

**JEWLAH Y. R. v THE INDEPENDENT COMMISSION AGAINST
CORRUPTION & ANOR**

2020 SCJ 294

Record No. 9170

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Yashwant Rai Jewlah

Appellant

v.

- 1. The Independent Commission Against Corruption**
- 2. The State**

Respondents

JUDGMENT

The appellant was charged with *trafic d'influence* in breach of section 10(5) of the Prevention of Corruption Act ("the Act") before the Intermediate Court. He pleaded not guilty and was represented by Counsel.

The learned Magistrate found the appellant guilty as charged and ordered him to be conditionally discharged upon entering into a recognisance and furnishing a security of Rs.10,000 within 30 days and to be of good behaviour for a period of one year, failing which to undergo 3 months' imprisonment.

The appellant is challenging his conviction on the following grounds, having dropped ground 2 at the outset:-

- "1. That the learned Magistrate was wrong to infer that the Appellant had guilty intentions (sic).*

3. *That the learned Magistrate was wrong to conclude that the 'Documents produced relative to the application supports the version of Mr Beeharry giving him the status of a witness of truth'.*"

Section 10(5) of the Act, under which the appellant was charged, provides as follows:-

"10. *Trafic d'influence*

.....

(5) Any public official who solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years."

The particulars of the offence were that the appellant, whilst being a social security attendant, solicited a sum of Rs.1,500 from the complainant (Mr. Beeharry-witness No.4) so as to cause the latter's application for a refund of his daughter's examination fees to be approved.

Under ground 1, it was the appellant's submission that there was no evidence to show his guilty intention.

The prosecution relied essentially on the testimony of the complainant. On the other hand, the appellant elected to give sworn evidence. He averred that the complainant had made a false allegation against him following a dispute between them as the complainant had filed his application late.

The learned Magistrate carefully set out both the prosecution and the defence cases. He was faced with 2 different versions. He analysed and assessed the evidence on record, bearing in mind the elements of the offence which had to be proved by the prosecution, including the appellant's guilty intention. He accepted the prosecution version as being a true account of events and found the case for the prosecution proved beyond reasonable doubt.

The prosecution version was as follows: pursuant to a Government scheme to refund examination fees, the complainant, whose daughter was sitting for the Higher

School Certificate examinations, applied for a refund on her behalf. He received 3 phone calls from the appellant who informed him that his application had not been approved and that he should give money for it to be approved. He was asked by the appellant to call on him at Piton Social Security Office. There and then, the appellant asked the complainant for a sum of Rs.1,500 to review the application. The appellant asked the complainant to go outside but, on seeing a red vehicle in front of the building, the appellant told him not to give the money. The appellant asked the complainant to go back inside. A dispute arose between them. The complainant then enquired from the staff about the fate of his application only to learn that it had in fact been approved and that he had to pay only half the examination fees.

The learned Magistrate found proved the appellant's guilty intention. We agree with the findings of the learned Magistrate. On the above prosecution evidence which he accepted as being true, it would have been most surprising if he had found otherwise. In our view, there is nothing on record which would justify us interfering with his findings.

It is common ground that the appellant, as a social security attendant, was not authorised to deal with the Ministry's files. The fact that he phoned the complainant to inform him that his application had not been approved and to ask for money to review the application clearly shows his intention to make use of his alleged influence to obtain a gratification. This was outside the scope of his duties. Moreover, he was simply not entitled to ask for money from a member of the public in order to process, let alone review, an application for the refund of examination fees. His request to the complainant to go outside the office to remit the money but his change of mind on seeing a red car in front of the building is consistent with the behaviour of a person who knew that he was indulging in an illegal act.

In the light of the above, we find that there was overwhelming evidence on which the learned Magistrate was entitled to rely to infer that the appellant had a guilty intention. We, accordingly, find no merit in ground 1.

Under ground 3, it is the appellant's submission that the learned Magistrate was wrong to hold that the documentary evidence adduced by the prosecution gave the complainant the status of a witness of truth. This ground of appeal is based on an extract of the judgment of the learned Magistrate.

We are of the view that this extract must not be read out of context. The impugned extract is to be found in a part of the judgment where the learned Magistrate carried out an assessment of the credibility of the complainant and other prosecution witnesses and of the appellant. The learned Magistrate found that the complainant deposed in a straightforward and convincing manner. But the learned Magistrate did not rely on the mere word of the complainant. He rightly and properly also considered the documentary evidence on record which, he found, supported the complainant's version.

We are unable to find any fault with the approach and conclusions of the learned Magistrate. The documentary evidence was consistent with, and did in fact support, the complainant's version. The correspondence and itemised bills from Mauritius Telecom (Documents C and D) confirm that the complainant received 3 telephone calls on his mobile phone from a phone registered in the appellant's name. Documents F and G, for their part, confirm that there was a Government scheme for the refund of examination fees and that the complainant had indeed made an application for such a refund.

In these circumstances, ground 3 must fail.

For the above reasons, we find no merit in this appeal which is dismissed with costs.

D. Chan Kan Cheong
Judge

P. D. R. Goordyal-Chitto
Judge

18 November 2020

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

For Appellant	:	Mr J. D. K. Pursun, Attorney-at-Law Mr R. Valayden, of Counsel
For Respondent No.1:		Mr S. Sohawon, Attorney-at-Law Mr M. Roopchand together with Mr H. Jeeha, both of Counsel
For Respondent No.2:		Mr M. Lallah, Chief State Attorney Ms P. V. Veerabudren, Ag Assistant Director of Public Prosecutions