

Peerthum (Appellant) v ICAC [2014] UKPC 42 -Judgment delivered on 18.12.14

The Appellant was granted leave to appeal to the Judicial Committee of the Privy Council (JCPC) as of right under section 81(1) (a) of the Constitution. The Appellant's counsel invoked a constitutional challenge and argued that a Police officer seconded to work for ICAC was being removed from his office, without the written authority of the Disciplined Forces Service Commission and that such a secondment was tantamount to the Commissioner of Police having surrendered his responsibilities towards that police officer, to the Director General of ICAC.

The Appellant, a senior local government officer, was arrested and provisionally charged on four occasions by Assistant Superintendent Coret, a police officer seconded to work for the ICAC under the provisions of section 24(5)(b) of PoCA. Section 24(5)(b) reads as follows: "Notwithstanding subsection (1), the Commissioner may for the purpose of this Act, make use of the services of a police officer or other public officer designated for that purpose by the Commissioner of Police or the Head of Civil Service, as the case may be". Furthermore, section 53 of PoCA creates a limited power of arrest which may be exercised by any of ICAC's officers, in instances where the Director General of ICAC is satisfied that the person concerned is about to leave Mauritius, or has interfered with a potential witness, or intends to destroy documentary evidence in his possession. In the present case, Assistant Superintendent Coret purported to exercise the ordinary powers of arrest available to a police officer and had no recourse to the powers of arrest under Section 53 PoCA.

The Privy Council dismissed the Appeal. The Court held that the key characteristic of such secondment, specifically provided under section 24(5) (b) PoCA, could only be accomplished by the Commissioner of Police to which the policeman belonged. The Commissioner has not ceded his powers to the ICAC but had agreed voluntarily that for as long as the designation lasted, the policeman would function within the organization of ICAC, and thus would be given instructions by senior ICAC officers. The Court was of the view that policemen in particular may, like officers in the armed services be posted by way of secondment to a variety of bodies operating in linked areas, such as other police forces, regulatory agencies, prosecution authorities, border control agencies and training bodies.