

ICAC v LUTCHMEENARAIDOO HARISHCHANDRAH

2009 INT 266

CN : 1151/07

IN THE INTERMEDIATE COURT OF MAURITIUS

In the matter of :-

ICAC

V

Harishchandrah Lutchmeenaraidoo

Judgment

The accused stands charged with whilst being a public official ,wilfully, unlawfully and criminally made use of his position for gratification for himself, breach of s 7(1) and 83 of the Prevention of Corruption Act. It is averred that whilst being a Detective Police Sergeant enquiring into a case involving one Vishnu Potigadoo, received from latter sum of Rs 3000 not to object to his bail and that of Rajesh Poorun. He pleaded not guilty to the charge and was assisted by counsel.

It is not disputed that the accused, a Detective Police Sergeant is a public official within the meaning of the Prevention of Corruption Act. Both Vishnu Potigadoo and one Rajesh Poorun (witnesses no.4 and 5 respectively on the list of the prosecution witnesses) were arrested in connection with a case of swindling. Vishnu Potigadoo was detained at Moka detention centre until he was released on bail on 24.11.05. ACP Hurrychurn gave instructions to a team of CID officers to enquire into the case of swindling. Accused formed part of that team. The information avers that on the same date, i.e 24.11.05, the accused made use of his position for a gratification for himself. He is alleged to have received Rs 3000 from Vishnu Potigadoo so as not to object to his bail and that of Rajesh Poorun.

It is not disputed that on the same day of the alleged offence , the accused assisted Vishnu Potigadoo (witness no.4) to pay a fine at Bambous District Court. The accused enrolled the services of Ved Goolam, a taxi driver who was called by the defence to depose. After he had taken money from the accused who received the money from somebody else, he proceeded to the District Court to pay the fine. He returned on the same day to Moka Police Station and

gave the receipt , Doc C, to the accused. According to Doc C, the fine paid was in the sum of Rs 2 300.

In relation to that part of the charge averring that the accused received Rs 3000 so as not to object to the bail of Vishnu Potigadoo, it can be gathered that the prosecution 's case rests on the testimony of Vishnu Potigadoo. As regards the other part of the charge that the accused received Rs 3000 so as not to object to the bail of Rajesh Poorun, the prosecution's case rests on the evidence of Jaywantee Mala Poorun.

Vishnu Potigadoo(witness no.4) deposed to the effect that on 23.11.05, he gave his statement at the Central CID whilst the accused were amongst the persons who was putting questions to him. He was assisted by counsel for the recording of his statement. Whilst his statement was still being recorded, the declarant in the case of swindling approached him with another person and told him that there was in fact no case against him and the said Rajesh Poorun. The declarant also asked him for Rs 150 000 to withdraw the allegations against both of them.

After his statement was recorded, the accused and two other officers escorted him and another suspect Kisson to Moka detention centre. Once the accused only was inside the detention centre with him and the other suspect , the accused told them that in order to expedite matters, there will be no objection to their release on bail and asked both of them if they could do something to have themselves released. He understood that the accused was asking for Rs 5000 but he did not know the purpose for which that money was being asked. As he had departed from his statement he gave on 25.11.05 and after it was put to him, he agreed having stated in his statement that the accused told him to 'faire ene lisage' and give Rs 3000 per person to obtain their release on bail on the following day. Immediately afterwards, he came back to his original version pertaining to the sum of Rs 5000 by stating that the accused told him and the said Kisson to give Rs 5000 to release both of them early in the morning. Both of them told the accused that they would not be able to afford this sum and he told that accused he would give him Rs 3000. He also added that he did not know whether there was objection to his release on bail.

On the following day, ie 24th November 2009, he was brought to court. On that day, he gave money twice to the accused, the first time for the unpaid fine he had at Bambous District Court and the second time for the purpose of his release on the same day. He could not remember the exact sum of money he gave on the second occasion, but stated that he remitted Rs 3000 which his wife had brought and which he in turn remitted to the accused for the payment of the fine. The second sum of money was given to him by two persons, by the sister and the mother of Rajesh Poorun.

Under cross-examination, he stated that it was on the same day when he was released on bail, i.e. 24th November that he came to know that he would be released. He also stated that the accused asked money for the release of Kissoon and himself and that the accused never mentioned money for Rajesh Poorun 's release on bail. He also admitted that he gave two versions to the police about the identity of the person who gave him money for the alleged offence implicating the accused. In his first statement, he mentioned one Hema Poorun whilst in his second statement he corrected the error he had made earlier, this time stating that it was the Mother of Hema who remitted him the money.

Jaywantee Mala Poorun (witness no.6) was then called by the prosecution to depose. Her son Rajesh Poorun was arrested from 18.11.05 and released on 24.11.05. Her version was that on 24.11.05 when she went to Moka Police Station , 'Missie la' (purportedly tending to mean the accused) told her that for formality sake, she had to bring Rs 3000 and then he would bring her son. She gave the money for her son to be brought to court from Moka to one Adil (assumed by the court to be Vishnu Potigadoo) who gave it to the accused. Then, her son was released on 24.11.05. She stood as surety for two persons, one for her son after having paid Rs 10 000 and the other one for Vishnu Potigadoo, for whom she only completed the formalities by signing on the documents for release.

Under cross-examination, she stated that her daughter told her that money was required for her son to be bailed out. She had brought in all Rs 10 050 and she had some Rs 1200 more with her. She met the accused at 08 h 00 when she gave the money to Vishnu Potigadoo and he in turn gave to the accused the money. On 20.11.05, she knew that her son would be brought to court.

Kovila Potigadoo (witness no.7), presently the wife of Vishnu Potigadoo was called to depose on behalf of the prosecution. She stated that on 24.11.05 she gave Rs 3000 to Vishnu Potigadoo to settle an unpaid fine for a contravention. Vishnu Potigadoo in turn handed over the money to the accused. Then, she left. The purpose of paying that fine was to enable Vishnu Potigadoo to go home on the day of his release on bail in connection with the case of swindling.

Under cross-examination, she stated that before she left, Vishnu Potigadoo told her that the mother of Rajesh Poorun would pay for his surety.

The accused deposed in court under oath and solemnly affirmed to the correctness of his two statements, Doc B and B1 he gave to the police. He also called PC Rajoo, PC Purahoo, PC Raymond , PC Joomuck and Chandraduth Golam as defence witnesses.

His sworn version was that under the instructions of ACP Hurreechurn, he investigated in a case of swindling in which Vishnu Potigadoo was involved as suspect. Before Vishnu Potigadoo gave his statement on 23.11.05, he with other police officers carried out the interrogation exercise. then, he put questions to him whilst PS Sookun was recording his statement . In his presence, ACP Juwaheer gave instructions to CI Lutchmun and PS Sookun to release both of the detainees on the following day, i.e. 24.11.05. Later on, he in turn informed both Potigadoo and Kisson that they will be released on bail on the following day. He did this in presence of PS Raymond and PC Purahoo. He was in a police car on the way with Vishnu Potigadoo to search his place when he was informed by CCID personnel that Potigadoo had an unpaid fine at Bambous District Court. As Potigadoo was in police custody, he asked him for help to pay his fine. This was why he enrolled the services of Ved Golam , taxi driver, to pay the fine at Bambous District Court. His sworn version was that on 24.11.05, he took Rs 3000 only once from Vishnu Potigadoo for the payment of the fine, and not twice. He denied that he had taken another Rs 3000 so as not to object to the bail of the detainees. He also denied the version of Jaywantee Mala Poorun that when Vishnu Potigadoo took Rs 3000 from her and gave it to him, he put the money in his pocket.

PS Raymond had escorted Vishnu Potigadoo both on 23.11.05 and 24.11.05. He stated that as escorting officer, it was his duty to accompany the detainees inside the detention centre, which he did along with the accused on 23.11.05.

His version was that ,on that same day, the accused informed both detainees that they were going to be bailed out.

PC Joomuck produced certified copies of entries of the diary book of Moka Detention centre where he was posted on 23rd and 24th November. He stated that on 24.11.05, before the detainees were bailed out, they were handed over their private properties. This formed part of the normal practice.

PC Purahoo posted at Moka prosecutor's office produced the provisional plaint for Vishnu Potigadoo as Doc E and E1. He stated that there was no objection to his release on bail. The bail papers were signed by DPS Sookun.

Before addressing the submission raised by defence counsel that the accused has rebutted the presumption under s 83 of the Prevention of Corruption Act, the issue which must be decided first is whether the prosecution has proved its case against the accused.

After scrutinizing the evidence on record, I have found the following disturbing circumstances:

- 1) As opposed to Vishnu Potigadoo's version that he and Kissoon were with the accused only inside the detention centre when the latter allegedly asked money from them, PS Raymond contradicted him and stated that he accompanied Vishnu Potigadoo and the accused inside the detention centre.
- 2) The information avers that the accused received the sum Rs 3000 from Vishnu Potigadoo. Vishnu Potigadoo stated that the accused first asked him Rs 5000, then agreed having mentioned a sum of Rs 3000 in his statement he gave to the police, and then coming back again over his first version that the accused asked Rs 5000 which was reduced to Rs 3000.
- 3) The version of Jaywantee Mala Poorun was to the effect that Rs 3000 was required to bring her son Rajesh Poorun from the detention centre to the court. At no time did she mention that the money was required so as not to object to his son's bail. One cannot read more into her words than what she stated in court. Such evidence falls short of establishing the averment of the information that the accused received money so as not to object to the bail of Rajesh Poorun. Mrs Poorun admitted that a police officer had told her that her son would be coming to court on 24.11.05. She also stated that on 20.11.05 she came to know that her son would come to court. As rightly pointed out by defence counsel, she knew beforehand that her son was going to be released. and that is why she brought the money.
- 4) It would appear that she met the accused on 24.11.05 at 8h00, that she gave the money to Potigadoo who then gave it to the accused. But, according to the Doc D, the DB entry of Moka Detention centre, it was not until 08h 58 that the detainee Potigadoo was removed on 24.11.05 from the detention centre.
- 5) The version which was put to the accused in his statement was that he kept the money in his pocket when Vishnu Potigadoo took it from Jaywantee Mala Poorun to hand it over to the accused, but she never mentioned anything to that effect in court.
- 6) Furthermore, Jaywantee Mala Poorun never mentioned that she brought Rs 3000 for Vishnu Potigadoo.

- 7) Taking the evidence of Vishnu Potigadoo at its best, Rajesh Poorun's mother should have disbursed Rs 3000 for his release. Coupled with this, the Mother alleged having given Rs 3000 to bring her son to court. In all then, she must have brought Rs 6000. But in court she stated that she had around Rs 10 000 (used for paying the surety of her son) and some Rs 1200 more.
- 8) In examination-in-chief, Vishnu Potigadoo stated that the accused had told him on 23.11.05 that there will be no objection to his release, but under cross-examination he stated that it was not until the day of his release i.e. 24.11.05 that he knew he was going to be released.
- 9) Vishnu Potigadoo contradicted himself on the number and identity of the persons who gave him money in connection with the present charge, at first mentioning two persons i.e. Hema Poorun and her Mother. Then, in his statement he gave to the police he mentioned Hema Poorun as being that person to correct himself and give a third version, this time stating it was the Mother of Hema Poorun who gave him the money.
- 10) It would seem that Kovila Potigadoo did not have any clue about any money which the accused was supposed to have asked her then boyfriend. According to her version, the mother of Rajesh Poorun was solely involved in the payment of the surety of her boyfriend. This strangely coincides with the omission Jaywantee Mala Poorun to mention that she had brought extra money for Vishnu Potigadoo in favour of accused.

The prosecution's case is such that it was fraught with contradictions, rendering it unsafe to act upon it. Vishnu Potigadoo was bent on exaggerating things. He would want the court to believe that in presence of his counsel whilst he was giving his statement, the declarant would have solicited money from him to withdraw a case which had been fabricated. Mrs Poorun displayed a defiant attitude in court. The demeanour of the two main witnesses, that of Vishnu Potigadoo and Jaywantee Mala Poorun is such that they have failed to convince me of their genuineness.

On the other hand, the sworn testimony of the accused that ACP Juwaheer instructed CI Lutmun and PS Sookun to release both detainees on the following day is reflected in the testimony of PC Puharoo that the bail papers were signed by DPS Sookun. The accused 's version that he informed Vishnu Potigadoo that he was going to be released on the following day is confirmed by PS Raymond.

The prosecution submitted that the accused mentioned in presence of PS Raymond and PC Purahoo he informed the suspects that they would be released on the next day. However, no such mention was made in his statements. But one cannot lose sight of the fact that PS Raymond called by the defence did say that the accused informed the suspects about their release and this evidence has not been challenged.

The accused has been subjected to a thorough cross-examination but this court finds that he has withstood that test. His version is supported by the testimony of the witnesses who deposed on his behalf.

For all the reasons given above, this court is unable to find that the prosecution has proved its case beyond reasonable doubt. I therefore find it unnecessary to make any pronouncement on the issues raised by the defence. I shall accordingly dismiss the information against the accused.

R. Seetohul-Toolsee

12th November 2009