

ICAC V VIJAY RAAMSAHYE

2014 Intermediate Court (Criminal Division)

Cause No 555/09

ICAC

V

VIJAY RAAMSAHYE

Charge:- Bribery by Public Official. Breach of sections 4(1) (b) (2) of the Prevention of Corruption Act.

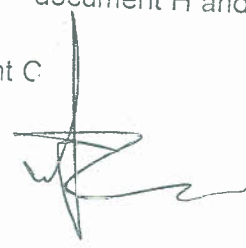
Judgment

Accused is charged for the offence of bribery by Public Official. He has pleaded not guilty and was assisted by counsel. The case was initially started before another bench; it has started anew before the present bench and there was no objection by all counsels.

Senior Investigator Ramaldawo testified and he produced the following documents-

1. A development permit issued by the Municipality of Curepipe on 19.07.04 – document A refers;
2. A business registration certificate issued on 23.10.06 – document B refers;
3. A letter from the Municipality of Curepipe issued by the Chief Health Inspector – document C refers;
4. A Check List for payment of trade fee for the Municipality of Curepipe – document D refers;
5. A certified true copy of the procès verbale of the PBMC of the Municipality of Curepipe for the 13.05.08 – document E refers;
6. A certified true copy of a list of payment of trade fee from 05.05.08 to 09.05.08 for the Municipality of Curepipe – document F refers;
7. A certified true copy of the "procès verbale" of the PBMC of the Municipality of Curepipe for the 29.05.08 – document G refers; and
8. Two statements made by accused on 09.10.08 and 17.10.08 – document H and H1.

The officer explained that accused was confronted with document C



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In cross examination, the officer explained that there were general conditions attached to a development permit and he produced a certificate of conditions attached to the development permit - document A1 refers. The witness also produced-

1. A letter from one Mr Isram and one from Mr How – documents J and J1 refer;
2. A letter from Mr Isram dated 04.06.08 – document K refers; and
3. A memo from witness No 3 – document L refers.

The witness explained that the development permit was issued on the 19th of July 2004 and after the amendment to the Local Government Act, the permit has been renamed as building and land use permit but both appellations refer to the same document. He explained that according to his enquiry, there was a meeting between the complainant and the accused on the 7th of May 2008 at 11.00 am and the complainant then after, reported the present case to the police on the same day. On the 8th of May 2008, Mr Nurjendoa filled in a checklist, which he issued to complainant to effect payment and the trade licence was issued. On the 12th of May 2008, the complainant wrote a letter of complaint to the Municipality of Curepipe explaining his alleged grievances (document J refers). The Chief Executive of the municipality referred the matter to ICAC for action (document J1 refers).

The witness further explained that according to his enquiry, the accused alleged that clearance was withheld because of two reasons viz the paintings works were not appropriate and the parking space was not tarred. On the other hand, the witness explained that he visited the locus and found that the parking was tarred but there was mud on the parking due to the rainy conditions.

The witness was lengthily questioned on the procedures to apply for a building permit, the conditions attached to the permit and the procedures to obtain a trade licence. He also explained documents D, E and G.

Mr seelumbur, Mrs Peerbaccus and Mr Nurjendoa, all officers who worked at the Health Department of the Municipality of Curepipe at the material time gave evidence and each one of them agreed that the trade licence was issued in an irregular manner but each one of them denied responsibility for the wrongful act. Mr Nurjendoa stated that he was instructed to issue the check list by Mrs Peerbaccus; latter stated that she received instructions from the planning department to issue the trade licence and Mr Seelumbur said that he did not remember much about what happened. Mrs Peerbaccus further explained that the trade fee could be paid without further clearance from the planning department as the complainant already had the development permit



and other trade licence in the same cluster. In this case, the complainant had a Development Permit and already had a trade licence for workshop since 5th of November 2004, no further clearance was needed from the planning department. She produced a report which she wrote to the Chief Executive. Document M refers. In cross examination, it came to light that she was not the one who dealt with the application of the complainant and she made the report as per document M under the instructions of Mr Lobin, who in the absence of Mr Seelumbur, was the acting Chief Health inspector and also based on an incomplete file remitted to her. She also produced a copy of the development permit of the complainant which was annexed to document M. document M1 refers,

Mrs Aranganee Bhugun, retired committee clerk at the Municipality of Curepipe certified as to the correctness of the minutes of proceedings produced as documents E and G.

Mr Patrice Hok Shui Hau Hau Kim Fai, witness No 3, explained that he is the director of Origin Investment Ltd and his business is located at Curepipe. On 19 July 2004, he got his development permit for his business; subsequently he received a letter which he identified as document C; the document requested him to call at the Municipality of Curepipe to pay a trade fee and he would be issued with a trade licence. He went to the Municipality of Curepipe where he met one Mr Vinod and he was referred to the accused, Mr Ramsahye of the Planning Department who fixed an appointment to visit his premises on the 7th of May 2008. On the next day accused visited his site and claimed that the building was not painted adequately and should be done properly; that the parking should be tarred and that this would cost around Rs 40,000 to Rs 50,000. Accused asked for Rs 5,000 to sign the clearance for his trade licence; he refused and accused went away. The witness made a complaint to the police on the same day. On the next day he received a phone call from Mr Vinod and he went to the municipality where he was asked to pay his trade fee and was issued with a licence. In cross examination, he was lengthily questioned on the procedures he followed for obtaining a development permit and a trade licence; on what he said in his original statements given to the police; on what was said and done during the site visit; on the renewal of his trade licence; he answered in a clear way save and except some minor details which he forgot with time and he maintained the acts and doings of the accused.

Mr Louis Jean Bernard Mathurin, witness No 4, explained that he works for the complainant. On the 7th of May 2008, accused came on the site, he phoned his employer who immediately came and met accused. He heard accused saying that the parking should be tarred and that it would cost Rs 40,000, Rs 50,000 and asked Rs 5,000 to sign for the issue of the permit. In cross examination he was questioned on the presence of another worker called Vijay and what



the said Vijay might have heard or seen but the witness could not answer much; however he maintained his testimony.

The case for the defence

Accused did not adduce any evidence and his version is contained in his out of court statement. He admitted having visited the site of complainant and has said that the parking should be tarred before he would give his clearance but he denied having solicited Rs 5,000 to sign the clearance certificate.

The issue of the trade licence to the complainant

Witness Roomaldawo explained that Mr Nurjendoa filled and issued a checklist to complainant to effect payment of his trade licence (document D refers). The witness explained that as per the checklist, payment by the complainant should not have been accepted and a trade licence should not have been issued. It is clear that the trade licence has been issued in excess of the powers of the Health Department.

Document E and G; the minutes of proceedings of the Permits and Business Monitoring Committee held on the 13th of May 2008 and on the 29th of May 2008, clearly show that the Health Department has acted in excess of their powers to grant the trade licence to complainant without the clearance of the Planning Department.

Mr seelumbur, Mrs Peerbaccus and Mr Nurjendoa, all officers who worked at the Health Department of the Municipality of Curepipe at the material time gave evidence and each one of them agreed that the trade licence was issued in an irregular manner.

All these show that the issue of the trade licence to the complainant was tainted with irregularities but the nature of the irregularities do not have any impact on the offence alleged to have been committed by the accused.

The case for the prosecution

The main witnesses for the prosecution

In the case of **Burhoo v ICAC &anor 2012 SCJ 211**, the court held that:- *"It is an undeniable principle that the trial court remains sovereign in its appreciation of the evidence adduced before it. The Magistrate had the opportunity of watching the witnesses depone before her and assessing their credibility as they were subjected to searching cross-examination by counsel. She noted inconsistencies in the evidence of the respective prosecution witnesses and*



she addressed her mind to them. She found that the flaws which the defence pinpointed in the version of the ICAC officers were "inconsequential". She analysed the complainant's evidence and found it credible inasmuch as it had remained unshaken on the material facts. She found it safe to act upon his testimony."

The case for the prosecution rests mainly on the testimony of Mr Patrice Hok Shui Hau Hau Kim Fai, witness No 3. I have seen the witness deposing, he has deposed in a clear and coherent manner, he has clearly explained how and why the accused solicited Rs 5,000 from him. His version has stood unrebutted and is corroborated to some extent by witness Mr Louis Jean Bernard Mathurin. I note that there are certain minor inconsistencies in the testimony of these two witnesses but these are not material at all; the main issues are clear and were explained beyond the shadow of a doubt. I therefore hold that Mr Patrice Hok Shui Hau Hau Kim Fai and Mr Louis Jean Bernard Mathurin are witnesses of truth and I feel safe to act on their respective testimony.

The law

Accused is being prosecuted for "Bribery by Public Official" in breach of sections 4(1) (b) (2) of the Prevention of Corruption Act which provides as follows-

4. Bribery by public official

(1) Any public official who solicits, accepts or obtains from another person, for himself or for any other person, a gratification for -

.....

(b) doing or abstaining from doing, or having done or abstained from doing, an act which is facilitated by his functions or duties;

.....

(2) Notwithstanding section 83, where in any proceedings against any person for an offence, it is proved that the public official solicited, accepted or obtained a gratification, it shall be presumed, until the contrary is proved, that the gratification was solicited, accepted or obtained for any of the purposes set out in subsection (1)(a) to (e).

1. The element of Public Official.

The prosecution has to prove that accused is a Public Official within the definition provided by the POCA. It is admitted that accused was the head of the Planning Department of the Municipality of Curepipe and this is not contested; therefore it is admitted that accused is a Public Official. Further, accused has himself admitted his occupation in his out of court statement. The first element is therefore proved.



2. The element of soliciting a gratification.

The complainant, Mr Patrice Hok Shui Hau Hau Kim Fai explained that accused visited his site and claimed that the building was not painted adequately and should be done properly; that the parking should be tarred and that this would cost around Rs 40,000 to Rs 50,000. Accused asked for Rs 5,000 to sign the clearance for his trade licence and he refused. Mr Louis Jean Bernard Mathurin confirmed having heard accused soliciting the Rs 5,000. The element is proved.

3. The element of doing an act which is facilitated by his functions or duties:

a. Document A1 shows that one of the conditions attached to the development permit for the issue of a trade licence is that the parking space should be tarred. It is obvious that it is an officer of the Planning Department who must visit the premises and give the clearance. It is therefore clear that to sign the clearance was an act facilitated by his functions or duties.

b. Accused has admitted in his statement at folio 45142, that a clearance should be obtained from his department before the payment of a trade licence. He admitted having effected a site visit at the premises of complainant in the furtherance of his duties. It is therefore clear that to sign the clearance was an act facilitated by his functions or duties.

c. Mr Patrice Hok Shui Hau Hau Kim Fai, witness No 3, explained that he went to the Municipality of Curepipe where he was referred to the accused, Mr Ramsahye of the Planning Department who fixed an appointment to visit his premises on the 7th of May 2008. During the site visit accused asked for Rs 5,000 to sign the clearance for the issue of his trade licence. It is therefore clear that to sign the clearance was an act facilitated by his functions or duties.

d. Mrs Aranganee Bhugun, retired committee clerk at the Municipality of Curepipe certified as to the correctness of the minutes of proceedings produced as documents E and G. According to document E; the minutes of proceedings of the Permits and Business Monitoring Committee held on the 13th of May 2008, Mr Ramsahye made representations to the effect that he found it strange as to how the trade licence of the complainant was approved without the clearance of the Planning Department. The Health Department was asked for their report. According to document G, in the subsequent Permits and Business Monitoring Committee held on the 29th of May 2008, Mr Seelumbur, the Chief Health Inspector reported that the trade fee of the




complainant was accepted through error and he made a report to that effect to the Deputy Town Clerk to explain the inadvertence and he also briefed his personnel to be more vigilant and not to accept payment of trade fee without the clearance of the Planning Department. All these make it clear that to inspect the site and to sign the clearance was an act facilitated by his functions or duties.

e. According to the same document G, the Health Department was asked to ensure that the complainant would comply with all requirements before the renewal of his trade licence and on the 4th of June 2008, Mr Isram wrote to the complainant to inform complainant that clearance from the Planning Department should be obtained before renewal of the trade licence, document k refers. Therefore it is clear that to inspect the site and to sign the clearance was an act facilitated by his functions or duties.

This element also is therefore proved.

For all these reasons and after having considered all facts and circumstances of the case and the submission of counsels for both parties; I find that the prosecution has proved its case beyond reasonable doubt and I find accused guilty as charged.



Delivered by Mr Vijay Appadoo

Magistrate Intermediate Court (Criminal Division).

08.09.2014.

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