

**ICAC v B.M Seedeer**

**2012 INT 92**

**IN THE INTERMEDIATE COURT OF MAURITIUS  
(Criminal Division)?**

**In the matter of :-C.No.313/2010**

**ICAC v Bhye Mamed SEEDEER**

**J U D G M E N T**

Accused, a Road Traffic Inspector is charged with willfully, unlawfully and criminally soliciting from Mr Doongur a sum of Rs.200.- for himself for abstaining from doing an act in the execution of his duties i.e, refraining from booking the latter for a road traffic offence in breach of section 4(1)(a) & (2) Prevention of Corruption Act 2002. He pleaded Not Guilty and was assisted by Mr.R.Jadoo. The Prosecution is led by Mr Bhurtun.

The offence allegedly took place on 15 May 2009 at about 7.45 hrs at Royal Road, Constance where Accused was posted on squad check duty together with Traffic Warden Balloo, who is empowered by law to hail and stop vehicles on the road. It is not disputed that Accused is a public official.

The gist of the case is as follows :-

On the material day, Witness Doongoor was driving borrowed van 674 ZE 93 (hereinafter referred to as “the van”) belonging to his friend Mr Razzak. He was by the football pitch when he was stopped by Traffic Warden Balloo. Accused requested Witness Doongoor for presentation of the Agreed Statement of Fact form as per section 68B(3) Road Traffic Act ( hereinafter referred to as “ASF” & “RTA”) which all drivers are supposed to have in their possession. Accused presented a photocopy of same to which Accused allegedly said that “... *papier là pas valable, aine contravention ca...*”.

Witness Doongoor replied that photocopies were acceptable. Accused thereafter allegedly asked him for Rs.200.- in order not to book him - which proposition he refused and Accused thereafter booked him by way of Fixed Penalty Notice. Witness Doongoor denied being angry or leveling a false charge and gave a declaration accordingly at Flacq police station on the same day against Accused for soliciting bribe and produced 2 ASF forms there. And the matter was subsequently reported to **ICAC**.

Witness Doongoor did not remember if he had asked Accused for a chance of not being booked or whether Accused had solicited the bribe of Rs.200.- before or after that particular exchange.

Traffic Warden Balloo whose name was on the Prosecution’s List of Witnesses was not called by the Prosecution but was called by the Defence.

¶Much was said about the requirements of the law as regards the ASF, the controversies raised as to the interpretation of section 68B(3) RTA, whether photocopies are an acceptable substitute for the original, from whom Witness Doongoor got the information that photocopies of ASF were acceptable, where the ASF was kept in the van, from where it was removed, how many copies of the ASF were initially produced to Accused and subsequently to the police, who signaled the van to stop, who was entitled to stop the van, what uniform traffic wardens wear, how Road Traffic Inspectors are attired, who the van belonged to, from whom the van was borrowed from and for what period of time, the subsequent purchase of the van by Witness Doongoor and the transfer of its ownership, why Witness Doongoor had not mentioned the presence of occupants/ minor children in the van on the material day, the ailments of Mr Doongoor, what was said in the respective statement/s of the parties and highlighted inconsistencies between same, the number of persons contravened by Accused that day, how many people proffered threats etc.

The Court will not delve into these collateral issues in as much as same are deemed irrelevant as regards proving the elements of the offence which is materially, *whether Accused indeed sought a gratification of Rs.200.- for himself for abstaining from booking Witness Doongoor.*

Indeed it is not disputed that Witness Doongoor was the *driver* of the van and the requirements of section 68B(3) RTA is that “... *every driver of a motor vehicle shall carry in his vehicle an ASF ...*” and that deeming the photocopy produced unacceptable, Accused thereafter booked the latter by way of Fixed Penalty Notice – see *Doc H. ?*

Accused deposed under oath and solemnly affirmed as to the correctness of his two defence statements in denial of the charge and which are on record.

Accused deposed that after Traffic Warden Balloo stopped the van driven by Witness Doongoor, he/Accused then approached the latter and identified himself to him by showing him the ID card kept in his shirt pocket. He verified the van and asked for production of the ASF form, (which comes in two originals with a carbon imprint on one original allowing reproduction of any writing on the first original onto the second original), to which Witness Doongoor produced one photocopy of the ASF.

Deeming same as not being in accordance with the law, Accused booked Witness Doongoor for “*failing to carry ASF*” which infuriated the latter and an argument ensued between them to the effect that Accused should accept the photocopy. Thereafter Witness Doongoor addressed him as follows : ” *Mo donne toi aine bon nouvelle, mo pe alle rapporte toi a la police ...*” . Accused denied asking Witness Doongoor for Rs.200.- not to book him.

Accused stated that he believed Witness Doongoor uttered those words because the latter believed that he/Accused had booked him on a false contravention.

Accused explained that he did not formally file a Report of Incident form as regards the threat proffered by Witness Doongoor in as much as he considered there was no incident as such to report and such threats were a common occurrence with booked irate drivers. It was put to Accused that he ought to have reported the threat made to him, to which he stated that he had already answered that question.

The Court notes that it was not put to Witness Doongoor, either by the Prosecution not by the Defence, whether he had indeed addressed the threat as reproduced above to Accused.

Traffic Warden Balloo who was called as a defence witness was regulating traffic during Accused's inspection of the van. He stated that after Witness Doongoor was booked and whilst he/Witness Balloo was approaching the van in order to give the latter directions to move off, the latter angrily said " ...*Mo pou mette ou dans problème, mo pou mette aine l'entrée dans station ...*". Defence Witness Balloo did not consider these words to be serious enough to report in as much as such threats were often proffered.

Written Submissions filed by counsel are on record and the Court has taken cognizance of same.

After consideration of the evidence on record and the written submissions of counsel, this Court is of the considered opinion that the benefit of doubt should apply and this for the following reasons which are to be read comprehensively :-

- Witness Doongoor deposed that Accused asked him for Rs.200.- as a bribe in order to abstain from booking him. He had no witness to depose in support of same.
- Accused deposed under oath. His court version in denial of the charge is materially consistent with his statement version and his sworn testimony was unshaken by the Prosecution. He had no witness to depose in support of his version.
- The Court finds nothing sinister in the fact that Accused did *not* report in the Incident Report that Witness Doongoor's allegedly "*threatened to report him to the police*" and notes that mention was made that such incidents were common. The Court has no reason to disbelieve him.
- It is pertinently noted that it is *not* the case for the Defence that Defence Witness Balloo overheard the conversation that ensued between Accused and Witness Doongoor as regards asking for the bribe and neither did Witness Balloo say that Accused never asked Witness Doongoor for a bribe.
- Defence Witness Balloo's version, albeit not *verbatim* consistent with Accused's as regards the words uttered by Witness Doongoor, is nevertheless mutually consistent with Accused's on the aspect that generally, Witness Doongoor angrily threatened to get Accused into trouble by reporting the matter to the police.
- At page 6 (and 8) of the Prosecution's Submissions, based on what the Prosecution considers to be inconsistencies between Accused and Defence Witness Balloo (which the Court does not consider to be material ) - mention is made that "... *the Defence has concocted a story before the Court ...*". The Court is rather taken aback at the veiled suggestion made in as much as Accused and Defence Witness

Baloo deposed under oath, were subjected to cross-examination by the Prosecution and their testimonies remained unshaken on the aspect that irrespective of the words used, Witness Doongoor angrily proffered a “threat to report to the police” *vis a vis* Accused.

- Even if such a “threat to report to the police” was made, it would not necessarily and *stricto sensu* lead to the conclusion that Accused had indeed solicited a bribe - as submitted by the Prosecution at page 6 and the last paragraph of Item 3. Such a baseless inference would be unfair and unreasonable in the circumstances.
- Even if Witness Doongoor had/had not angrily signified his intention to report the matter to the police, this is of no consequence, in as much as one need not give advance notice of their intention to report to the police and furthermore one is free to report their offence-related grievances to the police, whenever they so wish. The real issue is *whether the Prosecution has been able to prove beyond all reasonable doubt that Accused had solicited the gratification from Witness Doongoor. And it is the considered opinion of the Court that the Prosecution has not been able to do so.*
- This Court is of the considered opinion that the testimonies of Witness Doongoor and Accused are too evenly balanced to be able to say whether one or the other is lying or who is telling the truth - Witness Doongoor says Accused asked for the bribe and Accused says he did not and there is no evidence, independent or otherwise, to tilt the balance either way.
- Through the highlighting of inconsistencies between statements/evidence etc, both by the prosecution and the defence, this Court got the distinct impression that it was being asked to assess the credibility of the witnesses. This Court would be derelict in its duty were it to consider irrelevant, immaterial and inconsequential inconsistencies in either party’s out-of-court’s statement/s and thereby make an assessment as to whose sworn evidence is more credible. This Court is more concerned with sworn, material evidence that has been adduced before it than with what could have been consistently/inconsistently said in an out-of-court statement.
- The tenor of the Prosecution’s Submissions inclusive of its interpretation of section 68B(1) RTA at page 5 of Prosecution’s Submissions, is to the effect that since Accused did not accept the photocopy of the ASF, did not report the “*threat*” in his Incident Report, amongst others, he is guilty of soliciting a gratification for himself. This Court does not subscribe to such reasoning.

For all the reasons set forth above, this Court finds that the Prosecution has failed to prove its case, as per information, beyond all reasonable doubt - that Accused willfully,

unlawfully and criminally solicited from Witness Doongoor a gratification for himself in order not to book the latter for an offence under the RTA and accordingly **grants to Accused the benefit of doubt.**

**Prohibition Order to lapse after delay of appeal expires.**

Dated this 21<sup>st</sup> day of May 2012.

*N.Ramsoondar*

*Magistrate, Intermediate Court (Criminal)*

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