

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

Rajen Sachidanand ETTOO

JUDGMENT

1. The accused has been prosecuted for the offence of Traffic D'Influence under 2 counts of the Information, in breach of sections 10(4) of the Prevention of Corruption Act 2002 (POCA). The accused pleaded not guilty to the Information and was represented by Mr A. Ramdass, of counsel, throughout the proceedings.

CASE FOR THE PROSECUTION

2. Witness no.1, Investigator Goonjur, one of the enquiring officers, produced the two defence statements of the accused as **Docs A** and **A1**. He stated that the enquiry was triggered by the reporting of a case of soliciting to the amount of Rs7000. The report was made to the ICAC by the witness no.4, Mr Takoory against one Mr Raj, an unlicensed driving instructor. On numerous occasions, the latter allegedly solicited Rs7000 to facilitate the obtention of a driving licence for the witness no.4. The witness further stated that the allegations were that twice in September 2021 and once on 21.04.22, Mr Takoory gave Mr Raj the money. Witness no.3, PC Randha, acted as police examiner for the driving test taken by Mr Takoory. The latter took the test in a vehicle with registration plate 9067 OC 17.
3. Under cross-examination, the witness stated that, although he did not record the out of court statement of witness no.4, the case for the prosecution revolves around the allegations of the said witness.



4. Witness no.2, Mr Roopan Khadaroo, stated that he carried out an identification exercise between the accused and the witness no.4. The accused was informed of his constitutional rights and opted for a confrontation exercise. He was positively identified by the witness no.4. Mr Khadaroo produced his out of court statement to that effect as **Doc B**.
5. Witness no.5, Sub Inspector Tulloo posted at the Traffic Branch produced the certified copy of a correspondence from the Commissioner of Police to the ICAC, as **Doc C**. The document shows that the accused was not the holder of a driving instructor licence at the material time.
6. Witness no.6, Mr Julien Anthony Sookun, Registration and Licensing officer, at the National Land Transport Authority, produced **Doc D** which is the entry in the register showing that the car bearing registration number 674SP15 belonged to the accused at the material time.
7. Witness no.7, Mr Previn Samoo, driving instructor, gave evidence to the effect that he has been working as a driving instructor since 2010. He owns the car of make Nissan Micra and of colour grey, bearing registration number 9067 OC 17. He came to know one Mr Nyshal Takoory (witness no.4) as a person who did his driving test in the said car. He was recommended to him by the accused. On the day of the test, they met at the driving test centre in Curepipe. Mr Takoory took the test three times. The witness confirmed two dates as 17.01.22 and 21.04.22. The accused used to refer him clients, who were looking to take driving tests. The accused himself did not have a permit for giving driving lessons. When students are referred to him, the witness is paid on the day of the test. Mr Takoory went to see him on 17.01.22 for the driving test, which the former did not pass. The second time, Mr Takoory took the test with the witness, was on 21.04.22, but the witness did not dispense any driving lessons to him. On the said date, Mr Takoory paid the witness the agreed fee. He took the car provided by the witness and went to do his driving test with an examiner. They never spoke after the test and therefore the witness was not aware whether Mr Takoory had passed his driving test or not.
8. Under cross-examination, the witness confirmed that the accused used to send him clients wishing to take their driving tests. He had the required permit and he would provide his car to the clients to be used for the tests. One of those referred clients was Mr Takoory, witness no.4. He was not aware of any incident involving



Mr Takoory after 21.04.22. Likewise, he had no indication that the accused had asked for any bribe for the obtention of driving licences from the authorities.

9. Witness no.3, PC Randha, stated that he was posted at Traffic Branch of the Mauritius Police Force in May 2021. He was then transferred to the Driving Test Center at Curepipe. Driving tests can be conducted in centres found in Port-Louis, Curepipe and Flacq. However only the Traffic Branch of the MPF can issue driving licences. The witness described the procedure such that a person has to pass an oral test with an attached fee. He then has to pass the practical test which is divided into three parts; road test, practical reverse and practical parking. The practical tests also carry a fee which has to be paid at the cash points of the driving test centres, or such can be made online. The person on the day of the test, must bring his learner and a car, either registered through an 'auto-école' or a private car with insurance for the day. Furthermore, the witness explained that in the morning of the test and in the waiting area where the candidates are placed, a police officer would brief them as to corruption offences.
10. The witness confirmed that Mr Takoory, witness no.4, took an oral test on 07.05.19. He took his first practical driving test on 09.08.19 which he failed. He booked another test numerous times but was postponed every time. He finally had his second practical test on 17.01.22. He must not have passed the said test since he booked a third practical test on 21.04.22 only for the road test. The witness was the examiner assessing Mr Takoory on the said date. The latter passed his test and he was led to a room for a debrief. Mr Takoory was thus handed his results and informed of the various acts of corruption. On the day, the witness asked Mr Takoory if he was subjected to in any act of corruption involving driving licences. He replied that he was a victim of such an act. He was asked by a man to pay Rs7000. The witness informed his superior officer who interviewed Mr Takoory. The latter was thereafter accompanied to ICAC offices for enquiry.
11. Under cross-examination, the witness no.3 stated that a candidate is briefed on corruptions offences every time he calls at the Driving Test Centre for a test. In 2022, the fee for each test was Rs500. The candidate can be briefed by a police officer or by watching a TV screen with the relevant information displayed. With regards to Mr Takoory, on 09.08.19 he was briefed on corruption before and after his driving test, as he was for every time he turned up for a test, whether he failed it or not. The witness stated he had consulted the records before putting up his out of court statement. As per the said records, at no point in time before 21.04.22 through his multiple appointments at the Driving Test Centre, did Mr Takoory



give any indication that he was subject to a corruption offence, in terms of a request for a bribe. If such was the case, it would have been reflected in the records. The witness further confirmed that on 21.04.22, Mr Takoory told him that the accused had asked for Rs7000 if he wanted to get a driving licence as the former would arrange with the authorities to secure him such driving licence. The witness confirmed an extract of his diary book entry which was read to him to the effect that Mr Takoory reported that he would have had to pay Rs7000 to the accused after he had passed his driving test.

12. Witness no.4, Mr Nyshal Takoory, stated that he informed a police officer that the accused had asked him for money, between Rs6000 to Rs7000. He had difficulty in remembering at which location the accused had asked him for money. He was led during examination-in-chief to say that it was in Curepipe, when he was taking driving lessons from the accused. The witness further stated that the request by the accused for the money was made a few days before the obtention of his driving licence. It is not disputed that the said licence was obtained on 21.04.22 when he passed his driving test. However, the witness could not be precise as to the number of times the accused had asked him for money. He said that the accused could have asked him for money once or twice. During the month of April 2022, he gave evidence to the effect that he was in the accused's car during his driving lesson when the latter asked him for around Rs6000 to Rs7000. He did not know the reason for which the accused had asked him for money. Despite a lengthy examination-in-chief as to the second date when the accused allegedly solicited money him, the witness could not give any indication as to the timeframe. Questions were repeatedly put to the witness with regards to the reason for which the accused would have asked him for money. The witness replied verbatim : *ca veut dire li dire moi coter licence, mo meme mo pas connais mone blier. Coter licence soit coter so l'auto en panne. Mo pas connais kine casser. Soit coter pou gagne licence.*

A previous inconsistent statement was confronted to the witness and the extract from his out of court statement was read as follows: '*Mo fine demande li ki li fine dire par dresse la ligne et li fine dire moi ki li ena ene dimoune dans la main. Li prend Rs7000 pou faire gaigne licence la.*'

The witness confirmed his out of court statement being correct, but he could not provide further detail as to whom the accused's contact person was or how would the accused have proceeded to secure him the driving licence. Mr Takoory further explained that after he had passed his driving test he was interviewed by a Police Inspector. He related to him that his driving instructor had asked him for Rs7000 on two occasions. He did not ask the reason for the request of Rs7000 the first



time, but the accused told him that it was for the obtention of a driving licence the second time.

13. During cross-examination, the witness stated that the last time he saw the accused was on 29.07.22 for the purposes of an identification exercise at the ICAC offices, until he saw him in the Court premises for this case. He was apologetic towards the accused. It is understood that he did not have any ill-feelings to the accused since he has referred two of his nephews to the accused for driving lessons, after the events in question. He denied that he was forced to report the matter to the police but he said that the accused never asked him for bribes, nor that he would pay off police officers at 'Casernes'. Further questions were put to the witness and he maintained that the accused never told him that he would use the money to pay another person for the obtention of the driving licence. One of his answers on the point is hereby reproduced: '*Oui. Li pane demande moi cash pou alle kit ek kikene ek la police ou soit mo pas conner ki sanla, jamais line dire moi sa zafer la.*' The witness was re-examined and he maintained that the accused did not ask money for the obtention of a driving licence.

CASE FOR DEFENCE

14. The accused gave evidence under oath. He maintained his innocence and the content of his defence statements. He stated that he never asked money to the amount of Rs7000 from Mr Takoory (witness no.4). He had asked him money for his fees but nothing else. He denied having asked for money to use his influence in any way to secure a driving licence to the benefit of Mr Takoory.

15. Under cross-examination, the accused stated that Mr Takoory was his student from 2019 to 2022, in Curepipe. He did not have any problem with him except that he would show his displeasure to him when the latter was not following his instructions. Mr Takoory had paid him all his fees for the driving lessons. He denied that he asked Mr Takoory Rs7000 so as to use his influence to get a driving licence for him.

ASSESSMENT OF THE COURT



16. The accused has been prosecuted under two counts of the Information in breach of section 10(4) of **Prevention of Corruption Act 2002 (POCA)** which is reproduced as follows:

'Any person 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.'

17. The constitutive elements of the offence of Traffic D'Influence were laid out by the Supreme Court in the case **Peermamode v The State of Mauritius and Others 2022 SCJ 25** as:

- (i) the appellant solicited a gratification;
- (ii) from another person;
- (iii) for a person in order to use his influence; and
- (iv) to obtain a benefit from a public body

18. The submissions of both, the prosecution and the defence have mostly dealt with factual issues. Applying the above elements as propounded in **Peermamode (supra)**, the prosecution had to prove that the accused solicited Rs7000 from Mr Takoory (witness no.4) so that he would use his influence to obtain a driving licence for the said Mr Takoory.

19. It is manifest that the gist of the prosecution's case revolves around the testimony of witness no.4, Mr Takoory, who in effect was the declarant in the matter. A sum of money to the amount of Rs7000 falls within the ambit of gratification as defined under **section 2 of POCA**. The accused has denied having been paid Rs7000 by the witness no.4 both, during his deposition under oath in Court and through his out of court defence statements (Docs A and B). Throughout the hazardous testimony of the witness no.4 for the prosecution, there is one piece of evidence which has remained mostly consistent and where the said witness had been upfront with. He stated at the outset that the accused had asked him for Rs6000 to Rs7000, which he later clarified as Rs7000. It is undisputed that the accused has been paid money which constituted his fees for the services he provided as driving instructor. He stated the fees to be Rs400 per driving lesson in his defence statement and the witness no.4 has been his student for the period between 2019 and 2022. It is unknown at what frequency the said witness paid the fees. Nevertheless, the latter stated clearly that he was asked a sum of Rs7000 by the

accused. Despite the various inconsistencies of his testimony which will be addressed below, such cannot be viewed as a monolithic structure. Despite the denial of the accused on this point, I find that the evidence of witness no.4, that he was asked Rs7000 by the accused can be relied upon.

20. Thus, the prosecution had to prove that the sum of money amounting to Rs7000 was solicited by the accused for him to use his influence to obtain a driving licence to the benefit of Mr Takoory, witness no.4. The latter's evidence under oath has been canvassed at paragraphs 12 and 13 above, which include a summary of a lengthy examination-in-chief of the witness. He had difficulty in stating the reason for which the accused requested to be paid Rs7000. The first answer he gave under oath, was that he could not be sure whether it was for the driving licence or for repairs on the accused's car. A previous inconsistent statement was shown to him and he confirmed the extract, meaning that the accused knew someone who would have helped secure a driving licence for the witness. When taken in isolation, the prosecution might have had a prima facie case having considered the possibility of memory lapses, even with the caution propounded by the Supreme Court in **Neeroo v The State 2023 SCJ 116** where the following was held: *'we wish to point out however that such principles should not be used as a blank cheque. Inconsistencies of any kind or departures from the original complaint cannot invariably be placed on account of the fact that deposing in court is not an exercise of memory test and to simply brush them aside.'*

21. However, Mr Takoory under cross-examination subsequently stated that the accused never asked him for money to be paid to the police or any other person. When re-examined on the issue, the question was whether he agreed that he stated during cross-examination, that the accused did not ask him money for the obtention of a driving licence. He answered in the affirmative.

A previous inconsistent statement in the form of an out of court statement can be explained to some degree. On the other hand, a contradiction within a witness' testimony in Court raises serious doubts as to the credibility of the witness, vide **Joomer v The State 2013 SCJ 413**. If the contradiction concerns an element of the offence, the case for the prosecution would be severely affected. In the present matter, the use of the accused's influence in return for the money is an element of the offence as per **Peermamode (supra)** and as averred in the Information. The witness stated in clear terms during cross-examination that the accused did not inform him that he would use his influence in any way, at any point in time. Additionally, any doubt was dispelled when the witness confirmed

same under re-examination. The credibility of the witness is thus seriously undermined by such contradiction on a key issue. There are other surrounding circumstances, not necessarily conclusive by their own accounts, but which cumulatively render the evidence of witness no.4 unsafe to be relied upon. Without much prompting, the witness under cross-examination, expressed his apologetic nature towards the accused. He even stated that he recommended two nephews of his to take driving lessons from the accused. Furthermore, the accused has had numerous opportunities to report the matter at the Driving Test Centre on his multiple visits, but chose to do so only after he had passed his test. The only evidence in favour of the prosecution on the issue, is derived from the confrontation of the witness to a previous inconsistent statement. I thus find that the credibility of the witness has been shaken to such an extent that it cannot be relied upon.

22. In the absence of any other evidence from the prosecution to prove 'in order to make use of his influence to obtain a benefit' as averred in the Information, I hold that the prosecution has failed to prove its case beyond reasonable doubt. Both counts of the Information against the accused are therefore dismissed.



P K Rangasamy
Magistrate of the Intermediate Court
22.11.23