

# ICAC v SEERUTTUN LECKRAM

2009 INT 200

Cause No: 1079/08

## IN THE INTERMEDIATE COURT OF MAURITIUS

ICAC

V/S

LECKRAM SEERUTTUN

### JUDGMENT

Accused stands charged with the offence of **Public official using his position for gratification** in breach of **Section 7 (1) of the Prevention of Corruption Act (POCA)**. He pleaded not guilty to the charge and was assisted by counsel at his trial.

The charge against the accused is that on or about 18 June 2007 at Terre Rouge Police Station he, a Police Sergeant Departmental No. 5639, did wilfully, unlawfully and criminally, whilst being a public official, ***make use of his position*** (emphasis is mine) for a gratification for himself, to wit, the accused led one Jean Michel Sebastien Michael Louise to enter into an obligation for the payment of Rs.35,000 by using his position as a police officer.

Witness 1 SI Roomaldawoo, Senior Investigator at ICAC, deposed and produced two statements recorded from the accused on 5/2/08 and 11/2/08 at the ICAC office in presence of his counsel – **Doc A-A1**. He stated that the accused did not produce to him the original of document marked ML 2 the copy of which was produced by witness 5. He produced the said copy in Court as well as a re-write of the said document – **Docs B-C**.

Upon cross-examination he stated that a case of road accident was reported by witness 5 at Terre Rouge Police Station on 18/6/07 at 13.00 hrs (OB 5369/07) but he did not deem it important to get a copy of that declaration. He agreed that the on 18/6/07 the accused was on permission from Port Louis North CID and was in civilian dress. He produced the relevant Dairy Book entry – **Doc D**. He confirmed that it was witness 3 who gave the accused 2 sheets of paper and also he produced copies of 2 declarations made afterwards by witness 5 at Terre Rouge Police Station and CIB – **Docs E-E1**.

Witness 5 Jean Michel Sebastien Michael Louise deposed to the effect that on 18/6/07 whilst driving car DN 21, belonging to his father in law, he met with an accident with

motor-cycle 2318 K belonging to the accused. As the latter was injured he asked him to attend hospital for treatment but he declined and also declined to report the said accident to the police by stating that he was a police officer himself. Upon persistence he finally agreed to take the matter to the police. He took went there accompanied by his wife (witness 6). At the station the accused asked him to wait outside and that he will arrange everything. Afterwards the accused came back and told him to accept responsibility of the accident and to pay him for the damages caused to his motor-cycle. He and his wife went inside the station where he wrote **Doc C** after what he was told by the accused. He confirmed that **Docs B-C** are photocopies of which he made **Doc C** in a shop near the station. Then the accused told him that he had contacted the Honda Spare parts shop to confirm that the damages to his motor-cycle amounted to about Rs.35,000 which the accused claimed from him after threatening him to get him arrested and prohibiting him to leave the country. He was scared by the words of the accused but he still exchanged phone numbers with the accused and accompanied him to a nearby pharmacy where his wife bought medicines to apply on the injuries sustained by the accused. They then went home. When he showed **Docs B-C** to his father in law the latter told him that those documents could not be produced to the insurance company as they were false. In fact the accused had tried to get money from him. He went back to Terre Rouge Police Station accompanied by his wife and father in law to report the accident.

When cross-examined he stated that he went back to Terre Rouge Police Station in the evening of 18/6/07 to report the accident and he was treated fairly the officers there. He agreed that in his declaration he had mentioned that following a mutual agreement he and the accused had agreed not to report the accident to the police. He agreed that in **Docs B-C** he stated therein that he was at fault for the accident but he did so through "frustration". On 19/6/07 he reported the matter to the CIB after he realised in the late evening of the eve when he returned home that the accused used his position as a police sergeant to get Rs.35,000 from him. At the CIB he did not state in his declaration that the accused used his position as a police sergeant to get him to enter into the obligation to pay the accused Rs. 35,000 as he was told by the CIB officers to state so to the ICAC. It was on 25/6/07 that he reported the matter to ICAC. He stated that he caused the photocopies of **Docs B-C** to be made and at no time had the accused sequestered his wife. In fact he thought at that time that all that were being written in **Docs B-C** were normal and he had no doubt about any wrong being done by the accused.

In re-examination the witness stated that he had met with his first road accident and thought that by signing **Docs B-C** was a normal procedure. He got scared only when the accused told him that if he does not pay he would be arrested and a warrant be issued against him.

CPL Parahoo confirmed that on 18/6/07 at about 13.30 hrs he was on duty at Terre Rouge Police Station when the accused, whom he knew, called to ask him for a sheet of A4 paper to write down a mutual agreement following a road accident. Afterwards witnesses 5 and 6 came in and accompanied by the accused they went into an office. He could not say what happened there.

PS Rajnath deposed to confirm that on 18/6/07 at Terre Rouge Police Station witness 5 reported a road accident between cat DN 21 and motor-cycle 2318 K which he attended.

He could not say if a mutual agreement had been reached between witness5 and the accused.

CPL Shiboo also deposed and produced a road accident report of accident involving car DN 21 and motor-cycle 2318 K – **Doc F**.

Witness 7 Lallchand Soogumbur testified to the effect that he had a garage at Riche Terre. On 18/6/07 the accused brought his motor-cycle there for repairs. Despite the fork, tank, absorbers were damaged he only effected some repairs costing about Rs.2,500 so as to allow the said vehicle to be used. He confirmed that the value of the parts to be replaced on that motor-cycle would have cost about Rs.30,000 but the accused did not give him those parts.

Witness 6 Marie Adriana Louise gave evidence under oath that on 18/6/07 she was with witness 5 in car DN 21 which met with an accident with the motor-cycle of the accused following which the latter was injured. The accused had declined his identity as a police officer and they all went to Terre Rouge Police Station where they waited outside whilst the accused went in. The accused then came back and used a loud tone against witness 5. The latter was scared and agreed to pay the damages caused to the motor-cycle. The accused told them that he had contacted a spare parts shop and had reached the damages to value at Rs.35,000. The accused also threatened to get them arrested, prevent them from leaving the country and to use a “rotin bazaar” against them. They were both scared and witness 5 did all that the accused told him to do. Afterwards they all went to a nearby pharmacy where she bought medicines for the accused. She identified the accused in Court.

Upon cross-examination she stated that she and witness 5 went to Terre Rouge Police Station in their car after witness 5 had marked the road as he knew what must be done following a road accident. But reaching the station witness 5 did not make any declaration as he was forced to reach the mutual agreement by the accused. In fact **Docs B-C** are false as they did not contain the real wish of witness 5. On the same evening they went back to Terre Rouge Police Station accompanied by her father where witness 5 was free to state whatever he wanted in his declaration. She could not confirm if witness 5 had mentioned in his declaration that he had entered into a mutual agreement with the accused earlier on that day but she would be surprised if he had stated to. She was also positive that her father never told them that **Docs B-C** would not be sufficient for his insurance company to repair his car and without a formal declaration his insurance company would not repair his car. She added that in fact hey had trusted the accused but they were also scared by his threats leading witness 5 to sign **Docs B-C**. She further made it clear that it was when they were all leaving the station that the accused threatened to have them arrested, prevented from leaving the country, and the use of ‘rotin bazar’.

Before closing his case the prosecutor produced 2 certificates from the National Transport Authority – **Docs G-G1**.

The case was then closed for the prosecution.

No evidence was adduced by the accused. In his unsworn statements the accused has admitted that he met with a road accident with the car driven by witness 5 following which his motor-cycle was damaged. His version as contained in his statement is that it

was witness 5 who refused to report the road accident to the police and accepted to pay the damages caused to the motor-cycle. Hence a mutual agreement was reached.

I have carefully considered the whole of the evidence on record as well as the submissions made by both Counsels.

At the very outset it is apposite at this stage to refer to the case of **ICAC v Soobrun [2007 SCJ 318]** where the following observations were made:

***“The short answer to that submission is that POCA seeks to criminalise as many situations of bribery as may be possible and creates a host of offences. In many cases, the offences so created overlap not only with others in POCA itself but also with criminal offences under the Criminal Code. They are, however, not mutually exclusive. Which charge befits which offender in which situation is not for the courts to decide but for the prosecution in its discretion”.***

Since the prosecution has opted in its discretion to prosecute the accused under **Section 7 of the Prevention of Corruption Act** it is incumbent on the prosecution to prove all the elements of the offence under that section against the accused.

**Section 7(1) of the Prevention of Corruption Act** provides the following:-

***“Subject to subsection (3), any public official who makes use of his office or position for a gratification for himself or another person shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.”***

The prosecution therefore bears the burden of proving that:

1. The accused was a public official,
2. The accused made use of his position,
3. To obtain a gratification for himself.

From the evidence adduced, I am satisfied that the accused is a police officer despite that at the time of the alleged offence he was on permission as is evidenced by **Doc D**. He is therefore a public official under the **POCA**.

The next question to be answered is whether there is enough evidence adduced by the prosecution to show that the accused made use of his position.

True it is that the accused called together with witness 5 at Terre Rouge Police Station following a road accident which they had met with. There they reached to a mutual agreement for witness 5 to pay for the damages caused to the motor-cycle belonging to the accused. However, is this sufficient to prove beyond reasonable doubt that the accused made use of his position to obtain a gratification? The charge rested on the evidence adduced by witness 5 who is the main witness for the prosecution. At no moment in time did he say that the accused made use of his position to sign the mutual agreement. Nowhere is it shown that the accused asked his colleagues of Terre Rouge Police Station to press on the accused to enter into that mutual agreement. Would the use of **“a loud voice”** amount to **“using his position”**?. Witness 5 spoke about **“frustration”**. This word is unclear in its context. In very clear terms witness 5 stated

that at all times he thought that by signing Docs B-C the normal procedure was being followed and had no doubt whatsoever that anything wrong was being done by the accused. It is to be noted that according to him he got scared when the accused allegedly threatened to get him arrested with a warrant and prevented from leaving the country. This came only after the documents were already made and signed. This was confirmed by witness 6. It is also borne in mind that it was witness 5 himself who went to photocopy **Docs B-C** and it was witnesses 5 and 6 who went to the nearby pharmacy to buy medicines to be applied on the injuries of the accused. I find that it would be most unsafe to infer from the surrounding circumstances that the accused did actually make use of his position. I find that the prosecution has not managed to prove this important element.

As far as **gratification** is concerned **Section 2 of the Prevention of Corruption Act** provides that a gratification

- (a) means a gift, reward, discount, premium or other advantage, other than lawful remuneration; and
- (b) includes-
  - (i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description;
  - (ii) the offer of an office, employment or other contract;
  - (iii) the payment, release or discharge of a loan, obligation or other liability; and
  - (iv) the payment of inadequate consideration of goods or services;
- (c) the offer or promise, whether conditional or unconditional, of a gratification.

Did the accused obtain a gratification for himself?

The mere fact that a '**mutual agreement**' was signed by witness 5 is not in my view sufficient evidence to prove that it was meant to be a **gratification**. It was incumbent on the prosecution to prove that simply by entering into the agreement it was **gratification** per se. **Gratification** implies that the corruption leads to a gain. It is not sufficient that the accused would get that money but it should be shown that he actually got it. The damages caused to his motor-cycle were something which was due to him. The Prosecution only presumed that the accused was at fault for the accident and used his position to get unlawful gain. This is certainly not the case in the light of the evidence in hand.

At this stage this Court is of the opinion that the versions of witnesses 5 and 6 must be commented upon. Witness 5 made it clear that by signing **Docs B-C** he was doing what he called '*a normal procedure*' since it was his first road accident. It was only when he informed his father in law about Docs B-C that he was made to understand that the insurance company would not pay for the damages caused to car DN 21 belonging to his father in law. It was then in the evening of 18/6/07 that he again called at Terre Rouge Police Station to report the accident. In his declaration, copy of which is on record, he voluntarily mentioned that following the accident he and the accused had reached a mutual agreement not to file a declaration regarding the road accident. Clearly it sums up that the road accident was reported by him with a view to have the costs of repair of car DN 21 to be borne by the insurance company. It is hard for this Court to believe witness 5 when he said in court that he is not well versed in English and he only signed his declaration. It is also noted that witness 5 did not report to the CIB that the

accused his position as a police sergeant to get him into an obligation for the payment of Rs.35,000.

On the other hand the version of witness 6 contains the fact that witness 5 was well conversant as what to do following a road accident and it was the latter who had marked the road following the road accident they had met with the motor-cycle of the accused. It is in stark contradiction with the version given by witness 5. Again she stated that Docs B-C did not contain the wish of witness 5 while the latter stated that according to him it was a normal procedure for him to sign those documents. Surprisingly she stated that she would be surprised if witness 5 had mentioned in his declaration that he had entered into a mutual agreement with the accused. Once more she was in contradiction when she stated that her father did not tell her and her husband that **Docs B-C** would be insufficient for the insurance company to pay for the repairs to car DN 21. Therefore a formal declaration was necessary for the insurance company to intervene. She was positive that all the threats came from the accused after **Docs B-C** were already signed.

Bearing these observations into account I am of the opinion that the versions of witnesses 5 and 6 should be taken with a pinch of salt.

For all of the above reasons this Court is of the considered conclusion that the case for the prosecution has not been proved all reasonable doubt. I accordingly dismiss the charge against the accused.

**Raj Seebaluck**  
**Magistrate**  
**Intermediate Court**  
**This 24 July 2009.**