

Bisasur G. v ICAC 2014 SCJ 189- Judgment delivered on 29.05.14

The Commission is a party to the above mentioned case. The contention of the plaintiff was that by letter dated 16 May 2002, he was offered appointment as Deputy Commissioner of the ICAC as from 01 June 2002 for a fixed duration of 10 years. The said appointment was made under section 18 of the POCA. Following amendments brought to the POCA by Act No. 24 of 2005 which came into force on 01 October 2005, the post of Deputy Commissioner was abolished. The Plaintiff therefore claimed damages from the ICAC, as a result of the "unilateral decision of the [ICAC] to bring to a premature, arbitrary, unjustified and unlawful end to his contract of employment and to fix the amount of compensation payable to him".

The Court considered the two following issues: (i) was there a contract of employment between the plaintiff and the ICAC; and (ii) if the answer was to be in the affirmative, was the ICAC in breach of the plaintiff's contract of employment.

In relation to the first issue, the Court considered the submissions made on behalf of the ICAC, namely that the appointment and termination of appointment of the Commissioner and Deputy Commissioners were subject to sections 18 and 23 of the POCA whereas section 24 empowers the ICAC to recruit, appoint and dismiss its staff and officers subject to compliance with the POCA. It is to be noted that prior to the amendments brought to the POCA, the ICAC was headed by a Commissioner assisted by two deputies who were the three constituting Members of the ICAC. The Court considered the relationship of 'subordination' between the employer and employee which includes the power to give directions, to control the execution of the work and the power to dispense with the services of the employee. According to the Court, the facts and surrounding circumstances of the case must be looked at and the question asked whether when looked at globally, the only possible inference is that the plaintiff was in the defendant's employment. The Court took into consideration the plaintiff's letter of appointment and the terms and conditions as annexed to the letter and was of the view that the plaintiff's services and his whole time were devoted to the ICAC in assisting the Commissioner in the proper running of the institution. The Court was also of the view that instructions received from the Commissioner by the Plaintiff was identical to receiving directives from the ICAC itself. The Court inferred that the Plaintiff's was in the ICAC's employment.

In relation to the second issue, the Court took into account the submission made on behalf of the ICAC, namely the theory of "fait du prince" and/or "force majeure" which should exonerate the ICAC from liability. The Court also considered the fact that since the legislator fixed the amount of compensation payable for the plaintiff's loss of office by enacting section 29 of the Prevention of Corruption (Amendment) Act 2005, the plaintiff was debarred from claiming, and the ICAC cannot be ordered to pay damages or compensation over and above that which had been prescribed by

the said section. The said section 29 stipulates that the compensation payable for loss of office to the Deputy Commissioners immediately before the commencement of the said Act, shall be at the rate of 3 months' basic salary for each year they have served as Deputy Commissioners.

The Court concluded that the ICAC cannot be held liable whether contractual or tortious for the premature termination of the plaintiff's contract of employment. Hence, the Court dismissed the plaint with costs.

Joymungul A K v The State & Anor 2014 SCJ 143- Judgment delivered on 07.05.14

The Appellant was convicted by the Intermediate Court for breach of sections 4(1) (a), 4(2) and 83 of POCA. He had been sentenced to undergo 12 months imprisonment and to pay Rs. 500 as costs and his appeal was dismissed under all grounds by the Supreme Court on 07 May 2014. The four grounds of appeal were as follows: (i) The sentence was wrong in principle and was manifestly harsh and excessive; (ii) The learned Magistrate erred when he ruled that the statement taken from the Appellant on 07 August 2003 was "admissible in whole"; (iii) The learned Magistrate erred when he ruled that the statement taken from Mr. Golam on 23 September 2003 was admissible in its edited version; and (iv) The learned Magistrate erred when finding that the Appellant could be found guilty of the offence charged.

The gist of the case before the Intermediate Court as per the information was that the Appellant solicited from Mrs. Engutsamy a sum of Rs. 200,000 for Mr. Belle Etoile, an Assistant Comptroller of Customs, to abstain from establishing a customs offence report against the company of which Mrs. Engutsamy was a director. The case for the prosecution, as established in the course of the trial, was that there had been no offence committed by Mrs. Engutsamy's company. The prosecution also produced two statements given by the Appellant on 07 August 2003 and 25 September 2003 respectively. The learned Magistrate acted essentially upon the confessions made by the Appellant in those 2 statements in order to convict the Appellant. Following an objection as to their production, the learned Magistrate ruled both statements admissible. Grounds of appeal (ii) and (iii) above challenged the decision of the learned Magistrate to act upon those two statements in order to convict the Appellant.

The defence contended that the recording of the abovementioned statements had failed to comply with the requirements and procedure prescribed under section 50 of PoCA. The Supreme Court interpreted section 50 of PoCA and found that the Commission has a discretion to order a person to give evidence in two distinct ways.

The Commission may order a person to give evidence before it under section 50 (1)(a) or by way of a written notice to furnish a written statement made under oath or affirmation under section 50 (1)(d). The Supreme Court noted that although there was a letter summoning the Appellant to attend the Commission for examination which contained reference to section 50 (1)(d), there was no evidence of any written notice issued with the conditions prescribed under section 50(1)(d) for the giving of evidence on oath or solemn affirmation. As such, the Supreme Court held that in the absence of compliance with these conditions as prescribed under section 50 (1)(d), the said section could not become applicable for the purpose of ordering the Appellant to give evidence on oath or affirmation. The Supreme Court found no merits in the submissions made under ground (ii) above, which is to the fact there was no compliance with section 50(1) of the PoCA, given that the whole of the statement was not given under oath.

The defence also contended under the second ground of appeal that the statement was inadmissible on the ground that there had been a failure to comply with section 50(3) of PoCA given that the Appellant was not duly cautioned and informed of his constitutional rights, more particularly his right of protection against self-incrimination, before the recording of the statement. The Supreme Court noted that section 50(3) provides a statutory right of protection against self-incrimination to a person to whom an order has been served under section 50(1) to give or produce evidence. The Supreme Court also referred to the common law principle against self-incrimination and observed that undoubtedly the right to remain silent and the right not to be compelled to incriminate oneself extend both to the investigation process and trial proceedings. The Court further noted that although section 50(3) provides statutory protection against self-incrimination to any person who has been ordered to give evidence under section 50(1), there is no express legal duty to give a warning to the person before he starts to give evidence. However, the need for the protection of his right would arise whenever he is confronted with a question, the answer of which would tend to incriminate him. The Supreme Court stated that a person who is called to give evidence under section 50 (1) is not entitled to be cautioned or informed of his right against self-incrimination before the recording of his deposition, in the same manner as is provided for under the Judges Rules in respect of a defence statement from a person against whom there is evidence of reasonable suspicion that he has committed an offence. The Supreme Court analyzed the statement given by the Appellant to the ICAC and found that the Appellant had to all intents and purposes given a voluntary statement which was recorded with all the safeguards necessary for the protection of his rights. The Supreme Court therefore dismissed ground (ii) of the appeal.

The third ground of appeal as mentioned above was to the fact that Mr. Golam was not "a person in authority" who was entitled to record a statement in which the

Appellant made a confession as to the offence charged. The Court noted that witness Golam was an investigator of the ICAC when he recorded the statement from the Appellant on 23 September 2003 and stated that the ICAC is a statutory body set up by law with wide powers under the PoCA to investigate 'an act of corruption'. Therefore, the Supreme Court found that it was beyond dispute that witness Golam, in his capacity as an investigator of the ICAC, was a "person in authority", who was entitled, at the material time, to record the statement from the Appellant. The Supreme Court found no merit in the third ground of appeal as mentioned above.

The Supreme Court found that the fourth ground of appeal as mentioned above quite vague. However, the evidence had shown the active and prolonged involvement of the Appellant from the outset and the circumstances and context in which he solicited the sum of Rs. 200, 000 as bribe for Mr. Belle Etoile. This was done in a manner which left no doubt as to the required guilty intent on his part for the commission of the offence. The Supreme Court therefore dismissed the fourth ground of appeal.

With regard to the first ground of appeal, the Supreme Court held that the fact the Appellant solicited the gratification for another person does not make his criminal act less reprehensible. The Court found that the sentence was commensurate with the seriousness of the offence and could not be considered to be harsh or excessive but was richly deserved.

Dhurbarrylall A v Bhadain R & Ors 2014 SCJ 93-Judgment delivered on 27.03.14

The Appellant appealed to the Court of Civil Appeal against an interlocutory judgment of the Supreme Court upholding a plea in limine on behalf of the four respondents and dismissing an action for damages by the Appellant on the ground that there had been non-compliance with the provisions of the Public Officers Protection Act.

The Appellant first contended that on 12 December 2002, the police officers posted at the ICAC had asked the Appellant to attend the office of the ICAC where he was asked to make a false accusation against a colleague and, upon his refusal, was abused by the first Respondent, who was then the Chief Investigations Officer of the ICAC, and detained for some four hours. Secondly, the Appellant contended that on 17 December 2002, the police officers posted at the ICAC arrested him and he was detained in police cell until 23 December 2002. The Appellant averred that the second (ICAC), third and fourth respondents were the "commetants" of the first Respondent and the other police officers.

On 17 December 2004 the plaint with summons was lodged in the Registry of the Supreme Court and served on the third and fourth Respondents. Service on the second Respondent was effected on 20 December 2004. Service had not been effected on the first Respondent. Also, according to the record, a notice mise-en-demeure was deposited at the Registry of the Supreme Court on 17 November 2004 for service on the Respondents. Service had not been effected on the first Respondent as a wrong address was given. But service of the notice was effected on the third and fourth Respondents on 17 November 2004 and on the second Respondent on 18 November 2004.

On appeal it was not disputed that no notice was served on the first Respondent. The Court of Civil Appeal was of the view that the plaint with summons quoad the first Respondent had been properly dismissed with costs.

After interpreting section 38 (1) (d) of the IGCA, the Court of Civil Appeal held that the period of two years under section 4 (1) of the Public Officers Protection Act has to be calculated so as to include the date of the 17 December 2002. The Court was of the view that the period of two years as mentioned above ended on 16 December 2004. The Court also noted that there was no evidence that the 16 December 2004 was a public holiday. Hence, the Court held that the plaint with summons was lodged outside the prescribed period as provided under section 4 (1) of the Public Officers Protection Act.

With regard to section 4(2) of the Public Officers Protection Act, the Court of Civil Appeal applied section 38(1) (b) of the IGCA and held that there should have been one full month between the date of the service of the notice on each Respondent and the lodging of the plaint with summons.

In light of the above, the Court of Civil Appeal upheld the decision of the Supreme Court and dismissed the appeal with costs.