

PP v. NGUYEN VAN THIN

HIGH COURT SABAH & SARAWAK, BINTULU
LEE HENG CHEONG J
[CRIMINAL APPEAL NO: BTU-42LB-2-8-2017]
12 JANUARY 2018

CRIMINAL PROCEDURE: *Appeal – Appeal against discharge and acquittal – Appeal by prosecution – Bribe – Accused allegedly handed cash to enforcement officer during inspection of vessel – Accused charged for corruptly giving gratification to enforcement officer as inducement to forbear legal action against him – Accused discharged and acquitted by Sessions Court – Whether prima facie case established – Whether consent to prosecute proper and valid – Whether prosecution established prima facie case against accused – Malaysia Anti-Corruption Commission Act 2009, s. 17(b)*

CRIMINAL LAW: *Corruption – Bribe – Accused allegedly handed cash to enforcement officer during inspection of vessel – Accused charged for corruptly giving gratification to enforcement officer as inducement to forbear legal action against him – Whether gratification offered, paid or given to or received by receiver – Whether receiver in employment of public body at time of offer, payment, gift or receipt – Whether gratification paid or given or offered corruptly as inducement for doing act in relation to affairs of public body – Whether accused breached any Malaysian law – Malaysia Anti-Corruption Commission Act 2009, s. 17(b)*

During an operation in Malaysian waters, the team from The Malaysian Maritime Enforcement Agency, headed by Lieutenant Mohd Zahir ('PW3'), had stopped a vessel known as 'One United 15' ('the vessel') and carried out an inspection on the same. They met the respondent and when asked to produce the relevant documents for the vessel and the crew, the respondent handed over a file containing, *inter alia*, RM1,500. As PW3 was checking the notes, the respondent kept nodding his head. On the same day, when PW3 and one Laskar Kanan Mohammad Takdir Ramadhani ('PW4') were with the respondent in a room, the respondent pointed to a cabinet. PW4 checked what was in the cabinet and discovered another RM1,500. Again, the respondent responded by nodding his head. PW3 then lodged a report to the police and the Malaysian Anti-Corruption Commission ('MACC') regarding the incident and handed over the RM3,000 cash recovered from the respondent to the MACC officer. The respondent was subsequently charged at the Sessions Court under s. 17(b) of the Malaysia Anti-Corruption Commission Act 2009 ('the Act') for two charges of corruptly giving gratification to PW3 as an inducement for PW3 to forbear from taking legal action against the respondent who allegedly committed an offence under s. 8(a) of the Fisheries Act 1985 ('the FA') and s. 6(1)(c) of the Immigration

- A Act 1959/63 ('the IA'). However, the respondent was discharged and acquitted by the Sessions Court Judge, of both offences at the close of the prosecution's case, on the ground that a *prima facie* case was not established. Hence, the present appeal by the prosecution. The issues that arose for the court's adjudication were (i) whether the two consents to prosecute, exhs. B and C respectively, were proper and valid; (ii) whether prosecution proved a *prima facie* case against the respondent, namely (a) whether a gratification was offered, paid or given to or received by the receiver; (b) whether at the time of the offer, payment, gift or receipt, the receiver was in the employment of a public body; and (c) whether the gratification was paid or given or offered corruptly as an inducement for doing an act in relation to the affairs of that public body; and (iii) whether the presumption under s. 50(1) of the Act could be invoked.

Held (affirming order of Sessions Court; discharging and acquitting respondent):

- D (1) The particulars in the first charge and exh. B were almost the same except that there was an insertion of '1pm' in exh. B. The difference between the second charge and exh. C was the position of the vessel. The particulars sufficiently showed the prosecution's intention to prefer the two charges against the respondent as per the charges, respectively. Such minor and immaterial differences in exhs. B and C were minor and immaterial irregularities which did not occasion any miscarriage of justice to the respondent. They were curable under s. 422 of the Criminal Procedure Code. (paras 14, 15 & 17)
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- F (2) To prove the charges under s. 17(b) of the Act against the respondent, the prosecution must prove that (i) a gratification was offered, paid or given to or received by the receiver ('the first ingredient'); (ii) at the time of the offer, payment, gift or receipt, the receiver was in the employment of a public body ('the second ingredient'); and (iii) the gratification was paid or given or offers corruptly as an inducement for doing an act in relation to the affairs of that public body ('the third ingredient'). The prosecution failed to prove a *prima facie* case against the respondent in respect of the two charges. (paras 20 & 43)
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- H (3) The prosecution contended that the respondent was nodding his head as a signal for PW3 to take the total sum of RM3,000 as a bribe. However, such non-verbal gesture was capable of a number of interpretations and did not necessarily mean that the respondent was indicating to PW3 to take the monies as bribes. Any favourable interpretation should be drawn in favour of the respondent. The mere handing over of the file containing, *inter alia*, RM1,500 accompanied with a nodding of the head did not constitute an offering of a bribe to PW3. The RM1,500 could
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have been kept inside the file for safe-keeping along with the other documents. The prosecution failed to prove the first ingredient of the offences preferred against the respondent. (paras 25, 26, 31 & 33)

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- (4) The second ingredient was not disputed and was proven by way of testimonies and exhibits. Furthermore, the respondent never disputed this issue. (para 34)

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- (5) The prosecution failed to show that the respondent had offered or given the alleged bribe monies totalling to RM3,000, for not taking any action against the respondent and his crew and vessel, for allegedly having committed an offence under s. 8(a) of the FA and s. 6(1)(c) of the IA. There was also no clear evidence to show that the respondent, his crew and the vessel had breached any laws of Malaysia, in particular under the FA or under the IA, as contended by PW3. In fact, the 21 crew members had been released as they have not committed any offences. There were no charges preferred against the respondent and this showed that no offences were committed by the respondent. No gratification was paid or given or offered corruptly as an inducement for doing an act in relation to the affairs of that public body. (paras 36-39)

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- (6) Since the prosecution failed to prove that the respondent offered or paid any bribes to PW3 and no gratification was paid or given or offered corruptly as an inducement for doing an act in relation to the affairs of that public body, the presumption under s. 50 of the Act was not triggered. (para 42)

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Case(s) referred to:

Balachandran v. PP [2005] 1 CLJ 85 FC (*refd*)

Manimaran Amas v. PP & Other Cases [2014] 1 LNS 1412 CA (*refd*)

PP v. Yuvaraj [1968] 1 LNS 116 PC (*refd*)

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Legislation referred to:

Criminal Procedure Code, s. 422

Fisheries Act 1985, s. 8(a)

Immigration Act 1959/63, s. 6(1)(c)

Malaysian Anti-Corruption Commission Act 2009, ss. 17(b), 24(1), 50, 58

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For the prosecution - Low Chin How; DPP

For the respondent - Eric Lau; M/s David Allan Sagah & Teng Advocs

[Editor's note: Appeal from Sessions Court, Bintulu; Criminal Case No: BTU-62R-3/7-2017 (*affirmed*).]

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Reported by Najib Tamby

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JUDGMENT**Lee Heng Cheong J:****Background**

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[1] The respondent was charged with two offences under s. 17(b) Malaysian Anti-Corruption Commission Act 2009 (Act 694) (“MACC Act 2009”) and punishable under s. 24 (1) of the same Act. The respondent was discharged and acquitted by the learned Sessions Court Judge, of both offences at the close of the prosecution’s case as the learned Sessions Court Judge ruled that a *prima facie* case was not made out.

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[2] The two charges preferred against the respondent are set out below.

The 1st Charge

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That you, on 18th June 2017, at about 0630 hrs, on the vessel named One United 15, at position 04 degree 13.470 minutes North, 113 degree 03.739 minutes East, in Malaysian Water, did corruptly give gratification of RM1,500.00 to an agent of the Government of Malaysia, *to wit*, Mohd Zahir Bin Mohamad Basri, Maritime Lieutenant attached to the Malaysian Maritime Enforcement Agency, Miri District 13, as an inducement forbearing to do an act in relation to your principals affairs, *to wit*, is to forbear from taking legal action against you, who allegedly has committed an offence under section 8(a) of the Fisheries Act 1985 (Act 317), and that you have thereby committed an offence under section 17(b) Malaysian Anti-Corruption Commission Act 2009 (Act 694) and punishable under Section 24(1) of the same Act.

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The 2nd Charge

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That you, on 18th June 2017, at about 1300hrs, on the vessel named One United 15, at position 03 degree 49.547 minutes North, 113 degree 03.626 minutes East, in Malaysian Water, did corruptly give gratification of RM1,500.00 to an agent of the Government of Malaysia, *to wit*, Mohd Zahir bin Mohamad Basri, Maritime Lieutenant attached to the Malaysian Maritime Enforcement Agency, Miri District 13, as an inducement forbearing to do an act in relation to your principals affairs, *to wit*, is to forbear from taking legal action against you, who allegedly has committed an offence under section 6(1)(c) Immigration Act 1959/63 (Act 155), and that you have thereby committed an offence under section 17(b) Malaysian Anti-Corruption Commission Act 2009 (Act 694) and punishable under Section 24(1) of the same Act.

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The Appellant/Prosecution’s Case

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[3] On 16 June 2017, Lt. Mohd Zahir bin Mohamad Basri (PW3) from the Malaysia Maritime Enforcement Agency testified that he and his team were carrying out an “Ops Permai 01/06” in Malaysian waters, together with, *inter alia*, Laskar Kanan Mohammad Takdir Ramadhani (PW4).

[4] At about 5.24am on 18 June 2017, PW3 and his team pursued a few vessels which were suspected of being involved in illegal activities. After about 30 minutes of chasing, PW3 and his team managed to stop one vessel namely "One United 15". PW3 together with PW4 aboard the said vessel to carry out the inspection and met "the Tekong" who is the respondent herein. When asked to produce the relevant documents for the vessel and his crew, the respondent handed over one transparent file folder to PW3. In the said file folder, PW3 saw some Malaysia banknotes kept inside together with passports of the respondent, crew, licence and some other documents.

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[5] The appellant contended that the respondent kept nodding his head when the PW3 examined the said file folder which PW3 construed as the respondent offering a bribe to PW3, by asking him to take the money. PW3 then took the Malaysia banknotes, counted them and they amounted to RM1,500 (all in RM100 notes). PW3 kept the money in the said file folder which was with him all the time.

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[6] On the same day, at about 1pm, when PW3, PW4 and the respondent were at the Tekong's room, the respondent pointed to a cabinet behind him. PW3 then instructed PW4 to check what was in the cabinet that was being pointed out by the respondent. PW4 conducted a check and found out there were some money (all in RM100 notes) kept in the cabinet. PW4 then took out the money and showed it to PW3.

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[7] The respondent then responded by nodding his head, purportedly signaling to PW3, to take the said money but PW3 refused and warned him. The respondent kept on giving the same head signal to PW3 who then counted the money, which amounted to RM1,500. PW3 then made a police report and a MACC report regarding the incident and handed over RM3,000 which is the subject matter of the two charges herein, and which he had recovered from the respondent, to the MACC officer.

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Consideration Of The Appeal

Whether The Two Consents To Prosecute (Exhibits B And C Respectively) Are Proper And Valid

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[8] Section 58 of Malaysian Anti-Corruption Commission 2009 reads as follows:

A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Public Prosecutor.

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[9] In the present appeal, the appellant tendered two consents to prosecute namely (exhs. P(B) & P(C) respectively) pertaining to the first and second charges preferred against the respondent. Lines 9 to 12 of the two consents to prosecute (exhs. P(B) & P(C)) read as follows:

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- A ... committed on the 18th June 2017, at 6.30am and 1pm, on the vessel named One United 15, at position 04 degree 13.4.70 minutes North, 113 degree 03.739 minutes East, in Malaysia Water, in the State of Sarawak.
- B [10] As regards the first charge, the offence was allegedly committed by the respondent at the following co-ordinates namely, 04 degree 13.470 minutes North, 113 degree 03.739 minutes East. This was also confirmed by PW3 in his witness statement and also in his police report marked as exh. P3. However, the relevant consent to prosecute showed that the offence as stated in the first charge was committed "... at position 04 degree 13.4.70 minutes North, 113 degree 03.739 minutes East."
- C [11] In respect of the second charge, the appellant's consent to prosecute (exh. P(C)) at lines 9 to 12 read as follows: "... committed on 18 June 2017, at 6.30am and 1pm, on the vessel named One United 15, at position 04 degree 13.4.70 minutes North, 113 degree 03.739 minutes East, in Malaysia Water, in the State of Sarawak."
- D [12] For the second charge, the offence was allegedly committed when the vessel was at the following co-ordinates namely, 03 degree 49.541 minutes North, 113 degree 03.626 minutes East, in Malaysian waters at about 1pm. This was also stated in the evidence of PW3 that the fishing vessel was at the above said coordinates when the respondent allegedly offered the money
- E which is the subject matter of the second charge to PW3.
- F [13] In the light of the above, the respondent contended that there was nothing in the appellant's consent to prosecute (exh. P(C)) to such effect as the relevant consent to prosecute merely showed that the offence under s. 17(b) of the MACC Act 2009 was committed by the respondent at the following coordinates: "... committed on 18 June 2017, at 6.30am and 1pm, on the vessel named One United 15, at position 04 degree 13.4.70 minutes North, 113 degree 03.739 minutes East, in Malaysia Water, in the State of Sarawak."
- G [14] Having perused the first charge and with cross-reference to the first consent to prosecute (exh. P(B)), this court finds that the particulars are almost the same except that there is an insertion of "1pm" in the said first consent to prosecute (exh. P(B)).
- H [15] A perusal of the second charge and with cross-reference to the second consent to prosecute (exh. P(C)), revealed that the difference is in the position of the vessel "One United 15" at Malaysia waters where the bribe given by the respondent to PW3.

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[16] In the light of the above, this court finds that such differences in the particulars in the two consents to prosecute, are minor, not material and do not occasion any miscarriage of justice to the respondent in respect of both charges, as the first consent to prosecute (exh. P(B)) and the second consent to prosecute (exh. P(C)) stated that both incidents occurred at two different times and in Malaysia waters respectively.

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[17] There is no miscarriage of justice, with the omission of the position of the coordinates of the vessel "One United 15" at Malaysia waters, as long as the date, time, offence, the name of the respondent and that the offence occurred in Malaysia waters are stated. These particulars sufficiently showed the Public Prosecutor's intention to prefer the two charges against the respondent as per the charges respectively. Further, the respondent was represented by learned counsel since the beginning of the trial till this present appeal and the issue of the consents to prosecute is never raised by the respondent at any stage. In the light of the above findings, this court finds such minor and immaterial differences in both "consent to prosecute" are mere irregularities which are curable under s. 422 of the Criminal Procedure Code because they do not occasion any miscarriage of justice to the respondent in respect of both charges.

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[18] Guidance can be found in *Manimaran Amas v. PP & Other Cases* [2014] 1 LNS 1412; [2015] 1 MLJ 18, where the Court of Appeal held as follows:

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Learned counsel for the second appellant had also submitted on the issue of consent of the public prosecutor under s. 177A(1) of the Criminal Procedure Code (exh. P1) which was argued to be defective, resulting in the charge being defective as well.

The consent speaks of consent to prosecute the appellants 'bersama tiga orang lagi yang masih bebas' for the offence under s. 302, but the charge itself is absent of those words. And although the name of the deceased was stated in the charge, it was not stated in the consent. We found no merits in the issues raised by learned counsel, which merely concerned the inconsistencies between the consent and the charge. In our view, the inconsistencies had not occasioned any injustice to the appellants and could be cured under s. 422 of the Criminal Procedure Code. (emphasis added)

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Whether The Prosecution Has Proven A Prima Facie Case Against The Respondent
The Relevant Law

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[19] Section 17(b) of the MACC Act 2009 provides as follows:

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A A person commits an offence if:

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(b) he corruptly gives or agrees to give or offers any gratification to any agent as an inducement or a reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

Ingredients Of The Offence

C [20] To prove the charges under s. 17(b) of the Malaysian Anti-Corruption Commission Act 2009 against the respondent, the appellant must prove the following essential ingredients:

- (i) That a gratification was offered, paid or given to or received by the receiver;
- D (ii) That at the time of the offers, payment, gift or receipt, the receiver was in the employment of a public body; and
- (iii) That the gratification was paid or given or offers corruptly as an inducement for doing an act in relation to the affairs of that public body.

E *Whether A Gratification Was Offered, Paid Or Given To Or Received By The Receiver*

[21] In the present appeal, PW3 testified that after he pursued and then boarded the respondent's vessel on 18 June 2017 at 6.10am, he asked the respondent to surrender all relevant documents to him such as licences and others. The respondent then handed one transparent file folder containing personal belongings, all passports, licences and money. Inside the said file folder, PW3 saw Malaysia banknotes in denominations of RM50, amounting to RM1,500, after being counted by PW3.

G [22] PW3 also testified that while he was holding the file folder, PW3 asked the respondent who is the captain of the fishing vessel why there is money inside the file folder. PW3 testified that the respondent did not answer him except nodding his head upwards and PW3 testified that in his understanding, the respondent wanted to bribe him so that PW3 will not to take action against his vessel which might have committed certain offences.

H [23] PW3 testified that later on, at 1pm on the same day, the respondent showed him, one cabinet by using the respondent's right hand to point at the cabinet. PW3 then directed PW4 to open the said cabinet and inside the said cabinet, PW3 found an amount of money in a denomination of RM100 notes. PW4 took the said money and showed to PW3. PW3 then showed the said money to the respondent and asked the respondent, what was the money

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for. According to PW3, the respondent was again nodding his head and PW3 interpreted this action of the respondent, as asking the PW3, to take the said money.

[24] PW3 also testified that he warned the respondent, that his action of trying to give money to PW3, is an offence in the English language. However, PW3 said that the respondent still nodding his head as a sign to PW3, to take the money. PW3 then asked PW4 to count the money which amounted to RM1,500.

[25] The pertinent issue is whether the respondent had corruptly offered, paid or give to PW3, the monies which are the subject matters of the two charges, as a gratification for not taking any legal action against him, the crew and his vessel. In the present appeal, there were two instances of purported acts of bribery, firstly when the respondent in response to PW3's request, handed a transparent file folder containing the vessel's licence, passports of the crew and RM1,500 and secondly when the respondent some six hours later after the first purported act of bribery, pointed to a cabinet where PW4 found RM1,500. In both purported acts of bribery, the appellant contended that the respondent was nodding his head upwards as signal for PW3 to take the total sum of RM3,000 as bribes. PW3 construed the nodding of the respondent's head as a signal for PW3, to take the money as bribes.

[26] This court finds that such non-verbal gestures of the nodding of the respondent's head at the said two occasions are capable of a number of interpretations and do not necessarily mean that the respondent was indicating to PW3 to take the monies on the two occasions as bribes. Any favourable interpretation should be drawn in favour of the respondent who is the accused in this appeal.

[27] It is undisputed both PW3 and the respondent could not communicate with each other at all as the respondent is a Vietnamese and only can communicate in Vietnam language and not in the English language and PW3 on the other hand agreed that he could not speak the Vietnamese language.

[28] PW3 testified that upon his request, the respondent handed the transparent file folder which contained all personal belongings, all passports of the crew, licences and cash money of RM1,500. When the respondent handed the transparent file folder to PW3, the said sum of RM1,500 was already inside the said transparent file folder.

[29] PW3 alleged that he asked the respondent in the English language as to why there was money inside the said transparent file folder and also the money inside the cabinet. On both occasions, PW3 testified that he warned the respondent that it is an offence by trying to give money/bribe to PW3 in the English language.

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A [30] Since the respondent could not understand the English language, thus, it is perfectly reasonable to assume that the respondent could understand what PW3 had asked or warned him about. This is substantiated by the testimony of PW3 who agreed that the respondent simply could not understand what the maritime officers were talking to him.

B [31] This court finds that the mere handing over of the transparent file folder containing all personal belongings, all passports of the crew, licences and cash money of RM1,500 accompanied with a nodding of the head do not
C *per se* constitute an offering of a bribe to PW3. The RM1,500 could have been kept inside the said file folder for safe keeping along with the other documents. It would be a dangerous precedent to set that mere handing over a file folder containing all personal belongings, all passports of the crew, licences and cash money of RM1,500 accompanied with a nodding of the head *per se* constituted an offering of a bribe. There has to be more.

D [32] This court is in agreement with the learned Sessions Court Judge's finding that PW3 merely assumed that the respondent tried to bribe him on both occasions with the money when PW3 said that the respondent was merely nodding his head upwards when PW3 asked about the money was for what purpose, whereby, PW3 concluded that the respondent was trying to bribe him on both occasions.

E [33] In the light of this court's above-findings, this court finds that the prosecution has failed to prove the first ingredient of the offences preferred against the respondent.

F *Whether At The Time Of The Offer, Payment, Gift Or Receipt, The Receiver Was In The Employment Of A Public Body*

G [34] This court finds that this ingredient is not disputed and is proven. Exhibit P1, ie: "Perakuan Jawatan and the service record of PW3, Mohd Zahir bin Mohamad Basri" showed that he was Lieutenant of the Agensi Penguatkuasaan MARITIM Malaysia, Sarawak at that material time. The
H testimony of PW1 (Suhardi bin Manjeli – Timbalan Pengarah Pengurusan of the Agensi Penguatkuasaan MARITIM Malaysia, Miri, Sarawak) and PW2 (Mohd Nor Saifuddin bin Jamaluddin – a Lieutenant of the Agensi Penguatkuasaan MARITIM Malaysia, Miri, Sarawak) as well as the PW4 (Mohammad Takdir Ramadhani bin Abdul Ghani – Lascar of the Agensi Penguatkuasaan MARITIM Malaysia, Miri, Sarawak) also confirmed that PW3 is their colleague at that material time. Furthermore, the respondent never disputed this issue.

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Whether The Gratification Was Paid Or Given Or Offered Corruptly As An Inducement For Doing An Act In Relation To The Affairs Of That Public Body

[35] The appellant contended that since the three elements of the offence are proven, the presumption under s. 50 of MACC 2009 is thus triggered against the respondent. The testimonies of PW3 and PW4 have confirmed that the respondent gave RM1,500 to PW3, to refrain from taking action against the respondent who allegedly committed an offence under s. 8(a) of the Fisheries Act 1985 for the first charge and the respondent also gave RM1,500 to PW3, to refrain from taking action against the respondent who allegedly committed an offence under s. 6(1)(c) of the Immigration Act 1959/63 for the second charge.

[36] In the present appeal, this court found that the appellant had failed to show that the respondent had offered or given the alleged bribe monies totaling RM3,000 ie, RM1,500 for each of the charges preferred against the respondent, for not taking any action against the respondent together with his crews and vessel, for allegedly having committed an offence under the s. 8(a) of the Fisheries Act 1985 and s. 6(1)(c) of the Immigration Act, respectively.

[37] Further, there was no clear evidence to show that the respondent, his crew and the vessel had breached any laws of Malaysia in particular under the Fisheries Act 1985 or under s. 6(1)(c) of the Immigration Act 1959/63 as contended by PW3. This is substantiated by PW2, the investigating officer of the case from the Malaysian Maritime Enforcement Agency who confirmed that all of the 21 crews had been released as they have not committed any offences under the Fisheries Act 1985, Immigration Act 1959/63 and Merchant Shipping Ordinance 1952.

[38] The fact that even though investigation papers opened for investigation under s. 8(a) of the Fisheries Act 1985, for alleged illegal fishing without licence when the licence for this vessel is meant for cargo instead of fishing activity and under s. 6(1)(c) of the Immigration Act 1959/63, for alleged illegal entry into Malaysia without valid identification document. There were no charges preferred against the respondent and this showed that no offences were committed by the respondent thus there was no necessity for the respondent to offer any bribes to PW3.

[39] In the light of this court's above-findings, this court finds that no gratification was paid or given or offered corruptly as an inducement for doing an act in relation to the affairs of that public body as the respondent did not commit any offence. Thus, there was no necessity for the respondent to offer any bribes.

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- A *Whether The Presumption Under s. 50(1) Of The Malaysian Anti-Corruption Commission Act 2009 Can Be Invoked*

B [40] The appellant contended that since the three elements of the offence preferred are proven, the presumption under s. 50 of MACC 2009 is thus triggered against the respondent. The testimonies of PW3 and PW4 confirmed that the respondent gave RM1,500 to PW3, to refrain from taking action against the respondent who allegedly committed an offence under s. 8(a) of the Fisheries Act 1985 for the first charge and another RM1,500 to PW3, to refrain from taking action against the respondent who allegedly committed an offence under s. 6(1)(c) of the Immigration Act 1959/63 for the second charge.

C [41] In *PP v. Yuvaraj* [1968] 1 LNS 116; [1969] 2 MLJ 89 at p 90, the court held, *inter alia*, as follows:

D Where a defendant is charged with an offence under s. 4(a) of the Prevention of Corruption Act 1961, to which s. 14 also applied, the onus lies upon the prosecution to prove the first two factual ingredients of the offence, *viz* (1) that a gratification was paid or given to or received by the defendant and (2) that at the same time of the payment, gift or receipt he was in the employment of a public body. Upon proof of these two ingredients the existence of the third ingredient, *viz* (3) that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs of that public body, is to be presumed unless the contrary is proved.

E [42] In the light of this court's above-findings that the appellant failed to prove that the respondent offered or paid any bribes to PW3 and no gratification was paid or given or offered corruptly as an inducement for doing an act in relation to the affairs of that public body, this court holds that the presumption under s. 50 of MACC 2009 is not triggered.

F **Order**

G [43] In the light of this court's above-findings and based on the test as laid down by the Federal Court in the case of *Balachandran v. PP* [2005] 1 CLJ 85, this court finds that the appellant has failed to prove a *prima facie* case against the respondent in respect of the first and second charges preferred against the respondent. In the premises, this court thus affirms the order of the learned Sessions Court Judge and hereby orders that the respondent to be discharged and acquitted. The money of RM3,000 (exh. P6) to be returned to the respondent after the expiry of the appeal period.

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