

**Ramkalawan v Republic  
(1999) SLR 153**

Anette GEORGES for the appellant  
Anthony FERNANDO for the respondent

**Judgment delivered on 15 December 1999 by:**

**JUDDOO J:** The instant judgment arises out of a motion to the Senior Magistrate that a certificate, issued under the signature of the appellant, was not a valid certificate under section 15(2) of the Peoples' Assembly (Immunities and Powers) Act (Cap 163) - herein after referred as the Act.

the finding of the Georges Bibi, was a finding of the Peoples' Assembly (Parliamentary Act".

It is not disputed that on 11 November 1997 an incident occurred in the precincts of the National Assembly involving some of its members. A Committee of Inquiry was set up to investigate the incident. The committee, chaired by the appellant, completed its inquiry into the incident and submitted its report to the National Assembly on 18 November 1997. The appellant had appeared before the Committee prior to its report.

the precincts of the the Assembly was Mr Georges Bibi, before the National testified before the

On 12 September 1998, a criminal charge of assault was laid against the appellant contrary to section 236 of the Penal Code. The charge reads as follows:

re the Magistrates' de (Cap 158). The

Wavel Ramkalawan of St Louis, Mahe on the 11<sup>th</sup> day of November, 1997, within the premises of the National Assembly at Victoria, unlawfully assaulted Barry Faure thereby occasioning actual bodily harm to him.

ember, 1997, he, unlawfully ) him.

Both the appellant and the said Barry Faure were members of the National Assembly at the material time.

ational Assembly at

By motion, dated 8 January 1999, an application was made by the appellant to stay the proceedings before the Magistrates' Court. The grounds of the motion were as follows:

sel for the accused as per the motion

The defendant, having appeared as a witness before the Committee of Inquiry of the National Assembly in the determination of matters in the proceedings herein, will produce a certificate under the hand of the Chairman of the Committee that the defendant was required to answer the questions put to him by the Committee and answered them.

committee of the object of the the Chairman estions put to

At the hearing of the motion, a certificate under the signature of the appellant, dated 18 November 1998, was produced (Exhibit PI) and was relied upon by the appellant. The prosecution objected to the stay of proceedings on the ground that the certificate was invalid.

Georges Bibi, dated 18 November 1998. The prosecution issued was invalid

and therefore could not be relied upon to stay the proceedings before the Magistrates' Court. The Senior Magistrate, after having heard the submission of both counsel, ruled that:-

...the certificate was not a valid certificate under section 15 of the Act . Hence, this document cannot be relied upon and acted upon to grant a stay of proceedings in this matter.

The instant application made is for this Court to review the above finding of the lower Court.

In essence, the prosecution's stand is that the certificate, under the signature of Mr Georges Bibi, is invalid because at the material time when it was issued, on 18 November 1998, the said person had ceased to act in his capacity as Chairman of the Committee given that the Committee had already submitted its report to the National Assembly on 18 November 1997 and additionally the National Assembly had been dissolved on 19 February 1998.

On the other hand, the argument by the defence may be summarised as follows. The certificate, issued by Mr Georges Bibi, is a valid certificate under section 15 of the Act. It is contended that section 15 does not require that the certificate be issued at the time when the committee sits. The section only states that a witness before the committee is entitled to receive a certificate in the hand of the Chairman and only becomes relevant:

if and when charges are instituted before a court of law against a person called as a witness before a Committee and following his testimony before such a Committee. The Chairman of the Committee can certify what took place before the Committee even after it had reported to the court. Further, the fact that the National Assembly was dissolved on 18 February 1998 does not nullify the fact that the Committee heard witnesses, filed its report, three months before the dissolution of the Assembly and the Chairman can issue the certificate.

Accordingly, it is submitted that:

Mr Georges Bibi was entitled to issue the certificate on 18 November 1998 and to interpret section 15 in any other way limits the said section so as to make it otiose.

The certificate produced before the Magistrates' Court is under the hand and signature of Mr Georges Bibi and is dated 18 November 1998. It is not denied that by that date the Committee Report had been tabled before the National Assembly and the session of the National Assembly had been dissolved since 18 February 1998. The determination before this Court is whether Mr Georges Bibi had authority to sign and issue the certificate, when he did so, on 18 November 1998. Such authority, if any, would be by

virtue of the powers of the Committee or an enabling Act or a statutory instrument.

Under section 101 of the Constitution, the National Assembly may make standing orders for the regulation and orderly conduct of its proceedings. By virtue of the National Assembly Standing Orders 1994 (S.I 45 of 1994) orders were made to regulate the conduct of proceedings in the National Assembly and of members sitting in Committee. The Committee set up by the National Assembly to investigate into the incident was instituted under Order 80(1) and is referred to as a "Committee other than a Sessional Standing Committee". It is appointed by resolution on a motion made and consisted of members of the National Assembly. Under Order 81, the scope of the enquiry by a Committee is defined by the terms of the Order under which it is established. The object of the Committee is to "consider or take evidence" upon any matter in line with its terms of reference and its duty is to "report its Opinion for the information and assistance of the Assembly." (Vide: Order 80(2)). This is akin to what is commonly termed a 'select committee' under the UK legislation.

After the report by the Committee to the National Assembly, the latter shall debate the matter further and reach a decision on the issues (vide: 5.104(4) of the Constitution). The National Assembly is not bound by the Committee's recommendations (vide: Strauss Case, UK Parliament, Cmnd 605 (1958)). In his examination of the functioning of a select committee, Erskine May in *Parliamentary Practice* (19<sup>th</sup> edition) at p 630, states that:

Each session other committees (select committees) may be set up upon motion in which are laid down their orders of reference, the number proposed as the quorum and the powers with which it is proposed that the committee should be invested... Such committee ceases to exist at prorogation or (if they have not been given power to report from time to time) after they have made their report to the House.

Accordingly, the submission of the report by the Committee to the National Assembly brings an end to the Committee. It also brings a discharge to the responsibilities and obligations of each member of the Committee as per the terms of reference except where the National Assembly resolves that "the report should be recommitted and revived" (vide: Erskine May, supra, p 662). After the submission of the report to the National Assembly, the Committee and every member of the Committee, including the Chairman of the Committee, becomes *functus officio* with regard to the powers granted to the Committee upon institution.

Similarly the disciplinary powers of a Commission of Inquiry (instituted under an Act) cannot be exercised by the Chairman after the Commission had completed its report and submitted such report to the President in accordance with its terms of reference unless there is specific legislation to that effect. In *Baldry v DPP of Mauritius* [1982] 3 All ER 973, a Commission of Inquiry was instituted on 28 December 1978 to enquire into allegations of fraud and corruption made against the appellant in his former capacity as Minister of Social Security. The Commission produced its report on 2 May 1979.

Thereafter, on 18 May 1980 at a political rally, the appellant uttered contemptuous words to the address of the Commissioner. In delivering its judgment, the Privy Council observed that:

Since the appellant's speech was delivered long after the Commissioner was functus officio, it need not be said that the disciplinary power (of the Commissioner) was not, and could not, have been used in the present case.

In addition, a Committee set up under Order 80 of the National Assembly Standing Orders 1994 (S.1 45 of 1994) possesses no authority or power except that which it derives from the National Assembly upon being instituted. The session of the National Assembly which instituted the Committee under which the certificate, issued by Mr Georges Bibi, is purported to emanate was dissolved by virtue of the Dissolution of the National Assembly 1998 (S.16 of 1998) on 19 February 1998 in accordance with section 110 of the Constitution. This dissolution brought an end to any proceedings pending in the Assembly as provided by Order 9(3) of the National Assembly Standing Orders 1994 whereby it is enacted that:

At the dissolution of the Assembly all proceedings then pending shall terminate and lapse

The other relevant and important effect of the dissolution of the National Assembly is that under section 81(1)(a) of the Constitution –

A person ceases to be a member of the Assembly ... on the dissolution of the Assembly.

Accordingly the Committee, having ceased to exist after it delivered its report to the National Assembly, and Mr Georges Bibi, having ceased to be a member of the National Assembly, he became functus officio and could not thereafter act in any manner or under any authority which he had obtained from the National Assembly by virtue of his membership or appointment as Chairman of a Committee unless he was authorised to do so by legislation.

The argument of counsel for the appellant is that such authorisation is provided for by the legislator under section 15 of the Act and authorises Mr Georges Bibi to issue and sign the certificate when the need for a certificate arises at any later stage. Any other interpretation, it has been submitted, would make the operation of section 15 otiose because the need for a certificate under section 15(2) only becomes relevant once proceedings are started against the appellant.

The relevant part of section 15 of the Peoples' Assembly (Parliamentary Immunities and Powers) Act read as follows:

15(1)

Every witness before ...an authorised committee who shall fully and faithfully answer any question put to him by ...such committee to its satisfaction shall be entitled to receive a certificate stating that such witness was upon his examination so required to answer and did answer any such questions.

15(2)

Every certificate under subsection (1) shall, ... in the case of a witness before the committee, be under the hand of the chairman thereof.

15(3)

On production of such certificate to any court of law, such court shall stay any proceedings, civil or criminal,... against such witness for any act or thing done by him before the time and revealed by the evidence of such witness...

A Committee of the National Assembly may request, summon a person to attend before such Committee and to be examined upon oath to any facts, matters or things related to the subject of the inquiry. Such a person may refuse to answer any question put to him on the grounds that the same is of a private nature and does not affect the subject of the inquiry. In such cases the Chairman of the Committee has to report the refusal with reasons thereof to the Chairman of the Assembly who may thereupon either excuse or order the person to answer such question (vide: Section 13(2)). In addition, under section 14(1) every person summoned to give evidence before the Committee shall be entitled to the same right and privilege as before a court of law. However, the refusal to give evidence before a Committee of the National Assembly may constitute a contempt of the House.

It is certainly due to the fact that a witness before a Committee may be required to answer a question and may thereby lose his "right and privilege" that the power given under section 15 of the Act becomes most relevant. The power is for the Committee to grant to a witness, who upon his examination was required to answer fully and faithfully any question put to him and did answer such question to the satisfaction of the Committee, a certificate. The said certificate shall be under the hand of the Chairman of the Committee (under section 15(2)) and may be produced to stay any proceedings, civil or criminal (except for a charge under section 102 or 122 of the Penal Code) against such witness for any act or thing done by him before his answer and revealed by his evidence before the Committee (vide: section 15(3)).

Inherent in the grant of a certificate to a witness under section 15(1) of the Act is the exercise of the judgement of the members of the Committee to the following issues:-

- (i) whether the witness was required by the Committee to answer fully and faithfully,
- (ii) whether the witness did answer the required questions fully and faithfully;
- (iii) whether the Committee was satisfied with the answers;

- (iv) whether the witness is entitled to receive a certificate from the Committee.

The prerogative of examining the above issues and reaching a decision is that of the Committee and is not that of its Chairman. It is only after the members of the Committee have determined the above-mentioned issues arising under section 15(1) and resolved that the witness is entitled to a certificate to protect him against any act or thing done by him before the time and revealed by his evidence that such a certificate may be issued under the hand of the Chairman of the Committee under section 15(2) and produced in a Court of law under section 15(3) of the Act.

In *R v Holl & others* (1881) 7 QBD 575, the Court of Appeal examined a similar provision under section 7 of the Corrupt Practices Prevention Act (now repealed) which provided that where a witness had appeared before an Election Committee and was required to answer questions which incriminate or tend to incriminate him, he shall be entitled to a certificate, issued under the hands of the Commissioners, stating that he had so answered the questions and may use the certificate to stay proceedings against him pertaining to the answers revealed (except for perjury). In his examination of the power given to the Election Committee to grant and issue the certificate Bramwell LJ, at p 580, observed:

The certificate is to be a certificate stating that such a witness was required to answer questions relating to the matters aforesaid, the answers to which incriminated or tended to incriminate him, and had answered all such questions. That means, 'had truly', that is to say, 'honestly' answered all such questions. But for them (the Commissioners) to certify that the man had truly answered all such questions is to certify that in their opinion and judgment, he had done so. It is not certifying to a mere matter of fact which requires no opinion or judgement upon it, as that the man was sworn, or that he gave his evidence in a black coat, or anything of that sort but it is the expression of a judgement or opinion that he had bona fide answered all those questions, the answers to which incriminated or tended to incriminate him. It cannot be otherwise.(the underlining is mine)

In the same manner the determination by the Committee that the appellant had answered "fully and faithfully to its satisfaction is not certifying to a mere matter of fact which requires no judgement or opinion upon it but has to represent the decision of the Committee after taking into account the judgement or opinion of the members. Accordingly, it cannot be denied that the determination by the Committee as to whether a witness is to receive a certificate can only be made by the Committee, and necessarily, before it ceases to exist.

Further, the enactment under section 15(3) entitles a witness to a measure of protection for any act or thing done by him before the time and revealed by the evidence of such witness. In a court of law, a witness (other than the defendant) is privileged to answer any question which may tend to incriminate him, ie to expose him to any punishment,

penalty or forfeiture. (Vide: *Archbold* (1992 Edition) para 12-2). The responsibility for invoking a right or privilege rests upon the shoulders of the person entitled to that right or privilege. By way of example, the entitlement of the privilege against self-incrimination resides in the witness, as observed in *Archbold*, supra, para 12-2.

The proper person to take the objection is the witness and he is presumed to know the law sufficiently to enable him to take it (*R v Coote* (1873) LR 4 PC 599). However he will, in practice, usually be warned by the Court that he need not answer if an answer may clearly tend to incriminate him. Otherwise, he must claim the privilege himself (*Thomas v Newton* (1827) 2 C&P 606)...

A Committee established under Order 80(1) of the National Assembly Standing Orders (1994) may of its own raise the issue and determine whether a witness is entitled to a certificate under section 15 of the Act. Where such is, however, not the case, it falls upon the witness to request the Committee to reach a determination as to whether he is entitled to a certificate. The relevant time for a witness to do so is when he gives evidence before the Commission or at latest before the Commission has tabled its report to the National Assembly and had, thereafter, ceased to exist". By making his request at the relevant time, the witness calls upon the Committee to ascertain from the "judgement and opinion" of its members whether he had "fully and faithfully" answered the required questions to its satisfaction and to resolve whether, pertaining to this witness, a certificate is to be issued. It is only after the Committee has so resolved that the witness is entitled to a certificate under section 15(1) which is issued under section 15(2) and may be relied upon to stay proceedings under section 15(3) of the Act.

The likelihood and time at which proceedings, if any, civil or criminal, is or may be lodged against the witness for "any act or thing done by him before the time and revealed by the evidence of such witness" is not a relevant consideration to the determination by the Committee as to whether the said witness shall receive the certificate under section 15 of the Act and for such a certificate to be issued under the hand of the Chairman. Neither has provision been made for another person to sign the certificate at that later date in the absence of the Chairman, taking the unlikely example that he has been struck by lightning or has absconded. The important distinction is that proceedings, if any, shall only be stayed upon production of the certificate under the Act in cases where such proceedings are against the witness for any act or thing done by him before the time and revealed by his evidence before the Committee. Where the proceedings are for any act or thing done by the witness which is not revealed by his evidence before the Committee, a certificate issued under section 15 will not operate to stay proceedings, civil or criminal, under section 15(3) of the Act.

Under the Election Commissioners Act 1852 (UK) (now repealed) section 8 required all persons summoned to give evidence before the Commissioners appointed to inquire into such practices to attend before the Commissioners and answer all questions put to them and produce all books and documents bearing on the enquiry "provided always, that no statement made by any person in answer to any question put by such

Commissioner shall, except in cases of indictment for perjury committed in such answers, be admissible in evidence in any proceedings civil or criminal."It was held in *R v Letham* [1861] 30 LJ QB 205 (see English & Empire, Digest Vol 20, para 1571) that "a document already in existence before the time at which a witness was examined before the Commissioners and referred to by him in the course of that examination, was admissible in evidence against him in subsequent proceedings, other than the specified indictment for perjury, if it was otherwise admissible and was proved by an independent witness aliunde".

The motion made for the stay of proceedings before the lower Court, quoted earlier, states that the appellant, having appeared as a witness before the Committee in the determination of matters the subject matter of the proceedings before that Court, shall produce a certificate under the hand of the Chairman that he was required to answer questions put to him by the Committee and answered them. The certificate produced was issued and signed by Mr Georges Bibi on 18 November 1998. It is not denied that the said Mr Bibi was the Chairman of the Committee that was duly instituted and empowered by the National Assembly to enquire and report back to the House. Generally, where acts which require the concurrence of official persons are relied upon, a presumption arises that the person acted, prima facie, within the limits of his authority until the contrary is shown: *Omnia proesumtur rite et solenniter esse acta donec probetur in contrarium*- uide: *Broom's Legal Maxim* (1011 edition) p 642. The mere fact that the certificate was issued and signed at a time when Mr Georges Bibi was no longer Chairman of the Committee, the said Committee having ceased to exist, prevents the operation of the presumption and reliance upon its content. In that respect the averment under paragraph 3 of the purported certificate which reads: "The Hon Wavel Ramkalawan fully and faithfully answered all questions put to him to the satisfaction of the Committee" is open to doubt in the absence of other evidence to support this determination. Such a determination, as it has been established earlier, can only be made by the Committee itself and, in all circumstances, before such Committee ceases to exist, unless the Committee is "revived" to so determine.

The relevant time for the Commission to determine the grant of a certificate under section 15 of the Act and, correspondingly, for the issue a certificate to the witness, under the hand of the Chairman, is before both the Committee and the Chairman of the Committee become "functus officio" unless there is specific provision in the legislation to enable the determination and issue of the certificate at a date later than when the Committee had ceased to exist.

There is no other evidence before the Court that the Committee instituted to enquire into the incident, which occurred on 11 November 1997, had resolved that the appellant was entitled to a certificate under section 15 of the Act. Had such been the case and in the absence of a valid certificate issued to him, the appellant would still be able to rely on the exercise of the discretion of the Honourable Speaker of the National Assembly to refuse leave under section 8(1) of the Act for the proceedings of the Committee to be



produced in a court of law on the grounds of privilege of the record does not disclose that exhibit P1 had been produced special leave of the National Assembly as required under : Additionally, the issue of privilege, if any, pertaining to an act of the National Assembly and the claim of 'autrefois convict' are to be addressed and determined before the trial Court. They are not for present review.

For reasons given above, I find that the Senior Magistrate came to the right conclusion when he found that the certificate was not a valid certificate issued under section 15 of the Act.

se. Incidentally the case was heard in the lower Court with reference to section 8(1) of the Act. The case was heard within the precincts of the Magistrates' Court which have to do with the case. It forms part of the

he right conclusion under section 15 of

Accordingly, I remit the case back before the Magistrates' Court

**Record: Criminal Revision No 7 of 1998**