ROUSSETY J. v THE STATE & ANOR

2016 SCJ 27

Record No 8384

IN THE SUPREME COURT OF MAURITIUS

In the matter of:-

J. Roussety

Appellant

v

The State & Anor

Respondents

JUDGMENT

The appellant was, at the material time, the Chief Commissioner of the Rodrigues Regional Assembly. The offence with which he was charged, under Section 9 of the Prevention of Corruption Act **[POCA]**, was that on 7 November 2009 he did "*wilfully, unlawfully and criminally, exercise pressure by means of threat upon a Public Official with a view to the performance, by that public official, of an act in the execution of his duties*".

The charge was particularised in the information in the following terms:

> "*the said Johnson Roussety, threatened Mr Jean Claude Pierre Louis, Island Chief Executive of the Rodrigues Regional Assembly, to the effect that if latter fails to comply with his directives to set up a Selection Board consisting of members which he the said Johnson Roussety will nominate respecting the appointment of 250 General Workers, he the said Jean Claude Pierre Louis will have to tender his resignation by 09th November 2009 or else he the said Johnson Roussety will request the Prime Minister to sack the said Jean Claude Pierre Louis from service*".

The appellant was convicted and was sentenced to undergo 3 months imprisonment.

The case for the prosecution rested essentially on the version of the Island Chief Executive, Witness Pierre Louis ("Pierre Louis"). It may be summed up as follows:

On 6 November 2009, Pierre Louis attended a meeting of the Executive Council ["Council"] of the Rodrigues Regional Assembly. The issue which was being discussed concerned the recruitment of 243 persons who had been offered placement as trainees since 1 October 2007. The Council wanted those trainees to be absorbed as general workers and had instructed Pierre Louis to do the needful in order to obtain the necessary approval. The Council enquired from Pierre Louis about aletter which was being expected from the Ministry of Rodrigues in response to the request of the Council to absorb the 243 traineesas general workers on contract. Pierre Louis informed the Council that he had received a letter from the Ministry of Rodrigues but he had to seek further clarification and explanation from the Permanent Secretary, since there was according to him an ambiguity and a flagrant contradiction in that letter [Doc. S1]. Pierre Louis stated to the Council that although there was in effect an approval for the recruitment of the 243 trainees as general workers in the first paragraph of the letter yet he was also being asked in the same letter to follow "*the normal procedures for the recruitment exercise as per scheme of service for the post and existing practices*" This is what had prompted him to ask for clarification and explanation from the Permanent Secretary before attending the meeting of Council on 6 November 2009.

He was instructed by the Council to initiate procedure rapidly for the recruitment of these workers in the light of the clarification which he would obtain from the Ministry. The Chief Commissioner (appellant) also requested him during the meeting to contact him so that they could agree on the composition of a selection board. He received the second correspondence by way of a fax from the Ministry [Doc. S]in the afternoon of 6 November 2009. He handed over a copy to the Chief Commissioner on the same afternoon and explained to him the difference between the twodocuments [Docs. S and S1].

In the morning of Saturday 7 November, he went to see the Chief Commissioner in his office where the Chief Commissioner was receiving members of the public. This is when the offence is said to have taken place. The version of Pierre Louis differs diametrically from the version of the appellant as to what was said during that meeting which was attended only by the two of them.

According to Pierre Louis he explained to the appellant the purpose of his visit. It was to tell him that the wish expressed at the meeting of the Council that the 243 trainees be directly absorbed as general workers is not normal procedure and is not acceptable. The power to recruit is delegated by the Public Service Commission to him and not to anybody else. He told the appellant that neither the Chief Commissioner nor any other politician could have any say in the recruitment of the workers or in the setting up of the selection board for the recruitment.

Still according to Pierre Louis, the appellant reacted by telling him the following: what he was asking him to be done is the normal procedure in Mauritius and nobody will know about it except Pierre Louis and himself. They will have to seek ways and means to absorb directly the 243 trainees as general workers. If Pierre Louis is not willing to do it, he may keep the recruitment process in abeyance so that the person replacing Pierre Louis during his vacation leave in December 2009 might be able to deal with it. When Pierre Louis pointed out that this cannot be done, appellant became vehement and threatened to have him sacked by the Prime Minister. Pierre Louis added that the appellant wanted him to appoint persons of his choice in order to constitute the selection board. He could not agree to this because it was up to him as the Island Chief Executive, acting upon the powers delegated to him by the PSC, to set up the selection board in conformity with the PSC Regulations and the Rodrigues Regional Assembly Act.

In the course of the conversation, appellant also told him that if he failed to do what he was being asked to do, he would have to tender his resignation by 9 November 2009 failing which he would request the Prime Minister to sack him.

The appellant denied the allegations of Pierre Louis. He denied, both in his statement to ICAC and whilst giving evidence in Court, that he had threatened Pierre Louis in the exercise of his duties as related by Pierre Louis. He denied that on 7 November 2009 he ordered Pierre Louis to set up a selection board for the recruitment of the 243 trainees as general workers or that he directed him to appoint members of his choice. He had been democratically elected as Chief Commissioner of the Rodrigues Regional Assembly and was the head of the Council in Rodrigues. He is vested with functions, powers and responsibilities as defined in the Constitution and the Rodrigues Regional Assembly Act. Pierre Louis acts as Secretary to the Council and is the Island Chief Executive whois responsible to oversee the execution of all the Council's decisions and to ensure that they are duly implemented. The Island Chief Executive is under the authority of the Chief Commissioner and he has to abide to instructions given by

him unless they are unreasonable or contrary to the law. The appellant added however that as regards the recruitment of employees, he was fully aware of all the procedures and has never made any attempt to influence or threaten Pierre Louis to go against established practice or to do anything illegal.

The appellant also stated that Pierre Louis was previously exercising the functions of an Island Secretary and was vested with extensive powers prior to the coming into force of the constitutional amendment and the Rodrigues Regional Assembly Act. However, with the advent of the new legislation, the Island Secretary was re-styled as the Island Chief executive whose role was only confined to administrative tasks. Much of the powers of the Island Secretary had now been transferred to the Rodrigues Regional Assembly and the Council. This was never assimilated by Pierre Louis who had another vision of his role, contrary to the spirit of the Constitution and the provisions of the Act, which would bring him into sharp conflict with the political and elected members of the Rodrigues Regional Assembly. Pierre Louis was also bent upon thwarting the application of policy decisions in order to create trouble for the appellant since the latter had expressed his intention to request a stay of his appointment in a substantive capacity as Departmental Head following the PRB report.

With regard to the incident of 7 November 2009, appellant stated that he was receiving members of the public when Pierre Louis came to see him in his office in order to inform him that he had decided not to ask for the renewal of his contract. The appellant told him that this was a decision which concerned him only and he had nothing to say about it. There was never any discussion on the issue of recruitment of the 243 trainees as general workers. The conversation related only to the tense working relationship which existed between Pierre Louis and the appellant and the Council. The appellant told Pierre Louis that he was not satisfied with his performance. The policies of the Council were not being executed and Pierre Louis was always trying to curtail the policies of the Council, thus preventing them from producing results as a regional government. They had decided to compute a report on his attitude and the fact that he was not executing his duties as Island Chief Executive in order to report him to the Public Service Commission and the Prime Minister's office.

They did not have a long conversation on 7 November 2009 as there were many other persons waiting to see the appellant. There was never any discussion on the issue of the recruitment of the 243 trainees or of the 250 general workers or for the setting up of the selection board.

The issue of the recruitment of the 243 trainees had been on the agenda of the Council since a long time and it was being followed at every weekly meeting. It was brought up again at the meeting of 6 November 2009. Prior to that, the appellant had made representations to both the Minister of Finance and the Minister for Civil Service Affairs in August 2009 in order to obtain government approval for absorbing the 243 trainees as general workers. This was followed by correspondence by Pierre Louis to the various Ministries in order to obtain the approval for directly absorbing the 243 trainees. On 6 November 2009, when the issue was raised, Pierre Louis informed the Council that he had received an ambiguous letter from the Ministry of Rodrigues as a result of which he had asked for another version. At the same meeting appellant asked Pierre Louis to see him when he would have received "*the second version of the letter*". Pierre Louis did not bring any documentwhen he came to meet him in his office on 7 November 2009.

On 10 November 2009, during a telephone conversation from Mauritius, he informed Pierre Louis of his decision to report him to the Prime Minister in accordance with section 40(1) of the Act.

On 23 November 2009, the appellant reported Pierre Louis to the Prime Minister and to the Secretary to Cabinet and Head of the Civil Service demanding his immediate revocation [Doc. AC]. He waited until 23 November 2009 because he had to compile all the documents and information before making the report which contained several complaints of misconduct and poor performance against Pierre Louis.

On 26 November 2009, Pierre Louis made a complaint to the ICAC and the police against the appellant which eventually led to the prosecution of the appellant.

Additional Grounds 1 and 2

We shall first deal with additional grounds 1 and 2 which involve constitutional and legal provisions which may be relevant to the present matter. It is not in dispute that at the material time the appellant was the elected Chief Commissioner of the Rodrigues Regional Assembly and head of the Council in Rodrigues whilst the complainant Pierre Louis was the Island Chief Executive. It was submitted that the appellant was perfectly entitled in his capacity as Chief Commissioner to give instructions to the Island Chief Executive. The mere fact that the Chief Commissioner gave verbal notice to a subordinate that he intends to report him to the relevant authority for failure to perform his work does not tantamount to an offence of "exercising

pressure by means of threats" as set out in section 9 of the POCA. The words were uttered in the context of "*a superior and subordinate relationship"* and the appellant was lawfully entitled in his capacity as Chief Commissioner to give orders to Pierre Louis, as the Island Chief Executive attached to the office of the Chief Commissioner, with respect to the implementation of the policies of the Council of Rodrigues.

The Constitution and The Law

Chapter VIA of the Constitution of Mauritiusprovides for the creation of the Rodrigues Regional Assembly and its powers to make laws and regulations for Rodrigues[Sections 75A and 75B]. It also provides for the setting up of an Executive Council of the Regional Assembly comprising of a Chief Commissioner, the Deputy Chief Commissioner and Commissioners who shall have such powers and functions as may be prescribed [Section 75C of the Constitution]. This has been done by the enactment of the Rodrigues Regional Assembly Act ("The Act").

Sections 26(1) and26(2)(b) of the Act provide as follows:

"***26. Responsibility of Regional Assembly***

(1) Without prejudice to the provisions of Chapter VI of the Constitution and notwithstanding anything to the contrary in any other law, the Regional Assembly shall, in relation to Rodrigues, be responsible for the formulation and implementation of policy in respect of the matters set out in the Fourth Schedule.

(2) *For the better performance of its functions, the Regional Assembly may do all such acts and take all such steps, … … … as may be necessary for or which may be conducive to or incidental to the exercise of its powers and duties and, in particular, the Regional Assembly may-*

(a) … … …

(b) enter into such contracts as it deems fit for the efficient discharge of its functions;"

Section 40 of the Act further empowers the appellant as Chief Commissioner to report to the Prime Minister any matter concerning the general conduct of the affairs of the Executive Council in Rodrigues.

"***40. Prime Minister to be informed concerning matters of the Executive Council***

(1) The Chief Commissioner shall keep the Prime Minister fully informed concerning the general conduct of the affairs of the Executive Council in relation to Rodrigues and shall furnish the Prime Minister with such information as he may request from time to time with respect thereof.

(2) *The Prime Minister may invite the Chief Commissioner to discussions with a view to formulating administrative and legislative mechanisms for the promotion of harmony in the affairs of the Island of Mauritius and Rodrigues*."

Section 35 of the Act states that the Executive Council shall be responsible for the carrying out of the functions of the Regional Assembly. Section 39 of the Act further provides that the Executive Council shall develop policy on matters relating to Rodrigues in relation to its functions for submission to the Prime Minister.

Section 66 of the Act which provides that there shall be an Island Chief Executive reads as follows:

"***66. Island Chief Executive***

(1) *There shall be an Island Chief Executive who –*

(a) shall be a public officer for the purposes of section 112 of the Constitution; and

(b) shall be responsible for the efficient administration of all the functions of the Executive Council.

(2) *Before giving his concurrence to the appointment of the Island Chief Executive, as supervising officer, under section 89(4) of the Constitution, the Prime Minister shall consult the Chief Commissioner.*

(3) *The staff of the Regional Assembly shall be under the administrative control of the Island Chief Executive*."

Section 9 of the Act creates anoffence which is classified as a corruption offence under Section 2 and Part II of the Act. That section provides that "*any person who exercises any form of violence, or pressure by means of a threat upon a public official, with a view to the*

performance, by that public official, of any act in the execution of his functions or duties, or the non-performance, by that public official, of any such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years".

Firstly, it is significant to note that there is an offence under section 9 in respect of "*any act*" which is to be performed by the public official in the execution of his duties. It is not a prerequisite from the wording of the offence that the act should necessarily be an unlawful act, although it would undoubtedly apply "*a fortiori*" where the pressure relates to the performance of an unlawful act.

The next question which arises iswhether an offence would still be invariably committed under section 9 of the Act where the person who exercises the pressure by means of a threat may be himself acting in the course of his legitimate constitutional or hierarchical statutory functions. For instance, by way of analogy,would the Commissioner of Police or the Director of Public Prosecutions commit an offence under section 9 if he exercises pressure by means of a threat to have recourse to disciplinary action againsta subordinate officer "*with a view to the performance by that public official of <u>any act</u> in the execution of his functions or duties…"? **(Emphasis added)***There is obviously no such difficulty where the person charged is not vested with any constitutional or legal powers with regard to the execution by the public official of his functions and duties.

Section 9 does not operate "*notwithstanding any other law*". Had this been the intention of the legislator, this would have been expressly spelt outin the wording of section 9 when creating the offence of "*exercising pressure by means of a threat upon a public official"* for the performance of an act in the execution of his duties.Section 9 does not override the exercise of any constitutional powers or duties with which any other person or institution may be vested. This leads us to take the view that in construing section 9 of the Prevention of Corruption Actthe words "*any person"* must be read subject to any constitutional or statutory powers with which that person may be vested in the legitimate exercise of his functions in relation to the performance of the act which he may be allegedly "*pressurising*" the public official to perform in the execution of the latter's duty. The provisions of the Constitution and of the Rodrigues Regional Assembly Act relating to the respective powers, functions and duties of the Executive Council, the appellant as Chief Commissioner, and Pierre Louis as the Island Chief Executive, would thus inevitably have a significant bearing in construing whether an offence would lie under section 9 of the POCA in the factual context of the present matter. It was indeed

incumbent upon the learned Magistrates in their assessment of the guilt of the appellant to consider whether the appellant was threatening to use a statutory power conferred upon him within the scope of his functions as Chief Commissioner or whether he could not have been doing so in the exercise of any legitimate exercise of power by interfering unlawfully in the administrative aspect of the recruitment exercise. This, they had utterly failed to do.

The learned Magistratesin fact failed to address their minds to the scope of application of section 9 in the context of the present matter which involved a serious conflict between on one hand the appellant as head of the Council, which was responsible for determining policy decisions, and on the other hand the complainant Pierre Louis who was responsible for the implementation of the administrative decisions of the Council

This point would also be relevant for the purpose of determining whether it had been established that appellant had the required *mensrea* when he allegedly committed such an offence. This issue was raised on behalf of the appellant under additional ground 3. If the Chief Commissioner was merely trespassing upon the administrative functions of the Island Chief Executive,would any such act necessarily tantamount to a criminal offence as contemplated by section 9 of the Act?

The failure on the part of the Magistrates to take into account the constitutional and legal context in which the complainant and respondent had been acting at the material time, would not in itself finally determine the criminal liability, if any, of the appellant in respect of the present charge. The ultimate factual question which had to be determined still remained whether the appellant had pressurised Pierre Louis, to do an unlawful act in a manner which falls outside the scope of his lawful powers as Chief Commissioner and which constituted an offence under section 9 of the POCA.

We shall have therefore now to turn to the other grounds of appeal which challenge the findings of the Magistrates and their appreciation of the evidence.

The learned Magistrates were confronted with 2 contradicting versions regarding the conversation which took place between Pierre Louis and the appellant in the latter's office on 7 November 2009. There was no independent witness and the issue of guilt had to be decided, as stated at the outset of the judgment by the Magistrates, between the word of the complainant as opposed to the word of the appellant. Apart from that the learned Magistrate also relied on

the documents which were produced in the course of the trial and referred to events subsequent to what took place between the complainant and the appellant on 7 November 2009.

The prosecution's case, which was accepted by the Magistrates, was that the appellant had exercised pressure by means of threat upon Pierre Louis for the nomination of the members of the selection Board which had to recruit the 250 general workers and which was a matter which fell exclusively within the province of Pierre Louis.

Ground 1 relates to sentence only. Ground 4 was dropped.

Grounds 7 and 10 challenge the appreciation of the evidence by the trial Court on the grounds that the Magistrates either overlooked or misconstrued the evidence or utterly failed to give due consideration to material aspects of the evidence. It was submitted by learned Counsel for the appellant that the trial Court had failed to carry out a comprehensive analysis of the sequence of events in relation to the recruitment process and which ledto the encounter between appellant and Pierre Louis on 7 November 2009. This assumes all its importance since they relate to the issue of the recruitment of the 243 trainees as general workers and the procedure to be adopted which lie at the root of the charge against the appellant. The sequence of events leading to the meeting of 7 November 2009 may be summed up as follows:

1. On 19 August 2009, during the visit of the Vice Prime Minister and Minister of Finance to Rodrigues, the appellant drew his attention to the high rate of unemployment in Rodrigues as well as the critical shortage of employees in the manual grade which was hindering the implementation of infrastructure projects and the provision of basic services.

2. On 20 August 2009, the appellant also met the Minister for Civil Service to discuss the recruitment of workers. The Ministry was agreeable in principle to the recruiting of 300 general workers.

3. On 25 August 2009, Pierre Louis, the Island Chief Executive, under the letter head of the Chief Commissioner's Officer, wrote to both Ministries seeking their approval for the recruitment of 300 "general workers" and informing them that the Rodrigues Regional Assembly was proposing to fill all these vacancies in January 2010. **[Doc. M]**

4. On 11 September 2009, the Ministry of Civil Service authorised the recruitment on contract of 250 general workers **[Doc N].**

5. On 2 October 2009, Pierre Louis wrote a detailed letter to the Ministry of Rodrigues **[Doc. R]**for the absorption/appointment of 243 Trainees as general workers on contract setting out the following facts:

   (i) Following a public advertisement dated 4 July 2007 for the enlistment of 200 Trainees, a "Selection Committee" had shortlisted 300 persons from a total of 3790 applicants.

   (ii) 243 Trainees were offered placement with effect from 1 October 2007. Their employment had been extended on a month-to-month basis until December 2009.

   (iii) The 243 trainees have contributed an excellent input in the implementation of the activities and programme of the Rodrigues Regional Assembly and there is a legitimate expectation that they be given priority in the recruitment of general workers.

   (iv) The Council was inviting governmentto agree that the 243 Trainees be absorbed as general workers in the context of the forthcoming recruitment of the 250 general workers, "*notwithstanding the fact that the approval of the Public Service Commission was not sought and obtained regarding the procedures followed for the enlistment of the trainees".*

6. On 4 November 2009, the Ministry of Rodrigues issued a reply to that letter under the hand of Mr Boyramboli, the Permanent Secretary, informingPierre Louis that "*with reference to your letter dated 2 October, this Ministry has no objection to the recruitment <u>of the 243 trainees</u> as General Workers on a contract basis*"**[Doc. S1].**

7. Upon a query by the Council at its meeting of 6 November 2009, Pierre Louis stated to the Council that he was seeking clarification from the Ministry as regards the approval it had given for the recruitment of the 243 trainees as General Workers in view of the"ambiguity and contradiction" which he had found in the letter of approval.

8. Following a conversation between Pierre Louis and Mr Boyramboli, another letter was subsequently faxed to Pierre Louis on 6 November 2009, however still dated "4

November 2009" but replacing the words "*this Ministry has no objection to the recruitment of <u>the</u> 243 trainees as General Workers"* by the words "*this Ministry has no objection to the recruitment of 243 General Workers*"

9. The meeting between the appellant and Pierre Louis took place on 7 November 2009. When Pierre Louis went to see the appellant in order to explain to him that since the approval is no longer for the absorption of the 243 trainees as general workers but for the recruitment of 243 general workers, the procedure is for him, as Island Chief executive, to set up a selection Board acting upon delegated powers from Public Service Commission, stressing that neither the Council nor the Chief Commissioner has anything to do with it.

The learned Magistrates indeed failed to grasp properly the above sequence of events surrounding the recruitment of the 250 general workers in Rodrigues and never addressed their minds particularly to the following crucial facts, which were undoubtedly material considerations for the purpose of determining the conduct of both the appellant and Pierre Louis and their respective role and responsibilities until the meeting of 7 November 2009:

(1) It was the official policy of the Council that the 243 trainees who had been offered placement since 1 October 2007, following a public advertisement and a selection exercise carried out by a selection committee, be absorbed as general workers on contract.

(2) On 11 September 2009, the Government approved the recruitment on contract of 250 general workers.

(3) In its letter dated 2 October 2009, Pierre Louis in conformity with the decided policy of the Council seeks approval for absorbing "*the 243 trainees as General Workers on contract basis*" **[Doc. R]** setting out that the appointment of these 243 trainees would meetthe criteria for employment as general workers with regard to the projects undertaken by the Rodrigues Regional Assembly.

(4) Theoutcome of this application for approval is followed on a weekly basis by the Council until the meeting of 6 November 2009.

(5) On 4 November 2009, the Ministry conveys in unequivocal and unambiguous terms **[Doc. S1]** that "*this Ministry has no objection to the recruitment, as per*

specific needs of projects undertaken by Rodrigues Regional Assembly, of the 243 Trainees as General Workers on a contract basis." **(Emphasis added)**

(6) Doc. S1 was a direct reply to Document R, which was the letter written by Pierre Louis himself and in which he had expressly set out that the 243 trainees had already gone through a selection process. He had added in Doc. R that in view of their contribution in the implementation of the activities and project of the Rodrigues Regional Assembly, there was a legitimate expectation that the 243 trainees be given priority in the recruitment of the 250 general workers on contract.

(7) The conduct of Pierre Louis following the receipt of this reply from the Ministry is therefore to say the least troubling in several respects and this independently and irrespective of what should have been the correct procedure to be adopted for the recruitment in accordance with PSC Regulations.

(8) Following the reply to Document R in which it is specified that the recruitment of the 243 trainees as general workers had been approved **[Doc. S1]** and which is dated 4 November 2009, Pierre Louis:

(i) refrains from tabling the much-awaited reply at the meeting of the Council on 6 November 2009; and

(ii) instead, upon being queried, informs the Council and the appellant that there was according to him, a contradiction and ambiguity in this letter with regard to the procedure for recruitment and he was seeking clarification from the Ministry;

(9) Worse still, the letter [Doc. S1] was destroyed, was never officially recorded and was never filed by him.

(10) This first letter [Doc. S1] which was destroyed was never shown neither to the Council nor to the Chief Commissioner. In fact, it was when he was requested to produce the first version of the letter, that Pierre Louis stated that he had already destroyed it.

(11) Pierre Louis did not show this second document to the Chief Commissioner when he went to meet him on 7 November 2009. Prior to that he had contacted the

Permanent Secretary, Mr Boyramboli, immediately after receiving the letter on 5 November 2009 in order to amend the tenor of the letter, as a result of which he managed to obtain a new version of the same letter by fax on 6 November 2009. In the amended version **[Doc. S]**, the approval of "*243 trainees as General Workers*" had been deleted and it now read that approval had been granted for recruitment of "*243 General Workers*";

(12) As a result of such an amendment, the recruitment process would now be under his exclusive control, acting upon delegated powers from the Public Service Commission.

(13) The evidence of Boyramboli does not lend support to the version of Pierre Louis. Pierre Louis did not mention to him that there was any ambiguity or contradiction in the first letter **[Doc. S1]**. Instead Pierre Louis only indicated to him that there was a mistake and that the word "*trainees*" was superfluous. That could not be the case in view of what Pierre Louis had himself written in Document R on 2 October 2009, clearly asking the approval for "*absorption of the 243 trainees as General Workers".*

(14) The invariable use of the figure '243" in both Documents S and S1 is a further indication that the approval was in respect of the 243 trainees. The figure 243 could only relate to the number of trainees as there were 243 trainees who were involved whilst the figure 250 was the total number of posts available for general workers. Had the approval been in respect of general workers, the applicable and correct figure would have been "250" and not "243" as mentioned in both letters S and S1. The constant reference to the figure "243" could only be therefore in respect of the "243 Trainees".

(15) The evidence of Boyramboli further confirms that the first letter **[Doc. S1]** was a positive answer to the request contained in Document R for the absorption of the 243 trainees as general workers whilst the second letter **[Doc S],** which was the amended version of Doc. S1 following the intervention of Pierre Louis, was a negative answer to the request contained in Document R. It was misleading therefore to say that there was only a mistake or contradiction or ambiguity. It was none of these since the amendment triggered by Pierre Louis was in fact changing radically the decision of the Ministry. The learned Magistrates failed to

consider whether such conduct on the part of Pierre Louis was consonant with the version of the appellant that Pierre Louis was against the decision which the Council was trying to implement for the absorption of the 243 trainees as general workers.

The learned Magistrates lost sight of the fact that there was no ambiguity in the first letter **[Doc. S1]** and completely overlooked the material facts that:

(1) Document S1 rightly referred to the recruitment on contract of the 243 trainees as general workers in line with the policy decision of the Council as witnessed by Doc R which was authored and signed by Pierre Louis himself.

(2) It was thus rightly mentioned in Doc S1 that approval was given for the absorption of the 243 trainees as general workers on contract within the 250 posts which had been earmarked.

(3) Pierre Louis had deliberately concealed the first document**[Doc S1]** which had been destroyed as he avoided altogether to bring it to the notice of both the Council and the Chief Commissioner.

(4) Instead he arranged for Document S1 to be replaced by another document [Doc S]. He spoke to the Permanent Secretary of the Ministry to have another version of the letter sent but with the second letter still being dated the 4 November 2009 although it was unquestionably modified on 6 November 2009.

The issue of the recruitment of the 243 trainees as general workers and the alleged interference of the appellant in that connection lie at the root of the prosecution's case. Yet the learned Magistrates utterly failed to address their minds to all those highly disturbing elements and the conduct of Pierre Louis. Had there been a genuine mistake or ambiguity there is no reason why Pierre Louis should have dissimulated and destroyed an official public document [Doc. S1]instead of recording it on file. Had Pierre Louis genuinely believed that there was a mistake or contradiction in Document S1, he should have followed the official procedure, as was explained in Court by witness Dindoyal, who was an assistant Secretary at the Ministry of Rodrigues at the material time. The proper procedure when dealing with official public documents and official files, would have been for Pierre Louis to make an appropriate minute in the file explaining the alleged mistake which had occurred in Doc S1 and a corresponding

minute in respect of his request to Mr Boyramboli to rectify Doc S1. Doc S1 had not been recorded on file but instead Pierre Louis informed the appellant's Secretary, Mrs Raffaut that the first letter [Doc S1],had been destroyed. Pierre Louis omitted to put anything on record as regards Doc S1. Pierre Louis had, instead, surreptitiously contacted Boyramboli in order to obtain an amendment of the first official letter, not by obtaining a second official letter but through the issue of a backdated one [Document S] in order to replace the first letter which had been conveniently destroyed and dissimulated.

It is significant to note that all these matters only came to light in the course of the trial when Counsel for the accused (now appellant) probed fully into that issue and the Court granted a further postponement in order to enable witness Boyramboli to retrace from the Ministry a copy of Doc S1 which was then produced in Court. The existence and purport of Doc S1 which has a significant bearing was neither revealed nor considered at the stage of enquiry. The evidence of witness Dindoyal also brought to light, through Documents AA and AA1 which were obtained from the file of the Ministry of Rodrigues, that what was being consideredat all material times for approval was the request that the Rodrigues Regional Assembly may recruit the Trainees as general workers on contract as set out in Document R. This would be done on the understanding that the approval of the Public Service Commission would eventually be sought and that such employment on contract would not give the workers any claim for permanent appointment and would be subject to the usual procedures being followed for the eventual filling of vacancies in the grade of general worker. The concluding and relevant parts of the Ministry's brief on that issue are worth reproducing [Documents AA and AA1].

> "*4. The ICE (i.e Pierre Louis) is now seeking the approval of Government for the absorption/appointment of the 243 Trainees as General Worker on contract basis in the year 2010, on the understanding that the approval of the Public Service Commission would eventually be sought for the employment/absorption of these Trainees as General Worker.*
>
> *5. It is observed that:*
>
> *(i) the Trainees were recruited after a selection exercise under the Skilling and Reskilling Programme financed jointly by the Empowerment Programme and the RRA. They were posted to the different Commissions of the RRA and were paid a stipend of Rs 3500 monthly. The purpose of the training was to enhance their knowledge and skills to enable them to set up private businesses and find a job.*
>
> *(ii) it was also spelt out in the advertisement circular that the participation under the above programme would not guarantee a permanent employment in*

the RRA but that in case of vacancies in the RRA, they could be given priority of consideration, subject to their having given satisfaction during their traineeship.

6. In view of the preceding, it is felt that the RRA may recruit the Trainees as General Workers on contract. However, such employment should not give them any claim for permanent appointment and the usual procedures should be followed for the eventual filling of vacancies in the grade of General Worker."

The above again strongly indicates that the approval of the Ministry was in respect of the absorption/appointment of the 243 Trainees as general workers on contract following the policy initiated by the Council and the request of Pierre Louis to the Ministry. This is yet another importantpiece of evidence which throws much light on the conduct of the parties, and more particularly Pierre Louis,which was never considered by the learned Magistrates.

The learned Magistrates completely overlooked and ignored all those material facts enumerated above and which had a direct bearing upon the assessment of the credibility of Pierre Louis and in determining whether the charge had been proved against the appellant. They failed to take into account all these relevant considerations which seriously question their assessment of the credibility of Pierre Louis and their decision to rely on his testimony. They were thus clearly wrong when they concluded that:

(1) "*The incident concerning Docs. S and S1 does not in our view affect the credibility of the complainant*"; and

(2) "*the testimony of Boyramboli supports the evidence of the complainant*".

The learned Magistrates were in fact never alive to the question that Pierre Louis could have been conveniently trying to implement what he wanted to achieve as opposed to the policy decision of the Council headed by the appellant as Chief Commissioner. They overlooked the conduct of Pierre Louis in dealing with the recruitment issue in the light of the tense relationship which existed between the Chief Commissioner and Pierre Louis as Island Chief Executive. They also failed to make any distinction between the procedure which would be applicable for the recruitment of 250 general workers in accordance with the procedures prescribed by the PSC and the absorption of the 243 trainees on contract after they had already gone through the selection process described in Document R.

The Magistrates' assessment of the evidence and of the reliability of the testimony of Pierre Louis, who was the main witness for the prosecution, is thus seriously flawed by their

failure to take into account, or to give due consideration to, substantial and significant aspects of the evidence. To that extent, we consider that the reasons invoked by the appellant under grounds 7 and 10 to challenge the appreciation of the evidence of the Magistrates and their decision to rely upon the testimony of Pierre Louis, are well founded.

We shall now turn to grounds 3 and 8 which question the appreciation of the documentary evidence by the Magistrates. The learned Magistratesrelied on the documents which had been produced in choosing to accept the complainant's version that the appellant did in fact exercise pressure by means of threat upon Pierre Louis.

After raising the question *"why should the complainant be believed?" t*he learned Magistratesrelied heavily on the contents of a letter written by Pierre Louis himself on 9 November 2009 **[Doc. F]** in order to accept his version as complainant. The learned Magistrateswrote in that connection: "*The complainant's version in court is consistent with the letter dated 9th of November 2009 addressed by him to the Secretary to Cabinet and Head of the Civil Service*"and referred for that purpose to large extracts of the letter reproducing the complainant's version of his encounter with the appellant on 7 November 2009. This is patentlywrong in law as the previous statement of a witness is excluded as evidence of his consistency. The credibility of a witness may not be bolstered by evidence of a previous consistent or self-serving statement**[Roberts (1942) 1 All ER 187; Beattie (1989) 89 Cr App. R 302 at pp 306-7; and P (GR) (1998) Crim LR 663].** The learned Magistratesallowed themselves to be influenced by such inadmissible evidence in the course of their assessment of complainant's credibility on a crucial issue i.e whom to believe between the complainant and the appellant as to what actually took place and was said by the appellant in the course of their meeting on 7 November 2009.

The other documents to which the learned Magistratesmade reference in their judgment could barely be invoked to support the complainant's version as regardsthe alleged threats or pressure exercised by the appellant on 7 November 2009. These documents [Docs. H, Z and AC] came into existence much later after 7 November 2009 and do not throw any light on the incident of 7 November 2009 which constitutes the subject matter of the charge against the appellant. Doc. H is a letter which is dated 22 November 2009by virtue of which the Chief Commissioner instructed Pierre Louis to put an end to the recruitment procedure. Doc. Z is a memorandum which is dated 16 December 2009, in which the appellant again wrote to Pierre

Louis, in his official capacity as Chief Commissioner, directing him not to send any letter or communication emanating from the Chief Commissioner's Office without his prior vetting. Doc. AC which is dated 23 November 2009 is the complaint made by the appellant to the Prime Minister against Pierre Louis asking for his revocation. It is beyond dispute that subsequent to the 7 November 2009, the relationship between the appellant and Pierre Louis had seriously deteriorated whichwould explain the reaction of the appellant, in his capacity as Chief Commissioner, who had grown highly suspicious of Pierre Louis as the officer who was in charge of all administrative matters in his office. These documents did not bear evidence of such intrinsic value on the basis of which the trial Court could proceed to conclude that Pierre Louis was telling the truth with regard to the incident which took place in the appellant's office on 7 November 2009.

The learned Magistrates erred in reading into the contents of these documents facts which could establish the proof of the exercise of undue pressure by means of threats by the appellant on 7 November 2009 as alleged by Pierre Louis. Grounds 3 and 8 are therefore well taken in that the learned Magistrates could not upon the basis of these documents proceed to accept as true the version of Pierre Louis in order to convict the appellant.

Ground 2 deals with the issue of burden and standard of proof. In the judgment, the learned Magistrates proceeded first and foremost by assessing the credibility of the appellant and in concluding that his version could not be believedbefore turning to assess the credibility ofPierre Louis who was the main witness for the prosecution and before considering the other evidence relied upon by the prosecution. It was argued under this ground that it was incumbent upon the learned Magistrates to assess in the first place whether the prosecution had discharged its burden of proving all the elements of the charge against the appellant before turning to the version of the appellant. The Magistrates erred in proceeding to decide which version was more convincing after first considering and rejecting the version of the appellant. Such an approach may well leave the impression that the burden was on the appellant to disprove his guilt. It was also submitted that by making a final determination of the evidence of the appellant at the very start of their analysis of the evidence, the minds of the learned Magistrateswere already poisoned from the outset by their finding that the appellant was not a credible witness and this was a fact which unduly influenced the Magistrates in deciding to give credence to the version of Pierre Louis. Since the learned Magistrates were confronted with two contradicting versions, it was incumbent upon them in the course of a criminal trial to determine

first whether the prosecution had discharged its burden of proving all the elements of the charge.

There is no hard and fast rule as to the order in which the Magistrates ought to have proceeded in their analysis of the evidence so long as the judgment read as a whole does not reveal any violation of the constitutional rulethat the burden of proving all elements of the criminal charge lies on the prosecution. We are unable to say that this rule has been observed in the present matter. There is much force in the argument that by the manner in which the Magistrates proceeded, they left the strong impression that they decided to determine first whether the appellant was telling the truth and his version ought to be accepted before turning to the prosecution's version.It is not unreasonable to assume that they proceeded to analyse the evidence and decide the factual issues against the appellant without observing strictly the rule that the onus of establishing a criminal offence lies on the prosecution. This is, in our view, an additional reason why this appeal should succeed.

The remaining grounds of appeal also challenge the appreciation of the evidence by the learned Magistrates.

Ground5 challenges the appreciation of the evidence in relation to the testimony of the defence witnesses, particularly witness Raffaut and witness Cheong. The Magistrates failed to give due weight to the testimony of witness Raffaut, who was the confidential secretary of the appellant. She had confirmed in Court that on 6 November 2009 Pierre Louis had informed her that he had already destroyed the first letter from the Ministry dated 4 November 2009 **[Doc. S1]** and that as a result the letter was never traced and recorded on file.Witness Cheong, on the other hand, drew attention to the material omissions in the recording of the notes of meeting for which Pierre Louis was responsible **[Docs. AK and AL].**She had testified to the effect that Pierre Louis had omitted to mention in the notes of meeting of 26 November 2009 that the appellant had on 6 November 2009 requested Pierre Louis to come and see him with the second letter which was being expected from the Ministry [Doc. S].

Ground 6 raises the issue that the learned Magistrates misapprehended the evidence adduced by the defence to the effect that Pierre Louis was bent upon thwarting the implementation of policy decisions in order to create trouble for the appellant in view of the latter's intention to request a stay of the appointment of Pierre Louis as Departmental Head in a substantive capacity.

Ground 9 raises the issue that the learned Magistrates failed to give due weight and consideration to the fact that the complainant's contract was terminated following the complaint made against him by the appellant on 23 November 2009. The complainant therefore had a grudge against the appellant as he proceeded to report him to ICAC soon thereafter on 26 November 2009. The learned Magistrates have failed to address the issue that complainant had a purpose of his own to serve. The judgment in fact makes no reference to the tense relationship which existed between the appellant and Pierre Louis at the material time and the fact that Pierre Louis may have had an axe to grind against the appellant, the more so after the appellant had reported him to the Prime Minister on 23 November with a request for his revocation.

We consider that the analysis and appreciation of the evidence by the learned Magistrates are so seriously flawed that their conclusive finding that the charge against the appellant had been proved beyond reasonable doubt is highly questionable. They either overlooked or failed to give any, or due consideration, to the various salient features of the evidence which have been alluded to earlier and which constituted vital relevant considerations for the determination of the credibility of Pierre Louis. They further misconstrued the documentary evidence upon which they wrongly relied in order to accept the version of Pierre Louis and reject the testimony of the appellant. They utterly failed to take into account the constitutional and legal context within which both the appellant and Pierre Louis were exercising their functions and powers in particular with regard to the implementation of the policy decision of the Council to recruit the 243 trainees as general workers. A review of the evidence in the light of the grounds of appeal indicate that the prosecution's case is tainted throughout with highly disturbing features of such a nature and degree that it would be totally unsafe to maintaina criminal conviction against the appellant for the charge of exercising pressure by means of threat upon a public official in the execution of his dutiesin breach of section 9 of the Act.

We accordingly allow the appeal and quash the conviction against the appellant.

A.Caunhye

Judge

J.Benjamin G. Marie Joseph

Judge

26 January 2016

Judgment delivered by Hon. A. Caunhye

For Appellant	**:**	**MrAttorney P. Rangasamy** **Mr. G. Glover, SC, together with** **Mr C. Baboolall, of Counsel and Miss D.C. Samy, of Counsel;**
For Respondent No. 1:		**State. Attorney** **State Counsel**
For Respondent No. 2:		**Mr Attorney S. Sohawon** **Mr K. Goburdhun, of Counsel**