

**BOULET P. K. v THE INDEPENDENT COMMISSION AGAINST  
CORRUPTION (ICAC) & ANOR**

**2020 SCJ 106**

**Record No. 8913**

**THE SUPREME COURT OF MAURITIUS**

**In the matter of:-**

**Pravesh Kumar Boulet**

**Appellant**

**v.**

- 1. The Independent Commission Against Corruption (ICAC)**
- 2. The Director of Public Prosecutions**

**Respondents**

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**JUDGMENT**

The appellant was charged before the Intermediate Court with the offence of bribery by public official in breach of section 4(1)(b) and (2) of the Prevention of Corruption Act ("POCA"). The particulars of the charge were that the appellant, whilst being a Senior Government Valuer, solicited from the complainant, whose file he was handling, a gratification of Rs.50,000, so as to assess the value of a property purchased by the complainant in such a way as to reduce the registration duty payable.

The appellant pleaded not guilty and was represented by Counsel. The learned Magistrate found the appellant guilty as charged and sentenced him to undergo 6 months' imprisonment.

The appellant is challenging both his conviction and sentence on the following grounds:-

- “1. *The learned Magistrate erred when she found that the second element listed in her judgment was proved beyond reasonable doubt given that:-*
- (a) *it was obvious that the figure of Rs.25,000. – was a totally unrealistic one;*
  - (b) *the evidence of the complainant was unreliable; and*
  - (c) *the complainant failed and refused to make a formal complaint to witness Salarbux.*
2. *The learned Magistrate erred when she found proved the third element listed in her judgment the more so as there is evidence that the assessment of the Appellant (then Accused) was never changed, revised or otherwise reduced.*
3. *The sentence imposed by the Intermediate Court of Mauritius is wrong in principle and is manifestly harsh and excessive in the circumstances of the case.”*

The prosecution called several witnesses before the trial Court but its case rested mainly on the evidence of the complainant (witness No.13). Her version was to the following effect:-

The complainant and her husband purchased a commercial unit for Rs.700,000. On 10 November 2005, two officers from the Valuation Office came to survey the property. On the next day, the complainant, accompanied by her mother, went to the Valuation Office to find out the reason for the survey. She was referred to Mr. Ng Ah Yeh (witness No.4), Chief Valuation Technician, who informed her to go to the 4<sup>th</sup> floor. There she met the appellant who was dealing with her file. Her mother stayed outside the office.

The appellant removed the complainant’s file from a drawer, went through it and informed her that she still had a lot of extra duty to pay, namely between Rs.150,000 to Rs.200,000. The complainant told the appellant that the amount was exaggerated and that the measurements taken on the eve by the valuation officers did not tally with her title deed. Thereupon, the appellant took a calculator and told her: “*guette sa madame, mo capave faire ene zaffaire*”. The appellant asked her to give him Rs.50,000 and he would assess the extra registration duty at Rs.25,000, which she would still be able to contest. She understood that the appellant was asking for a bribe and told him that she

needed to discuss the matter with her husband first. The appellant gave her a piece of paper on which he had written his name and telephone number and told her not to waste time as he had to complete the file within a time limit.

On the same day, the complainant informed Mr. Ng Ah Yeh about what had happened. The latter took her to report the matter to Mr. Salarbux (witness No.5), then Chief Government Valuer, who asked her to put her complaint in writing. The complainant stated that she would bring a letter of complaint later but finally decided not to do so after speaking to her husband. The Valuation Office evaluated her property anew and she paid Rs.25,000 as extra registration duty.

### **Ground 1**

This ground concerns what the learned Magistrate identified as the second element of the offence which the prosecution had to prove, namely that the appellant solicited a gratification of Rs.50,000 from the complainant for himself. Relying upon the complainant's testimony, the learned Magistrate found this second element proved beyond reasonable doubt.

Under this ground, the appellant is in effect challenging the credibility of the complainant. The latter's version was that the appellant told her that she would have to pay between Rs.150,000 to Rs.200,000 as extra registration duty but that he could reduce it to Rs.25,000 in return for a bribe of Rs.50,000. It is the appellant's contention that the sum of Rs.25,000 is so derisory compared to the extra amount allegedly payable that it makes the complainant's story totally unrealistic and casts doubt on her credibility.

We find no merit in the appellant's contention. He has been unable to demonstrate how the figure of Rs.25,000 can be said to be totally unrealistic. There is in fact no evidence on record to buttress his contention. As rightly pointed out by Counsel for respondent No.1 ("ICAC"), this issue was never canvassed before the trial Court.

On the contrary, far from being totally unrealistic, it was precisely the sum of Rs.25,000 that the complainant eventually paid as extra registration duty. It must not be forgotten that the complainant, who is a lay person, if believed, only repeated the figures

advanced by the appellant to convince her to give a bribe of Rs.50,000. In this context, it is to be noted that the appellant had overvalued the complainant's property by assessing it at Rs.1.4 million, which was eventually reduced to Rs.900,000. Hence, the finding of the learned Magistrate that the appellant had given himself room to adjust his valuation in order to reduce the extra registration duty payable to Rs.25,000 and solicit a gratification of Rs.50,000 for that purpose.

It was submitted on behalf of the appellant that the complainant's evidence was unreliable. In this respect, the appellant laid emphasis on the failure of the complainant to make a "formal" complaint.

True it is that the complainant did not make any "formal" complaint. But there is cogent evidence, which the learned Magistrate accepted, that she did report the matter to both Mr. Ng Ah Yeh and Mr. Salarbux (the then Chief Government Valuer) shortly after the incident on the same day. And Mr. Salarbux acted on her verbal complaint to refer the matter to ICAC which then called her for enquiry purposes.

The complainant explained that she did not make a formal complaint because her husband and her children did not wish her to proceed with the case, she did not want the appellant to lose his job and she was afraid for her security and of reprisals. The learned Magistrate found her explanations to be plausible and preferred her version to that of the appellant. We find that the learned Magistrate was perfectly entitled to do so. There was nothing sinister in the complainant's failure to make a "formal" complaint. She did in fact report the matter on the same day, albeit verbally.

It is also not surprising that the learned Magistrate preferred the complainant's version to the appellant's unsworn version. It is not disputed that the appellant was dealing with the complainant's file and met her at the material time in his office. However, his unsworn version was that it was the complainant who offered him a bribe of Rs.25,000, and then of Rs.50,000, which he refused, to reassess her property and that she was trying to sully his reputation. These allegations are contained in a letter dated 1 December 2005 (Document G1).

In this respect, learned Counsel for the appellant conceded that one would have expected the appellant, a Senior Government Valuer, to report the case immediately if he had been offered a bribe by the complainant and not some 3 weeks after the incident. The learned Magistrate inferred from this that the appellant had concocted a story after having been made aware of the complainant's version. Learned Counsel conceded that the learned Magistrate could correctly make such an inference. It is to be noted that in his out of court unsworn statement to ICAC, the appellant made mention of an alleged bribe of Rs.25,000 only.

It was also submitted on behalf of the appellant that the complainant had a purpose of her own to serve in that she wanted her file to be removed from him. On this issue, the learned Magistrate found that there was no evidence to that effect and that it was in fact Mr. Salarbux who decided to remove the file from the appellant.

Finally, the appellant submitted that an essential piece of real evidence was not produced by the prosecution in Court, namely the piece of paper on which the appellant had written his name and telephone number, so that this was a flaw in the complainant's evidence. The latter stated that she had given the piece of paper to Mr. Salarbux.

As rightly pointed out by learned Counsel for the respondents, the defence had the opportunity to cross-examine Mr. Salarbux on this issue but never did so. Moreover, the learned Magistrate chose to accept the complainant's evidence in relation to the piece of paper.

At the end of the day, it was up to the learned Magistrate to assess the credibility of the complainant. She had the opportunity of seeing and hearing the complainant and of watching her demeanour. She found that the complainant had deposed in a straightforward and cogent manner and had withstood the test of cross-examination. She preferred the complainant's version to the appellant's unsworn version which she believed was a mere concoction.

Learned Counsel for the appellant submitted that the complainant's evidence was unreliable but was unable to point out to any discrepancy or contradiction. We are of the view that the appreciation of the evidence by the learned Magistrate cannot be

faulted. On the evidence on record, she was entitled to reach the conclusions which she did. There was no inherent implausibility or inconsistency in the complainant's evidence.

On the contrary, her version in Court was remarkably consistent with the version put to the appellant in his written defence statement. Her version was also supported by the evidence of Mr. Salarbux and Mr. Ng Ah Yeh who were from the same office as the appellant and to whom she reported the incident immediately thereafter. She was subjected to a thorough cross-examination but remained firm in her version.

In these circumstances, there is no reason for us to interfere with the decision of the learned Magistrate to accept the complainant's version as being a true account of events. Ground 1, accordingly, fails.

## **Ground 2**

The learned Magistrate held that the third element of the offence which the prosecution had to prove was that the soliciting was done so as to assess the property in such a way as to reduce the registration duty payable. The appellant submitted that the learned Magistrate was wrong to have found the third element proved since he did not have the power to whimsically and finally reduce the value of the property and his valuation was in line with the report of the valuation officers (witnesses Nos.7 and 8) who had visited the complainant's property.

Having regard to the wording of section 4(1)(b) of POCA, under which the appellant was charged, the question which arises under this ground of appeal is whether the appellant was purporting to do an act which was facilitated by his duties.

From the appellant's own statement, it turns out that, as Senior Government Valuer, his duty was to assess the value of properties at the request of the Registrar-General based on the reports of valuation technicians although the final decision rested with the Deputy Chief Valuer.

It was not disputed that the appellant, as Senior Government Valuer, dealt with the complainant's file and assessed her property. The learned Magistrate noted that the

appellant was well acquainted with properties found in the same locality as the complainant's property. She found that the appellant had valued the latter property at Rs.1.4 million, which gave him room for adjustment based on the methodology used by valuation officers. She concluded that the appellant was, therefore, aware that he could eventually reassess the property in order to reduce the extra registration duty payable to Rs.25,000.

We agree with the reasoning and findings of the learned Magistrate. It is not disputed that the duties of the appellant, as Senior Government Valuer, consisted *inter alia* in assessing the value of a property at the request of the Registrar-General, on the basis of which the registration duty payable, including any extra duty due, would be calculated. In this case, the appellant valued the complainant's property at Rs.1.4 million, which was exaggerated taking into account that it was finally valued at Rs.900,000. This lends support to the finding of the learned Magistrate that the appellant had given himself room to eventually reassess the property in order to reduce the extra registration duty payable to Rs.25,000. The appellant was no doubt purporting to do an act which was facilitated by his duties. And he solicited from the complainant a gratification of Rs.50,000 for doing that act.

In the light of the above, we find that the learned Magistrate was right in finding the third element of the offence proved beyond reasonable doubt. We, accordingly, find no merit in ground 2.

### **Ground 3**

Ground 3 challenges the sentence of 6 months' imprisonment passed on the appellant on the ground that it is wrong in principle and manifestly harsh and excessive. The main thrust of the appellant's argument is that the learned Magistrate erred in not considering the possibility of suspending the sentence of imprisonment and making a community service order.

The learned Magistrate noted that the appellant was a public official and had committed a very serious offence. She held that a strong signal should be given to the public that the Courts are not prepared to condone such offences when government

officers fail in their duty and bring disrepute to their office. She was not prepared to treat such offences with leniency and, taking into account the appellant's clean record, was of the view that a short sharp shock, in the form of a custodial sentence, was warranted.

Subject to what we will say below, we agree with the approach adopted by the learned Magistrate in sentencing the appellant. The latter was a public official operating at a senior level and an expert dealing with technical aspects which are not to everyone's understanding. He did not hesitate to make an abuse of his position in order to solicit a gratification of Rs.50,000 which was an important amount at the time. Not only did he not show any remorse at any stage but he also had no qualm in levelling a false allegation of a serious nature against the complainant to the effect that it was the latter who offered him a bribe. He has indeed committed a serious offence carrying a heavy penalty of penal servitude for a term not exceeding 10 years.

We may here aptly quote the following extract from **Joymungul v The State** [\[2014 SCJ 143\]](#), referred to by learned Counsel for respondent No.1, where the appellant was sentenced to 12 months' imprisonment for a similar offence of bribery:-

*"The learned Magistrate gave due consideration to the clean record of the appellant. The offence involves an act of corruption perpetrated by the appellant in the course of his duties as a Customs Officer for the purpose of extracting a relatively substantial amount of money... Public officers endowed with law enforcement duties and powers like the appellant cannot be expected to be dealt with leniently when they make such an abusive use of their position in the course of their duties in order to obtain any form of unlawful gratification. The sentence is undoubtedly commensurate with the seriousness of the offence. It cannot by any standard be considered to be harsh or excessive but is richly deserved."*

In the present case, we are of the view that the appellant richly deserves the custodial sentence passed on him, despite his clean record. The sentence is indisputably proportionate to and commensurate with the seriousness of the offence and is meant to act as a deterrent. The present case is one of those cases where the conversion of a custodial sentence to a community service order would be clearly inappropriate. As was held in **Mohabeer v The State** [\[2009 SCJ 297\]](#), "there is no compulsion on a trial Court to consider making a Community Service Order specially where this does not appear to be appropriate".



However, we agree with learned Counsel for the appellant that there has been an inordinate delay of more than 14 years since the commission of the offence to date. The delay in completing the hearing of the present matter is, therefore, in breach of the reasonable time guarantee under section 10(1) of the Constitution and is relevant to the selection of the proper sentence (vide **Boolell v The State [2006] UKPC 46** and **Celine v The State of Mauritius [2012] UKPC 32**). In such a case, the appropriate remedy would “*depend on all the circumstances of the case*”.

After anxious consideration of all the circumstances of the present case, including the length of the delay and the compelling public interest in inflicting the appropriate penalty commensurate with the seriousness of the offence, we are of the view that the appellant is entitled to a reduction of 3 months on account of the delay. We, accordingly, allow the appeal to this extent only and we reduce the custodial sentence passed on the appellant from 6 months’ imprisonment to one of 3 months.

For the above reasons, the appeal is otherwise dismissed with costs.

**D. Chan Kan Cheong**  
Judge

**S.B.A. Hamuth-Laulloo**  
Judge

**3 June 2020**

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**Judgment delivered by Hon. D. Chan Kan Cheong, Judge**

**For Appellant : Mr J. Gujadhur, SA  
Mr G. Glover, SC**

**For Respondent No.1: Mr S. Sohawon, Attorney-at-Law  
Ms P. Bissoonauthsing, of Counsel**

**For Respondent No.2: Mr M. Lallah, Chief State Attorney  
Senior Assistant Director of Public Prosecutions**