

IN THE INTERMEDIATE COURT OF MAURITIUS

Cause No: 1180\2009

In the matter of

ICAC

v

Bimla Ramloll

Judgment

Accused in the present case stands charged with the offence of traffic d'influence in breach of section 10(5) and 83 of the Prevention of Corruption Act 2002 (hereinafter referred to as 'POCA'). She pleaded not guilty and was assisted by counsel.

CI Cheng Yuen was called by the prosecution and he produced the defence statement of the accused (Doc A).

CI Gungadin was called by the prosecution and he produced an envelope marked JLI\2007 (Doc B) containing documents which he secured from the accused namely a set of four receipts in the name of 12 persons namely B.Jugoo, Javed Doolull, MI Goodur, MI Domah, L A Ramjaun, R Banhadoor, M N Beeharry, GL Groems, B Poorun, M R Jauffur, S Poorun and V Poorun (Docs B1 to B12). DPS Ragoo handed over to him an envelope marked JLI\2007 (Doc C) containing (a) receipt no 1212 dated 2\07\07 for the sum of Rs 10,000 in the name of Mrs Babita Jugoo and receipt no 1211 dated 02\07\07 in the sum of Rs 10,000 in the name of Mr Gabriel Laval Groems (Doc C1), a document allegedly from the Municipal Council of Quatre Bornes under the signature of the Chief Executive addressed to Mrs Joffur dated 16 August 2007 (Doc C2) , ten A4 paper bearing writings to be formats of letters in the name of the officer-in- charge of the health department of the Municipality of Quatre Bornes (Doc C3) and a document showing various points of calculations on it (Doc C4).

DPS Ragoo handed over to him another envelope marked JLIII/2007 (Doc D) containing three documents from the accused namely (a) a document dated 16 August 2007 signed by the Chief Executive of the Municipal Council of Quatre Bornes referring to right of occupation for the financial year 2007/2008 for Quatre Bornes Fair on which the name and address of the holder had been erased (Doc D1); (b) a letter addressed to the Mayor of the Municipal Council of Quatre Bornes bearing the signature of one Srikiissoon; (c) a letter dated 10 October 2007 signed by the Secretary of the Municipal Council of Quatre Bornes addressed to Mr Joolfoo (Doc D2); (d) a letter dated 10 October 2007 signed by the Secretary of the Municipal Council of Quatre Bornes addressed to Mr Ramjaun (Doc D3) and (e) a letter dated 10 October 2007 signed by the Secretary of the Municipal Council of Quatre Bornes addressed to Mr Taujoo. He also produced a sum of Rs 259,500 handed over to him by DPS Ragoo (Exhibit 1) and a mobile phone secured from the accused (Exhibit 2). Accused when confronted with the exhibits and the contents of envelopes JLI/2007 and JLIII/2007 as well as the mobile phone did not deny that they had been in her possession. Witness no9 was confronted with the accused and they both knew each other.

Under cross examination he could not say whose hand writing had been on Doc C3 which had been obtained by him from witness no3 but not in his presence.

Learned counsel for the prosecution clarified that immunity was given to witness no9 on 15 October 2009 and he was in Court in his immunity status and he informed the witness no9 about same.

The main witness to depose on behalf of the prosecution was **Mr Viraj Poorun**, witness no9, who expatiated that he knew accused since 2007 through one Mr Domah an estate agent whom he knew since long when he had a fast food. He told Mr Domah about the problems he was facing as a street hawker namely that inspectors would seize his goods and he wanted to have a fix place of business. Mr Domah then told him that he knew someone who was a councillor at the Municipality of Quatre Bornes and he called the latter. He fixed an appointment and it was then that he met accused.

Accused at the first meeting told him that there were vacant stalls at the Quatre Bornes fair and that he could obtain one. She was rather talking to Mr Domah on that

day. She advised him to write an application letter and to send it to the Municipality. On 27 October 2007, police arrested him but he had no money with him. Police also arrested accused with a sum of Rs 259,500. He explained that the money was collected from 13 hawkers because accused said that there were 13 stalls available and the money would be used to settle the outstanding fees of existing tenants.

He arranged for the money and gave accused an appointment at Orchard, Quatre Bornes to remit same. All these were done in presence of Mr Domah. The stall would cost Rs 30,000 each. The money would be used to pay for the permits, the patents, the places and arrears for the merchants who owed money. He then stated that there were many details that he could not remember.

It was put to him that he gave a statement to ICAC and in which he said that the Rs 30,000 for the stall at Quatre Bornes Fair, part of the money would be used to pay for charges for the stall and part of it to be given to inspectors '*pou faire demarches*'. He confirmed that if it was in his statement that was correct. He was then shown Docs B, B1 to B12 where he positively identified the names of the persons mentioned on each receipts whom he had contacted to take the stalls.. Mr Domah and accused explained to him as to how to write an application letter to secure a stall. Witness no9 confirmed that Docs C1 to C4 were specimen letters for application given by accused. He distributed copies to those who were interested in the stalls. He identified the sum of Rs 259,500 seized by police on accused at Flic en Flac.

On the material day, accused told him that he would get the receipts and a meeting was fixed at Quatre Bornes. He went there with Mr Domah. He remitted the money to accused who told him that she had to go La Pirogue hotel where a meeting of inspectors was being held and the receipts would be issued there. Accused pressurised him to collect the money and he did so with other applicants. He did not know about the application procedures and he sought the advice from a stall holder Mr Imteaz Bahadoor who explained that an application letter had to be sent. Accused also told him that she was councillor and she would do the necessary to approve the application.

Under cross examination, he confirmed he had been working illegally as hawker on the streets of Curepipe some 2 to 3 years before 2007 and did not hold any permit

for Curepipe market fair. He had tried several times to get a permit from the Town Council of Curepipe but to no avail. He said that he did not send application letters but went to the Town Council to give his name.

He initially contended that no one in his family had a permit then he admitted that his brother had a permit to operate. He did tell his brother about Mr Domah telling that him that could get a stall in Quatre Bornes and he showed the letter to his brother. He queried from him about the procedures of obtaining a permit. He understood that that it had to be discussed in a Committee but he could not remember if his brother told him about the procedure if its being processed from the subcommittee to a main committee and then approved by Council. He could not remember the details of all procedures explained to him as it was a long time back and he has forgotten the details.

He met Mr Domah in his snack whom he knew from his college days as he used to have lunch there. He could not remember if it was in June 2007. He was interested in getting a permit anywhere in Mauritius. He could not remember if Mr Domah proposed the stall in Quatre Bornes on the very first day he went to the snack. He could not remember if on that very day Mr Domah mentioned the name of the councillor of Quatre Bornes. It was put to him that he stated the following " *Enn jour jeudi dans le mois de juin 2007, date mo pas rappel, a 5.30 hrs mo fine dans bureau Mons Domah, li fine presente moi enn Mme Ramloll. Line dire moi ki enn conseillere ki appelle Mme Sunita Ramloll. Sa jour la meme li fine presente moi avec ene madame et fine dire moi sa Mme Sunita Ramloll la conseillere et madame la ti dans bureau Domah et sa madame la fine dire li meme conseillere Sunita Ramloll et la mo fine dire madame la ki mo bizin enn stall dans la foire Quatre Bornes.*". He replied that that could be correct.

He found the handwriting difficult to read but he recalled that the statement was read to him and he agreed to its content. He agreed that he gave a statement in October 2007 and he had signed it.

He stated that accused asked her for Rs 30,000 per stall but he collected a bit more as he did not have money for a stall and as such Mr Domah told him to ask others for more so that he can generate a surplus to buy one of his own. They contemplated to ask for Rs 50,000 or even Rs 60,000. The surplus was to be shared

between himself and Mr Domah. He did not give any money to Mr Domah as Rs 20,000 was left which was still with him and he was willing to remit same back. He could not remember if he told Mr Domah that there was Rs 20,000 left.

He confirmed that when police arrested him at Flic en Flac, they seized the money namely the sum collected from those willing to get a stall in Quatre Bornes. He could not say when he was arrested to whom he said that the money belonged to. It was put to him that he stated in his statement " *madame Ramloll ti reponde la police casse la pou moi sa ek moi en retour mo ti dire la police c'est casse ki mo fine ramasser comme commission avec banne dimoune pou gagne la table dan bazar Quatre Bornes et c'est mo meme qui fine donne sa Madam Ramloll.*" He confirmed that he said so and it was the truth. He gave a first statement on 24 October 2007 which was in ten pages but he was still confused and he gave a statement to police where details were missing. The only statement to be relied upon was the one given to ICAC.

He did not know about the procedures but he was advised by Mr Domah. He went on to canvass people who were interested and he showed them the specimen application letter which they had to sign one and send to the Council. He was hesitant as to whether he told them that the Committee had to approve same. If it was written in his statements that he spent part of the money on food and fuel for his car then it might be true. It was also put to him if he did not tell ICAC that accused was on the committee and that she would use her influence to get him the permit. He maintained he spoke the truth at ICAC but he did not say that as he could have missed that.

He could not remember how he got the address of accused and he said that he might receive from Mr Domah as well as the telephone number. He could not also recall how many times, he called accused but he should have called her for the deal. But he could not remember the details at all and everything was found in his statement.

He did not remember if he had said to Mr Domah that the Council had approved all the permits for stalls and he went to the office of Mr Domah to inform him. He denied again that he requested Mr Domah to sign a form to accept the offer of the Council. He was asked if he offered a gift to accused and he said he could not remember and

added that it was in his statement. He explained that his memory was not good at all and it was since he was arrested and went to jail. He had been suffering from depression and he consulted several doctors.

The prosecution called **Mr Jacques Commarmond** who stated that in 2007 he was working as security officer at Brinks. On 24 October 2007 he was responsible for the security at La Pirogue Hotel. He stated that there was no activities such as seminars, marriage ceremonies at the hotel on that day as the person at the gate should have been informed. A sheet was sent to him at the gate with details of the events at the hotel. Under cross examination he stated that he worked at the hotel since 2001 and it was the sales department which would receive bookings for conference and it would be impossible that he would not have been informed of any event and a function sheet was circulated to all departments. At the gate he would be communicated with a list of the persons attending the function. The person's name would be verified from the list before he would be given access. No one attended any function on that day.

The prosecution also called **Mrs Sasika Loga Virahsawmy**, who stated that in 2006\2007 she had been working at the Municipality of Quatre Bornes as Financial Controller. There had been four departments namely the Income, Expenditure, Payroll and Stores each headed by a Head of Department. To obtain a stall four types of computer generated receipts for payments were issued namely right of occupation, trade fees, entrance fees and stamped paper and there was a number for each receipt. The payments were effected at the cash office at the Municipality. The cashier would hand over the original to the person making the payment and would the remaining copies for the records of the Municipality. The original receipt would bear the signature of the cashier. Each cashier has an alphabet identifying him. She was shown documents B1 to B12 and she confirmed that the documents did not emanate from the Municipality as the numbers on the receipts were that of the month of July 2007 as per the records at the Municipality and not in October 2007. She produced the real receipts bearing the numbers on Documents B1 to B12 and they were marked Docs E E1 to E47. Under cross examination she stated that any receipts with respect to those stalls issued in October 2007 would be at the Municipality. She could remember the amount to be paid for each specific fee.

The prosecution also called **PC Laval** who deposed to the effect that on the 24th October 2007 at 1530 hrs, he proceeded to Wolmar, Flic en Flac in company of other officers and private car bearing registration number 8212 make Renault colour white was intercepted by them. It was being driven by Mr Viraj Poorun, witness no9. The accused was seated at the rear on the left. A search was carried out with their consent. He secured Docs B1 to B12 and D1 to D3 from the accused and Docs C1 to C4 from Mr Poorun. The sum of Rs 259,500 (Exhibit 1) was secured from the accused from her handbag. Accused was cautioned about the money and she replied that she was going to leave the money to a lady called Shoba. He agreed that in his statement he said that Mrs Ramloll stated that following '*en fait mo ti pe alle quitte sa l'argent la avec inspectrice municipalite ki appelle Shoba ki dire moi vine joinde li cote l'hotel La Pirogue a cote li a pe attend ene seminar*'. As regards the receipts secured she replied that "*banne recus ki mo ti pou donne Rajiv pou la table bazar*" and Rajiv was the alias name of Viraj Poorun. Mr Rajiv Poorun stated the following as regards the receipts '*sa banne recus ki lor nom banne dimounes avec ki mo fine ramasse kass pou commission et en parties a banne dimounes la fine paye pou sa banne recus la*'. The handbag of the accused was searched and her mobile was secured (Exhibit 2). Another mobile had been found in possession of the accused and the latter was not secured as she stated that it belonged to her son.

Under cross examination he stated that he did not verify the signature of the cashier on the receipts(Docs B1 to B12), the signatures on Doc C1 to C4 and the handwriting on Doc C3 as he was not the enquiring officer and he only secured the exhibits. He could not say if there was a person called Shoba who worked at the Municipality and whether a statement was recorded from her.

Mr Jean Francois Dorestant deposed to the effect that in 2007, he was the Chief Executive of the Municipal Council of Port Louis and he confirmed that accused was an elected member of the Municipality of Quatre Bornes following the election held in 2005. She was a sworn counsellor at the Municipality of Quatre Bornes and there were subcommittees of the council that would look after the allocation of stalls at the market. The Public Health Committee and the subcommittees of the Public Health Committee was responsible for the allocation of stalls. Accused was not a member of the Public Health Committee or any of its subcommittees relating to allocation of stalls. He was shown Doc D2 addressed to one Mr Joyfoo dated 10th October 2007

purported to be signed by him and Doc D3 dated 10 October 2007 purported to be signed by him and he clarified that from September 2007 to 31st December 2007, he was on vacation leave and was not on duty so that those letters could not have emanated from him. He stated as regards the format of Docs D2 and D3 he could not see whether there was a difference in the format of these documents and that which was usually sent by the Municipal Council of Quatre Bornes.

Under cross examination, he stated that when he had been on leave somebody would do the actingship on his behalf. He agreed that at the bottom of Doc D1 it was written 'for Chief Executive' and it was difficult for him to identify the said signature. He was shown letter dated 16th of August and he stated he was not leave on that day. He was asked whether it was the practice for somebody with his authority to sign for the Chief Executive to which he replied that there were some letters who were signed by other officers and some were signed by the Chief Executive. He was then questioned as to whether he had any reason to believe that Docs D1, D2 and D3 did not emanate from the Municipal Council of Quatre Bornes and signed 'for' the Chief Executive to which he replied the signature was his that is it was like his signature but he could not say if it was not his signature. He could remember if a lady inspector called Shoba worked at the Municipality. He also explained that the recommendations of the subcommittee would come to the main Public Health Committee which would approve what the subcommittee had done. According to the Standing Orders the Public Health Committee had delegated powers by the Council. The public health inspectors would decide to whom the stalls should be allocated to. The public health inspectors would receive the application, process same, place them in the list and table it to the Committee. The subcommittee would finalise the list which would be forwarded to the Public Health Committee for approval or diapproval. It would the decision of the Council through the Public Health Committee.

Under re-examination, he stated that the signatures on letters Docs D2 and D3 resembled his. It could be his but it was just that during that period he had been on vacation leave. He had not been in office so that he could not have signed those letters.



He confirmed when questioned through Court by defence counsel that the police handwriting expert did not take any specimen signature from him to verify whether the signatures on Document D2 and D3 emanated from him or not.

DPS Jugroop produced the defence statements that he recorded for the accused (Docs A1 and A2).

Mr Boopal Dookee, witness no7 the Senior Health Inspector at the Municipal Council of Quatre Bornes deposed to the effect that he had been occupying the said post since October 1995. He stated that the Hashbury fairs were usually on Thursdays and Sundays and in July 2007 the decision was taken by the Public Health Committee to allocate stalls for the new type of fairs which were to be held on Tuesdays and Fridays. The application for the stalls was considered at the level of the subcommittee which would make recommendations to the Public Health Committee namely the main committee. Once the decision was taken at the level of the Public Health Committee as regards the allocation of stalls, letters were issued. Upon the receipt of the letters the person would call at the Municipality to pay for the fees in order to be able to trade. He had not come across the names of the persons borne out on the receipts as per the records of the Municipal Council. He was asked as to how he could say that Documents B1 to B12 did not emanate from the Municipal Council of Quatre Bornes to which he replied that they were not on the list of stall orders and those names had not been approved at the Council. He also specified that the receipts of the Municipal Council were different. The wordings were correct and he was not aware of the signature of the cashier. Under re-examination, he stated that there was a list of stall orders approved by the Council which was submitted to their department to know who the stall holder was who had to pay the appropriate fees and stall numbers. His department was not involved with the issue of receipts. He maintained that the names were not found on his list.

The defence adduced no evidence. In her unsworn version accused stated she was elected Municipal Councillor in October 2005. Her task consisted of being a sitting member of committees, namely sports, environment, library and presided over by Messrs Badry, Beedassy, Appadoo and Sakarbuth respectively. Each committee would take decisions for the good administration of the town. Each committee was composed of twelve voting members and twelve non-voting members. All members

could however vote in the Whole Council. A councillor was a benevolent worker and was not remunerated. The current mayor was Mrs Regina Maudar and the deputy mayor was Mr Gangabisson. The Chief Executive was Mr Dorestan. The last time she was attended a meeting was the quarterly council one held on 25 October 2007 where the Mayor reported on the achievement of her mandate.

She stated that the Public Health Committee (the 'PHC') was responsible for the allocation of stalls in the Quatre Bornes market fair and in 2006-2007, it was presided by Mr Chetanand Pursun and its members were Mrs Maudar, Mr Gungabisson and Mr Badry. This committee was made up of 12 members only and she was not a member. There was also a subcommittee made of five members which met when necessary. When there were applications for stalls, the main committee of Public Health Committee referred same to the subcommittee and its members were Messrs Pursun, Gungabissoon, Mootosamy, Badry and another person she could not remember.

Before March 2006, the Quatre Bornes market fair made of 540 stalls operated a vegetables fair on Wednesdays and Saturdays and an apparels fair on Thursdays and Saturdays. As from March 2006 as per the decision of the Council, two days were added for apparels namely Tuesdays and Fridays which were reserved for residents of Quatre Bornes and publications in the press were made in March and September 2006. She could not remember the application procedures for the stalls, but she said it consisted of sending a letter to the Council, with an ID card and proof of address. Once received the application was referred to the Health Department headed by the Chief Health Inspector Mr Veerasamy who after he had received a number of applications, went to see the Chairman of the Public Health Committee who sorted the applicants and made a final list referred then to the subcommittee. The approval was then done by the Public Health Committee and noted in the Minutes of Meeting. A letter was sent by the Chief Executive to inform the applicant.

She also stated that on 24 October 2007 at around 15.30 hrs, when she was in the company of one Rajiv Poorun in his car, at Royal Road Flic en Flac, the police arrested her. She came to know Mr Poorun through Mr Domah estate agent whose office was at Royal Road Curepipe. She knew him as she was looking for a building to rent. She added that Rajiv Poorun was a market trader in Curepipe fair, and in

some other fairs. He lived in Castel. Mr Domah knew she was a councillor at the Municipality of Quatre Bornes and in June 2007, she could not remember the specific date, he asked her if there was any vacant stall at Quatre Bornes fair. She told him that as from July and August, there would be a number available on Tuesday and Friday and 15 to 20 vacant stalls on Thursday and Sunday. Mr Domah asked her to confirm same and she told him that she would do so to the Chairman and it was then confirmed that by Mr Pursun that there were 15 stalls vacant and he would allocate them provided that he got Rs 30,000 per stall and he would accelerate the allocation procedures. She said that she spoke with the chairman in the yard of the town hall of Quatre Bornes. Two days later she went to meet Mr Domah in his office at Curepipe where Mr Poorun was present and she told him the conditions of Mr Pursun but Mr Domah told her that Rs 30,000 was a bit excessive and if it could be reduced to Rs 20,000, in which case he would take all the 15 stalls. Then on 29 or 30 June at around 16.00 hrs, she met with Mr Pursun in the same place and told him about the request of Mr Domah. On 2nd July she went to see Mr Domah where Poorun was present and she told him that Pursun was agreeable and Mr Domah asked about the procedures which she explained as said before in the statement. One week later, she went to meet Mr Domah again when he remitted to her 15 applications and he told her that he collected Rs 10,000 per applicant which came to Rs 150,000. He showed the money to her but kept it with him. On or about 10 July, she went to meet Pursun and she remitted the applications documents for further processing and he told her that he had to wait for PHC to meet to process same and it did not hold any meeting during August 2007 because the Mayor Mrs Maudar was on leave. During all that time she was communicating with Domah and Pursun on 7502939 and 5702408 respectively and they were calling on her mobile 766 2772. They were in touch to apprise of the progress of the applications. On 20 September 2007 she learnt that the PHC would meet and she informed Poorun who asked her if he could go ahead to collect the money and she told him to do so.

The PHC met on the 2 October 2007 and a couple of days later, she called Poorun to inform him that the Chairman told her that all the 15 applicants would get a stall. Domah then called her to confirm the news. On 10 October 2007 between 10.00 hrs and 11.00 hrs, she met Mr Pursun in the yard of Quatre Bornes Town Hall and he remitted to her 15 letters to remit to the beneficiaries to enable them to pay for their

dues. On the same day at around 13.00 hrs, she called Mr Poorun and told him to meet her at Orchard Centre to take the letters. She asked him to remit the letter back to her duly signed on the same day with Rs 6,500 per applicant. On the same day, Mr Poorun called her to inform that he collected money from 12 persons only and he could do so for the remaining three. Among the 15 beneficiaries, there were 3 from Poorun family, one from Domah, one Javed Doolul, two from Ramjaun, one each for Bahadoor, Goodur, Jaffur, Groehme and the rest she could not remember. On 12 October 2007 at about 11.30 hrs, Mr Poorun came to see her with the money and she took to him to the kindergarten to count the money. She was alone with him and there was Rs 78,000 which he remitted to her and he left. She then called Mr Pursun to inform him of same and the sum collected. On 15 October 2007 at 14.00 hrs, she went to meet Mr Pursun and remitted to him the signed letters and the sum of Rs 78,000. On 17 October 2007, she met him again and he remitted to her four receipts for each applicants and contracts to be signed by the twelve applicants.

She then called Mr Poorun and told him that she would accompany him to sign each contract, collect four passport photos and Rs 20,000 per person before remitting the receipt. On same day, she went with Mr Poorun in his car to get the contract signed and to collect money. They met with four persons on Shoprite car park who signed their contracts and remitted the money to Mr Poorun. They went to Goodur at Stanley. They also saw Mr Poorun's aunt at Le Workshop Port Louis to sign and collect money. They did the same thing at Arsenal with Mr Poorun's brother who then accompanied them to Grand Gaube to get one Groehme to do the same thing. At about 16.30 hrs, they went to see Mr Domah at Curepipe where one Javed Doolull was also present and they both signed the contract and gave their passport size photograph. Rajiv went to his place to make his mother sign the contract. She kept the contracts and the photographs but the money remained with Rajiv. On 18 October 2007 around 1000 hrs Rajiv called her and informed her that he had got all the money and to meet him so that he could hand over the money to her and she could give him the receipts as well three letters for the three persons who had not remitted money yet. Around 1345 hrs she met Rajiv alone at Orchard and she accompanied him to the car in the parking of Orchard and he told her that he had Rs 170,000. She told him that as per the instructions she had received, all the money should be collected first before any receipts would be issued and she did not take

the money. Fifteen minutes later she received a phone call from Rajiv to the effect that he had managed to get Rs 200,000 but she did not agree. She informed Mr Pursun of the situation and subsequently met him in the yard of the Municipality of Quatre Bornes alone and she handed over to him all the contracts and receipts. On the 22 and 23 October 2005, Rajiv called her anew and informed her that he had got all the money namely Rs 259,500. On the 24 October at 0930 hrs, Rajiv and Mr Domah called her anew to inform her that they were bringing the money. Around 1030 hrs she called Mr Pursun and told him that she would meet him to remit the money to him on the beach at Wolmar as he would have been attending a seminar at La Pirogue Hotel. Around 1330 hrs, he met Rajiv and Mr Domah in the parking at Orchard. They counted the money and handed over to her the sum of Rs 259,500 in cash. They got into the car. They dropped Mr Domah at Quatre Bornes and then Rajiv and herself proceeded to Flic en Flac. Around 1430 hrs, they reached Wolmar beach as they had an appointment with Mr Pursun to remit him the money. She called Mr Pursun and the latter told her that he was still in the seminar to wait for him. She called him a second time but he did not answer. Then at 1530 hrs as Rajiv had to get back to Curepipe she called him anew and Mr Pursun told her to drive over to La Pirogue and he would meet them there. Reaching near Sugar Beach Hotel, they were surrounded by persons in civilian clothes and when a lady wanted to take her bag she resisted and the lady showed her identity card as police officer. They were taken to Flic en Flac Police Station where the sum of Rs 259,500 was secured from her handbag, the 48 receipts, a mobile, four letters with the heading of the Municipality of Quatre Bornes and a letter signed by one Sreekeesoon. The receipts had been given to her by Mr Pursun. She also denied having told Rajiv on the 24 October 2007 that they would pick up the receipts from an inspector who was attending a seminar at La Pirogue Hotel because the receipts had been with her. She admitted that the procedures that she had been adopting was not the normal procedure. Mr Domah asked her if there was any free stall at Quatre Bornes fair. When she queried about that with Mr Pursun and the latter told her that he give the stalls provided he got some money from same and he would allocate the stalls without going through the normal procedure and drawing of lots. As councillor, it was not her job to receive the applications for the stalls in the market but she took the money for Mr Pursun and was arrested by the police before she could hand over same to him.



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

The accused, the then Municipal Councillor at Municipal Council of Quatre Bornes . a public official was charged under Section 10 (5) of POCA 2002 with having, on the 24th of October 2007 wilfully and criminally obtained a gratification from any other person for any other person in order to make use her influence, real or fictitious, to obtain a benefit from a public body. The particulars were to the effect that the accused obtained the sum of Rs.259,500 from Mr Viraj Poorun and Mohamed Izaac Domah for Inspectors of the said Municipal Council, to use her influence, real or fictitious, to obtain stalls from the Municipal Council of Quatre Bornes.

It was incumbent on the prosecution to prove beyond reasonable doubt the following elements:-

- (a) the accused was a public official,
- (b) the accused obtained a gratification from Mr. Poorun and Mr Domah
- (c) the gratification was for the inspectors of the Municipal Council,
- (d) accused made use of her influence and
- (e) a benefit could have been obtained from a public body

I: Accused was a public official

In relation to (a), a 'public official' was defined as being an employee or a member of a local authority, under Section 2 of the POCA. Mr Jean Francois Dorestant the then Chief Executive of the Municipal Council of Quatre Bornes in 2007 confirmed that accused was an elected member of the Municipality of Quatre Bornes following the election held in 2005. She was a sworn counsellor at the Municipality of Quatre Bornes. In her statement that she gave to the police accused admitted this fact. As such, it is undisputed that the accused was at the time of the offence a public official. I find that this element has been established by the prosecution.

A handwritten signature in black ink, consisting of a large, stylized 'V' or 'J' shape with a horizontal line extending to the right.

II: Accused obtained a gratification from Mr. Poorun and Mr Domah for the inspectors of the Municipal Council

In relation to (b) and (c), it is undisputed that a sum of Rs 259,500 had been collected from 15 applicants in order for them to obtain stalls at the Quatre Bornes Fair. In fact the evidence on record revealed that accused was arrested with the said sum of money in her handbag. She gave a detailed account in her statement as to how the money had been collected by Poorun and remitted to her. Accused even admitted in her statement that the procedure she was adopting was not a normal one. As such she was causing money to be collected illegally when she mentioned that she was aware that there was no need to give money to Mr Pursun to obtain a stall but she nevertheless took the money for Mr Pursun.

Witness no9 deposed that following an appointment arranged for him to meet the accused at Orchard, Quatre Bornes, he remitted to the accused in presence of Mr Domah the sum of Rs.259,500. He had collected that amount from persons who wished to obtain a stall at Quatre Bornes Fair. The money collected was meant for "*banne permis, banne patentes, et banne places*" and the accused had told them also about "*banne arrierages, ena beaucoup banne marchands qui pane payer, li bisin paye ca arrierages la pou capave gagne ca la table la cause pe prend banne places la avec banne dimounes la, banne marchands la.*" When his memory was refreshed from his statement he said that if the words «*ene partie pou donne inspecteur pou faire demarches*» were in his statement they are correct. Witness no9 maintained throughout that all that he stated in his statement that he gave to the ICAC was the truth.

The next issue to be determined was whether the money was meant for health inspectors as contended by witness no9. The version of the accused it is to be noted was that the money was to be remitted to Mr Pursun as stated by her in her defence statement.


As regards the fact that inspectors were involved in the allocation of stalls at the level of the Municipality, Mr Boopal Dhookee the senior health inspector of the Municipal Council of Quatre-Bornes, established that, in his capacity as an inspector he was

involved in the said procedure. Mr Dorestant, the chief executive officer of the Council, witness No 11, also confirmed that the inspectors of the Council would play an administrative role, when it came to allocating stalls.

Furthermore, as borne out in accused's statement that once applications were received, the application would be referred to the Health Section of the Municipal Council that fell under the responsibility of Mr Veerasamy, the chief health inspector. The latter would refer the matter to the Public Health Committee. The Public Health Committee would then refer the applications to a subcommittee for determination. Once applications had thereafter been approved by the Public Health Committee, there would be a drawing of lots, and the Chief Executive Officer would inform the successful applicant that he had been allocated a stall and that the latter would have to call to the Municipal Council for payment of relevant fees. Witness no 11, in fact explained that the Public Health Committee had delegated power from the Council, to effect such allocation.

I wish to observe at this juncture that the version of the accused was that the money was meant for Mr Pursun, the Chairman of the Public Health Committee. DPS Jugroop was questioned as regards the allegation made by the accused against Mr Pursun . He stated that Mr Pursun denied the allegations made against him. He also confirmed that there was no conversation between accused and Mr Pursun from the mobile secured from the accused. Accused was not able to give the full number of the second mobile which had not been secured from her. Under cross examination, he stated that Mr Pursun was arrested in relation to another case and following a Judge's Order the phone calls on the mobile of Mr Pursun had been perused and there was no conversation noted between Mrs Ramlohl and Mr Pursun. Mr Pursun had only one mobile.

Accused contended in her statement that Mr Pursun allegedly asked her to meet him at Wolmar Flic en Flac as he was in a seminar at La Pirogue 24th October 2007. She was arrested on that day on her way to the said hotel. However, Mr Comarmond, the Chief Security Officer at La Pirogue gave a lie to her version when he highlighted that there was no seminar being held at La Pirogue Hotel.

A handwritten signature in black ink, consisting of a large, sweeping loop with a small mark inside.

It is to be noted that even when accused was arrested by police , she stated ' *En fait mo tipe aile quitte sa l'argent avec inspectrice Municipalite qui appelle Sobha qui ti dire moi vine joine li cotte Pirogue a cotte li ape attend ene seminar.*'

She had never mentioned to witness no9 that the money was meant for Mr Pursun.

Learned counsel for the defence submitted that the "gratification" namely the sum of Rs.259,500 was allegedly collected from many persons. The prosecution did not call any of these persons to give evidence. The only witness who gave evidence on this issue was Mr. Poorun. He was the one who collected the money. It has not been established that the persons who handed money to Mr. Poorun were told that the money would be used as gratification for inspectors. I am not prepared to endorse the submissions of learned counsel for the defence on this score as Mr Poorun did state that the money was meant for inspectors at the Municipal Council.

I find that the elements that the gratification had been meant for inspectors of the Municipality of Quatre Bornes had been established by the prosecution.

III: Accused made use of her influence

I wish to refer to **Dalloz 2003-« Fonctionnaire et agent public» - para 102** which stipulates that

« Le delit de trafic d'influence exige que le fonctionnaire ou l'agent public se presente comme un intermediaire dont l'influence reelle ou supposee permettrait d'obtenir un avantage ou une decision favorable d'une autorite ou d'une administration (Cass. Crim i" Oct. 1984 Bull.Crim. no 277, D1985,380, note Feneaux)

As set out earlier, accused was an elected member of the Municipality of Quatre Bornes following the election held in 2005. She was a sworn counsellor at the Municipality of Quatre Bornes. The allocation of the stalls at the Quatre Bornes fair was done at the level of the Municipality of Quatre Bornes by the Public Health Committee and sub committee by virtue of delegated powers from the Council.

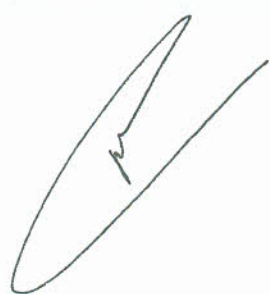


As highlighted by learned counsel for the prosecution, the person should portray herself as having an influence for the purpose of obtaining a benefit from a public body. The evidence on record established that Mr Domah, introduced the accused to witness no9 as a councillor of the Municipal Council of Quatre Bornes, who could assist Mr Poorun, in obtaining stalls. She made Mr Poorun believe that she was in fact to use her influence for the purpose of obtaining stalls. Accused further informed him that there were some 13 stalls available, and that to obtain each stall, would cost Rs 30,000. She informed, Mr Poorun that such sum was being needed to cover the fees and liability associated to the stalls as well as the commission for the inspectors of the Municipal Council

Mr Poorun, under cross-examination, depicted the part played by the accused as follows: *"Madame la ine explique nous couma pou faire travail la grosse modo ki nou bisin faire comien casse nou besin roder, comien casse inspecteur pe roder ou comprend la ti ena ene brain wash derriere sa et surtout c'est madame ki faire tous sa la. Domah ine presente moi madame la mais . madame la ki brainwash, ki inne met pression pou ramasse tant l'argent ou comprend la' and he further added " pena l'heure ti pe sonner, bane l'argent coter pencore paret, pencore ici, pencore la bas."*

She backed the fact that she indeed had an influence when she remitted specimen letter to Mr Poorun and asked him that those applicants who were interested in a stall should fill in such letter, such that these applications be considered by committee at the level of the Council. Additionally, she was found in possession of fake receipts as Mrs Viraswamy , the then Financial Controller at Municipal Council of Quatre Bornes testified to the fact that the receipts dated October 2007 that were in possession of accused were fake ones, as they bore numbers to receipts that were issued in July 2007, in the names of other parties.

According to accused's own statement to ICAC, she did not deny the fact that she had an influence at the level of the Municipal Council of Quatre Bornes, to secure the stalls that were subject to applications being brought forward by Mr Poorun.

A handwritten signature or mark, possibly a stylized 'V' or a similar character, enclosed within a large, loopy oval shape.

In **Dalloz Corruption 2003 para 51** it is set out as follows:

'La notion d'influence recoupe celle de credit reel ou imaginaire: la personne use ou abuse du credit dont elle jouit (ou pretend jouir) de par ses fonctions dans l'administration (liens d'amitie de collaboration). le coupable use et outre passe ici de sa qualite.'

As such, the accused, had used or abused her "credit dont elle jouit (ou pretend de jouir) de par ses fonctions dans l'administration" and "use et outre passe ici de sa qualite" It is clear from the facts of the case, that accused had portrayed herself as an intermediary to exert her influence over the inspectors of the council in relation to the allocation stalls.

IV: A benefit could have been obtained from a public body

Learned counsel for the defence submitted that the word "benefit" was not defined in the POCA. He referred to the dictionary meaning in **Webster's New World Dictionary** where "benefit" was defined as "a kindly charitable act, anything contribution to an improvement in condition...advantage.. help.. to receive advantage, profit." He propounded that obtaining a stall from the Municipal Council necessitated an agreement - a stall in return for consideration - i.e. - payment of appropriate fees. The information should have mentioned specifically a "contract" as provided by the POCA.

It is undisputed that under Section 2 of the POCA, a public body would include a local authority and would therefore include the Municipal Council of Quatre Bornes.

Learned counsel for the prosecution submitted that the benefit was the stall allocation being made by a Public Health Committee of the Municipal Council and I endorse his proposition on this score and the arguments of learned counsel for the defence is set aside in this issue.



V : Reliability of witness Poorun

Learned counsel for the defence laid emphasis upon the fact that Mr. Poorun was informed by counsel representing ICAC that he had been given immunity. He submitted that Mr Poorun was a "coauteur/accomplice" who had his own interests to serve. He opined that the evidence of witness no9 should be discarded as there was a specific procedure, which was not followed, in the present case, when a witness was given immunity. He quoted the cases of **Me Donald v Regina – Privy Council Decision 1983** and **R v Turner (1975) 61 Cr. App. R. 67, CA**. The Court was not handed over any document from the D.P.P. to that effect.

I have duly considered the arguments of learned counsel for the defence. This Court is alive to the fact that corroboration is required as a rule of practice in certain cases and the danger of convicting an accused party on the evidence of a witness where the latter might have a purpose of his own to serve in giving such evidence vide **Rambhujun v R (1976) MR 256**.

Witness no9 deposed in a genuine and credible manner before this Court. It is to be noted that the memory of Mr Poorun had to be refreshed a number of times. He did not contradict himself but simply maintained that he had forgotten what he stated as he suffered from depression and the version he gave in his statement to the ICAC was a correct one.

Learned counsel for the defence submitted that Mr. Domah was mentioned so many times by witness Poorun as having played an important part that one would have expected him to have been called by the prosecution to corroborate the testimony of Mr. Poorun whose evidence on the issue of "influence" was strongly challenged and who also kept hiding behind his poor memory and his suffering from depression. Mr. Domah who was also mentioned in the body of the information should have been called especially as the testimony of Mr. Poorun was strenuously challenged.

I wish to refer to the following extract in the **Nurkoo v R (1983) MR 128**, in relation to corroborating witness available to the prosecution having not been called by the prosecution:



*“ Addressing us on the first ground of appeal, Sir Gaétan Duval Q.C., for the appellant, relied on the oft quoted case of **Paruit v. R [1968 MR 37]** to contend that the prosecution's failure to call a witness, whose name appeared on the list of witnesses, to corroborate the version of Dowlut should be fatal to its case. The Court, in **Paruit v. R. (supra)**, only reaffirmed the principle which had been stated in **Moonien v. R. [1953 MR 246]** that in a hotly contested case the failure of the prosecution to call a witness had indisputably witnessed an incident should have raised an inference in the Magistrate's view that that witness might not have been prepared to support the prosecution. “*

I do not find that the fact that the prosecution elected not to call Mr Domah to be fatal for this Court to make a proper finding in relation to the present case.

I wish to observe that most of the facts as set out by Mr Poorun were admitted by the accused in her defence statement. She mentioned the recipient of the gratification as being Mr Pursun whereas Mr Poorun said that they were inspectors of the municipality.

VI: The accused should have been prosecuted for the offence of swindling

Learned counsel for the defence raised the issue that the accused should have been prosecuted for swindling, or for conspiracy to swindle, persons out of their property but not under POCA.

He submitted that the prosecution has established that all the receipts and other documents found in possession of the accused were purported to have been forged. Mr. Dorestan the then C.E.O. of the Municipality of Quatre Bornes could not have affixed his signature to the documents that bore his signature. No inspectors had asked accused to collect money for him, her or them. There was no seminar at La Pirogue hotel as pretended by the accused in her statement and therefore no inspector was attending any seminar. The accused had therefore told lies to Mr. Poorun and Mr. Domah and had shown false documents to them to make them believe her "mise en scene". All the elements of swindling were here present.

On the other hand the prosecution itself has proved that there were not any inspectors involved for whom money would have been collected as gratification. Accused should therefore have meant the money for herself and had used lies and "mise en scene" to obtain money for herself and not for any other person.

The prosecution submitted, on the other hand even if based upon the facts of the present case the accused could also have warranted a prosecution for swindling, that the prosecution had to elect and rightly elected for "trafic d'influence"

I wish at this juncture to refer to the case of **Soobrun v/s The State and ICAC 2007 SCJ318**, where the Supreme court made the following pertinent observations:

"The short answer to that submission is that POCA seeks to criminalize as many situations of bribery as may be possible and creates a host of offences. In many cases, the offences so created overlap not only with others in POCA itself but also with criminal offences under the Criminal Code. They are, however, not mutually exclusive. Which charge befits which offender in which situation is not for the courts to decide but for the prosecution in its discretion."

As such, it was within the discretion of the Director of Public Prosecution to elect for which offence the accused was to be prosecuted.

For the reasons given above, I find that the prosecution has proved its case beyond reasonable doubt and I find the accused guilty as charged

Judgment delivered on: 24th July 2014 .

Judgment delivered by: R.D. Dabee,

Vice – President, Intermediate Court(Criminal Division)

