

IN THE INTERMEDIATE COURT OF MAURITIUS

Cause No: 1369\2009

In the matter of

ICAC

V

1. Rakesh Rammessur
2. Indradeo Beechook

Judgment

A discontinuance of proceedings was filed against the accused no1 on the 28\07\2010. Accused no2 stands charged for the offence of public officer using his office for gratification in breach of section 7(1) and 83 of the Prevention of Corruption Act under count 2 of the information. He pleaded not guilty and elected to be represented by counsel.

The prosecution at the outset called PC Sreekissoon who produced a booklet containing eleven photographs which he took in relation to the present case (Doc D, D1 to D11) on 14\05\2009 and he also produced a booklet containing three photographs which he took in the presence of the accused (Doc E, E1 to E3).


Mr Neerunjun Kumar Mooruth produced the official letter of the accused (Doc F).

SI Bholah produced the certified copy of the plan put up by PC Poutou in relation to the present case (Doc G).

Insp Sreekissoon produced his statement (Doc H) explaining photographs (Docs D1 to D11).

PS Lachuman produced the defence statement of the accused (Doc K) as well as a circular emanating from the Deputy Comptroller of the MRA to the effect that a laptop imported by any incoming passenger for his personal or professional use may be admitted free of VAT (Doc L).

Insp Appasamy, witness no4, deposed to the effect that on 14 May 2009 at around 6.00 a.m. he was on duty at the SSR International Airport in company of PC Issuree. Upon arrival of flight MK 045 from Charles De Gaulle, PC Issuree informed him that he had profiled an incoming passenger, namely Rakesh Ramessur, witness no20, who was appearing anxious. At that point in time, he noticed that the passenger had a laptop bag and a handbag with



him. The passenger performed his immigration formalities. PC Issuree and himself discreetly followed him up to the ground level where he went through the Duty Free shop and then he collected his luggage. In the meantime, PC Issuree and himself, proceeded to the end of the green channel and waited for the passenger. The passenger made his way out of the terminal through the green channel but he was diverted to the customs examination hall. He saw the accused actually calling the passenger to the X-ray machine to have his luggage scanned. After a brief conversation with the accused, the passenger placed his luggage on the X-ray machine for scanning. Whilst he was removing his luggage from the scan machine, he saw him having a conversation with the accused which he could not overhear.

Afterwards, he saw the passenger tendering a piece of paper which the accused examined. He approached further the X-ray machine and he saw the passenger actually partly removing a pouch with his left hand from the left front pocket of his trousers and with his right hand he removed a bank note from the pouch and placed it in his passport. He then tendered the passport to the Customs Officer namely to the accused and he saw the accused actually removing the bank note with his right hand and placed it in the right front pocket of his trousers. He approached PC Issuree who was near the exit door and related to him the occurrence and instructed him to intercept the passenger. Shortly after, the passenger came out from the examination hall. PC Issuree intercepted him in his presence. They revealed their police identity to him and requested him to accompany them to the ADSU Office for questioning. He had a conversation with him. He instructed PC Issuree to bring the accused for enquiry. Shortly after PC Issuree called at the office together with Mr Purmessur, the Customs team leader, witness no15. When the accused came into the ADSU Office, he informed him of the evidence against him, informed him of his constitutional rights, cautioned and questioned him, to which he stated: "*Mo pas ine dire li qui quantite ena pou payer. Mo ine juste dire li so allowance.*" By 'li' he was referring to the passenger, Mr Ramessur. Shortly after, Mr Purmessur left the office. The accused then voluntarily stated to him: "*Fini ca par la meme; mo pou retourne li so 50 Euros.*" meaning Mr Ramessur.

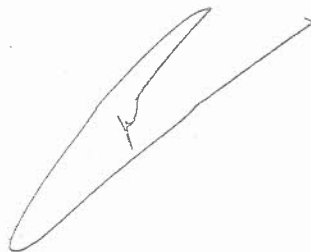
He then volunteered to show to him where he had thrown the money earlier. In company of PC Marisson, witness no6 and the accused, he left the ADSU office. At the doorstep of the office, they were joined in by Mr Purmessur. In presence of Mr Purmessur and PC Marisson, the accused showed to him the bank note which was lying in the staff corridor

near the wall separating the staff corridor and the green channel. The money was crushed in form of a ball and was lying on the floor. Accused picked up the money and he remitted it to him. He then informed the accused of the offence of accepting bribe in the execution of his duty. He secured the 50 Euros for the enquiry. He produced the 50 Euros in Court (Exhibit 1).

Under cross examination, he stated the accused was searched, but not in his presence. He did not search the accused there and then as accused admitted that he had thrown the money. He was referred to Doc J wherein the accused admitted that "*Mo pas ti dire qui bisin payer. Mo ine simplement dire li so allowance.*" He agreed that there was nothing in relation to asking payment for a bribe or receiving payment of a bribe. When accused told him "*Fini par la meme; mo pou retourne li so 50 Euros*" it was in the absence of Mr Purmessur. He questioned him about the money. Accused said that he had thrown it earlier and he was going to show to him where. He did not see the accused throwing the money away and from the evidence, no one saw him throwing the money away. He could not identify the bank note which he allegedly saw Mr Ramessur putting in his passport. Apart from the alleged confession there was no evidence linking the money with the accused. Mr Purmessur, the team leader, was present when the operation of picking up the bank note was being carried out. He received the 50 Euros bank note in his office and not immediately after accused picked up same.

He was shown Doc G (plan). He was at Point C when he first saw the passenger approaching the counter where the accused was. When he approached a little bit more towards the counter, he was at point E. The scanner machine was approximately two metres high. He was 1 metre 75 of height and Mr Beehook was even smaller than him. When he was at Point C, the accused was in-between the scanner and counter no. 1 and afterwards he moved to point G. After Point C, he moved to Point E and the accused was at Point G and that was when the transaction occurred. The scanner was fitted with two conveyor belts, one at each end, such that the scanner was not occupying the whole length. He agreed that when he did the reconstruction exercise, he was not asked to show where the passenger was when he was being called upon by the accused. Mr Issuree had been near the exit door when he was at Point C.

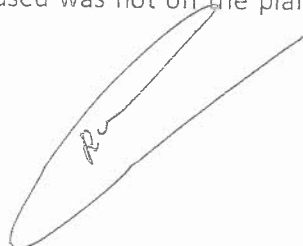
It was put to him that the accused said that the passenger came to the scanner and he had to get his luggage at the conveyor belt which was nearer to Point H. The luggage was placed



on the conveyor belt and the luggage was scanned and it came out near the computer. The luggage was placed on the conveyor belt and the luggage was scanned and it came out at Point J where the computer was so that the accused at that point in time was still in-between the scanner and counter no. 1. He agreed that accused was the only one manning the scanner at that moment. The screen to show what was being scanned was at Point J. He did not agree that accused could only have been at Point J because the image on the computer was saved so that the Customs Officer could review it back when several luggage had gone through.

— He explained that he witnessed two conversations between the accused and the passenger. The first conversation was when the passenger was for the first time entering the Customs near the counter before the luggage was placed on the conveyor belt. At that time the passenger was in-between the scanner and the counter and he could see them. It was put to him that if one drew a straight line between Points C to H, C to A, C to D, C to B, they all went through the big box of the scanner which was two-metres high so that he could not have seen them. He maintained he had a clear view between there was the conveyor belt at the end of the scanning machine pointing towards the computer. He then agreed that if a straight line was taken between Point C and Point H, it would go straight through the scanner. Point C and A also went through the scanner. For Point C to Point D, it went partially through the scanner. He then clarified that the accused was at Point G when he was at Point E and he maintained that he could see him. It was put to him that he could not see anything at Point G if he was at point E because if a straight line was drawn between the two points, two items were on the way namely a black box and the scanner itself. He explained that the black box was the conveyor belt and was lower than the scanner itself. He maintained that he saw the accused. He agreed that at Point E he could not see Points H, A, D, and B.

When he looked for his pouch in his left hand pocket to take out the money, the passenger was on the other side of the scanner near the conveyor belt at the end of the scanner. The accused was at Point G. The passenger was actually facing him when he was taking his pouch out and taking the money out. He turned his back to him to walk towards the accused and his passport was in his right hand. He saw him the handing over of the passport. He conceded that the point at which the passenger had reached when he allegedly remitted the money which was in the passport to the accused was not on the plan. Accused was at



Point G but the point when he actually took the money from the passport was also not on the plan. The distance between point E and point G was approximately 8 to 10 metres.

After the formalities the passenger had to come out of the Customs area from the sliding door which was opposite counter no. 1 and there PC Issuree and himself intercepted him and they lost sight of accused. The next time he saw accused was when he walked into his office with his team leader and Mr Issuree. Mr Issuree and Mr Purmessur did not report to him when they arrived with accused that they had seen the latter taking something out of his pocket and throwing it down. Point F was the staff corridor and was not a well frequented area.

Under re-examination, he stated that when accused was brought in in the ADSU Office, he said to him "*Fini sa par la meme, mo pou retourne li 50 Euros*". He questioned him about the money. Accused told him that the money he was going to show to him where he has thrown the money, I wanted to ascertain first the veracity of what he was saying. The scanner was two-metres high, but the scanner itself was fitted with two conveyor belts at each end.

The prosecution then called PC Issurree who deposed to the effect that on 14\05\2009 at 0600 a.m he was on duty at the Arrival Hall at SSR International Airport. He was profiling passengers on arrival from flight MK 045 near the Immigration Counter. He saw a passenger called Ramessur who appeared to be anxious. He was sweating and his hands were trembling. He informed PS Appasamy and he discreetly followed him. The passenger was carrying a laptop bag. He retrieved his luggage from the conveyor belt, proceeded to the Duty Free Shop for shopping. He proceeding to the Green Exit channel and waited for the passenger. PS Appasamy then informed him that he had seen the passenger remitting something to the Customs Officer namely the accused. He intercepted the passenger at the tour operator hall and brought him to the ADSU office to have his luggage checked. The passenger was informed of his previous act and he made an allegation against the Customs officer. He was instructed to call the accused in the office. He informed Mr Purmessur the team leader supervising the accused that the latter was being needed at the ADSU office. The accused on seeing the passenger said '*Mo fine dire li so banne allowance, seulement so banne allowance, zamais mo fine dire li ki bisin payer*'. Mr Purmessur then left the ADSU office. The accused then said '*fini sa par la meme, me pou retourne li so 50 Euros*' referring to the passenger. He told them that he would show them where he had seen the 50 Euros.

A handwritten signature or mark, possibly a stylized 'P' or 'M', enclosed in an oval shape.

He was accompanied by PS Appasamy and PC Marisson on the spot. Accused brought them to the staff passage and showed them the 50 Euros. Doc D8 was the spot where he intercepted the passenger.

Under cross examination he agreed that Insp Appasamy did not say that he saw accused remitting money to the accused but he mentioned 'something'. When the allegations were put to the accused in the presence of Mr Purmessur he denied same. He then stated that when Mr Purmessur left the office, the accused volunteered to return back the money and that was done without any prompting and he told them that he had thrown the money outside. They did not go to see Mr Purmessur then. He maintained that the accused made the confession regarding the 50 Euros.

DPC Marisson deposed to the effect that on the material date and time he was on duty at SSR International Airport and Insp Appasamy informed him that he had detected a case of bribery. He accompanied Insp Appasamy and the accused to the corridor leading to the Green Channel and they were later joined by Mr Purmessur. Accused showed to the police the place where he found a 50 Euros banknote on the floor. Doc D7 was the photograph where the 50 Euros was found. Under cross examination he stated that photograph D7 showed an open space. Accused picked up the banknote and handed it over the Insp Appasamy in his presence in the corridor. Mr Purmessur then joined them. It was put to him that the handing over of the 50 Euros did not take place at the spot where the 50 Euros was picked up to which he replied that all happened as he was stating. It was put to him that in his statement he stated that the 50 Euros was handed over to PS Appasamy at the ADSU office to which he replied that he could not say. It was also put to him that he stated that Mr Purmessur was at the spot and in Court he stated that Mr Purmessur joined them afterwards in the ADSU office to which he replied that he could not say but he stated that he remembered that Mr Purmessur joined them on the spot. It was put to him that he stated in his statement that the following '*then the Customs Officer Beehook picked up the 50 Euros and handed it over to Mr Appasamy in the ADSU office in the presence of Issurree and Purmessur*'.

Mr Sailesh Purmessur deposed to the effect that on 14\05\09 at 0600 a.m he was on duty at Sir Seewoosagar Ramgoolam as team leader of two Customs Officers one of them being the accused. He explained that the passengers moved through the green channel or the red channel. If they had to declare something they filled an assessment form and the payment

was made to the Cashier at the cash office. For a first laptop there was no tax to pay but for a second one VAT had to be paid. At some point in time, PC Issuree informed him that there was an allegation about accused and he accompanied him to the ADSU office. He was shown Doc D6 and asked what he had been showing .He replied that after the questioning he was coming out with the ADSU officers then some ADSU officers noticed a folded piece of paper . When they approached the piece of paper they saw that it was like a blank note. A police officer took it and opened it and it was a blank note of 50 Euros.

Under cross examination he stated that at the ADSU office the denial on the part of the accused of the allegation of bribery was implied. Accused did not say anything but he implied same from his demeanour. Then he walked out of the office and the piece of paper discovered by the ADSU which was opened up and found to be money. Thereafter the ADSU brought the accused to the spot.

No evidence was adduced on behalf of the defence.

In his unsworn statement to the police the accused explained that on the material date he was in the examination hall at the airport and a passenger called Rakesh Ramessur came to the counter no8. He did not have anything to declare. He was in possession of a new laptop. He showed him his receipt for same which amounted to 899 Euros and he told him that he had to pay Rs 3900 on the laptop. Then he decided that the laptop was part of his allowance and he gave him his clearance. He noted the name the passport number and the flight number and allowed the passenger to leave. After a while his team leader came with Mr Issuree ADSU officer and they went to the ADSU office. His team leader informed him that according to the ADSU officer a passenger had complained that he gave him 25 Euros. He denied the allegation. The passenger told him the he gave him twenty and five Euros. He denied same. PS Appasamy told him to settle the case and he would close the matter. He was searched and no money was found on him. Then he accompanied them where he had been working. On the way, at the entrance of the ADSU office PS Appasamy asked him to pick up a piece of paper found there. He declined to do so. The sergeant forced him verbally to do so. He picked up the crushed piece of paper and they went to the ADSU office and there the police opened the paper and found a note of 50 Euros. He denied that the money belonged to him.

I have duly considered the evidence on record, the version and demeanour of the witnesses for the prosecution and the unsworn version of the accused.



The accused stands charged with the offence of public official using his office for gratification in breach of Section 7(1) and 83 of the Prevention of Corruption Act 2002 ("POCA") namely on or about 14th day of May 2009 at SSR International Airport he did whilst being a public official, wilfully, unlawfully and criminally make use of his position for a gratification for himself. The particulars of the offence were that he obtained a sum of 50 Euros which he was not entitled to.

The prosecution bears the burden of establishing beyond reasonable doubt the following elements of the offence under section 7(1) of POCA to be established:

- (a) that the accused was a public official;
- (b) he made use of his office or position for a gratification for himself

In relation to (a) it is provided under the POCA that a "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; and

(b) includes a Judge, an arbitrator, an assessor or a member of a jury;

It is undisputed that the accused was a Customs Officer posted at the International Airport of Mauritius at the material time of the alleged offence. The letter emanating from Mr Mooruth from the MRA dated 14 Septemebr 2009 states that accused held a substantive post of Customs Officer on the establishment of the Customs Department of the MRA. As such, it remains unchallenged that accused was a public official.

In relation to (b) above, the prosecution has to prove that the accused made use of his position for a gratification for himself.

Inspector Appasamy, witness no4 was the sole witness to testify to the effect that he witnessed the transaction between the passenger and the accused. He saw the passenger tendering a piece of paper which the accused examined. Witness no.4 contended that he then approached further and saw the passenger taking a bank note from a pouch which he then placed in his passport before tendering it to the accused. Insp Appasamy then alleged that the accused removed the note and placed it in the front pocket of his trousers.

It is to be noted that Mr Issurree, witness no5 who was called as supporting witness did not witness any transaction between the passenger and the accused. He explained that Insp Appasamy had informed him that he had seen the passenger remitting 'something' to the Customs Officer and Insp Appasamy never made mention of any money being remitted.

Moreover, Insp Appasamy conceded that the scanner machine in the examination hall was about two meters high. He also stated that his height was 1.75m and that the accused was shorter than him. Insp Appasamy stated that he was at Point C on the plan (Doc G) when the accused was between the scanner and the counter.

The witness also indicated that the first conversation between the accused and the passenger occurred between the scanner and the counter which was at Point G on the plan (DOC G). It was put to him that if a straight line was drawn between Point C and Points A, B, D and H, the line would go through the scanner. He maintained that he had clear view as he described the scanner machine was about 2m height. But the conveyance belt was placed both at the end and start of the scanner was low, approximately one-third of the scanner for someone to be able to carry a heavy luggage to place on it. However, he further conceded that when he was at point E, he could not see Points A, B, D and H.

It was submitted by the defence that Insp Appasamy could not have seen any transactions as his field of vision was obstructed by the scanner at all times so that he could not have clear sight of what was in fact happening between the passenger and the accused. It is to be noted that Insp Appasamy stated that the accused and the passenger were on the other side of the scanner when the passenger allegedly looked for his pouch to take out the money. Accused was at point G when the passenger was near the conveyor belt at the end of the scanner. The passenger was facing him when he was taking the money out of his pouch, and then turned his back to him before walking towards the counter. He conceded that the point at which the passenger had reached when he allegedly remitted the money which was in the passport to the accused was not on the plan. Accused was at Point G but the point when he actually took the money from the passport was also not on the plan. This tends to undermine his credibility as to whether he had clear view of the transaction as contended by him and raises doubts as to the reliability of the version of witness no4 regarding the remittance.

Moreover, Mr Issurree explained in his testimony that when the accused was brought to the ADSU Office, the complaint against him was put to him and he denied the evidence and

stated "mo fine dire so banne allowance, seulement so banne allowance, zamais mo fine dire li ki li bizin payer". Insp Appasamy and Mr Purmessur also confirmed in their testimony that the accused had denied being involved in the alleged transaction. In the light of the accused denial, the team leader, Mr Purmessur left the ADSU Office. It was after Mr Purmessur had left that the accused allegedly to have made a verbal confession.

Now, there are some contradictory versions as to how the money was secured. PS Appasamy stated in chief that accused volunteered to return the money without being prompted to do so by anyone and he then took the ADSU officers to the spot where he had thrown the money. However, when Insp Appasamy was cross examined, he stated that the bank note was in fact remitted to him in the ADSU Office. Mr Marisson was also questioned on the issue of the bank note. Mr Marisson agreed in cross examination that the bank note was lying on the floor in an open space before the accused picked it up but his version was that the accused handed the bank note over to Insp Appasamy in the corridor itself. He stated that Mr Purmessur had been with them and then stated that he joined them. But Mr Purmessur gave an altogether different version when he explained in his testimony that the ADSU officers noticed a folded piece of paper and a police officer took the folded piece of paper and opened and found same to be money. As such from the different versions given by the prosecution witnesses as to how the money was found, this Court cannot but have serious doubts as to whether it was the accused who himself volunteered to show to the police the spot where the money was lying on the floor after he made a verbal confession.

For the reasons given above, I find at the end of the day that this is a fit case to give the accused the benefit of the doubt and I therefore dismiss the case against the accused.

Judgment delivered on: 12/12/2014

Judgment delivered by: R. D. Dabee,

President

Intermediate Court (Criminal Division)

