

**ICAC v Noorhoosen Ramoly**

**2023 INT 150**

**CN 25/2022**

**IN THE INTERMEDIATE COURT OF MAURITIUS  
(FINANCIAL CRIMES DIVISION)**

**In the matter of:**

**Independent Commission Against Corruption**

**v/s**

**Noorhoosen RAMOLY**

**JUDGMENT**

1. The accused has been prosecuted with the offence of Bribery of Public Official in breach of sections 5(1)(b) & (2) of the Prevention of Corruption Act 2002. He pleaded not guilty to the Information and was represented by counsel, Mr R. Gulbul together with Mr D. Dodin throughout the proceedings. The prosecution was represented by Mr L. Nulliah for the ICAC.

**CASE FOR THE PROSECUTION**

2. Witness no.1, Senior Investigator Naiken, was the enquiring officer in the case. He produced the defence statement of the accused as **Doc A**. As part of the enquiry, he accompanied Mr Justine, witness no.2 to St Croix, near Latanier bridge where he was shown a garage owned by Mr Ramoly, the accused. Mr Justine told him that that was where he was taking possession of vehicles from Mr Ramoly.

3. During cross-examination, the witness confirmed that he was the only enquiring officer of the case and the allegation against the accused is the one made by witness no.2, Mr Justine. The allegation was made in 2019 on events which occurred from 2015 to 2016. The defence statement was recorded in 2019. The first allegation is dated 06.12.19 when he was in prison. The second allegation is dated 05.11.20. The witness no.2 was tried and convicted for a case of bribery. The enquiring officer confirmed that the accused denied knowing the identity of the witness no.2 in his defence statement. During enquiry, only the identification of the garage in question was carried out. During re-examination, the witness stated that the enquiry for this case started as a result of a report from a Commission of Enquiry on drug trafficking held in 2018.
4. Witness no.3, Mr Pudaruth, was the officer in charge in 2020, of the Eastern High Security Prison at Melrose. A detainee, named Siddick Islam, was admitted to the said prison on 27.05.14. He was transferred to central prison on 02.08.17. He was visited by Mr Noorhoosen Ramoly at Eastern High Prison on three occasions, more precisely on, 29.05.15, 25.02.16 and 27.05.16. Mr Siddick Islam was detained at Hibiscus Unit of the said prison. Mr Justice, witness no.2 was a prison officer at the time and he was transferred to Eastern High Security Prison on 27.05.14. He was posted at the Hibiscus Unit. He was moved from the said prison on 02.08.17. A search of the detainee Siddick Islam was carried out on 09.11.16. A mobile phone with a sim card was secured. The witness produced the report from Eastern High Security Prison consisting of 5 pages, as **Doc B**.
5. The witness under cross-examination stated that as per Doc B, witness no.2, Mr Justine was not working at the Hibiscus Unit on 29.05.15. Equally he was not working there on 25.02.16 between 1335 and 1405 during the visit of Mr Ramoly. He was scheduled for night duty. Finally, as per the duty roster (Doc B), the witness no.2 was not on duty at Hisbicus unit on 27.05.16 since he was already transferred to Beau Bassin Prison.
6. Witness no.2, Mr Paul Olivier Stephane Justine, was a prison officer at Melrose Prison during the years 2015 and 2016. In 2019 he stopped working at the said prison. He knew the detainee Siddick Islam during his posting at the Eastern High Security Prison (Melrose). He, as a prison officer, interacted with him being a detainee. Since Mr Siddick Islam was detained at the Hisbiscus Unit of the prison in 2015, they had verbal face-to-face

conversations. He stated that one of the conversations was about a car he wished to hire and he asked Mr Islam whether he can be referred someone. He was given a phone number and he was supposed to contact one 'Kalil'. An argument ensued with regards to dock identification and a ruling was delivered as a result, on 08.03.23. At the resumption of his examination, he stated that he used the phone number and contacted one named 'Kalil'. They met in Port-Louis for the latter to give him a car. He hired the car from him in exchange of money, to the amount of Rs1500. The witness could not remember the number of times he hired a car from 'Kalil' but it was more than once. He then stated that he did not make any payment to 'Kalil' for the hire of the cars. He simply replenished the fuel tank after had used the cars. The memory of the witness was refreshed as to the number of times he hired a car from 'Kalil'. He confirmed his answer from his out of court statement as seven or eight times. The issue regarding the reason for Mr Islam and 'Kalil' to provide cars free of charge, was raised and he stated that he was not aware. A previous inconsistent statement was confronted to the witness; *'mo ti pe informe Siddick Islam kan pou fer la fouille dans prison ek Kalil mo pas finn donne li narnien.'* The witness stated that the version which he has given to court is the correct one. He thought Mr Islam was a friend of his, that was why he made the arrangements for the cars. The version from his out of court statement is not correct.

7. Under cross-examination, the witness confirmed that he was a prison officer at the same time Mr Siddick Islam was a detainee at the said prison. He stated that he did not hire but borrowed cars from 'Kalil', without any condition attached. He has worked at Melrose Prison, as he did at other penitentiary centres such as Beau Bassin and Petite Rivieres prisons. As prison officer, he would not know who visited the detainee, Siddick Islam. He would equally not have access to the visitors at the prison. He did not have access to the administrative department of the prison, including the file of Mr Islam. When he was not on duty at the prison, he would take his leave. He would not know if Mr Islam had committed prison offences or that a search had been carried out in his cell. During enquiry, at no point did the enquiring officers confront him to the man named 'Kalil'. He knew the man from whom he took the cars only by the name 'Kalil'. He answered one question during re-examination to the effect that he last met 'Kalil' in 2017.

## **CASE FOR THE DEFENCE**

8. No evidence was adduced as part of the defence case.

## **ASSESSMENT OF THE COURT**

9. It is not disputed that the accused had met one detainee named Siddick Islam at Melrose prison on, at least three occasions. Mr Islam was also acquainted with witness no.2, Mr Justine, being one of the prison officers at the prison. They entered into an arrangement where Mr Justine was to take possession of cars for temporary use from one 'Kalil'.

10. As per the Information, the prosecution's case theory is that the accused offered Mr Justine cars free of charge as gratification and in return, Mr Justine provided confidential information to one detainee Mr Siddick Islam. There is no direct evidence that the accused and the one named 'Kalil' are one and the same person. The contention of the prosecution is that it can be inferred from circumstantial evidence that it was indeed the accused who remitted cars to Mr Justine as part of the arrangement agreed with the detainee Siddick Islam. Dock identification was ruled as inadmissible after submissions were offered by both parties. Mr Justine, witness no.2, does not deny that the one Mr Islam referred him to one 'Kalil' to obtain cars for his personal use. At no point in his testimony in court did he give the impression that he meant the accused every time he referred to the one 'Kalil'. As canvassed in my ruling dated 08.03.23, the fact that the prosecution did not carry out an identification exercise at enquiry stage for such a pivotal issue in their case is confusing to say the least. Such an exercise would have cleared the issue at the outset. Nevertheless, the prosecution has offered submissions on the existence of circumstantial evidence which could create the irresistible inference that the accused was the individual named 'Kalil'.

11. The prosecution submitted that Mr Justine, W2, was posted at the Melrose prison when Mr Siddick Islam was incarcerated there. The accused visited the said Mr Islam during that time. Mr Justine had numerous conversations with Mr Islam regarding the borrowing of cars and he was given a phone number to contact one 'Kalil'. Mr Justine visited the one 'Kalil' at a garage in Port-Louis. Witness no.1, the enquiring officer stated that the said garage was owned by Mr Ramoly, the accused.

12. There is no direct evidence on record that Mr Justine, when he was operating as a prison officer, has ever met the accused in the compound of the prison. In fact as per Doc B and the evidence of witness no.3, it is clear that Mr Justine was not on duty as a prison officer at Hibiscus Unit, Melrose Prison at the times when the accused visited the detainee Siddick Islam. Furthermore, the version of the accused from his defence statement (Doc A) is that he has never met Mr Justine, nor is he aware of him as a prison officer. The testimony of Mr Justine refers to the one 'Kalil' throughout, without ever alluding to the accused or Mr Ramoly.
13. It is clear that the prosecution has attempted to make up for the lack of an identification exercise during enquiry. However, the circumstantial evidence on record is not sufficient to paper over the cracks of the prosecution's case. It can be argued that the sum total of the evidence adduced by the prosecution raises suspicion as to the identity of the one named 'Kalil'. Such does not create an irresistible inference, that barely leaves any doubt, that the latter is indeed the accused in this case. The possibility that the one 'Kalil' who transacted with Mr Justine may not be the owner of the garage in question, raises a reasonable doubt.
14. Furthermore, it is not disputed that Mr Justine, witness no.2, was a public official at the material time. The prosecution had to prove that the accused offered a gratification to Mr Justine for doing an act which was facilitated by his duties. The evidence on record points to taking possession of cars by Mr Justine. It had to be established that the remittance of the cars to Mr Justine was not an innocuous act devoid of any criminal context, vide **Police v Seechurn 1980 MR 248; Jhurry v ICAC & Anor 2015 SCJ 258; ICAC v Seeneevassen 2012 SCJ 328**. The only evidence that can be acted upon by the court on that issue, is that Mr Justine was borrowing cars from the one 'Kalil' who was referred to him by detainee Siddick Islam as a gesture of friendship.
15. For these reasons, the prosecution has failed to prove its case beyond reasonable doubt. The case against the accused is dismissed.

**P K Rangasamy**  
**Magistrate of the Intermediate Court**  
**07.06.23**