

IN THE INTERMEDIATE COURT (FINANCIAL CRIMES DIVISION)

CN: FR/L48/2020

In the matter of:

INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

V

YASDEV BEEGODHUR

RULING

1. The accused stands charged for the offence of **corruption of agent** in breach of **Section 16 (1)** of the **Prevention of Corruption Act 2002**. He pleaded not guilty and retained the services of counsel. The trial has started since the 8th November 2021 whereby witnesses have started to testify. During the trial the defence has raised points of law regarding the extraction of audio recordings from a mobile phone and the transcripts of phone conversations which were obtained as a result. On the 10th August 2023 this court heard arguments on such a point in law whereby the defence asserts that the transcript of a phone conversation between Mrs Koosseeal and the accused was not put to the accused by the ICAC at enquiry stage. The defence argues that as the accused was not given the opportunity to respond to that particular piece of evidence this amounts to an infringement of **Section 10 (7)** of the **Constitution**. **Section 10 (7)** of the **Constitution** provides that:

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.



2. This court heard arguments on this issue and the prosecution called Mr Monneron Senior Investigator posted at the ICAC under oath to rebut the point raised by the defence. In a nutshell, Mr Monneron's testimony and version is that:

A: Yes, Your Honour. In fact, the purpose of putting evidence to suspected party during the investigation Your Honour is to put further questions to the accused party. So, in this case, the accused had opted not to answer to any questions that would be put to him. He had also opted not to listen to any of my questions at that time. So, if I would have put the questions to him, I would have been engaged in an oppressive conduct thus stepping into his constitutional rights. He did not want at all to listen¹.

3. Mr Monneron was cross-examined by the defence on the procedure adopted at enquiry stage and his presence at a disciplinary committee. Mr Monneron reiterated that the accused was assisted and opted not to answer to any questions.
4. As regards the disciplinary committee Mr Monneron vehemently denied being present thereat.
5. In re-examination Mr Monneron explained that the accused was duly cautioned and explained of his constitutional rights. Following the testimony of Mr Monneron, the prosecution and the defence submitted their contentions supported by case law regarding whether there has been an infringement of the accused's constitutional rights. This court has carefully considered the testimony of Mr Monneron and the prosecution and defence submissions. At the outset, this court points out that the defence's objections are unmeritorious and must be set aside. These are the reasons.
6. In **DPP v Ducasse C.R.G.M 2023 SCJ 20** the Supreme Court has recently affirmed that:

¹ Page 4 and 5 of transcript of court sitting dated 10th August 2023

It is, therefore, clear that all imperfections during the enquiry by the police will not necessarily be fatal to the prosecution's case unless it is of such a nature as to result in irreparable prejudice being caused to an accused.

7. In the present matter, from the testimony of Mr Monneron it is clear that at investigation stage the ICAC officers cautioned and explained to the accused his constitutional rights. Furthermore, as pointed out by Mr Monneron the accused had mainly elected to keep silent and was assisted at enquiry stage. In fact, this court finds that the testimony of Mr Monneron clearly demonstrates that the accused was fully alive about his constitutional rights and that these rights have not been overlooked or infringed.
8. In addition, during the arguments learned counsel for the accused conceded that he does not dispute the fact that the charges were put to the accused. That is, the defence agrees that the accused was well aware about the case he had to meet at interrogation stage. As pointed out in **DPP v Ducasse C.R.G.M 2023 SCJ 20:**

At the end of the day, what is important is that the respondent was given a clear idea of what was being reproached of him, namely, that he had administered an injection to the lady which has later caused her death. He knew fully well the case he had to meet.

9. For these reasons, this court finds that the prosecution has been able to demonstrate that the accused's fundamental rights were not infringed at enquiry level.
10. The motion of the defence is accordingly set aside.

A.Joypaul

Intermediate Court Magistrate

26.10.23

