Police v Gooljaury

2016 INT 183

IN THE INTERMEDIATE COURT OF MAURITIUS

Cause No: 362\2016

POLICE

V/S

DOOMESHWARSING GOOLJAURY

Sentence

Accused stands convicted with the offence of effecting public mischief in breach of section 298 of the Criminal Code Act.

Part I: Mitigating Factors

I wish to highlight a number of mitigating factors in favour of the accused party which are as follows:

(a) **Personal circumstances of Accused**

CI Rughoonundun explained that the accused came by himself to give a statement in 2015 stating that he will reveal the whole truth in relation to an incident which happened in 2011.

The accused deposed under solemn affirmation. He explained that in his first statement in 2011, he said that he was in the bungalow of the former Prime Minister (hereinafter referred to as "PM") when robbers attacked him and he had to give Rs 20,000. In his four subsequent statements, he related that his first statement was not correct. His version was that when he gave his first statement he was a close friend to the PM for twelve years. He had already left the bungalow of the PM after a party when he was called anew. He found that the PM was injured at his chest and Mrs Sornack had been there also. Five minutes later DCP Jokhoo came and ten minutes

later DCP Sooroojbally arrived. The PM related that a robber had attacked both of them in their bedroom. Mr Jokhoo and Mr Sooroojbally advised him not to report the matter to the police. The PM insisted to have the matter reported and told him to do so in the presence of the two DCPs' who also pressurised him. He lived with a guilty conscience for four years and he gave his second statement voluntarily. He spoke the truth in his second statement and reported the matter when the PM lost power. He affirmed that he had cooperated with the police and would continue to do so.

He added that he is married with two children. His old mother is under his responsibility. He highlighted that he is a businessman and employed 500 persons. He tendered his apologies to the Court and promised not to commit such offences anew.

The defence also called Mr Praveen Aggarwal who deposed to the effect that he had known accused for 6 years and is employed by him. He depicted accused as a tough boss but one who takes pride in his team. He expatiated that accused is the backbone of his business of 500 employees and is very committed to his business. He also portrayed the accused as a gentle and kind human being.

(b) **Guilty Plea of the accused**

One of the strong mitigating factors in favour of the accused party is his timely guilty plea. The time for determining the reduction for a guilty plea is the first reasonable opportunity for the accused to have indicated a willingness to plead guilty.

The guilty plea of an accused which was entered at the outset of the trial entitles him in a significant manner to a reduction in sentence vide **Tyack v State (2005) PRV 60.** In the case of **Goolfee v The State and anor (1996) SCJ 144**, it was held as follows:

"In light of the above observations, we are of the view that a plea of guilty should operate as a strong mitigating factor. It would be pointless for accused parties to plead guilty, thereby showing remorse, saving the time of the court and sparing witnesses the ordeal of testifying, if in spite of such a plea, they are to be visited with the maximum penalty that a court can inflict for the offence. ..".

I also bear in mind the Guideline 'Reduction in sentence for guilty plea' referred to in **Blackstone's Criminal Practice (2008)** and the analysis thereof of His Lordship Mr E. Balancy in the case of **State v Mootien and others (2009) SCJ 28.**

(c) **Clean Record of the Accused**

Accused has a clean record. As pointed as in the case of **Ameer v The State (2012) SCJ 366,** a clean record is a strong mitigating factor.

(d) **Accused's Willingness to Cooperate with the Police**

Accused deposed under solemn affirmation to the effect that he cooperated with the police and gave to the police some precise information. He undertook to cooperate also as witness in the upcoming case against the former Prime Minister and the two Deputy Commissioner of Police. He specified that he was not doing so for any personal gain. He, in fact, wished to reveal the truth as he had been feeling guilty and ashamed of himself for the past four years towards his wife and children.

Part II: Sentencing Powers of the Court in relation to the present case

(a) **The Law**

Accused stands charged with the offence of effecting public mischief in breach of section 298 of the Criminal Code which provides as follows:

'Any person who knowingly makes to a police officer a false statement in writing concerning an imaginary offence shall commit the offence of effecting a public mischief and shall be liable to imprisonment for a term not exceeding 2 years and to a fine not exceeding Rs 100,000'.

(b) **Seriousness of the Offence**

Learned counsel for the prosecution emphasised that the Court cannot overlook certain factors which should be taken into consideration namely that the present offence involved an alleged conspiracy involving a former Prime Minister and two high ranking police officers. He was instrumental for the realisation of such occurrence. Moreover, she specified that the cooperation of the accused was a belated one namely four years after that incident and the accused did not cooperate with the police in as much as he did not identify the alleged aggressor though initially he stated he could do so.

I have duly considered the circumstances of the present case. PS Bhujun explained that following the second statement of the accused, three persons were arrested namely the former Prime Minister, DCP Jokhoo and DCP Sooroojbally. They have been formally charged for conspiracy to commit a crime and accused helped in uncovering a big plot.

However, this Court takes a serious view of the offence committed by the accused. He depicted himself as being a close friend of the then Prime Minister and he bowed

down in a subservient manner to his pressure by giving a false statement to the police to help his friend out. Subsequently, he had a sudden change of heart and outpour of remorse which made him reveal the truth so as to free himself from a guilty conscience. It is to be noted that it took him no less than four years for him to come on his own volition to report the false statement which led inevitably to the former Prime Minister and two DCP's being formally charged with the crime of conspiracy and this notably after the change in Government. The accused was fully conscious of the consequences of his second statement which he gave in order to clear his conscience. I wish to observe that the accused admitted that he took the police for a ride and was part and parcel of the alleged conspiracy between the former Prime Minister and the two high ranking police officials.

Consequently, the gravity of the offence committed by the accused cannot be overlooked. In so doing he deliberately lost the time and resources of the police and public funds. In the case of **DPP v Savariacooty (2012) SCJ 100**, the learned Judges of the Supreme Court observed:

"*The characteristic feature of the offence of public mischief is whether the investigating authorities following the false statement made to them in writing, deployed public resources which could have been put to better use. On this aspect there is ample evidence. …..By her statement given to the police, the respondent took the Police for a ride following which they were bound to deploy public resources in sheer futility investigating her false allegations, following false clues. Police could have been put to better use. That is not all, Members of the public were put to suspicion, arrest and detention before release."*

In the present case, PS Bhujun explained that following the first statement of the accused an examination of spot was effected by the police, several suspects were arrested during the enquiry and police had to obtain search warrants to effect searches at the places of suspects. No prosecution was instituted against any of them. As such in the present case, it is noteworthy that public resources were deployed to investigate into the false statement of the accused who was not in a position to identify any suspect.

A false statement given by the accused in 2011 in what was allegedly a simple case of robbery had now led to the dire consequence of having three persons arrested in 2015. This Court cannot but take a serious view of the offence committed by the accused.

(c) **Submissions of the Prosecution in support of a Custodial Sentence**

Learned counsel for the prosecution has submitted that a short sharp shock was required in the present case. In support of inflicting a custodial sentence she relied upon the cases of **Waleed Damree v The State (2011) SCJ 212**, where for the offence of effecting public mischief the appellant was sentenced to undergo four months imprisonment in spite of the guilty plea, clean record and young age of the appellant. The Appellate Court held that the four months imprisonment was fully warranted. In the case of **DPP v Rungoo (2013) SCJ 29**, the sentence of the appellant was reduced from 2 years imprisonment to one year imprisonment which was the maximum sentence provided by law for the offence of effecting public mischief. The false statement was to the effect that one Hurchurn handed over to the appellant five forged prescription forms against the payment of Rs 150 following which Hurchurn was arrested and kept in custody for 5 weeks.

(d) **Alternatives to Custodial Sentence**

However, in passing sentence this Court has also to take into account the mitigating factors laid out above namely the timely guilty plea of the accused and his personal circumstances. Moreover, accused is a first offender who had shown remorse and willingness towards rehabilitation so that in the circumstances this Court finds that an alternative to custody ought to be considered which would be more appropriate and would met the ends of justice.

The following passage from "**Young Offenders, Law, Policy and Practice" by C. Ball, K. Mc Cormac and N. Stone (London, Sweet & Maxwell 1995),** at p. 106 paragraph 9- 005, sets out clearly, with quotations from the Home office publication **"Crime, Justice and Protecting the Public" (Home Office 1990),** why alternatives to custody are often desirable, especially in the case of young offenders:

"The deprivation of liberty through a custodial sentence is the most severe penalty available to the courts and the proper punishment for the most serious crimes" (Home Office, 1990, para. 2.11). …".

Furthermore, conditional discharge, as suggested by learned counsel for the accused, does not appear to this Court to be an appropriate sentence in the present case. **As Christopher J. Emmins points out in "A practical approach to sentencing" (1985)** at page 228 paragraph 15.1.1. :

"It is not appropriate to conditionally discharge an offender who has committed a serious or fairly serious offence. To do so would appear to excuse criminal conduct which, whatever the mitigation, cannot be excused. [….] The prime use of conditional discharges is in respect of minor instances of 'real' crime, especially where the offender is of good or relatively good character. …..'

As in England, legislation in Mauritius provides that conditional discharge may be used as a non-punitive sentence. Section 197 of our Criminal Procedure Act provides for this sentence where the Court "*thinks that having regard –*

(a) *to the character, antecedents, age, health or mental condition of the person;*

(b) *to the trivial nature of the offence; or*

(c) *to the extenuating circumstances under which the offence was committed;*

(d) *it is inexpedient to inflict punishment and that a probation order is not appropriate*."

(The underlining is mine)

This Court does not find the present offence to be of a trivial nature which would require a non-punitive sentence. Nor would a heavy fine meet the ends of justice in the present case,

On the other hand, a Community Service Order contains a punitive element in that the offender is deprived of his leisure time, but on the other hand it avoids the harsh effects of a prison sentence vide **Jhugroop v The State (2008) SCJ 1997**. As pointed out by **Emmins, op. cit. at page 237, paragraph 16.1.5 :**

"Community service orders are used as an alternative to a custodial sentence in cases where, if an order could not be made, a short or even medium term of imprisonment etc. would be justified […] The second use of community service is where the nature of the offence and the character of the offender do not justify a custodial sentence but a fine is inappropriate (e.g. because the offender is impecunious). […] The great advantage of community service as a sentence is that it genuinely punishes an offender, because pending a series of Saturdays or weekday evenings working for nothing is something which only the very altruistic could willingly do. On the other hand, it does not deprive him of his liberty with all the consequent cost to society of keeping him locked up and perhaps, supporting his dependants while he is locked up. Indeed, society even benefits from the work done under community service schemes – in a very real sense, the offender pays back his debt to society."

Conclusion

Bearing in mind the cases of **Damree** (supra) where four months imprisonment was upheld by the Appellate Court and **Rungoo** (supra) where the sentence of imprisonment was reduced from two years to one year by the Appellate Court**,** I therefore sentence the accused to undergo three months imprisonment.

However, taking into account all the mitigating factors in favour of the accused, I am of the view that Community Service Order should be contemplated as an alternative sentence. The sentence of imprisonment is therefore suspended pending Social

Enquiry Report on behalf of the accused as regards whether he might benefit from a Community Service Order requiring him to perform unpaid work in the open for a specified period. He has to pay Rs 500 as costs.

Sentence delivered on: 18 April 2016
Sentence delivered by

R.D. Dabee
President, Intermediate Court (Criminal Division).