Ref: IBA/MBC/23/069

Mr. Anooj Ramsurrun
Director General
Mauritius Broadcasting Corporation
Reduit
Moka

11 August 2023

Dear Sir,

Re: News broadcast in Samachar on MBC TV 1 on 26 July 2023 at around 18h00

1. Please refer to previous correspondences on this matter.

2. I am directed to inform you that the following was heard at around 18h00 during Samachar broadcast on MBC TV 1 on 26 July 2023:
   *'**Insert:***

   Mantri Avinash Teeluck ne Privy Council ke do nirnayon par khaas roop se charcha ki, tijori ka maamla aur Siddick Chady ki appeal.

   Avinash Teeluck:

   ***C'est enn deuxième minis du parti travailliste ki être condamné pou acte de corruption. Deuxième minis, dans le passé noun gagne le cas de Vishnu Bundhun et la nou gagne le cas de Siddick Chady**. Deuxième décision Privy Council ki tomber sa semaine la, l'affaire coffre-fort pou être ramené à la cour intermédiaire. Mo refaire enn l'appel avek l'honorab Paul Bérenger, demande ou partenaire zordi, avant ou demande renouveau dans le pays, avant zot aspire pou vinn roule le pays, pou vinn dirige le pays, pou vinn*

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faire gouvernement, zot ena enn obligation morale, enn obligation politique vis-à-vis la population, pou vinn éclaire la population lor provenance de sa 220 millions roupies kinn trouver dan coffre-fort leader parti Travailliste. [Emphasis is ours]'

In a judgment delivered by Hon. E. Balancy, Judge, on 21 June 2010 in the matter: **Ved Prakash Bundhun v/s The State 2010 SCJ 206**, it is mentioned that *'For all the above reasons, we conclude that the conviction was unsafe and accordingly allow the appeal and quash the conviction and sentence.'* A copy of the judgment is attached.

3. It is apposite to note that:

(i) paragraphs 3(1), 3(2) and 3(5) of the Code of Conduct for Broadcasting Services provide as follows:

3. News

(1) Broadcasting licensees shall report news truthfully, accurately and objectively.

(2) News shall be presented in the correct context and in a balanced manner, without intentional or negligent departure from the facts, whether by—

(a) distortion, exaggeration, or misrepresentation;

(b) material omission; or

(c) summarisation.

(3)…

(4)…

(5) Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention;

(ii) paragraph 2.2 (i) of the Code of Ethics provides as follows:

2.2 Factual Programmes

In all factual programmes, due impartiality and accuracy must be preserved. This may be secured in a number of different ways, depending on the purpose and format of the programmes. Those primarily addressed to an examination of issues already in the arena of public debate should give a fair representation of the main differing views on the matter.

*(i)**News***
Reporting should be dispassionate and the treatment of news should be even–handed.

Significant mistakes in news should be acknowledged and corrected on the same channel at the first available opportunity and should be appropriately scheduled; and

(ii) paragraph 26.2 of the Public Television Broadcasting Licence granted to MBC provides as follows:

The Licensee must ensure that all its broadcasts are accurate. Any news broadcast in whatever form must be presented with due accuracy and impartiality. Any mistake that does occur shall be corrected as quickly as possible and an apology be broadcast where appropriate.

4. The Independent Broadcasting Authority "(the Authority)" has considered the explanations of the Mauritius Broadcasting Corporation.

5. The Authority is of the considered view that the explanations of the MBC are satisfactory in so far as:

(a) following the phone called received from Mr. Ved Prakash Bundhun, the MBC acted with celerity and did not broadcast the impugned extract again;

(b) there was only one broadcast; and

(c) the MBC has, in the circumstances as explained in its letter dated 10th August 2023, and in the light of the Authority's inquiry in the matter, acted in good faith.

6. However, the Authority considers that the MBC has, *inter alia,* breached paragraphs 3(1) and 3(5) of the Code of Conduct for Broadcasting Services in as much as the MBC did not rectify the incorrect broadcast without reservation or delay. The onus was on the MBC to rectify the incorrect broadcast. The Authority, does recognize, that the matter under consideration related to the existence and interpretation of a judgment of the Supreme Court and that MBC staff may, in good faith, not have been aware of that judgment.

7. In addition, the press conference was on social media, which is not regulated by the Authority.

8. Having considered the inaccurate content of the news broadcast in Samachar on MBC TV 1 on 26 July 2023 coupled with the fact that the MBC failed to rectify the incorrect broadcast without reservation or delay, the Authority has determined that the MBC has breached paragraphs 3(1) and 3(5) of the Code of Conduct for Broadcasting Services.

9. The Authority has taken good note of the reference to section 29 of the Mauritius Broadcasting Corporation Act. This reference is incorrect as the relevant section is section 19 of the Mauritius Broadcasting Corporation Act. However, notwithstanding section 19 of the Mauritius Broadcasting Corporation Act, the attention of the MBC is drawn to section 3(3) of the Mauritius Broadcasting Corporation Act which provides as follows (see italicised part):

"3. Establishment of Corporation

(1) The Mauritius Broadcasting Corporation in existence on 9 August 1982 shall be deemed to have been established under this Act.

(2) The Corporation shall be a body corporate.

(3) The Corporation shall be a principal medium for the dissemination of information, education and entertainment and shall, subject to this Act and the Independent Broadcasting Authority Act, be independent in the conduct of its day-to-day business and other activities."

10. Pursuant to its powers under section 5(1)(a) of the Independent Broadcasting Authority Act, the Authority hereby issues the following direction to the Mauritius Broadcasting Corporation:

"The Mauritius Broadcasting Corporation is hereby directed to broadcast an ***unreserved apology with the reasons thereof together with the stand of the Authority in its Samachar bulletin of 18h00 on 14 August 2023 on MBC TV 1.***

11. The Authority relies on the cooperation of the Mauritius Broadcasting Corporation and trusts that the MBC will exercise due care in its reporting.

12. The Authority reminds the MBC that it is bound by the IBA Act, Code of Ethics, Code of Advertising Practice and the Code of Conduct for Broadcasting Services.

Thank you for your kind consideration.

Yours faithfully,

K. Ramphul

K. Ramphul
Acting Director

BUNDHUN V P v THE STATE

2010 SCJ 206

Record No. 7160

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

Ved Prakash Bundhun — Appellant

v

The State — Respondent

...

JUDGMENT

The appellant ("the accused") was prosecuted in the Intermediate Court on an information which averred that "*in or about the month of April in the year 1999 in Port Louis*", he "*did wilfully and unlawfully agree with another person, to wit: one Sookdeo Rambaruth, to do an act which was wrongful to another person, to wit: the act of demanding from one Ishwarduthsing Dabeesing a sum of money as commission with respect to a contract for the supply of blankets that had already been awarded by the Ministry of Social Security and National Solidarity to the said Ishwarduthsing Dabeesing's brother-in-law, one Satyam Alleck.*"

After hearing evidence, the learned Magistrates (P. Fekna and S. Hamuth-Laulloo) of the Intermediate Court found the accused guilty and sentenced him to undergo six months imprisonment and to pay Rs 400 as costs.

In a notice of appeal dated 1 December 2005 – the date on which the judgment was delivered – three grounds were included but forty one additional grounds were added thereto in a further notice dated 16 December 2005.

The offence charged was set within the context of the procurement, in 1998-1999, by the Ministry of Social Security and National Solidarity, of 105,000 blankets which were to be distributed to eligible persons, mostly the elderly, at the approach of winter.

In the final part of their judgment, the learned Magistrates sum up their factual findings and state their final conclusions.

The findings of fact – based on strings of circumstantial evidence which led them to the irresistible inference of the accused's guilt - were as follows :

(1) the accused requested from the Central Tender Board (CTB) a list of tenderers whereas such request was not necessary, and was not in-keeping with established procedures, at that stage. (B. Doolhur, the Permanent Secretary of the Ministry had forwarded the request because the Minister had insisted that the list be obtained, although he, Doolhur, viewed such a request as being improper at that early stage i.e. when the samples had just been submitted to the Mauritius Standards Bureau (MSB) for examination and no decision had been reached by the CTB as to who would be awarded the contract. And the accused's insistence took place after Doolhur had told him it was improper to do so);

(2) the accused, who was the Minister of Social Security and National Solidarity, chose to get personally involved in the inspection of the sample

which took place in his office, an exercise which might have been done by officers of his Ministry, in particular the Permanent Secretary;

(3) the accused ascertained who the successful tenderer would be as opposed to the remaining unsuccessful bidders;

(4) the accused insisted that the meeting for the signature of the contract should take place in his office instead of letting the event take place as usual in the office of the Permanent Secretary or in the Conference Room where he would, in principle, have had no contact with the successful tenderer;

(5) after the signature of the contract in his office the accused demanded a commission from I. Dabeesing and threatened that the contract might be cancelled and the would-be recipients of the blankets might be given Rs 100 instead of a blanket;

(6) "the mentioning of the name of one Rambaruth followed by the involvement of Sookdeo Rambaruth a short while later in connection with the commission". This was a reference by the learned Magistrates to –

(i) the evidence of I. Dabeesing who said that at a later encounter, when he handed over a fax copy of the costing of the blankets to the accused, the latter told him that another person would contact him and that the commission would have to be paid to that person whose name was Rambaruth;

(ii) the admission by the accused in a statement given in connection with the charge, that he knew one Sookdeo Rambaruth whose name he had submitted amongst others to Cabinet in view of the appointment of the Chairman of the National Savings Fund, and

who, following his appointment to that post, used, in that capacity, to phone the accused and come to see him;

(iii) the evidence of I. Dabeesing that a few days after the conversation in the office of the accused referred to at (i) above, one Rambaruth contacted him by phone, said he was a friend of the Minister and talked about the commission.

The three initial grounds of appeal are elaborated upon in 29 additional grounds of appeal (additional grounds Nos. 1 to 29, 35 to 37 and 39 to 41) and the novel points raised in the additional grounds of appeal are to be found in additional grounds 30-34 (under the heading "Hearsay Evidence") and 38, 39 (which are to the effect that the offence charged is contrary to section 10 of the Constitution and that the learned Magistrates misdirected themselves as to the meaning of the word "wrongful" in the relevant enactment.)

We do not propose to set out here the numerous elaborate and often repetitive grounds of appeal. It is sufficient, for our purposes, to list the essential arguments raised therein, which are, to our minds, as follows:

(a) The offence charged, is, as worded in the enactment creating the offence, contrary to section 10 of the Constitution (additional ground 38).

(b) The learned Magistrates wrongly construed the word "wrongful" in the relevant enactment (ground 39).

(c) The learned Magistrates improperly admitted inadmissible hearsay evidence which subsequently influenced their judgment (additional grounds 30 to 34).

(d) Even on the facts found proved by the learned Magistrates the offence charged is not established in law (ground 3 and additional grounds 35 to 37 & 40, 41).

(e) There was such a faulty appreciation of the evidence by the learned Magistrates that the conviction cannot be allowed to stand (grounds 1 and 2 and additional grounds 1 to 29).

Mr. G. Ollivry Q.C. appeared together with Mr. Y. Mohamed S.C. and Miss Y. Munshiram for the appellant. Mr. Ollivry offered submissions on grounds 38 and 39 only (i.e. points (a) and (b) above) whilst Mr. Mohamed submitted on all the other grounds (i.e. points (c) (d) and (e) above).

Point (a) above has been raised in the following terms of additional ground 38:

> *"Because the offence of conspiracy to do an act wrongful to another person is so vague and undefined that it is contrary to section 10 of the Constitution".*

The so called skeleton argument in relation to that ground merely repeats it *verbatim.* At the hearing of the appeal, Mr. Ollivry's submission on the point in question was twofold. First, he argued that conspiracy to commit a wrongful act is contrary to section 10(1) of the Constitution inasmuch as what is wrongful is not defined in the law and may be decided subjectively by different courts as what appears wrongful to some judges may not appear wrongful to others.

Second, he submitted that in view of sect. 10(1) and (4) of the Constitution, the law creating a criminal offence must be formulated with sufficient precision to enable the citizen to regulate his conduct and know when such conduct will amount to the commission of a criminal offence.

We are unable to agree with these submissions. Section 10(1) of the Constitution guarantees a "fair hearing" to a person charged with a criminal offence. And section 10(4) establishes the principle of legality which protects a person from being found guilty of a criminal offence on account of any act or omission except when such conduct constituted an offence at the time it took place. It has been further held, in *Sabathee v The State [Privy Council appeal No. 1 of 1999]* that this carries a requirement that the law creating the offence should be clear. At page 7 of the judgment in that case, Lord Hope of Craighead, delivering the judgment of the Judicial Committee, states in relation to the argumentation of Mr. G. Ollivry Q.C., Counsel for the appellant in that case, the following:

> *"He referred in support of his argument to the principle of legality which is embodied in section 10(4) of the Constitution [...]*
>
> *The principle of legality requires that an offence against the criminal law must be defined with sufficient clarity to enable a person to judge whether his acts or omissions will fall within it and render him liable to prosecution on the ground that they are criminal. But the jurisprudence of the European Court of Human Rights shows that the requirement for clarity must be seen in the light of what is practicable, and that it is permissible to take into account the way in which a statutory provision is being applied and interpreted in deciding whether or not the principle has been breached."*

We fully endorse the above principles which pertain to fundamental rights which have to be respected to ensure a fair trial and which are reflected in our Constitution. But we are unable to agree with Mr. Ollivry's submissions that the relevant law is in breach of these principles. Indeed those submissions are based on an incorrect reading of the law creating the offence with

which we are concerned and an incorrect appreciation of the way in which this law has been applied and interpreted by our Courts. The part of section 109(1) of the Criminal Code (Supplementary) Act with which we are concerned provides that the offence of conspiracy is committed by a person who "*agrees with one or more other persons to do an act which is unlawful, wrongful or harmful to another person*". In *Rughoonundun and Ors v R [1986 MR 23]*, the Supreme Court held that the words "*to another person*" in the enactment just cited only qualify the word "*harmful*" and not the word "*wrongful*". However, in *Kessownath v R [1986 MR 227]*, the same Court differently constituted expressly disagreed with the pronouncement in *Rughoonundun* and held, having regard to the legislative intention, that both the words "*wrongful*" and "*harmful*" must be read with the words "*to another person*". Referring to the memorandum accompanying the bill which introduced the relevant legislation, the Court in *Kessownath* noted that it was intended to create the offence of conspiracy in Mauritius by applying the law to persons who conspire to do (a) unlawful acts and (b) lawful acts by unlawful means. The Court's reasoning, in the circumstances, was as follows:

> *"Why, then, may we ask ourselves, did the legislator, who wanted to deal with offenders {...} who conspired to do unlawful acts, make provision for them not only by reference to "an act which is unlawful" but also and further by means of the phrase 'or wrongful or harmful to another person'? [...] The object clearly was that one could envisage acts which were unlawful i.e. prohibited by law, irrespective of whether or not any damage or harm resulted to anyone, and on the other hand acts which were wrongful or harmful to other persons."*

We agree with the learned trial Magistrates that the view held in *Kessownath* is the better one. And indeed it is the one which has, in practice, been followed in Mauritius. Under this prevailing interpretation of the law, the offence with which we are concerned is in no way vague and undefined and in no way contravenes the requirement of the principle of legality referred to in *Sabapathee v The State [supra]*.

The argument raised in additional ground 38 and referred to as point (a) above accordingly fails. For the reasons given above, ground 39 (point (b) above) also fails.

We also find no merit in point (c) above, elaborated in additional grounds 30 to 34, which is to the effect that the learned Magistrates improperly admitted inadmissible hearsay evidence which subsequently influenced their judgment. The prosecution had to prove that the accused had conspired with one Rambaruth to demand from one Dabeesing a sum of money as commission with respect to a contract awarded to his brother-in-law Alleck. However strange the course adopted by the prosecution, it set out to prove that conspiracy by evidence that –

(1) the accused demanded the commission from Dabeesing and told him it had to be paid to Rambaruth who would contact him (Dabeesing); and

(2) a few days later Rambaruth contacted Dabeesing by phone, said he was a friend of the accused and talked about the commission.

At the trial, objection was raised on the ground of hearsay when the prosecution sought to put to witness Dabeesing a question the answer to which would indirectly suggest what Rambaruth (a non-witness who had in fact passed away at the time of the trial) told him. The learned Magistrates held that the indirect assertions of Rambaruth would not be hearsay as they were not being tendered to show the truth of their contents but to show that those assertions were actually made. As the fact that those assertions were made was relevant circumstantial evidence and the truth of their contents was not a matter of concern, we fully agree with the ruling of the learned Magistrates on the objection. Following the learned Magistrates' ruling, the evidence on which the learned Magistrates relied was the statement of Dabeesing:

"He (Rambaruth) informed me that he was a friend of the Minister. I became sure he was the person sent by the Minister. He was talking about the commission which the Minister had spoken to me earlier."

That statement was relied upon by the learned Magistrates as evidence of the fact that Rambaruth said he was a friend of the accused and of the fact that Rambaruth talked about the commission which the witness said the accused had spoken to him earlier. The Court was in no way concerned with the truth of the statements which according to Dabeesing's testimony were made by Rambaruth, but with the simple fact that they were made if Dabeesing was to be believed. The fact that they were made was a relevant string of circumstantial evidence adduced to prove the conspiracy. Accordingly, we conclude that the learned Magistrates' approach to the issue of hearsay evidence, which was backed by a correct reference to the relevant authorities, could not be faulted. Additional grounds 30 to 34, the essence of which is reflected in point (c) above, accordingly fail.

However, in our examination of the arguments raised in relation to points (d) and (e) above, (which relate to grounds 3 and additional grounds 35 to 37 and to grounds 1 and 2 and additional grounds 1 to 29, respectively), we have found a number of disturbing features.

Point (d) above is to the effect that even if the findings of fact of the learned Magistrates are accepted, the offence charged is not established in law. After anxious consideration, we indeed have strong qualms in that connection. The problem, to our mind, stems from the decision of the prosecution to prosecute the accused for an act of conspiracy by using evidence which if believed would tend to show actual commission of an offence of corruption. The direct evidence of Dabeesing – that the accused, the then Minister of Social Security, demanded from

him a sum of money as commission in respect of a contract awarded by the accused's Ministry – is used as one string of circumstantial evidence to prove a conspiracy to commit that act of demanding which could have itself been the subject matter of a prosecution for a corruption offence.

In so doing, the prosecution appears to us to have resorted to a rather awkward conception of a conspiracy committed by the accused jointly with Rambaruth to do an act which was "*wrongful to another person*". The particulars provided in the information specified that act as that of demanding from Dabeesing a sum of money as commission in respect of a contract awarded to his brother–in-law Alleck but do not expressly specify that the act was wrongful to Dabeesing. The learned Magistrates construed the information in that way and found, on the evidence, that the act was wrongful to Debeesing. However, the evidence falls short, in our view, of showing how the mere demand of a commission after the award of a contract – a demand which could well be turned down as was in fact the case on the evidence of Dabeesing – was wrongful towards Dabeesing, in other words how it could amount to a "tort" towards him or cause him any harm whatsoever. And the learned Magistrates' judgment fails to explain that too. In the circumstances, we find substance in the argument of Mr. Y. Mohamed, Senior Counsel, that the findings of the Magistrates are not capable in law of establishing the precise offence charged.

Finally, we have also noted some disquieting features in relation to point (e) above which sums up the grounds challenging the appreciation of evidence by the learned Magistrates. These disturbing features in the approach of the learned Magistrates are mostly characterised by a recourse to surmise as opposed to actual inferences from evidence on record and are considered below under the six headings which follow:

(i) The circumstances in which the allegation was made against the Minister

The request for commission was allegedly made on 5 April 1999 and it is only on 24th July 2000, i.e. some fifteen months later that the matter was reported to the Economic Crime Office (ECO). As pointed out by the Magistrates themselves –

"one would expect a person who really went through such an experience to register a complaint after a relatively short time."

Witness Alleck stated that he wanted to ignore the issue of commission and wanted to concentrate on the importation and delivery of the blankets.

The Magistrates were anxious to find explanations justifying the conduct of the complainants and wrote –

"It is perfectly understandable that someone in that situation would be reluctant to get involved in the controversy of registering a complaint against the Minister with all the complications that are likely to follow."

It is only shortly after he had given a statement under warning to officers of ECO in connection with an allegation to the effect that he had prevented officers of the Mauritius Standards Bureau (MSB) from verifying the quality of the blankets that he was delivering, that witness Dabeesing gave a second statement in which he made the accusations against the accused. According to him after his statement of the 24th July 2000 under warning which ended at 22.15 hours, he felt revolted by the accusation made against him and he volunteered to give another statement that same evening at 22.40 hours, in which statement he implicated the appellant.

Again the Magistrates felt the need to supply their explanations for witness Dabeesing's actions. They surmise as follows:

> *"It therefore appears more probable that Dabeesing gave the statement implicating the Minister based on legal advice rather than motivated by any feelings of retaliation or as a response to a feeling of humiliation ensuing from the situation in which he found himself."* (page 222)

There is no evidence to substantiate the Magistrate's above comments, especially when one bears in mind that following the allocation of the contract to witness Alleck, the latter had to face various problems regarding the said contract. There were questions in Parliament regarding the quality of the blankets supplied, and there were adverse reports from the Director of Audit and the MSB in relation to the contract. Further the contract which witness Alleck had obtained to supply blankets to the Ministry for the year 2000 was cancelled and the performance bond in relation to the 2000 contract seized such that the complainants sustained a heavy financial loss.

In such a context we find that the above quoted words of the Magistrates asserting that the complainants were not motivated by feelings of retaliation, are not borne out by the evidence which could in fact lend a different colour to the matter.

(ii) <u>The request for the list of tenderers</u>

The Magistrates found that the appellant had requested for the list of tenderers prior to the allocation of the contract and that there was no reason why this list should have

been requested and it was improper to try and obtain the list at that stage. The Magistrates relied on this fact as being one of the elements establishing the case against the appellant.

We disagree with the Magistrates' conclusions. Even assuming that the Ministry did ask for the list as found proved by the Magistrates, the evidence reveals that there had been at least another such request in 1997 when this Ministry was headed by a different Minister. Further there is no evidence to the effect that the Ministry used this list, let alone made any sinister use thereof. The allocation of the contract befell upon the Central Tender Board and not the appellant.

Even on the prosecution's own case, there was no contact between the appellant and the successful tenderers until the signature of the contract. Indeed according to the evidence, Alleck the successful tenderer was unknown to the Minister and he asked, at the time of the signature of the contract to be shown who the said Alleck was.

(iii) The Cassette

According to witness Dabeesing, on his way to calling upon the appellant to deliver the copy of the costing of the blankets, he stopped at Happy World Centre and bought a cassette recorder which he took along with him and the conversation between the two was recorded. However his answers upon being questioned about the said cassette were evasive. He denied that he had bought the cassette recorder to have proof of what the accused would be asking him. He stated that the cassette was important but not precious to him and upon being questioned as to why he had not kept it in a safe place,

he replied that it was not important, and that according to him the asking of a bribe by a Minister was not an important matter.

We cannot find any justification for the comments of the Magistrates that *"it is hard to accept that witness Dabeesing would have mentioned this cassette to the police if it actually did not exist"* and that the unavailability of the cassette *"does not necessarily establish that his complaint was not genuine or that he has invented evidence which did not exist or that the recording in the cassette, if available, would necessarily have contradicted the evidence that he gave in Court".*

The unavailability of the cassette and the lame explanation of witness Dabeesing for his failure to retain such an important piece of evidence could equally have been compatible with the fact that there had never been any cassette recording.

Further the manner in which Dabeesing himself stated that he had kept the cassette leaves doubts as to the genuineness of the existence of the cassette recording. He stated that he had kept it in an unlocked drawer at his house and he had seen his children playing with it.

In the light of the above evidence, the appreciation of the evidence made by the Magistrates on this issue, appears to be based on pure conjecture. They wrote:

> *"It therefore appears that witness Dabeesing did not deal with the cassette lightly in the sense that he did not just dispose of it or did not just put it somewhere and forgot about it. He kept it in a drawer even though, at that time, he did not particularly intend it to be used as evidence in a trial. Secondly it is current practice*

for people not to keep most of their drawers constantly under lock and key in view of the fact that several other items may be kept in the same drawer which have to be available for use. Thirdly the event of moving house does get things topsy turvey and it is not impossible that a small object such as a cassette recorder may be mislaid in the process."

(iv) The venue of the meeting between Dabeesng and Rambaruth

The Magistrates' treatment of the issue relating to the venue of the alleged meeting between Rambarath and Dabeesing, is also, in our view, disturbingly affected by a conjecture on their part. Dabeesing had stated that the meeting took place in Rambarath's office situated at Remy Ollier Street, Port Louis. Witness Doolur stated that Rambarath did not have an office at this address. On this issue the Magistrates surmised that *"it is possible that the meeting was organised in an office found at Remy Ollier Street and Dabeesing was led to believe that it was the office of Rambarath. We say so bearing in mind that people who are involved in transactions of a dubious character would normally tend to cover up their tracks".*

(v) The Venue for the signature of the contract

In his first statement, witness Doolur stated that the contract was signed in his office in presence of witness Ramsurn. Doolur even stated that he pointed out to PC Mahadewoo the exact spot in his office where the contract was signed.

Witness Ramsurn stated in his first statement that he could not recall where the contract had been signed. He is diabetic, he had not been given any food or drink and he could not remember.

It was only in their second statements that both witnesses mentioned that the contract had been signed in the Minister's office.

Witness Doolur explained in Court that he had assumed that the signing had been done in his office as contracts are normally signed in his office and the spot that he had shown to the police is the spot at which contracts are normally signed. He stated that subsequently he had doubts about the venue when he saw the memo addressed to Alleck requesting him to call at the office of the Minister.

On the other hand, witness Ramsurn explained that after his first statement, he had time to recall matters when he attended ECO for the second time and he was shown certain documents which jogged his memory.

Those explanations are however not very convincing and arouse suspicion inasmuch as during the week-end following their first statements both witnesses, on their own evidence, conferred with each other, prior to stating to the officers of E.C.O. that the contract was signed in the office of the appellant.

(vi) <u>How the appellant's alleged behaviour escaped the attention of Ramsurn</u>

The learned Magistrates' also appear to us to have indulged in surmise when addressing the question as to how the appellant's alleged behaviour in his office on the day when the contract was signed escaped the attention of Ramsurn. Faced with the question how the alleged conversation between the Minister and the complainants was not heard by Doolhur and Ramsurn and how the appellant's alleged refusal to shake hands with the complainants also escaped their attention, the learned Magistrates relied

on the size of the appellant's office as indicated on the plan produced and considered that it appeared "*plausible that one may speak in a low tone at one end and not be heard at the other end*". In the absence of evidence that the appellant was indeed speaking in a low tone, they clearly indulged in surmise when they stated in their judgment:

> "*At any rate, one would normally expect that the Minister may not have wanted the other persons present to hear what he was saying and would therefore have deliberately spoken in a soft tone*"

For all the above reasons, we conclude that the conviction was unsafe and accordingly allow the appeal and quash the conviction and sentence.

E. Balancy
Ag. Senior Puisne Judge

R. Mungly-Gulbul
Judge

21 June 2010

Judgment delivered by Hon. E. Balancy, Judge

For Appellant:	Mr. Attorney A. Rojubally Mr. G. Ollivry Q.C. Mr. Y. Mohamed S.C. Miss Y. Moonshiram, of Counsel
For Respondent:	C.S.A. State Counsel