

ICAC v Shvanand SOOBRUN i.p.o The DPP 2007 SCJ 318
Judgment delivered on 27th November, 2007

The Respondent, Mr Soobrun, was prosecuted before the Intermediate Court for the offence of Bribery by a Public Official in breach of section 4(1)(a) of the Prevention of Corruption Act 2002. He pleaded not guilty and was assisted by Counsel.

In the information, it was also averred that the Respondent wilfully and unlawfully obtained from another person a gratification for doing an act in the execution of his duties, to wit: to cause a road contravention to be filed.

The Prosecution adduced evidence to the fact that the Respondent, a police officer, was posted at the Enquiry Panel of Rivière du Rempart. The Complainant, Mr Reedha was booked for a road traffic contravention. Later, he met the Respondent on two occasions and requested to "donne ène ti chance". On the second meeting, the Respondent told Mr Reedha "Prend Rs 1000 to vini". Mr Reedha gave a statement to the ICAC. He explained that he was merely asking for a let-off but had not offered any money to the Respondent. A sting operation was organised. The Respondent met Mr Reedha in the latter's car, where the money was remitted to him. The Respondent was immediately arrested by ICAC officers. He accepted having obtained the money.

After all evidence was adduced in court, counsel for the defence made submissions in law to the effect that the filing of the contravention was not part of the duties of the Respondent and therefore one element of the offence, that is, that the act of the Respondent was not done within the execution of his duties, was not proved. Counsel for the prosecution submitted that all elements of the offence had been proved and that the trial court should proceed with the conviction of the Respondent. The Learned Magistrate agreed with the submissions of the Counsel for the Respondent and dismissed that charge against him on the ground that one of the elements of the offence had not been proved.

The ICAC appealed against the judgment of the Magistrate on the ground that the Learned Magistrate erred in law and made a wrong interpretation of section 4 and other provisions of the Prevention of Corruption Act 2002.

The Appellate Court held that the Learned Magistrate was wrong in her findings and that she asked herself the wrong question leading to the wrong decision. The Magistrate, instead of asking herself whether it was part of the execution of the Respondent's duties of file a contravention, she should have asked herself whether the Respondent was acting in the execution of his duties.

The Appeal was allowed, judgment of the trial Magistrate was reversed and the case was remitted to her to proceed with the conviction of the Respondent and to conduct a hearing for sentencing purposes.