect that his company had received Rs2,750,000. He couldn't confirm whether the records or receipts still existed for the said payment. The witness agreed that he had WhatsApp messages exchanged with the accused. Docs AD to AD12 were produced to that effect. The messages were with regards to the renovation at the accused's place in Flic-en-Flac. The first message at Doc AD was dated 06.10.14. The witness agreed that the messages were sent from his phone number but he could not recall whether he sent the messages. He denied that he imported goods for the work at the accused's place. But he stated that he was in communication with the accused. As per Doc AD2, he agreed that he sent a foreman on site to take precise dimensions for ordering the goods. It is possible that the foreman took the measurements on 26.10.14, but he could not be certain. Again he agreed that it was possible that he sent the message at AD5. He confirmed the contents of Doc W. The witness agreed that he read and signed Doc E. Doc W and Doc E varies in the dimensions stated therein. The witness explained that Doc E was a rough estimate of dimensions. He was adamant that he did not receive Rs200,000 from the accused, nor any amount of money. He agreed that he sent an email to Mr Moura as per Doc Z. He produced the said document to the ICAC and admitted that there was no header for the email, he provided what he had. As per Doc Y, Mr Govindramen asked him for Rs150,000, and he did so by deducting the amount from the Rs316,745. The former would still owe him the Rs150,000.

28. The case was postponed for the witness to verify certain documents in his company's records. Cross-examination was resumed and he produced the company's statement of account as Doc AE. The witness used aluminium of the make GMD and he could not remember the exact modifications made for the work.

29. Witness no.9, Mr Roland Jasmin, was a lorry (S1162) driver at GCS Ltd. He knew of Mr Moura as a supervisor at the company. The witness worked on 'the project' at Flacq where he met the accused. He identified Doc M, a delivery showing that, together with Mr Moura (WS), they delivered tiles at Flic-en-Flac, the residence of the accused. The latter took possession of the tiles. The witness confirmed the photograph at Doc A2, and he was led as to the mistaken date on the delivery note being 02.11.14.

30. Under cross-examination, the witness identified himself at Doc A2 and Mr Moura at Doc A3. He did not see the accused on the spot on the day of reconstruction. When asked who opened the doors of the residence, he replied that he did not know. He could not remember at what time he delivered the tiles at the residence. He stated that he placed the tiles in the garage of the accused at Flic-en-Flac. He was helped in transporting the tiles by Mr Moura. He said he moved about 10 boxes of tiles from the lorry which was backed up in the yard of the residence. Questions were geared for the witness to retrace his journey on the material day when he delivered the tiles at Flic-en-Flac. He could not remember the timeframe due to lapse of time. He did state that he left Curepipe in his lorry in the early morning at about 0600 and reached Flacq at about 0730. Mr Moura and him, went to pick up the tiles at the hardware store during the day but could not remember the time exactly, nor the roads he used to Flic-en-Flac. When he reached the said residence, he stated that he stayed in his lorry and Mr Moura must have knocked and had the door opened. He could not remember if the accused was present at Flic-en-Flac at the time. He did not provide his mobile phone to the then ICAC to enquire about his whereabouts on the day.

31. Witness no.8, Mr Jean Pierre Moura, at the material time, worked at GCS Ltd as a technician on site. He worked on 'the project' at Flacq. He also supervised the workers on site. He knows Mr Jasmin (W9) as a driver and he does other metal works on site. He dealt with members of the MPI. He showed samples of materials to Ms Ramgoolam (W7). He met the accused as the architect of MPI regularly on site at Flacq, but mostly during meetings regarding 'the project'.

32. A previous inconsistent statement exercise was carried on the issue that he met the accused in his office regarding samples. He stated that he gave his out-of-court statement under a bit of pressure as it was a first experience for him to be involved in a criminal enquiry. He would later deny that he met the accused in his office when the question was put again.

33. The witness was shown Doc A3, a photograph showing him pointing to the residence of the accused. He stated that ICAC officers asked him to point to the house and a photo of him was taken. A previous inconsistent statement was read to him to that effect as follows; "*Suite a sa zordi meme mercredi le 24 fevrier 2016, a 1436, dans l'apres-midi ou fine volontairement accompagne banes officiers ICAC a la rue Tourteraux a Flic-en-Flac at mo fine montrer la case de messieur Seeburrin la cote mo ti ale kit tiles la.*" The prosecution did not expressly ask the

witness whether he stood by his out-of-court statement regarding the tiles and moved on.

34. Another previous inconsistent statement was read to him regarding the fact that he stated that he went in the lorry S1162 to pick up the tiles at Store ASAS at Petite Riviere and proceeded to the residence of the accused near Manisa Hotel. His response was that he agreed he put up that statement but he felt pressured when he did so. He was afraid. When asked whether he lied to protect himself, he denied that he had lied in his statement.
35. Witness no.2, Mr Kessoven Govindramen, referred to GCS Ltd as his company which was awarded the contract to work on 'the project'. The work was carried out under the supervision of the MPI and more precisely by the accused, as project architect. It is on record that the witness has been granted an immunity from the Director of Public Prosecutions concerning this case. He identified Doc W and stated that the quoted figure was for the aluminium works that the accused asked him to do at his residence. He paid the sum of money to Mr Ramloul (W13) despite alluring to the fact that the accused was supposed to pay that amount. He produced Doc AF, showing a payment of Rs500,000 to Mr Ramloul for the aluminium products bought, as the witness stated. He produced Doc AF1. It showed another payment of Rs500,100 to ASAS, the company of Mr Ramloul, for the work done on the 'the project'. He further produced Docs AG and AG1. They are delivery notes from ASAS showing tiles to be delivered at the residence of the accused.
36. He was asked by the accused in person if he could carry out aluminium works for the latter at his residence. Since the accused was quite difficult on site for 'the project', the witness stated that he feared that the accused would be even more strict with him on site, if he didn't agree. He was led as to the deduction he made from the Rs500,000 without much explanation from the witness. That piece of evidence is unclear and does not carry much weight.
37. Under cross-examination, the witness was shown Doc M at no. 5512. He stated that those goods were partly used for 'the project' and partly sent to the accused's place. On Doc AG, when asked who inserted the word Flic-en-Flac, he replied that it should have been someone at ASAS. There was an embossed mark on Doc AB from ASAS which was absent from Doc M. It is noted that the witness did not comment on the difference. Groups of questions were put to the witness at a time.

He stated that he obtained Doc AG1 from ASAS, but he did not know the name of the person who provided same. Both Docs L and AG1 emanate from ASAS.

38. He confirmed having given five out-of-court statements under warning where he was considered as a suspect. It was borne out that the witness had stated in his statement that the accused had asked him to order some tiles for his personal use in November 2014. Thereafter, it was revealed that the accused was not in Mauritius from 26.10.14 to 22.12.14. The witness was asked to explain the discrepancy but stated that he could not recall dates after the passage of time. The witness also confirmed that he effected a first payment of Rs150,000 to Menuiserie de l'Ocean Indien Co Ltd on 30.10.14 for the aluminium works at the accused's residence. The payment was made by cheque as per his out-of-court statement. The total amount would be Rs316,745. He finally stated that there were two cheques of Rs500,000 each paid to Mr Ramloul representing all his work for 'the project' and the aluminium works for the accused personally.
39. It is noted by the court that references have been made to the out-of-court statements of the witness on numerous times during cross-examination. It is unclear whether such references were made to show a previous inconsistent statement or whether to refresh the memory of the witness. The out-of-court statements are not evidence before court. If such references are made without prior direct questions and answers being made in court, it is difficult for the court to assess the weight of such inconsistencies.
40. The witness was shown Doc W, he could confirm the payments stated therein. He was equally shown Doc AE and he could not recall whether the payments were made on the stated dates. He maintained that at the request of the accused, he went to replace his aluminium openings at Flic-en-Flac and provided him the tiles that he needed. He did not recognise or could not comment on the documents shown to him.
41. During re-examination, a memory refreshing exercise was carried out. An extract was read to the witness to the effect that he paid Mr Ramloul for the aluminium works Rs316,745 in two instalments. He transferred Rs500,000 on 29.10.14 and he asked Mr Ramloul to earmark Rs150,000 from that amount, which would count as a part-payment to the Rs316,745. A second transfer of Rs500,000 was made on 13.11.15 and the difference of Rs166,745 was deducted from that sum.

42. Mrs Juanita Meenowa a Quantity Surveyor for the Ministry of National Infrastructure and Community Development (MNI), formerly the MPI. She worked on 'the project'. The witness identified a series of payment/valuation certificates (Docs U to U11). These documents typically required three signatures: the witness (J. Meenowa), a government engineer and Mr. Domah, the Government architect. The witness clarified that Mr. Seeburrun, the accused, was never required to sign these payment certificates. The witness produced Docs AH and AH1. Doc AH was the certificate No. 13, dated March 23, 2016. Doc AH1 was the pre-final certificate No. 14, dated December 19, 2016. While a final account was submitted to the client (the Ministry of Education), no "final payment certificate" was ever released because the client never gave the necessary "go-ahead". The witness was questioned about the aluminium openings and regarding the report on the valuation of aluminium openings involving a subcontractor. She was not aware of the subcontractor. She stated they were not aware of the specific name of the subcontractor (specifically "Menuiserie de l'Ocean Indien"). The witness clarified that the amount for these works is payable to the main contractor, not directly to the subcontractor. She produced Doc AJ, a report on valuations for Aluminium openings. The contractor was fully paid as per the contract amount.

43. Under cross-examination, the witness explained that the payment certificates had to receive the final signature from Mr Domah the Deputy Director. However, as project architect and supervisor, the accused would always be best person to provide views, recommendations and conclusions. As quantity surveyor, she did not interact with subcontractors for payment purposes. Whenever there were meetings, minutes would normally be recorded.

44. The witness, Mrs Rajcoomar Pittea Mandira Devi. produced Doc AK, an attendance sheet of the MPI on 02.10.14. It showed that the accused's arrival time at 10:45 and departure time at 16:12.

45. Under cross-examination, she added that the attendance sheet was for the offices at Phoenix. She stated that in between the arrival and departure times, officers may leave for site visits, which are not shown on the attendance sheet. Same would be recorded in a movement book.

## ASSESSMENT OF THE COURT

46. The accused is charged under two counts of the Information. Both offences have been allegedly committed in the month of October 2014. The offence is under section 7(1) of POCA and the said section is reproduced below:

- (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 and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.*
- (2) *For the purposes of subsection (1), a public official shall be presumed, until the contrary is proved, to have made use of his office or position for a gratification where he has taken any decision or action in relation to any matter in which he, or a relative or associate of his, has a direct or indirect interest.*
- (3) *This section shall not apply to a public official who—*
  - (a) *holds office in a public body as a representative of a body corporate which holds shares or interests in that public body; and*
  - (b) *acts in that capacity in the interest of that body corporate.*

47. The Supreme Court through the cases **Joomer v State 2013 SCJ 413**, **Jhurry v ICAC & Anor 2015 SCJ 258** and **Babooa v ICAC & Ors 2024 SCJ 408**, has established the elements to be proved by the prosecution as follows:

- a. The accused was a public official;
- b. He made use of his office or position;
- c. In order to obtain a gratification either for himself or for another person.

48. It is not disputed that the accused held a public office at the then MPI at the material time. Docs B, B1 and B2 are on record. The first element is thus proved for both counts of the Information. The issues of this case are mostly of a factual nature. The evidence adduced in court by witnesses has been assessed as summarised above.

49. The gist of the charge under count 1 of the Information is that the accused allegedly obtained 1580 wall tiles for his personal use, from the contractor, Kessoven Govindramen who was awarded the contract to work on 'the project'. The accused was the project architect and supervisor of the contractor on 'the project'. The person who had allegedly carried out the physical transfer of tiles to the accused's residence was the contractor's foreman, Mr Jean Pierre Moura. The

latter was also the one dealing with all the administrative steps with the supplier of the tiles, that is, Africa Supplies and Services Ltd (ASAS).

50. The documentary evidence related to ASAS are found at Docs K, L, M, N to N3 and P. Mr Jealal, the manager at ASAS was clear in his testimony (paragraphs 11 and 12 above) in that, 1580 tiles were ordered by GCS Ltd through Mr Moura, and for some reason only 1500 were delivered. At Doc K, the tiles were sought for the R.G. primary school at Flacq. Doc L, a VAT invoice refers to the site at Flacq Govt. School. Same reference is made at Doc M, a delivery note for the tiles. The evidence that tiles were ordered and delivered, was corroborated by witness nos. 11 and 12 as seen above. It is understood that Mr Moura took delivery of the tiles in lorry S1162. There was a mistake as to the delivery date, which was corrected to 02.10.14. Whilst the evidence pointing to the fact that tiles were ordered and delivered to Mr Moura, is reliable, it must be shown that those tiles were directed to the accused in some capacity.
51. The main witness for the prosecution regarding the transfer of the tiles, due to his involvement in the process, was witness no.8, Mr Jean Pierre Moura. His evidence has been assessed above starting at paragraph 31. Having had the benefit of observing the witness in court, it can safely be construed that Mr Moura was the epitome of unreliability as a witness. He was evasive and neither confirmed nor denied his out-of-court statements when confronted to him. Some latitude was granted to the prosecution to ask leading questions to the witness. He was nevertheless difficult to contend with as a witness. Thus, his evidence carries no weight.
52. The witness no.2, Mr Govindramen, produced Docs AG and AG1 regarding order no.5512. He stated that they emanated from ASAS. Doc AG bears the title 'delivery note'. They list the same four types of tiles as those at Doc M. Doc M was provided to the then ICAC by ASAS and produced in court by Mr Jealal, the then manager of ASAS. Docs AG and AG1 were produced in court by the witness no.2. No explanation was offered as to the reason for having multiple copies of delivery notes for the same goods delivered, with important differences. The striking feature of Doc AG1 is that the poorly made copy is almost entirely faded except for the writings regarding the tiles, the accused's name and the site at Flic-en-Flac. The only plausible explanation would be that those were over-writings. When shown Doc M during cross-examination, the witness could not explain the differences. However, he stated that the tiles at Doc M were partly used for 'the project' at Flacq, and partly for the accused at Flic-en-Flac. The issue is that the

total number of tiles at Doc M amounts to 1580, which is the case for the prosecution. If the order of such tiles was not entirely meant for the accused, then the evidence of the driver (W9) who delivered all the boxes of tiles to the residence of the accused is put in doubt.

53. Furthermore, the issue of date correction from 02.11.14 to 02.10.14 for the delivery of tiles, when it was revealed by the accused that he was not in Mauritius, has to be addressed. Whilst it can be explained that a clerical mistake occurred when filling in a delivery note, the witness no.15 at paragraph 6 above stated that when photos were being taken at Flic-en-Flac, the alleged deliverer of tiles initially stated to him that he did so on 02.11.14. When the issue is one of credibility and the existence of the delivery itself is at stake, such does not help the prosecution's case.

54. I find that the evidence regarding the transfer of tiles from ASAS to the residence of the accused at Flic-en-Flac is cribbled with inconsistencies which are material in nature. When viewed as a whole, it would be unsafe to extract the bits and pieces of evidence which favour the prosecution and discard the rest. The rest does create a reasonable doubt that the tiles were given to the accused whether to his residence at Flic-en-Flac or otherwise. It is noted that, in its written submissions, the prosecution left the matter in the hands of the court regarding count 1 of the Information.

55. Under count 2 of the Information, the prosecution had to prove that the accused obtained a gratification by virtue of renovation works by replacing Aluminium openings worth Rs316,745 from GCS Ltd through Mr Jean Pierre Moura.

56. The supplier of the Aluminium products was the 'Compagnie Menuiserie de l'Océan Indien', whose sole director and shareholder was Mr Ramloul (W13). His evidence has been considered above at paragraphs 24 to 28. He was subject to a thorough cross-examination. He stated that he was requested by Mr Moura to replace Aluminium openings at the residence of the accused at Flic-en-Flac. The court notes that no evidence was adduced from Mr Moura to that effect. The witness no.13 also worked on 'the project' in Flacq, as a subcontractor to GCS Ltd. Doc W is a quote dated 10.10.14 showing a list of items with an inscription; '*For residence building at F en Flac for Mr Dinesh Seeburrin (architect)*'. The amount of Rs316,745 was alleged to have been paid by GCS Ltd in full and the work was completed in December 2015. The witness was adamant that he met the accused multiple times on the site at Flic-en-Flac to discuss the specifications of the

Aluminium works. Docs AD to AD12 show that there had been constant communication between the accused and the witness, regarding renovations at the accused's place.

57. It is not disputed that renovation works involving Mr Ramloul, regarding the replacement of Aluminium openings, was carried out at the accused's residence in Flic-en-Flac. That is confirmed by the accused's defence statement at Doc D. In the said defence statement, the accused went on to explain that he requested Mr Govindramen for such renovation work, and the latter put him in contact with Mr Ramloul. The issue which remains is how did Mr Ramloul get paid for the work. The accused had provided the then ICAC with Doc E, a receipt dated 07.12.15. The receipt was signed by Mr Ramloul showing a list of items used in the renovation work, and a sum of Rs200,000 was paid to Mr Ramloul. Mr Ramloul adduced evidence in court to the effect that he was asked to sign the said receipt but he was never paid that amount, nor any other amount by the accused. Doc E1 (verso) shows a cash withdrawal of Rs175,000 on 07.12.15 from the bank account of the accused.
58. The alleged payment of Rs316,745 was made by GCS Ltd and the evidence of witness no.2, as shown above, through Doc AF and AF1 that two payments of Rs500,000 were made to 'Compagnie Menuiserie de l'Ocean Indien'. A sum of Rs150,000 was deducted from the first Rs500,000 and Rs166,745 was deducted from the second payment of Rs500,000 to account for the total Rs316,745 as per the quote for the Aluminium works. It is noted that such evidence was obtained in court from the reading of an extract of the out-of-court statement of the witness during a memory refreshing exercise, conducted in re-examination.
59. Doc W, the quote of Rs 316,745 was dated 10.10.14. Doc Y is a statement of accounts of the company of Mr Ramloul addressed to Mr Govindramen showing a first payment of Rs150,000 dated 30.10.14 and a second payment of Rs166,745 on 16.11.15. Doc AA is a VAT Invoice from the said company showing a payment of Rs500,000 from GCS Ltd on 30.10.14. Doc AA1 is another VAT invoice showing a second payment of Rs500,000 from GCS Ltd dated 13.11.15, which predates the second payment on Doc Y. It has been clear through oral evidence in court that the Rs316,745 was deducted from two payments of Rs500,000 made by GCS Ltd to the said company. Doc Y refers to the specific sums of Rs150,000 and Rs166,745 only. It is unknown whether it should be read that those sums are marked as paid but they are in fact derived from larger sums of Rs500,000. Doc AB shows one cheque deposit of Rs500,000 and a bank transfer of Rs500,000 into the bank

account of the company. Both transactions took place on 29.10.14. Another inward transfer from GCS Ltd was found at Doc AC for another Rs500,000 on 13.11.15. None of those payments of Rs500,000 tallies with the date of payment of the sum of Rs166,745 at Doc Y. The final documentary evidence on the issue is Doc AE, a statement of account dated 12.06.15, showing four payments made on different dates.

60. If Doc Y is considered as true, the first payment of Rs150,000 was derived from the Rs500,000 payment effected on 30.10.14. That payment tallies with Doc AA and Doc AE. The second payment of Rs166,745 was dated 16.11.15. The VAT Invoice at Doc AA1 is dated 13.11.15. Two payments of Rs500,000 are disclosed at Doc AE dated 30.10.14 and 30.07.15 respectively. No evidence was adduced to explain from which Rs500,000 was the sum of Rs166,745 subtracted from. The lack of transparency on that issue through the documentary evidence and the discrepancy between oral and documentary evidence is relevant. Aluminium products were ordered and used for the governmental project. The two VAT invoices (Rs500,000) at Docs AA and AA1 are described as part payment for the school in Flacq. Doc AJ shows the valuations on 'the project' for Aluminium openings amounting to Rs3,060,000. It was therefore paramount for the prosecution to identify the two Rs500,000 payments from the documentary evidence, from which the Rs316,745 was derived, to add much needed credence to the evidence of witness nos. 2 and 13.
61. The total amount of payment for Aluminium openings at Doc AE adds up to Rs4,262,141. The valuations of Aluminium for 'the project' amounted to Rs3,060,000 as per Doc AJ. That amount was paid to GCS Ltd by the Government. The amount at Doc AE exceeds the contract price for Aluminium openings for 'the project'. The inconsistency was not explained nor submitted upon by the prosecution.
62. As a general rule the last payment would have been effected upon completion of the work. The renovation work at Flic-en-Flac was completed in December 2015, and the sum of Rs166,745 was paid allegedly on 16.11.15.
63. The evidence of the accused that he has paid Mr Ramloul Rs200,000 for the renovation work at his place has been denied by the latter. However, documentary evidence shows that the accused had withdrawn Rs175,000 from his bank account on the same day. When considering all the discrepancies that exist in the documents produced and the oral evidence of the witness no.13, the version of Mr

Ramloul carries less weight than the one of the accused. Furthermore, Mr Ramloul was a business owner who, from his demeanour in court, seemed to be of a character who could stand his ground when needed. It is questionable whether he would affix his signature on an acknowledgement of payment if no payment was received.

64. Based the above assessment, I find that the accused must have paid for the work carried out at his residence in Flic-en-Flac, by Mr Ramloul (W13).
65. No evidence was adduced to show whether the Aluminium products used at the accused's residence in Flic-en-Flac were ordered for use on the governmental project but partly used for the accused's benefit. If the Aluminium products used at Flic-en-Flac were in fact separate and distinct from the orders for 'the project', the prosecution would have had to prove that such orders and work done, was as a result of the position held by the accused as the project architect, irrespective of payment.
66. It is the view of the court that even if, Mr Ramloul was additionally paid by GCS Ltd for his work done at the residence of the accused, there is no evidence to show that the accused was aware of the separate dealings between Mr Govindramen and Mr Ramloul. There is nothing on record to suggest that the accused was informed that a payment of Rs316,745 was to be effected for the work. The case for the prosecution was based on the allegation that the accused did not make any payment for the renovation work at his residence. Without such payment, it could have been inferred that he must have known that the work was to be paid for in some other ways. That would have created the mens rea for making use of his office or position, and amounting to the gratification under section 7(1) of POCA. However, the evidence for payment was based on the testimonies of two main witnesses who have been evasive in court when confronted with contradictory documentary evidence. Once it is established that the accused has paid for the work, the prosecution had to prove that the accused knew that the payment was not in full consideration for the work done. The sum of the evidence on record shows otherwise.

## CONSLUSION

67. For these reasons, under count 1 of the Information, I hold that there is not enough reliable evidence to show that the tiles were delivered to the accused's residence and, for the latter's benefit. The accused is given the benefit of the doubt. I therefore dismiss count 1 of the Information against the accused.

Under count 2 of the Information, as assessed above, I hold that the prosecution has been unable to prove that the renovation work (Aluminium openings) carried out at the accused's residence was not a separate transaction to 'the project' in Flacq, but related to the accused's office or position. I therefore dismiss count 2 of the Information against the accused.

**P K Rangasamy**  
**Magistrate of the Intermediate Court**  
**03.06.26**