

ICAC V S.BUMMA

2010 INT 227

CAUSE NO: 133/2008

**IN THE INTERMEDIATE COURT OF MAURITIUS
(CRIMINAL DIVISION)**

**INDEPENDENT COMMISSION AGAINST CORRUPTION
(ICAC)**

V

SATCAMSING BUMMA

JUDGMENT

Accused stands charged with the offence of "**Traffic D'Influence**" in breach of Section 10(4) of the Prevention of Corruption Act 2002. He pleaded not guilty to the said charge and was assisted by counsel at the trial.

PC Jehee deposed and produced 3 statements recorded from Accused on 9/3/05, 23/3/05 and 27/7/05 - (**Docs A-A1-A2**). He stated that during the course of the enquiry he recorded a statement from witness 3 in February, 2005 who produced to him two bank statements for accounts no. 062662104 and 062590383 Mauritius Commercial Bank Ltd for the period of May 2004 to November, 2004. He produced those two statements in Court – (**Docs B-B1-B2**). He added that all withdrawals made on week-ends and public holidays appeared on the next working day on Docs B-B1-B2.

Upon cross-examination he stated that he could not recall if 31/5/04 was a Monday. He could not recall if witnesses 2 & 3 gave the exact date of the solicitation of the gratification. He agreed that the version of witness 2 differs with that of witness 3 with regards to the payment alleged to have been made and the dates of the meetings with the accused.

In re-examination the witness said that the differences in the versions of witnesses 2 & 3 regarding the dates of payment and meetings with the accused was cleared by the recording of further statements from those two witnesses.

Witness 2 Ravi Jhankur deposed to the effect that he know the accused. At the beginning of his testimony he was unwilling to proceed with the case but eventually

elected to give evidence. He stated that the accused was introduced to him in 2004 near the NPF Building in Port Louis by one Sunil Padaruth who works at Dr Jeetoo Hospital. The latter had described the accused as a very influential political person who had contacts at the Public Service Commission (PSC). During that meeting he told the accused that his wife (witness 3) had applied for the post of Primary School Trainee Hindi Teacher and asked him if he could do something about his wife's application. After his memory was refreshed he confirmed that the accused also told him that he knew influential people at the Public Service Commission and that his wife had to receive her interview letter first. The accused also asked him for Rs. 20,000 to facilitate his wife to get that job. Before leaving he took the mobile and home phone numbers of the accused. Subsequently, his wife did get the letter for the interview for the post of Trainee Hindi Teacher. He immediately contacted the accused who told him to get the Rs. 20,000 ready to be paid to a lady working at the registry of the Public Service Commission so that she could verify the chances for witness 3 getting the said job. He also added that he did give the accused the sum of Rs. 20,000 which he had contracted from a loan in one payment at the place of residence of accused but he could not remember with whom he went there. He further said that he could not remember if in his statement to ICAC he had mentioned of giving Rs. 10,000 to the accused on that occasion.

Upon cross-examination he stated that he could not remember how many statements he gave to ICAC. He agreed that his testimony in Court is different to the contents of his statements given to ICAC but maintained that he gave money to the accused. He also said that he had forgotten many aspects of the case as he had never been involved in such a situation in the past. However, he admitted that things done only once in a lifetime are always remembered. He reiterated the fact that he could not remember the contents of his statements given to ICAC and for that reason he prayed earlier not to proceed with the case. He confirmed that his wife did get an interview at the Public Service Commission but was not successful in having the job of Trainee Hindi Teacher. He added that thereafter he phoned the accused to return his money or else he would report the matter to ICAC. He then corrected himself by saying that he did not threaten the accused that he will report him to ICAC. He said that up to now the accused has not refunded him the money but still he did not want to proceed with the case. He was agreeable that he had only three choices, namely, his wife to get the job; the accused to give him back his money; and/or, he reports the accused to ICAC.

Witness 3 Rajnee Devi Jhankur testified that in 2004 she applied for the job of Trainee Hindi Teacher at Primary School. She did get an interview but was again unsuccessful in securing the job just as in 2002 when she was previously interviewed for the same job. She added that her husband had a friend living at St Pierre. Before the interview in 2004 she was about to conceive. For her wedding she had received about Rs. 5,000 as gift and she used that money to add to the sum of Rs. 20,000 which she gave to the accused so as to facilitate her of having the said job. She also said that together with her husband she had called on the accused at his place where her husband handed the money to the accused which she had previously given to her husband.

When cross-examined she stated that she gave the money to the accused after her interview by the Public Service Commission but before the answer received from the same Commission. She added that she did not know when and in what circumstances her husband received the request for the Rs. 20,000.- but was only told by the latter that they had to give the money. She corrected herself by stating that perhaps the request for

the money was made in February 2004. The money was given to accused in June 2004 some two weeks after the 23/5/04 which was the date of her marriage. She was positive in her testimony that the payment of the money could not have been made in April 2004. She could not remember the exact sum remitted to the accused and it could have been paid by two instalments to the accused. She was present only at the 1st payment after she had withdrawn Rs. 5,000.- from her bank account. She concluded that the matter was reported to ICAC in November 2004 as her husband and herself felt betrayed by the friends of her husband over that affair.

Witness 4 as presented by Bhamila Devi Nundloll deposed to confirm that the post of Trainee Oriental Teacher was advertised in 2004 and on 11/5/2004 witness 3 was interviewed for that job.

Joseph Michel Roussel on behalf of witness 5 confirmed Docs B-B1 as being bank statements of witness 3.

The case was then closed for the prosecution.

No evidence was adduced by the defence.

I have carefully considered the whole of the evidence on record as well as the submissions made by Learned Counsel appearing for the accused (now elevated to the rank of Senior Counsel) and those made by prosecuting Counsel.

The gist of the case as per the charge contained in the information is that in the month of April 2004 the accused solicited from witness 2 the sum of Rs. 20,000.- to be remitted to officers at the Public Service Commission to enable witness 3 to secure a job as Hindi Teacher.

The offence is provided by virtue of **Section 10(4) of the Prevention of Corruption Act 2002** which reads 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”.

The case for the prosecution rest principally on the testimonies of witnesses 2 and 3 to support the said charge.

In the case of **Marday v. The State [2000] SCJ 225** it was held by the Supreme Court that:-

“in a criminal case it is normal to assume that the version that is put to an Accused when recording his statement is the very complaint that was made by the victim”.

Hence, this Court has to refer to the previous complaint made against the accused by the victim to ICAC. From a perusal of the out of court statement of the accused which is on record (Doc A) it is apparent therein that the complainant had reported the following, namely:-

- 1.- In April, 2004 he met the accused through the medium of Ravi Padaruth near the NPF Building in Port-Louis and talks about the application of witness 3 for the post of Primary School Trainee Hindi Teacher cropped up. The accused asked him for the sum of Rs. 20,000.- to be paid to people at the Public Service Commission to facilitate that job application.
- 2.- In May, 2004 in Port-Louis the accused asked the complainant the sum of Rs. 1,500.- out of which Rs. 1,000.- will be given to a lady working at the registry of the Public Service Commission.
- 3.- On 29 May, 2004 the complainant accompanied by his wife and mother called on the accused at Nouvelle-Decouverte and remitted him a first payment of Rs. 10,000 in cash.
- 4.- In June, 2004 the complainant paid to the accused the remaining balance of Rs. 10,000.-
- 5.- In September, 2004 at Port-Louis the accused refunded to the complainant the sum of Rs. 10,000.- after witness 3 was unsuccessful in securing the job sought for.

After an analysis of the testimony of the complainant in court after comparison with the contents of his statement (Doc A) it appears that as per his version in court at the beginning that during the meeting with the accused near the NPF Building at Port-Louis he was only told by Sunil Padaruth about the political influence of the accused. He met the accused a second time near the Mauritius Telecom at Port Louis by off-chance and it was then that their conversation turned around the application of his wife for the job of Trainee Hindi Teacher. It was only when previous inconsistent parts of his statement was put to him and his memory refreshed that the complainant corrected himself to say that it was during his first meeting in April, 2004 with the accused that the latter spoke about facilitating the application of witness 3 and that a sum of Rs. 20,000.- needs to be paid to a lady working in the registry of the Public Service Commission. He then stated in court that he gave the accused the Rs. 20,000.- in one payment at the place of the latter but he could not say with whom he went there. He added that the Rs. 20,000.- came from a loan. Again an inconsistent part of his statement was put to him about the fact that only Rs. 10,000.- was paid to the accused on that occasion to which he replied that he had forgotten about same. When cross-examined he admitted that his evidence in Court was different with what he stated in his statement given to ICAC due to the fact that he had forgotten many aspects of the case although agreeing that things done only once in a lifetime are always remembered. He conceded that he phoned to the accused that if the latter did not refund the money he would report the matter to ICAC. He maintained that the accused did not refund him any money.

From an assessment of the version of the complainant given in court this Court finds that there are major contradictions when compared with the contents of Doc A.

Firstly, in Court he never spoke about the alleged demand of the sum of Rs. 1,500.- out of which Rs. 1,000.- to be paid to the lady working at the registry of the Public Service Commission.

Secondly, he said that the sum of Rs. 20,000.- was paid to the accused in one payment but could not remember if that payment could have been done otherwise.

Thirdly, the complainant could not say with whom he went to the place of the accused to hand over the money to the latter.

Fourthly, in Court he stated that the source of the Rs. 20,000.- was from a loan, a fact which was not stated in his statement.

Fifthly, he did not mention in court about the alleged payment of the second sum of Rs. 10,000.- in June, 2004.

Lastly, again he did not say anything in Court about the alleged refund of Rs. 10,000.- made by the accused to him in September, 2004.

Witness 3 was called as a supporting witness by the prosecution. Her version in court was that in 2004 she was called for an interview by the Public Service Commission in connection with her application for the job of Primary School Trainee Hindi Teacher. She gave her husband the sum of Rs.20,000.- to be remitted to the accused to facilitate her said application. She stated that she had added about Rs. 5,000.- received as gift for her wedding to reach the said Rs. 20,000.- Witness 2 and herself called on the accused at his place where the said sum of Rs. 20,000.- was given to the accused by her husband. However, she was positive that it was in February, 2004 that witness 2 told her about the payment of Rs. 20,000.- to be made to the accused. She was adamant that it was in June, 2004 that the said sum was paid to the accused. Surprisingly, again in her cross-examination she stated that she could not say what was the exact sum paid to the accused but that payment could have been paid on two occasions as she was present only at the first payment. She admitted that had witness 2 not told her about the dealing with the accused she would not have known anything. Her version was that the case was reported to ICAC because witness 2 and herself had been betrayed by the friends of her husband.

As rightly submitted by Learned Counsel for the defence (now Senior Counsel) and conceded by Prosecuting Counsel in his submission there are various inconsistencies between the versions of witnesses 2 and 3. It is clear that witness 3 was not personally involved in the alleged dealing between witness 2 and the accused. She was only told by her husband that the money had to be paid to the accused and she could not remember what sum was exactly paid to the accused. According to her the payment was effected in June 2004 which is contrary to the version of her husband who stated in his statement to ICAC that the payment (1st) was done on 29 May, 2004. It is also borne in mind that witness 3 was all along positive that the Rs. 20,000.- was her money which she gave to her husband to be remitted to the accused out of which she had withdrawn Rs. 5,000.- from her bank accounts. However, the version of witness 2 on that aspect is different since he mentioned of a loan as the source of the said sum handed to the accused. A contradiction is also present on the issue of the reason the case was referred to ICAC although some six months later. The reason put forward by witness 2 was that because the accused did not refund back the money that he went to report the case to ICAC whereas according to witness 3 it was because of the betrayal suffered by witness 2 and herself from the friends of her husband that the matter was referred to ICAC.

From an overall assessment of the testimonies of witnesses 2 and 3 and the manner in which they deposed this Court finds that their versions cannot be relied upon to secure a conviction of the accused. On seeing them deposing I was not impressed by the way they gave evidence. There is no doubt in my mind that they did not give a true account of the events and were incoherent and inconsistent. The examination in chief of witness 2 was substantially done through the refreshment of his memory and/or inconsistent parts of his statement put to him. This obviously led the veracity of his version very shaky and weak. Witness 3 was not privy in the alleged dealings between the accused and her husband save and except that according to her witness 2 had told her that the money had to be remitted to the accused.

I have further carefully considered the contents of Docs B-B1-B2. From Doc B it appears that for the bank transaction dated 31/5/2004 a sum of Rs. 2,000.- was credited in account no. 062662104 which was immediately debited. Clearly, entries were created in that bank account to show the running of that account. From account no. 062590383 the total sum of Rs. 4,500.- was withdrawn on 31/5/2004. In all the sum of Rs. 7,000.- was debited from both accounts.

It is also noted that indeed a long lapse of time has occurred between April, 2004 and the case heard in Court. Nevertheless, it is also apposite to note that the complaint was made some six months after the alleged event and the case was lodged only in January, 2008 from which only one postponement of the case is attributed to the defence.

Taking all the above observations into consideration and the reasons given the only conclusion that is reached by this Court is that it would be most unsafe to rely on the versions of the witnesses for the prosecution to convict the accused. At worst, I am of the view that this is a fit case where the accused may be given the benefit of the doubt which I accordingly give him. The case for the Prosecution not having been proved beyond all reasonable doubt the present charge is, otherwise, dismissed.

Delivered by:-Mr Raj Seebaluck
Magistrate
Intermediate Court (Criminal Division)
This 19 November, 2010.