40/82

IN THE PRIVY COUNCIL

No 4 of 1981
No 5 of 1981
No 6 of 1981

ON APPEAL FROM THE
SUPREME COURT OF MAURITIUS

BETWEEN:

LUTCHMEEPARSAD BADRY — APPELLANT

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS — RESPONDENT

CONSOLIDATED APPEALS

CASE FOR THE APPELLANT

Record

1. These are three consolidated appeals from two judgments of the Supreme Court of Mauritius (P.Y. Espitalier Noel and M.M.G. Ahmed, JJ.) both dated the 23rd October 1980 which held in respect of three motions to commit or otherwise punish the Appellant for contempt of Court (two of the said motions concerning No 5 of 1981 and No 6 of 1981 being heard together) that the Appellant was guilty of contempt of Court and sentenced the Appellant to six weeks imprisonment on each of the three motions with costs, two of the

No4 of 1981 pp.63-68
No 5 of 1981 pp 18-26
No 4 of 1981 pp.1-3
No.5 of 1981
No.6 of 1981 pp. 1-3
No 4 of 1981 p. 68

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said sentences to be served concurrently to make a total sentence of twelve weeks' imprisonment. No 5 of 1981 p. 26

2. These consolidated appeals arise out of the three said motions all dated the 7th July, 1980 for the committal of the Appellant for contempt of court for having uttered certain words in the course of a speech to a regional congress held by the Labour Party in Mauritius at Mare d'Albert on the 18th May, 1980. pp. 1-3

APPEAL No. 4 of 1981 (The Motion and the Hearing)

3. The words allegedly uttered were concerning No. 4 of 1981 (as translated from the Creole): No 4 of 1981 pp. 5-6

> "There is a person who committed murder, he got away with it because he has got money, he has left - a child is dead. A 'creole' working at F.U.E.L. (Flacq Limited Estated Ltd) met with an accident at work. He is now 50% incapacitated. The case was referred to the Supreme Court. The case was dismissed. Because it is F.U.E.L. because it is M. Series who is there, he did not get a penny in compensation. This is the kind of justice we have here".

The motion alleged that those words contained scandalous matters respecting the Supreme Court of Mauritius, which were clearly and beyond reasonable doubt calculated and intended to bring into suspicion No 4 of 1981 p.1.

and contempt the administration of justice in Mauritius on the ground that the words meant that injustice and corruption prevailed and that wealthy persons received preferential and biased treatment in the Supreme Court of Mauitius.

4. By an affidavit sworn on the 30th May, 1980, one Jean Berky Ombrasine, a reporter for the newspaper 'Le Mauricien' deposed to his attending the said regional congress of the Labour Party held on the 18th May, 1980 at the Social Welfare of Mare D'Albert arriving at about 10.15 a.m. when the Appellant, a Member of the Legislative Assembly was addressing the congress then consisting of some two hundred persons. He said that the Appellant in the course of his speech when speaking about 'capitalistes blanc' referred to two Court cases in the terms of the words set out in paragraph 3 hereof. No 4 of 1981 pp. 5-6

5. In his affidavit in answer affirmed on the 11th July 1980 the Appellant denied that he uttered the words complained of. In an affidavit jointly sworn by one Ramdawon and Sophine on the 11th July, 1980, they deposed to their listening to the Appellant's No 4 of 1981 p.7

Record

speech but said that they did not hear the words complained of.

6. On the 16th Spetember, 1980, the first motion to be heard was that concerning No 4 of 1981 (Case 5CR No. 23519), the Court consisting of Y. Espitalier-Noel and A.M.G. Ahmed, JJ. pp. 14 and 17-18

7. The witness, Mr. Ombrasine, was tendered for cross-examination and was cross-examined on behalf of the Appellant. Mr. Ombrasine said that he did not see anybody at the meeting representing the newspaper, L'Express. He said that he saw a police-man at the meeting who was a friend of his. The witness was shown Document A being a copy of the newspaper Le Mauricien dated the 19th May 1980 which contained a report of the regional congress held on the previous day at which the Appellant spoke. A translation of the report in question appears at pp.72-76 of the Record in No. 4 of 1981. The witness explained that the words complained of had appeared in the article as originally written by him but that the editor had deleted such words from the report as published. The

No 4 of 1981 pp. 18-31

p.18

p.18

p.19

pp.72-76

pp.19-20

p.22

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witness was shown an issue of the newspaper L'Express which contained a report of the same regional congress (a translation of the report appears at pp.79-82 of the Record in No. 5 of 1981): the witness said that the words complained of did not appear in that report. The witness said that when he submitted his original article to the editor, the editor took the witness's notebook and the article and put them away in the office safe. He said that it was not true that Le Mauricien was hostile to the Labour Party. He denied the suggestion that the words complained of were added by him in order to buttress a compaign against the Appellant and the Labour Party. In re-examination, the witness referred to Document A and was referred to the words at p.74 of the Record in No. 4 of 1981;

No 5 of 1981 pp.79-82

p.24

p.23

pp.28-30

pp.28-29

> "The speaker" (referring to the Appellant) "has challenged the Judiciary and has made statements that we cannot bring forward again here against the country's magistrates".

The witness said that these words were those of the editor who had deleted the words complained of from the article as originally written by the witness. The witness said that in the course of the police

No 4 of 1981 p. 29

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enquiry his notebook was photographed by the police and he produced as Document B parts of his notebook thus photographed. He identified where in Document B the words complained of in No. 4 of 1981 appeared and said they were to be found in the middle of the third page and on the fifth page with an asterisk. The words in the notebook concerning the creole at F.U.E.L. being translated were:

pp.69(a)(i)-(iv)

p.30

p.69(a)(iii)

> "A 'creole' from F.U.E.L. is 50% incapacitated. The Supreme Court dismissed the case. Because it is F.U.E.L. he did not get a penny in compensation. This is the kind of justice we have here".

p.30

In further cross-examination, the witness said that there was nothing on the face of the notebook to indicate when the notes were made.

p.31

8. The Appellant was then cross-examined. He said that he was the first speaker on the 18th May, 1980 at the Labour Party Congress. He said that he never prepared his speeches but could still remember the important points. He said that he did not utter the words complained of. He never mentioned F.U.E.L. He never mentioned Supreme Court rulings of the name of M. Series. The witness agreed with the suggestion that

No.4 of 1981 pp.31-37

No.4 of 1981 p.32

p.34

p.35

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it was pure fabrication to say that he spoke the words complained of. He first knew of the fabrication being aimed at him when he was issued with a summons. He said that he had been told about the article in Le Mauricien by his son on the afternoon of the 19th May, 1980. He said that he took no steps to deny certain remarks in the newspaper "because the press writes all sorts of things against the government, against ourselves, against the party". He said that he had confidence in justice and the highest respect for all the judges of the judiciary. He could never think of making attacks upon the judiciary. Although he had had many opportunities in and out of the Assembly to attack the judiciary, he had never done so.

p.35

p.36

No.4 of 1981 p.37

9. The two said deponents Ramdawon and Sophine were then cross-examined, who both gave evidence that they did not hear the Appellant speak the words complained of although they had been listening to his speech.

No.4 of 1981 pp.37-38 pp.38-45

10. One Ahmad Han Hyderkhan who was acting Commissioner of Police in May, 1980 gave evidence that one police officer was specifically detailed to

No.4 of 1981 pp.45-47

p.47

Record

cover the meeting. The Director of Public Prosecutions interposed to say that it was not his case that any police officer heard the Appellant uttering the words complained of. p.46

11. After argument on behalf of the Appellant and Respondent, the Court reserved its decision. No.4 of 1981 pp.47-54 pp.54-62 p.15

APPEALS Nos.5 and 6 of 1981 (The Motions and the Hearing)

12. The words allegedly uttered concerning No. 5 were (as translated): No.5 of 1981

> "WE, the children of the coolies who have suffered hardships, we shall take our revenge. Is it M. Glover who is going to run this country? M. Glover must be taught a good lesson and exposed for what he is in this country. p.6

The motion alleged that those words contained scandalous matters respecting Mr. Justice Glover which were clearly and beyond reasonable doubt calculated and intended to bring into suspicion and contempt the administration of justice in Mauritius on the grounds that the words were likely to impair the preservation of public confidence in the honesty and impartiality of the Courts in general and of the impartiality of Mr. Justice Glover in particular. pp.1-2

Record

13. The words allegedly uttered concerning No.6 /78/ were (as translated): No.6 of 198 p.4

> "The Glover report is being used to destroy me ..... it is not everything he said that is true ..... a lot of things he has not taken into consideration."

The motion made the same allegations as to the contents, effect and intent of the words complained of as the said motion in No.5 of 1981 on the ground that the words meant that the findings of Mr. Justice Glover were not honest and impartial. No.6 of 1981 p.1

14. By three affidavits sworn respectively by the Respondent, the said Jean Berky Ombrasine and one Desire Louis Appou (a reporter for the newspaper L'Express) on the 2nd June and 30th May 1980, it appeared that on the 21st December, 1978, a Commission was issued by the Governor General requiring Mr. Justice Glover, a Judge of the Supreme Court of Mauritius, to enquire into allegations of fraud and corruption made against the Appellant and one G. Daby then Minister of Social Security and Minister of Co-operatives and Co-operatives Development respectively. On the 2nd May, 1979 the Commission of Enquiry reported adversely No. 5 of 198 pp.4-5 5-6 and 6-7 No.6 of 1981 p.3-4 and 4-5 No.5 of 1981 pp.3-4

Record

against the Appellant. Those matters were not in dispute. At the said Labour Party Congress on the 18th May, 1980 the Appellant, according to the deponents Ombrasine and Appou, uttered the words complained of (as set out in paragraphs 12 and 13 hereof) in the course of the same speech as that referred to in No.4 of 1981.

No.5 of 1981 pp.5-6 and 6-7

No.6 of 1981 pp.4-5

15. By his affidavit affirmed on the 11th July, 1980, the Appellant denied that he uttered the words complained of. As set out in paragraph 4 hereof the said Ramdawon and Sophune jointly stated that they were present but did not hear the words complained of.

No.5 of 1981 pp.8-9

No.6 of 1981 pp.6-7

15. On the 16th September, 1980 immediately following the hearing of the motion in No.4 of 1981 the motions in Nos. 5 and 6 of 1981 were heard, the same being heard together.

No.5 of 1981 p.28

16. The said Appou was tendered for cross-examination on behalf of the Appellant. In cross-examination the witness explained why the words complained of did not appear in L'Express report on the 19th May, 1980 and why they did appear in L'Express

No.5 of 1981 pp.28-42

No.5 of 1981 p.30

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report on 21st May, 1980. The witness said that the words complained of in No.6 of 1981 did not appear in L'Express report of 19th May. The witness said that he wrote that the Appellant had said that certain politicians were using certain of the Judge's remarks to destroy him: the witness considered references to everything not being true and to a lot of things not being taken into consideration as "very hot remarks" which he deliberately did not include in the published report, because he judged it wise not to do so. He denied the suggestion that his paper was not in sympathy with the Labour Party. The witness produced a copy of L'Express report marked "A" (a treanslation of which appears in No.5 of 1981 at pp.79-82).

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p.35

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p.38

p.42

No.5 of 1981 pp.42-44

18. The said Ombrasine was tendered for cross-examination. The witness agreed that the words complained of did not appear in the Le Mauricien of the 19th May but did appear in his original text and in his notebook. The witness in answer to the Court said that certain words in his original article had been deleted by the chief editor.

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19. The Respondent stated, in effect that none

No.5 of 1981 p.44

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of the police officers present heard the words complained of.

20. The Appellant was cross-examined. The Appellant agreed that on the 21st December, 1978 Mr. Justice Glover was appointed by the Governor General to enquire into allegations of fraud and corruption made, inter alia against the Appellant then Minister of Social Security and another and that on the 2nd May, 1979 the Commission of Enquiry reported adversely against him. The Appellant said that he had no grudge against Mr. Justice Glover and he denied that he uttered any words against him on the 18th May, 1980. The Appellant agreed that on the Agenda for the 18th May there was to be discussion about the Glover report, but said that he did not touch on the subject. The Appellant said that he thought that Mr. Appou and Ombrasine had deliberately lied on oath in order to do damage to him. The evidence was concluded by the cross-examination of the said Damawon and Sophine in No.4 of 1981 being treated as evidence in Nos.5 and 6 of 1981.

No.5 of 1981 pp.44-47

p.45

No.5 of 1981 p.45

p.46

p.47

p.48

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21. After argument on behalf of both Appellant and Respondent, the Court reserved its decision. No.5 of 198 pp.49-69 pp.69-75 an pp.75-76

JUDGMENT IN No.4 of 1981

22. On the 23rd October, 1980, the Court delivered their Judgment. After summarizing the evidence, the Court said that they found the two witnesses Ramawon and Sophine to be thoroughly unconvincing and unreliable and that they had no hesitation in discarding their evidence. The Court said that the issues of fact were clear cut, finding that the question of Mr. Ombrasine having possibly misunderstood or mistakenly reported what the Appellant said did not arise. The Court considered the submissions on behalf of the Appellant concerning the uncorroborated and partisan word of Mr. Ombrasine and as to the high standard of proof in cases of contempt of court. The Court said that they were fully satisfied of the good faith of Mr. Ombrasine, that he had spoken the truth and that the Appellant did utter the words complained of.

No.4 of 198 pp.63-68 No.4 of 198 pp.63-65 p.65 p.66 p.66 pp.66-67 p.67

22. As to the words concerning the child who died, the Court was not satisfied that the Appellant must have been referring and been understood to refer to

No.4 of 1981 p.67

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a court case. The Court accordingly ignored the first part of the words complained of.

24. As to the words relating to the man who was 50% incapacitated the Court said that they had no doubt that the Appellant meant and could only have been understood to mean that the man's claim for damages or compensation had been unjustly dismissed by the Supreme Court because the other party to the case happened to be a wealthy company. It was a serious accusation of bias levelled at the Supreme Court. The Court rejected the suggestion by counsel for the Appellant that the words could possibly be considered as a comment on the difficulties poor litigants may encounter in having their cases adequately presented in court. The Court accordingly held that the Appellant had been guilty of contempt of court.

No.4 of 1981 pp.67-68

p.68

25. In sentencing the Appellant to six weeks' imprisonment the Court referred to the fact that the Appellant had said during the hearing that he had the highest respect for the Judiciary and had never made any such attacks upon the Judiciary even under parliamentary immunity at the Assembly. But the Court took

No.4 of 1981 p.68

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view that as they described it, the grave and unwarranted attack levelled at the Supreme Court by the Appellant was clearly meant to shake public confidence in the administration of justice in Mauritius.

JUDGEMENT IN Nos 5 and 6 of 1981

26. On the 23rd October, 1980 immediately following its Judgement in No.4 of 1981, the Court delivered their Judgment in Nos.5 and 6 of 1981. Having summarized the evidence, the Court discarded the evidence of the witnesses Ramdawon and Sophine and said that they could safely act on the evidence of Messrs. Appou and Ombrasine. The Court said that they were satisfied that the Appellant did utter the words complained of and that such words concerned Mr. Justice Glover in relation to the report of the Commission dated the 2nd May 1979.

No.5 of 198 pp.18-26

pp.18-20

p.20

p.20

27. The Court then considered a submission made on behalf of the Appellant that as a matter of law the words complained of, being directed at a Commissioner appointed (as he was) under the Commissions of Inquiry Ordinance 1944 (Cap.286), did not constitute a contempt of Court. As the commission of enquiry was

No.5 of 1981 p.20

p.20

not a court of law the common law of contempt did not apply to it in the absence of statutory provisions to that effect. Counsel had further referred to the Tribunals of Inquiry (Evidence) Act 1921 in England which in S.1(2)(c) applied the law of contempt to tribunals. The Court referred to the Commissions of Inquiry Ordinance 1944 (Cap.286) where the only provision was to be found in s.... which provided that contempt in the face of the Commission shall be an offence pubishable by a fine to be imposed by the Commission. In the Court's view s.11(3) of the Ordinance (Cap.286) did not more than confer on a Commission of inquiry substantially the same authority as that given to Magistrates under ss.102 and 103 of the Courts Ordinance (Cap....) when dealing with conduct in the face of the Court. The Ordinance (Cap.286) plainly made no provision for forms of contempt other than that in the face of the Commission. The Court then asked whether in the absence of specific statutory provisions the Supreme Court was prevented from considering that comments scandalising a commision of of inquiry still constituted a punishable contempt of court as tending to undermine confidence in the

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No.5 of 1981
p.21

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administration of justice in Mauritius.

28. The Court referred to the case of D.P.P. v Masson and Auor (1972) M.R.47 where it was accepted without argument (the point not being raised) that the law of contempt applied generally to a Board of Enquiry set up by the Minister of Labour under the Trade Disputes Ordinance, 1965 (Cap. ...). The Court said that they agreed with the decisiin in the Masson case which they found to be in accordance with the reasoning of the Salmon Committee 1969 Command 4078 which, the Court said, had concluded that the law of contempt was applicable to tribunals of enquiry. The Court then quoted certain passages from pp.300 and 307 from The Law of Contempt by Borne & Lowe and concluded that there could be little doubt that the law of constructive contempt was applicable to tribunals of enquiry. The Court considered the submission that the Salmon Committee was only concerned with the scope of the application of s.1(2)(c) of the Tribunals of Enquiry (Evidence) Act, 1921 and not with the application of the common law of contempt as such to tribunals of enquiry. The Court, however, concluded

No.5 of 1981 p.21

p.22

pp.22-24

No.5 of 1981 p.24

p.24

p.25

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that the reasoning of the Salmon Committee set out at pp.300 and 307 of Borne & Lowe held good generally and in the Court's opinion justified the application of the common law of contempt to commissions of enquiry in Mauritius. The Court accordingly held that conduct amounting to contempt of a commission of enquiry could constitute a punishable contempt of court although the Ordinance (Cap.286) did not specifically so provide. p.25

29. The Court then considered the words complained of in No.5 of 1981 and said that they understood the Appellant to have been complaining that the Government was allowing itself to be dictated to in its decisions by Mr. Justice Glover and saying that Mr. Justice Glover must be brought down from such pre-eminence. The Court considered that such comments taken by themselves would not amount to any imputation against Mr. Justice Glover in relation to the performance of his duties as Commissioner. On the other hand, the Court said that they had no doubt that the actual words used amounted to a scurrilous abuse of Mr. Justice Glover, as Commissioner, and tended to bring the administration of justice generally into disrepute. No.5 of 1981 pp.25-26

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30. As to the words complained of in No.6 of 1981, the Court said that the Appellant was alleging in so many words that the Commissioner had not taken into consideration a large number of matters and written in his report things that were not true. The Court said that this was a clear attack on the integrity and impartiality of the commissioner. No.5 of 198 p.26

31. The Court accordingly found in both cases that the Appellant had been guilty of contempt of court. No.5 of 1981 p.26

32. In sentencing the Appellant to six weeks imprisonment in each of the two cases to be served concurrently, the Court referred to the attempt by the Appellant to discredit a Judge of the Supreme Court in public and to the fact that in this case the commissioner was a member of the judiciary. No.5 of 1981 p.26

ARGUMENT IN No.4 of 1981

33. It is respectfully submitted that the Court should have held that there was a reasonable doubt as to whether the Appellant uttered the words complained of. The notes taken by Mr. Ombrasine did not purport

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be a shorthand or verbatim note but were rough notes in summary form which purported to set out only parts of what the Appellant had said. The rough notes required to be interpreted by Mr. Ombrasine. The words in the rough notes concerning the 'creole' who was 50% incapacitated consisted of the following:

No.4 of 1981 pp.69(a)(i)-(iv)

No.4 of 1981 pp.30 and 39 (a)(iii)

> "Creole fule 50% infirme cour supreme dismiss the case parce qui li fuel ene sou pas fine gagner ala la justice ici".

The translation of those words apparently is:

(Record in No.4 of 1981 pp.30 and 69 (a)(iii))

> "A 'creole' from F.U.E.L. is 50% incapacitated. The Supreme Court dismissed the case. Because it is F.U.E.L. He did not get a penny in compensation. This is the kind of justice we have here". (Record in No.4 of 1981 p.30)

Even that translation has required some interpretation with the addition of punctuation and words to make sense of the rough notes. All this is in the context of a speech to a Labour Party congress at which there was undoubtedly present at least one other newspaper reported, Mr. Appou of L'Express, who arrived at the Congress earlier than Mr. Ombrasine. Although Mr. Appou listened to the Appellant's speech he did not

No.4 of 1981 p.5

No.5 of 1981 pp.5 and 6

hear or record any words like those complained of concerning a 'creole' whose case was dismissed by the Supreme Court. Further, although at least one police officer attended to cover the congress and apparently was present, he did not hear or record any words like those complained of. It is respectfully submitted that the above considerations were not taken into account by the Court, as they should have been in proceedings akin to that of a criminal trial.

No.4 of 1981
p.47

34. It is respectfully submitted that the Court erred in excluding from its consideration the possibility of misunderstanding or misreporting by Mr. Ombrasine, particularly in a case where Mr. Ombrasine's rough notes were the only evidence purporting to record parts of what the Appellant had said. And where it would have been expected that the other reporter listening, namely, Mr. Appou, would have recorded some part of the offending passage complained of. The fact that the Appellant denied speaking any such words did not mean that the Court had the simple choice of accepting or rejecting Mr. Ombrasine's evidence.

35. It is respectfully submitted that the words complained of were not in all the circumstances capable of amounting to a contempt of court.

36. It is respectfully submitted that whether the Appellant uttered the words as set out in Mr. Ombrasine's rough notes or as expanded in Mr. Ombrasine's affidavit such words do not necessarily involve any allegation of bias in the Supreme Court. It was not established that such words meant and could only have been understood to mean that the Supreme Court unjustly dismissed the claim by the incapacitated man solely because the defendants happened to be a wealthy company. The injustice to the incapacitated man could have arisen (on a proper reading of the words complained of) by reason of a combination of the probable power and wealth of a substantial company giving it access to the best legal facilities and resources as against the probable poverty and illiteracy of an incapacitated man who could not hope to compete on even terms. Such general injustice and the political comment arising from it do not involve any imputation against the Supreme Court. Such interpretation of the

words complained of, it is respectfully submitted, was not excluded beyond reasonable doubt and accordingly the complaint of contempt of court should have been dismissed.

37. It is respectfully submitted, in the alternative, that in all the circumstances a sentence of imprisonment was inappropriate, wrong in principle and/or too severe.

ARGUMENT IN Nos 5 and 6 of 1981

38. It is respectfully submitted that the Court should have found that there was reasonable doubt as to whether the Appellant uttered the words complained of.

39. It is respectfully submitted that the Legislature of Mauritius having made specific provision as to the circumstances (namely, contempt in the face of a commission of enquiry) in which the law of contempt applied to commissions of enquiry it was not open to the Court in effect to make new law by applying the law of contempt generally to such commissions of enquiry. If and insofar as it may be necessary to do so, the Appellant will respectfully contend that the

case of D.P.P. v Masson and Anor (1972) M.R.94 was wrongly decided. It is respectfully submitted that the Court's reliance in Nos.5 and 6 of 1981 on the reasoning of the Salmon Committee was erroneous, as the Salmon Committee was concerned with the scope and application of s.1(2)(c) of the English Act of 1921 as a matter of policy and not, apart from the statute itself, as a matter of law. There was, therefore, no warrant it is respectfully submitted, for the Court of its own motion to extend in the admitted absence of appropriate statutory provisions in Mauritius the law of contempt generally to commissions of enquiry.

40. It is respectfully submitted that the Court correctly found the Commission of Enquiry not to be a court of law and should, therefore, have held that the law of contempt did not apply to the words complained of as they did not amount on any view to contempt in the face of the commission of enquiry.

41. Alternatively to paragraph 40 hereof, it is respectfully submitted that the words complained of were not in all the circumstances capable of amounting to contempt of court, even if the law of contempt

generally applied in Mauritius to commissions of enquiry.

42. It is respectfully submitted that the words complained of in No. 5 of 1981 were not established beyond reasonable doubt as involving any scurrilous abuse of Mr. Justice Glover or any tendency to bring the administration of justice generally into disrepute. It is not disputed that the words complained of in No. 5 of 1981 could be understood to mean that the Government was allowing itself to be dictated in its decisions by Mr. Justice Glover and that Mr. Justice Glover should be brought down from such pre-eminence. However, it is respectfully submitted that the strong language used in making such political comment in the course of a political speech did not convert what was otherwise unobjectionable into a contempt of court.

43. It is respectfully submitted that the words complained of in No.6 of 1981 were not established beyond reasonable doubt as involving any attack on the integrity and impartiality of Mr. Justice Glover. It was perfectly possible for reasons wholly un-connected with Mr. Justice Glover's integrity and

impartiality for the Report of the Commission of Enquiry to contain some untrue statements and for "a lot of things" not to be taken into consideration in the Report.

44. It is respectfully submitted, in the alternative, that in all the circumstances a sentence of imprisonment was inappropriate, wrong in principle and/or too severe.

45. The Appellant respectfully submits that the judgments of the Supreme Court of Mauritius in Nos. 4, 5 and 6 of 1981 are wrong and ought to be reversed and these appeals ought to be allowed with costs in the Privy Council and in the Supreme Court for the following (among other)

REASONS

(1) BECAUSE the Supreme Court should have found that there was reasonable doubt as to whether the Appellant uttered the words complained of.

(2) BECAUSE in No.4 of 1981 the Supreme Court erred in concluding that the question whether the Appellant had been misunderstood or misreported

did not arise, particularly in a case where no shorthand or verbatim note was made and where Mr. Ombrasine's rough notes were the only purported record of what the Appellant said.

(3) BECAUSE the words complained of are not on any reasonable interpretation capable ofamounting to contempt of court.

(4) BECAUSE it was not established beyond reasonable doubt that the words complained of in No.4 of 1981 necessarily meant that the injustice suffered by the incapacitated man arose as a result of bias in the Supreme Court.

(5) BECAUSE the Supreme Court erred in discarding the evidence of the witnesses Ramdawon and Sophine.

(6) BECAUSE it was not established beyond reasonable doubt that the words complained of in No.5 of 1981 involved any scurrilous abuse of Mr. Justice Glover or any tendency to bring the administration of justice generally into disrepute.

(7) BECAUSE it was not established beyond reasonable

doubt that the words complained of in No.6 of 1981 involved any attack on the integrity of Mr. Justice Glover.

(8) BECAUSE in the absence of appropriate statutory provisions the law of contempt other than contempt in the face of the tribunal does not apply to tribunals including commissions of enquiry.

(9) BECAUSE the law of contempt other than contempt in the face of the tribunal has no application in or concerning the proceedings of commissions of enquiry in Mauritius.

(10) BECAUSE on any view the words complained of in Nos.5 and 6 of 1981 could not amount to contempt in the face of the commission of enquiry.

(11) BECAUSE sentences of imprisonment were in all the circumstances inappropriate, wrong in principle and/or too severe.

STUART N. McKINNON, Q.C.

IN THE PRIVY COUNCIL

B E T W E E N :

LUTCHMEEPARSAD BADRY

APPELLANT

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

CASE FOR THE APPELLANT

MESSRS. DONALD NELSON & CO.,
124 WIGMORE STREET,
LONDON W1

01 486 8421
PSKH/828/LJ