

CN: 86/2020

IN THE INTERMEDIATE COURT OF MAURITIUS (FINANCIAL CRIMES

DIVISION]

In the matter of:-

**Independent Commission Against Corruption**

**v/s**

**Jugdishwar Shiboo**

JUDGMENT

Accused stands charged with the offence of, whilst being a public official, wilfully, unlawfully and criminally soliciting from another person, for himself, a gratification for abstaining from doing an act in the execution of his duties in breach of section 4(1)(a)(2) of the Prevention of Corruption Act 2002. Accused was assisted by counsel and pleaded not guilty to the charge

Statement of Accused were read and produced in court by SI Nuckchady. The motor vehicle licence of vehicle 2494 JL 95, 6 contravention case files, a certified copy of PF 37 which is a duty roster, a certified copy of a diary book entry were produced in court. In cross-examination, he stated that Accused left the police station with another police officer for the same extra duty. He stated that document GG reveals that the front nearside tyre of the car 2494 JL 95 was indeed worn out which confirms the version of the Accused. The contraventions files confirm that the opening of enquiries by the police as a result of Accused's declarations in relation to vehicle 2494 JL 95. He added that Accused informed Mr Bundhoo of the offence of worn out tyre. He could not say whether there was a disagreement between Accused and declarant. Mr Bundhoo however complained with regard to the manner Accused addressed him.

Pc Juleemun deposed that he examined vehicle 2494 JL 95 on the 14<sup>th</sup> of December 2013 in the light of which he prepared a report which he produced in court. According to the report, the front nearside tyre was worn out. He was not cross-examined.



Asp Nuccedy deposed that when a police officer is in uniform and is performing extra duty, he has the right to establish contraventions and he was not cross-examined.

CI Tengnah gave evidence that on the 19<sup>th</sup> of June 2014, he held an identification exercise between Accused and Mr Bundhoo. Accused was informed of his constitutional rights and different modes of identification. Mr Bundhoo stated that he could not identify the suspect because they were all similar. He was not cross-examined.

Inspector Jaitoo gave evidence that on the 13<sup>th</sup> of December 2013, Cpl Shiboo was on duty from 22.15 hrs until 6.30 hrs the next day. At 9.30 hrs, the Station orderly came in the office and informed him that one Mr Boodhoo intends to make a declaration against Cpl Shiboo. Cpl Shiboo was at the time regulating traffic along Royal road. He added that Cpl Shiboo in fact established certain contraventions against Mr Boodhoo. He further stated that as per the Diary book entry, Accused stated that Mr Boodhoo offered the sum of Rs 500 to him so that he does not contravene him. He added that he could not recollect the full name of Mr Boodhoo. When he was asked whether Mr Narain Bundhoo came to make a declaration, he stated that he was unsure and when his memory was refreshed, he stated that he was informed by the station orderly that one Narain Boodhoo was going to make a declaration. In cross-examination, he stated that no enquiry was carried out at the level of the police station regarding the alleged offering of bribe by Mr Narain Boodhoo.

Ps Dhotah gave evidence that on the 14<sup>th</sup> of December 2013, he was detailed to perform shift duty at Pamplemousses Police station from 6.15 hrs until 1430 hrs. He states that Cpl Shiboo entered at 650 hrs to perform extra duty. One Mr Bundhoo called at the police station to make a declaration against a police officer who asked him Rs 500 not to establish a contravention. He was requested by the station manager to go and find out who the police officer was. He proceeded to the spot where Mr Narain Bundhoo showed him Cpl Shiboo. A declaration was recorded against Cpl Shiboo. In cross-examination, he stated that Mr Bundhoo came at about 9 hrs to make a complaint against a police officer to the effect that the latter has asked him for 500 for him not to book him. He conceded that there were other police officers patrolling along the said road. Mr Bundhoo stated that the police officer was regulating traffic and indicated the area where he was regulating traffic. He could not recollect how many police officers were regulating traffic within 15 metres in that area.

**Analysis and findings:**

I have carefully considered the whole of the evidence on record. Declarant's evidence was very vague and unconvincing. His testimony in court is in contradiction with the particulars of the charge. In the charge as per the information and in the charge which was put to the Accused, it is mentioned that Accused asked Mr Narain Bundhoo Rs 500 so as not to report the latter for the contravention of fitting out of order. In court however, he gave a different version to the effect that the police officer in question asked him for Rs 500 failing which he will report him for several contraventions. At no time, he mentioned that Accused told him that he will not report him for the offence of fitting out of order. Furthermore, the PF 70 gives the lie to his version that his vehicle was in order at the time.

It cannot be overlooked that the declarant was very vague in respect of the issue of identification. He failed to identify Accused both during the identification parade and in court as the police officer who allegedly asked him for a gratification. The court is mindful that the Accused did mention in his last statement that he did recognise Mr Narain Bundhoo during the identification exercise as the person whom he contravened on the same day and at the same time. The weight to be given to such recognition of Mr Narain Bundhoo by the Accused is put into question by the fact that the identification exercise took place several months after the alleged incident and there is no evidence that both Accused and declarant are known to each other. The court has also noted Accused's unsworn version that he saw declarant in company of Pc Dhotah after the alleged incident. It must also be stressed that such version is only evidence of what he told to the police.

**Andoo M v/s R** [1989] MR 257 and that Accused who did not depose in court and did not swear as to the correctness of his statement. Nevertheless, the court has a duty to assess the weight to be given to the contents of Accused's statement. The version of declarant that he was at a distance of 100 feet when he was asked to show Accused to Pc Dhotah and that the traffic was congested at the time, taken at its best, begs the question how Accused could have had a clear view of the declarant from such a distance and sheds doubt on the specific part of Accused's unsworn version alluding to identification of the Accused by Mr Bundhoo after the alleged incident. This court cannot be oblivious to the fact that the declarant was positive at a certain stage that he had never seen the Accused before and that he does not know him.

The main features of Mr N Bundhoo's testimony are that on the 14<sup>th</sup> of December 2013, he was driving his vehicle of registration number 2494 JL 95 in the direction of Port-Louis when a police officer stopped him. The police officer wanted to contravene him but his vehicle was in fact in order. In his own words, he said that "pas ti ena contraventions dans mo van" and when he was asked which contravention the police officer tried to establish, he reiterated that that his vehicle was "a jour". The police officer asked him for Rs 500 failing which he contravene him for several offences. Since the police officer was aggressive and did not act in a correct manner, Mr Bundhoo proceeded to the police station to make a complaint. He then came back to the spot to identify the police officer in company of Pc Dhotah. When he was asked to identify the Accused in court, he stated that it was not him who asked him Rs 500. He added that he was not sure it was the same police officer who had asked him for Rs 500. He stated however that he did show the said police officer to Pc Dhotah on the same day. However, the said officer was standing at a distance. He was unable to describe the police officer who had asked him Rs 500 and stated that he was wearing sunglasses at the time. He stated that when he was asked to identify the police officer on the same day after the incident, the road was blocked and he had stopped at a distance and had to show the police officer from a distance of 100 feet. He denied that he offered Rs 500 to Accused. He then stated he never saw the Accused before and that Accused is unknown to him.

In his statements which were produced in court, Accused has denied the charge against him. The charge is that he solicited Rs 500 from Mr Narain Bundhoo so as not to report him for the offence of worn out tyre. His version is that at the material time, he was performing extra duty when vehicle 2494 JL 95 stopped at his level. He noticed that his front near side tyre was worn out and informed him of the contravention. The latter dismounted from his vehicle and came to the left side to verify the tyre. The latter then offered him Rs 500 but he refused and informed him it was an offence. The driver then left and he subsequently booked him. He added that after the incident, he saw Mr Bundhoo in the company of Ps Dhotah. Accused has admitted in his third statement dated the 3<sup>rd</sup> of July 2014 that, during an identification exercise which was conducted on the 19<sup>th</sup> of June 2014, he recognized Mr Narain Bundhoo as the same driver of vehicle 2494 JL 95 at 8.45 hrs and who had proposed to offer him Rs 500.



For the above reasons, I find it unsafe to rely on the testimony of Mr N Bundhoo to convict Accused and I dismiss the charge against Accused.



[Delivered by Nalini Senevrayar-Cunden, Magistrate of Intermediate Court]

[Delivered on the 31<sup>st</sup> of January 2022]

