REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Cr.A. No. 85 of 2001

BETWEEN

JAGDEO SINGH

v

THE STATE

CORAM: SHARMA, C.J.
HAMEL-SMITH, J.A.
JONES, J.A.

APPEARANCES:

Mr. D. Allum, S.C., Mr. R. Rajcoomar and
Mr. R. Persad for the Appellant.

Ms. C. Brown-Antoine and
Mrs. K. Latchu for the Respondent.

Delivery Date:

15th November, 2002.

JUDGMENT

Jones, J.A.

On the 20th of November 2001 Jagdeo Singh, an attorney-at-law, (the appellant), was convicted at the Port of Spain Assizes of two offences under section 3(1) of the Prevention of Corruption Act No. 11 of 1987. The particulars of the offences were:

(a) "Jagdeo Singh, on a day unknown during the period 1st October, 1999 and 3rd of December 1999 at Port of Spain in the county of St. George corruptly solicited for himself the sum of $40,000.00 Trinidad and Tobago currency from Sherry Ann Basdeo as an inducement to Magistrate Debra Thomas-Felix to grant bail to Rudolph John, an accused person in custody on a criminal charge on Indictable Information No. 13520 of 1999, who had previously been refused bail by the said Magistrate and as an inducement to Claudette Bynoe, a Police Prosecutor in the said matter, forbearing to object to the granting of bail to Rudolph John on the said criminal charge, a matter in which the State is concerned".

(b) "Jagdeo Singh, on the 2nd of December 1999, at Curepe, in the county of St. George corruptly received for himself the sum of $40,000.00 Trinidad and Tobago currency from Sherry Ann Basdeo and Lynette Bridgelal as an inducement to Magistrate Deborah Thomas-Felix to grant bail to Rudolph John, an accused person in custody on a criminal charge on Indictable Information 13520 of 1999 who had been previously refused bail by the said Magistrate Deborah Thomas-Felix and as an inducement to Claudette Bynoe, a Police Prosecutor in the said matter forbearing to object to the granting of bail to Rudolph John in the said criminal charge, a matter in which the State is concerned".

The appellant was sentenced to terms of seven years hard labour on each offence, the sentences to run concurrently. There was on the indictment a third

count of “obtaining money by false pretences” but this was withdrawn from the jury’s consideration by the learned trial judge.

THE FACTS:

The appellant practised as an attorney-at-law from offices at Victoria Square, Port of Spain. On October 1, 1999, Rudolph John (John) a client of the appellant was charged for possession of marijuana for the purpose of trafficking. Two other men were also charged. On October 2, 1999, Sherry Ann Basdeo (Basdeo) the common-law wife of John approached the appellant and asked him to represent her husband in the matter. The appellant agreed to do so and fixed his fee at $50,000.00.

He had previously represented John at a preliminary enquiry into another charge and John was committed to stand trial at the Assizes. For that matter the appellant quoted a fee of $150,000.00 and Basdeo had paid him $10,000.00 and then $2,500.00 on account.

On October 11, 1999, the appellant went to the chambers of Magistrate Deborah Thomas-Felix, the magistrate before whom John would appear that day on the trafficking charge and asked if his client would be granted bail. She told him that since his client had several pending charges, unless circumstances changed, he would have to seek bail before a judge in chambers. The appellant replied that he would take his chances in the Magistrate’s Court. He appeared as counsel for John on that day. Bail was denied.

On November 1, 1999, the appellant appeared before the said Magistrate. He represented the three accused in the matter but made no application for bail for his own client. Bail was granted to the other two accused. On November 11, 1999, the appellant met Basdeo at the Magistrate’s Court at Nipdec House, Port of Spain. He told her that in order for her husband to be admitted to bail, she

would have to pay $40,000.00 as an inducement to Magistrate Thomas-Felix to grant bail and to the Court Prosecutor Cpl. Claudette Bynoe to offer no objections to bail. The appellant made repeated requests of Basdeo for the money.

On November 18, one Derek Popignac, whose wife was on friendly terms with Basdeo, visited Magistrate Thomas-Felix at her home and spoke with her. The Magistrate then contacted Senior Supt. Wellington Virgil of the Fraud Squad. The following day, the appellant appeared at the door of the chambers of the Magistrate. He requested her not to fix bail because he had not received his fees. She said, "You have not received your fees?" He replied, "no". She said, "No problem".

Senior Supt. Wellington Virgil arranged a "sting" operation, involving WPC Lystra Bridgelal and Basdeo. On November 30, 1999, WPC Bridgelal and Basdeo visited the office of the appellant. The WPC posed as "Debbie", the wife of a friend of John, and the person who was trying to raise the $40,000.00. She told the appellant that she wanted to be sure the money was to be used to take John's bail and that she appreciated he was trying to get bail for John. She asked the appellant how long after she paid him the sum of $40,000.00 that John would get bail. He said all the arrangements for bail had already been made and he needed to have the money at least one day before the matter came up for hearing and once he had the money he would contact the magistrate and tell her he had the money and everything would be okay. The appellant also told "Debbie" that if John did not get bail, he would return the money to her. She told him she could raise the money by December 2, 1999.

On December 1, 1999, the appellant appeared for John and sought an adjournment to December 3, two days later. He whispered to Magistrate Thomas-Felix that he would make an application for bail for his client on that day because he would be getting his fees. On December 2, 1999, Senior Supt. Virgil gave WPC Bridgelal $40,000.00 in a white plastic bag, having obtained the money from State funds. Virgil had previously made a list of the serial numbers

of the bills. Later, Basdeo, WPC Bridgelal, WPC Kathleen Nanton, officers of the Organised Crime and Narcotic Unit (OCNU) and other officers took up positions at the Kentucky Fried Chicken (KFC) outlet at Curepe, a location some 7 miles from the office of the appellant. The appellant had called Basdeo on her cell phone and agreed to meet her at KFC to collect the money.

He arrived at the KFC compound and turned his car around to face the exit. Basdeo and "Debbie" were seated inside the restaurant and could see the appellant from where they sat. He called Basdeo on her cell phone and spoke to her. He made a second call and spoke to "Debbie," asking her what was taking so long. He refused to go inside the restaurant for the money. He told "Debbie" to come outside with the money. "Debbie" and Basdeo eventually approached him in his car. "Debbie" handed him the money, which was in a white plastic bag. He took the package and Basdeo asked him if everything would be all right. He said, "yes, everything would be okay". Police then converged on the car. The appellant cried, "Is money, is money." Senior Supt. Virgil arrested the appellant and took him to the Fraud Squad Office in Port of Spain where Virgil again told the appellant of the report made against him, cautioned him and showed him the list of serial numbers which matched the numbers on the bills in the package. The appellant replied that the sum of $40,000.00 was his fees.

The trial judge rejected a no case submission.

CASE FOR THE DEFENCE

The appellant gave evidence on his own behalf but called no witnesses. His defence was that the $40,000.00 paid to him by Basdeo represented the balance of his fees to represent John.

The appellant agreed that he collected the sum of $40,000.00 from "Debbie" in the KFC car park, Curepe, on December 2, 1999 but he said the money represented the balance of fees owed to him by Basdeo and her husband

Rudolph John. He denied ever telling Basdeo and WPC Bridgelal, posing as "Debbie," that he needed $40,000.00 to pay the magistrate and the court prosecutor so that John would get bail.

The appellant testified that in October 1999 he agreed to represent John after John had been charged for drug possession for the purpose of trafficking. He charged $50,000.00 for that matter and Basdeo later paid $10,000.00, which meant a balance of $40,000.00 was outstanding. He denied that the $10,000.00 was on account of the High Court matter and he denied ever receiving a further sum of $2,500.00 from Basdeo on account of that matter. The fee he quoted for the High Court matter was $120,000.00 not $150,000.00 as Basdeo had testified. He never received any money for that matter, despite several assurances from John that he was coming to pay the money.

The appellant agreed that on October 11, 1999, he visited Magistrate Deborah Thomas-Felix in her chambers and asked her what were the chances of John getting bail. He agreed that he later told Basdeo that her husband had a good chance of getting bail and he had a good relationship with the Magistrate. He, however, denied telling her he and the Magistrate were good friends. On November 1, 1999, he appeared in the matter and held papers for two other accused but he made no application for bail for his own client.

He said over the adjournment period, he told Basdeo that when he was paid the balance of his fees, he would apply for bail for her husband. He denied that he told her the only way her husband would get bail is if she paid a $40,000.00 bribe to the Magistrate and the Court Prosecutor. He further denied that he saw Basdeo at the Magistrate's Court and asked her if she had the $40,000.00 to pay for the bail. He admitted he visited the Magistrate in her chambers on November 19, 1999, telling her that the accused would not be brought down from prison to court and asking her not to deal with the matter of bail. He told her he had not received his fees.

He agreed that he spoke to Basdeo on November 29, 1999 and that she told him that a friend of her husband would be lending her the money and the friend wanted to meet him. The Food Court at Valpark Shopping Plaza was suggested but he said he insisted it should be done at his office. On November 30, the friend, who called herself "Debbie" and Basdeo visited him at his chambers at Victoria Square. He did not recall the exact words used but he told "Debbie" and Basdeo that all arrangements had been made. By that he meant that he would tell the magistrate he had received his fees and he would be in court to make the bail application. He agreed that he might have told her that if John did not get bail he would return the money but indicated that that statement was made in jest. He expected the money to be paid on December 2, 1999.

He appeared in court on December 1, 1999 and the matter was adjourned to December 3. When he was about to leave, he leaned forward and whispered to the magistrate, telling her he would make an application for bail because he expected to collect his fees.

He said on the 2nd December he got a call from Basdeo saying that her car had broken down and he suggested she take a taxi, which suggestion she turned down. He said he suggested that his girlfriend receive the money, but this was also turned down. He eventually agreed to meet Basdeo at the KFC outlet in Curepe and as he took the bag of money from "Debbie," police swooped down on his vehicle. He said they were bearing arms and he shouted, "What is this? What is this? This is only money, this is my fees." After he was arrested and taken to the Fraud Squad Office, he repeated his assertion to Senior Supt. Virgil that the money represented his fees.

The appellant also testified as to his good character. He stated that he grew up in Bamboo Village No. 2 and was active in the community. He played football and was captain of every cricket team he played on. He entered private practice in 1989 and had never been convicted of any criminal offence.

THE APPEAL

The grounds:

The appellant filed four (4) grounds of appeal. These were:

Ground 1:

> "The learned trial judge erred in law when he failed to uphold a no case submission made on behalf of the accused in relation to counts 1 and 2 ruling that a person (not being a public official) who solicits money from another can be guilty of an offence under the relevant section of the Prevention of Corruption Act even though such person had made no corrupt approach to, or had entered into any agreement with nor had any intention to enter into any agreement with any public official".

Ground 2:

> "The learned trial judge in ruling on the no case submission misdirected himself on the evidence when he found that "when Sherry Ann Basdeo gave Singh the $40,000.00 she was so doing in order that he would do something to help i.e. to induce the Magistrate to grant bail. In other words she gave him money to perform a corrupt act. The fact that Singh may never have intended to approach the Magistrate or the Prosecutor does not matter. He induced her to part with the money as an inducement for the Magistrate to do something which the law forbids".

Ground 3:

> "The learned trial judge erred in law in misdirecting and/or failing to direct the jury adequately or at all as to the essential ingredients of the offences."

Ground 4:

> "The learned trial judge's direction on character was inadequate in that he failed to give a full character direction. The direction given was limited to propensity whereas in the circumstances of this case a direction on its impact in relation to credibility was crucial".

Although the first three grounds are separately set out, Mr. Allum, readily agreed at the outset, that they really encapsulated a single point of law, and the matter was so argued. His contention was that in order to establish a prima facie case under the section of the Prevention of Corruption Act under which the appellant was charged, there must on the evidence be some link or contact between the appellant and the public officer, in this case the Magistrate. In other words there must be some interaction with or at the very least some intended

interaction with a public official before an offence could be committed under the Act.

Mr. Allum's submissions ran this way. He contended that an essential ingredient of the commission of an offence under section 3(1) of the Prevention of Corruption Act 1987 is that there must be evidence that there was a "corrupt" solicitation or a "corrupt" receipt. In order for the solicitation or receipt to be corrupt, he submitted, there must be some evidence of a link between the accused and the public official for the achievement of a corrupt purpose, that is to induce for reward a public official to do or forbear to do an act in which the State is concerned. The State, he submitted, has to establish that there was a corrupt purpose in the instant transaction. In other words that the alleged offender must do an act which has the tendency to corrupt the public official. If there was neither an act designed to corrupt a public official nor any intent to approach a public official for a corrupt purpose then no offence under section 3(1) of the Prevention of Corruption Act can be established. In this matter even on the State's case there was a mere solicitation and receipt of money for the appellant's own use and in such circumstances the offences were plainly not established. There was absolutely no evidence suggesting that the appellant ever intended an approach to the Magistrate or the Prosecutor and therefore it is impossible on the State's case to prove that the appellant solicited the $40,000.00 as an inducement to Deborah Thomas-Felix or Claudette Bynoe as the particulars of the charge allege.

Mr. Allum further submitted that construed simply it is clear that section 3 of the Act is aimed at deterring public officials from either themselves being involved in any corrupt transaction in relation to the performance of their duties or being put in the way of temptation by any approach being made to them by any individual in relation to the performance of their duties.

Mr. Allum cited dicta in a number of authorities which he submitted were supportive of his submissions. We refer to some of them, not necessarily in the order in which they were presented.

In *R v Smith [1960] 44 Cr. App. R 55* the Court was dealing with a charge brought under section 1(2) of the Public Bodies Corrupt Practices Act 1889. That subsection reads as follows:

> I (2) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of any public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanor."

Subsection 1 of that section is in these terms:

"1. Corruption in office a misdemeanor –

> (1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanor".

This subsection is in almost identical terms with our Prevention of Corruption Act 1987 section 3.

The Court in Smith defined "corruptly" in these terms:

> "Corruptly in the above section (that is section 1 of the Public Bodies Corruption Act 1889) means that there should be a deliberate offering of cash or something similar with the intention that it should operate on the mind of the offeree to make him enter into a corrupt bargain. It is not necessary that the offeror should intend to see the transaction through and the motive of the offeror is irrelevant".

Lord Parker CJ said at p. 62:

> "The view which we have formed is, we think, confirmed by the passage I have already quoted from Willes J. in *Cooper v. Slade* at p. 773. I will read it again: "I think the word

> 'corruptly' in this statute means not 'dishonestly,' but in purposely doing an act which the law forbids as tending to corrupt voters." It seems to this court that those words apply in the present case. The mischief aimed at by the Act, as the learned judge told the jury, was to prevent public officers or public servants being put in a position where they are subject to temptation."

The facts of R v Smith were these:

> "The appellant, together with a man named Lockyer, was convicted at Leeds Assizes on July 27, 1959, of corruption, contrary to section 1(2) of the Public Bodies Corruption Act, 1889, and was sentenced by Paull J. to twelve months' imprisonment.
>
> The appellant's wife owned a plot of land next to their house, which was suitable for a petrol filling station. The appellant was minded to persuade the Castleford Borough Council to sell for this purpose a part of their land adjoining the plot owned by his wife. On January 27, 1959, Lockyer (who was convicted with the appellant of the same offence) called at the appellant's house and the appellant drew up an IOU for £500. There was no doubt that when Lockyer left the house the appellant knew that Lockyer would offer it as a bribe to some councilor. Lockyer went to the Town Hall and had an interview with the mayor at which he offered him the lion's share. The mayor did not agree to any such thing.
>
> Just after the time of the offer by Lockyer, the appellant wrote a number of letters to the Press and others inviting them to investigate the matter or to witness the exposure of corruption about to be made. It was his case that although he intended Lockyer to take the IOU to the mayor and offer it as a bribe, he did not intend to take the matter any farther; that he wanted the mayor to accept the bribe and he would then have exposed him, and that he wanted no favours.
>
> The judge directed the jury that, as a matter of law, the word "corruptly" in section 1(2) meant an intention to corrupt and that the motive of the appellant, however praiseworthy, was irrelevant".

The learned Chief Justice went on to say at p. 60:

> "The sole question, for the purposes of this case, (our emphasis) as it seems to the court, is whether the word 'corruptly' in its context means deliberately offering money, or whatever it may be, with the intention that it should operate on the mind of the person to whom it is made so as to make him enter into what I may call a corrupt bargain, or whether it means that the intention must be that the transaction should go right through and that the offeror should obtain the favour for which he sought. It seems to this court that the word 'corruptly' here used (and it is a word which appears throughout the Act and other Acts dealing with corruption) is used in the former sense, namely that it denotes that the person making the offer does so deliberately and with the intention that the person to whom it is addressed should enter into a corrupt bargain".

We were also referred to the case of R v Wellburn 69 Cr. App. R. 254 where the Court of Appeal in England approved the following definition of 'corruptly':

> "Corruptly is a simple English adverb and I am not going to explain it to you except to say that it does not mean dishonestly. It is a different word. It means purposefully doing an act which the law forbids as tending to corrupt".

Briefly the facts of the case were:

> "W and N directors of a company which manufactured radio equipment were charged with three counts of corruptly giving a gift or consideration to R a Ministry of Defence official contrary to section 1(1) of the Prevention of Corruption Act 1906; and R was charged, inter alia, with three counts of corruptly accepting as a person serving under the Crown a gift or consideration from W and N contrary to sections (1) and (3) of the Act. The Crown's case was that W and N had corruptly given and R had corruptly received from them some £13,000. W and N's defence was that they had acted on instructions from seniors".

Mr. Allum also referred us to the case of R v Godden-Wood (2001) EWCA Crim. 1586 where the direction of the trial judge in the following terms were approved:

> "The word corrupt is a simple English adjective. It does not mean dishonest. It means purposefully doing an act which the law forbids as tending to corrupt. The law seeks to prevent the corruption of agents in the shape of their being put into positions of temptation".

We unreservedly adopt the principles set out in the aforementioned cases and the directions of the trial judges, which were approved by the higher Court. In all the cases there was communication between the persons involved; both the public official and the person seeking to bribe him or on whose instruction the public official was approached – see Smith (supra). What the cases do not establish is that those are the only circumstances in which an offence under Acts dealing with bribery and corruption can be established. It seems to us that we must focus on the words of the statute and the mischief at which it is aimed. This is clearly borne out by the way in which the Courts have defined a "corrupt act" or what is entailed in acting "corruptly."

To begin with we do not agree with Mr. Allum's narrow interpretation of the aims of section 3 of the Prevention of Corruption Act 1987. We do not accept that it is limited to deterring public officials from either themselves being involved in any corrupt transaction in relation to the performance of their duties or being put in the way of temptation by any approach being made to them by any individual in relation to the performance of their duties. This was the main thrust

of Mr. Allum's submissions. We are, however, inclined to the view and accept the submission of counsel for the State that the Act itself is one of great breadth; the primary aim of which is to prevent a corrupt bargain. In other words, the Act was intended to be wide enough not only to prevent public officials from entering a corrupt bargain, but also to discourage and hopefully prevent all those who might entertain the idea of initiating a corrupt bargain which involved a public official.

The section under which the appellant was charged was:

> "3(1) Every person who, by himself or by or in conjunction with any other person, corruptly solicits or receives, or agrees to receive, for himself or for any other person, any gift, loan, fee, reward, or advantage whatsoever, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence.

The State's case was that the appellant had solicited $40,000.00 from Basdeo and had actually received that sum for the stated purpose; to influence the Magistrate to grant bail to the appellant's client who was charged before her. The State accepted that the appellant never intended to pass the money on to the Magistrate and had called evidence from the Magistrate to show that he had never made any such approach to her.

It seems to us, however, that by the plain wording of the section, once it is established that the appellant solicited the money from Basdeo and intended her to believe that she was giving it for the purpose of bribing the magistrate, that amounted to a corrupt solicitation and a corrupt receipt. It is not essential in our view for the Magistrate to have been approached or that it was the secret intention of the appellant never to approach her.

We have had the opportunity to see the transcript of the case of *(R v Robert Harrington* decided in the Court of Appeal in England on the 28th September 2000). The facts were these:

> "H was a retired police officer working as a private detective. He had maintained a working relationship with the police and had provided information to assist with investigations. In January 1998 a noted jockey ('J') was arrested as a result of an

> investigation into race-fixing (J was subsequently exonerated). H was approached by a colleague of J with a view to providing J with some general advice. In April 1998 H was approached by a detective sergeant ('W') involved in the investigation and was asked to infiltrate the racing community and to inform the police of his findings. On 5 May 1998 H met J and informed him of his new covert role. H advised J that one option that lay open to him was to bribe W. J immediately reported this matter and was duly recruited to act as an informant reporting to police officers investigating possible corruption. At the request of these officers J arranged further meetings with H. During the second of these meetings J gave H £500 to make the case "go away". During the third meeting H advised J that he would need a further £2000 to secure an assurance from W that any case against him would not proceed. H was arrested after this meeting. H had not approached W about the proposed bribe and W had no knowledge of H's actions. H claimed that he had acted so as to test J's integrity as part of his investigation into the racing community. At his trial, H made a submission of no case to answer in respect of the count alleging corruption on the ground that the absence of any approach to a public official or an employee of a public body meant that his actions fell outside the scope of the Act of 1889. The judge rejected this submission and the jury found H guilty of both counts. H appealed against his conviction for corruption on the ground that the judge had erred in rejecting the submission of no case to answer".

In dismissing the appeal, the Court said:

> "In our opinion the submissions made on behalf of the Crown in this matter are correct. In our view it is perfectly clear from the wording of section 1 of the 1889 Act and from the passage in the judgment of Lord Parker LCJ, to which we referred earlier, that it is not necessary to prove an intention on the part of the person soliciting a bribe that the corrupt transaction in question should actually go right through in order to establish the necessary mens rea for an offence under section 1 of the 1889 Act. In our judgment, to adapt the succinct definition given to the word 'corruptly' by Lord Parker in Smith in the context of section 1 of the 1889 Act to the circumstances of this case, the word 'corruptly' denotes that the person carrying out the solicitation does so deliberately, with the intention that the person to whom it is addressed should enter into a corrupt bargain. As is stated in the headnote to Smith, again suitably adapted to the circumstances of this case, it is not necessary that the person making the solicitation should intent to see the transaction through, and the motive of the person making such a solicitation is irrelevant. Furthermore, in our view, on the plain wording of the statute, it is not necessary to prove that any member, officer or servant of a public body was in fact aware of what was going on when the improper offer was made or the bribe was passed, provided that the apparent purpose of the transaction was to affect the conduct of such a person corruptly.
>
> It follows that, in our opinion, the judge was correct in his conclusion that the evidence called by the prosecution did establish a prima facie case with regard to count 3 and in particular that the appellant had acted corruptly within the meaning of section 1 of the 1889 Act. As Sir John so succinctly and helpfully stated, the essence of the offence under section 1 of the 1889 Act is the instigation of a corrupt bargain. In our judgment, the evidence called by the Crown plainly established a prima facie case of such a bargain. Accordingly, for those reasons, this appeal against conviction is dismissed.

We note that the facts and circumstances of that case are almost on all fours with the instant case. The arguments for the appellant were similar to those advanced before us. Mr. Allum has asked us to find that that case was wrongly decided and in any event we were not bound by it.

We think, however, that that decision accords with the law as we see it and in the premises we find no merit in these grounds.

Ground 4

> "The learned trial judge's direction on character was inadequate in that he failed to give a full character direction. The direction given was limited to propensity whereas in the circumstances of this case a direction on its impact in relation to credibility was crucial."

Before dealing specifically with this ground we wish to make some general observations about the value of a good character direction once it is raised on the evidence before the Court.

Before the case of Vye and others *(John Arthur Vye, Frederick James Wise and Malcolm Stephenson [1993] 97 Cr. App. R. 134*), the matter of an accused's good character (at least in this jurisdiction) was never considered as part of his defence requiring the trial judge to give specific directions on how the jury should regard it. It was only relevant to permit cross-examination as to his bad character under provisions of the Evidence Act or in mitigation of sentence.

In Vye, the Lord Chief Justice traced the history of the relevance of an accused person's good character. Of significance he stated that "at one time these issues would not have been regarded as even arguable in this court. The principle applied by this court was that the judge had no obligation to give directions on good character or even to remind the jury of *it (Aberg [1948] 32 CAR 144; Smith (1971) Crim. L.R. 531)."*

It is, however, now firmly established that where character and credibility are in issue, the defendant is entitled to have his good character put to the jury, as relevant to his alleged offence. The trial judge should do so with clarity, impartiality and without exaggeration or sarcasm – see *Rachid Berrada [1990] 91 CAR 131.*

In *Kizzy Sealy and Marvin Headley v The State* Privy Council Appeal No. 98 of 2001 as yet unreported, there was evidence by a police officer, Cpl. Holder

of seeing the appellants at the scene of the murder whereas both men raised alibis. Lord Hutton delivering the opinion of the Board stated:

> "Therefore the crucial question was one of credibility as between Corporal Holder and the two appellants: were the jury satisfied beyond reasonable doubt that Corporal Holder was telling the truth and that the two appellants were not – that Corporal Holder was not lying and that the appellants were? This was the very issue on which a direction as to credibility and propensity based on good character might have been of considerable importance. The importance of credibility may vary depending on the factual issue in dispute between the prosecution witness and the accused in a particular case, but where the issue in dispute is fundamental to the question of the guilt or innocence of the accused, then whether it relates to non-participation in the crime charged or to consent or to some other defence, their Lordships consider that the good character direction is an important safeguard to the accused."

We now turn to the instant case and to that part of the summing up about which complaint is made. The trial judge told the jury"

> The accused is saying to you that he is a person of good character and where in a trial, a criminal trial, an accused brings forward his good character, places it before things. Where a person brings his good character is not a defence to a criminal charge, it is no defence, neither is it a passport against guilt. It doesn't mean because you have good character you cannot be found guilty, or you cannot commit a crime, there is always a first time.
>
> But members of the jury, it is a factor that you must consider when you deal with the evidence of the accused. Take into consideration here is a person who has never committed any criminal offence, who has had a life of, involved in a cultural activities and service to his community. And a person of, when you are considering his evidence the fact that a person is a person of unblemished record may mean that he is less likely than otherwise to commit this type of crime. That is how you use good character, that he is less likely than otherwise to commit this type of crime because of his hitherto good character."

It is clear and this has been conceded by the State that the judge's directions on good character were inadequate. He omitted to direct the jury on the impact of the appellant's good character on the question of his credibility. Although the trial judge told the jury that the fact of his good character was a factor to be considered when dealing with the evidence of the appellant, we do not think that was sufficient to bring home to the jury that his good character was to be taken into account when they were considering whether or not they could accept his evidence as truthful. Indeed the question whether the money obtained by the appellant from Basdeo was his fees or not turned essentially on his credibility and that of Basdeo and the police officer Lynette Bridgelal.

Undoubtedly the appellant was a person of good character at the time of this incident. He was a young man of 35, regarded by many as a competent lawyer. He had been involved in social activities in the community where he was born and grew up. He was an active member of a cultural group and an avid cricketer who was captain of his cricket team and indeed captain of all the teams for which he played. He also played football. Above all he has no previous convictions of any type.

Those qualities stood out in his favour. The question is, however, whether the omission by the trial judge to give the full good character direction resulted in a miscarriage of justice. Although the need to give a full good character direction has been emphasized in all the reported cases it has always been recognised that there may be some cases in which the omission of a good character direction does not render a conviction unsafe. Is this one such case? Mr. Allum submits that this is not; counsel for the State says it is. The answer turns on a critical analysis of the evidence.

We must therefore examine the evidence to determine whether in our opinion the jury would inevitably have convicted even if a full good character direction had been given. That is the test.

As we have already pointed out the critical issue in the case is whether the sum of $40,000.00 was the payment of fees to the appellant in respect of the defence of Basdeo's husband or was the solicitation and receipt of money for an intended bribe of the Magistrate.

We must look at the facts against the background of the circumstances in which the events unfolded. The appellant was the attorney for the common-law husband of Basdeo, Rudolph John. He had appeared for John at a preliminary enquiry at which John was committed to stand trial at the Assizes for a narcotic offence. The appellant was retained to appear for John at the Assizes. The appellant was also retained to appear for John in respect of another narcotic offence. It appears from the evidence that in respect of all these charges Basdeo

was the person who had discussions with the appellant and met his requisitions. Prior to the date when the money was handed over, the appellant appeared for John before Magistrate Thomas-Felix and spoke to her in connection with the granting of bail to John. Firstly he was seeking to ascertain the Magistrate's attitude towards bail for John and after her initial refusal to grant bail he was seeking to delay her determination of the matter until his fees were paid. On Basdeo's evidence the appellant approached her for the sum of money for the purpose of securing bail from the Magistrate for John who was then in custody, having been refused bail by the said Magistrate.

The appellant arranged for the case against John to be adjourned to the day after he was assured by Basdeo that the money will be paid.

Of particular significance is the fact that Basdeo did not report to the police any such approach by the appellant. The report to the police was made by the Magistrate who was spoken to by the husband of a close friend of Basdeo. It was after the report to the police that the "sting" operation was arranged.

The appellant's chambers were located in Port of Spain and Basdeo had on all previous occasions dealt with him there. He, however, agreed to meet Basdeo and her friend Debbie (the police officer) at a Kentucky Fried Chicken Outlet at Curepe some seven (7) miles away from his office. At the outlet he refused to go inside to collect the money but called Sherry Ann on her cellular phone enquiring why she was taking so long to come out with the money. These in our view and must have been the view of the jury were unusual circumstances for an attorney to collect his fees in light of the fact that it was the habit of Basdeo to meet the attorney at his chambers, albeit it was Basdeo who suggested this venue.

Significant also is the admission by the appellant that he told Basdeo that if he did not secure bail from the Magistrate, he would refund her the money. Will counsel return fees in such circumstances? The appellant's explanation for this was that he used those words in jest. He also admitted that he told Basdeo and

‘Debbie” when they met at his chambers that “all arrangements” had been made for the grant of bail. If this conversation of “all arrangements” was believed by the jury (which they did), it was clearly irreconcilable with his contention that the money represented fees.

Further there was no allegation that there was any collusion between the police and Basdeo to fabricate this case against the appellant. Indeed the police officer ‘Debbie’ was always in the company of Basdeo when they visited him at his Chambers after the initial approach and supports Basdeo in the reason advanced by the appellant for wanting the money. The conversation the appellant had with ‘Debbie’, the person providing the money, confirmed the purpose for which the money was to be paid.

Furthermore, the appellant admitted his meetings with the magistrate; his request for the money of Basdeo and his collecting the money at Curepe. The only divergence between them was that he claimed the money represented fees.

This is the evidence which the jury had before them as against the good character of the appellant which was highlighted by the trial judge. All these matters in our view weighed heavily against the credibility of the appellant.

It was also brought out in evidence and the trial judge dealt with it in his summing up that Basdeo was herself a person not of good character, having had convictions recorded against her. We are satisfied having regard to the evidence and all the circumstances that the jury would inevitably have come to the same decision.

We wish to add one final word. The evidence in this case has revealed an association between the Magistrate and the attorney which we cannot countenance. While interaction between counsel and the Bench is desirable, there are limits to which it should go and in our view this case classically exemplifies how inappropriate it is for magistrates to meet with counsel in “Chambers”.

If such meetings are necessary, (and it should only be in exceptional circumstances) it is essential for the Clerk of the Court or the Justice of the Peace to be present. Fortunately in this case the Magistrate was forewarned in good time thereby enabling her to take the appropriate steps.

In the premises, we hold that although the trial judge failed to give the full direction to the jury on the significance of the appellant's good character and the purpose for which it was raised, we are nevertheless of the view that this omission did not result in any miscarriage of justice.

We would accordingly apply the proviso. The appeal is dismissed and the convictions and sentences are affirmed.

S. Sharma,

Chief Justice.

R. Hamel-Smith,

Justice of Appeal.

L. Jones,

Justice of Appeal.