

3/12/2010
NOT REPORTABLE

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(2) OF INTL. COURT

(3) REVISED.

3/12/2010

DATE

CASE NO: A1526/2004

IN THE MATTER BETWEEN:

S A MOGALE

APPELLANT

Vs

THE STATE

RESPONDENT

JUDGMENT

TOLMAY J:

The accused was charged with one count of corruption in terms of sec 1(1)(b)(ii), read with sec 1(2), 2 and 3 of the Corruption Act 94 of 1992.

On 24 October 2002 the appellant and his co-accused pleaded not guilty. Appellant was convicted as charged with his co-accused and on 21 November 2002 they were both sentenced to 15 years imprisonment.

The charge was based on the allegation that the appellant and his co-accused, who were police officers, on 25 June 2002 received R2 000-00 cash, which was not due to them in a corrupt way from a certain Mr Malete to change the chassis and engine number of Mr Malete's vehicle,

It was common cause that:

- (a) Both accused were police officers, who had a fiduciary duty in terms of their employment.
- (b) Both accused arrived with a vehicle on 25 June 2002, in Seshego at Mr Malete's business.
- (c) That appellant went into the shop and that Mr Malete followed him out of the shop and got into the vehicle and closed the door of the vehicle.
- (d) The state witnesses found R2 000-00 in the vehicle in which the accused came to the shop.
- (e) There was no money due to the accused from the complainant.

The disputes as far as appellant is concerned were the following:

- (a) Whether the accused requested any payment from Mr Malete for the correction of the chassis and engine numbers of his vehicle.
- (b) Whether R2 000-00 was handed over by Mr Malete to the appellant in the vehicle.

Mr Malete testified that he bought a blue Toyota Hi-Lux in 1998 on an auction from Bankfin. His brother-in-law was then arrested whilst driving the vehicle.

In due course Mr Maleta was informed by the appellant that the chassis number was tampered with and was also informed that according to the Venda authorities (the car carried Venda number plates) the car did not appear on their books. Appellant told Mr Maleta that he and his co-accused could change the engine and chassis number if they were given R2 000-00. Mr Maleta went to the anti-crime unit and reported the incident. A trap was then set up to catch the accused. The R2 000-00 that was to be used in the trap was copied and certified so that the serial numbers could be traced. On 25 June 2002 the appellant arrived at Mr Maleta's shop after he had called the appellant to tell him that he had the money. When appellant arrived, Mr Maleta followed him out of the shop and got into the vehicle with appellant. The co-accused was also in the vehicle. After some discussion he handed the money over to appellant and got out of the vehicle. When he got out he took off his jacket, which was a signal to the police that he handed over the money. The police of the anti-crime unit then approached them and arrested the accused. The money was found in the vehicle.

Inspector Ramakokobu testified that she received a letter from inspector Monama regarding the verification of the chassis and engine number of the vehicle in question. The appellant also contacted her about this vehicle and he asked her to send the chassis and engine number per fax, which she did.

Inspector Monama testified that appellant was a colleague of him at the motor vehicle unit. Inspector Monama was assigned to investigate the vehicle in question. The appellant came with Mr Maleta to him and told him about the

vehicle that was attached. He provisionally released the vehicle to Mr Malete pending investigation. After investigation he found that the engine number was tampered with and that it now carried a Venda number. He sent a fax to Venda and only after the vehicle was released to Mr Malete did the Venda police confirm that the numbers allocated to the vehicle did not exist. He later attached the vehicle again.

Captain Mosina testified that Mr Malete reported to him that a police officer at the motor vehicle unit requested money from him in order to change the chassis and engine numbers of his vehicle. After obtaining Mr Malete's statement he set up a trap. Money in the amount of R2 000-00 was obtained and the notes were copied so that the serial numbers could be traced. The copies were duly certified. When the trap was set up the money was given to Mr Malete. Mr Malete was told to phone the appellant to come and collect the money. He drove alone to Mr Malete's shop. Inspector Nesengane and Superintendent Nkuna also went there in their own vehicle. Mr Malete was told to remove his jacket when the money was handed over. A police vehicle stopped in front of the shop, a man got out and went into the shop. The man came out of the shop, followed by Mr Malete, who got in the vehicle with the man. After a while Mr Malete got out and removed his jacket. He drove to the scene, when he got there the vehicle was already blocked by Nesengane and Nkuna's vehicle. When he got out the appellant was struggling with Nesengane, he walked to the vehicle and as he walked he saw the driver putting his hand under his seat. Both accused were searched but nothing was found on them. The R2 000-00 was however found in the vehicle and it

corresponded with the copies of the notes in his possession. Both accused were arrested.

Captain Bopabe testified that the appellant worked with him at the motor identification unit. He confirmed that captain Monama was the investigating officer in the matter of Mr Malete's vehicle and that the appellant only had administrative duties. Neither of the accused were assigned to investigate the vehicle in question.

Superintendent Nkuna who was a member of the anti-corruption unit testified and confirmed the evidence of captain Mosima and Mr Malete.

The appellant then testified. He testified that he never requested any money from Mr Malete as alleged. He said that on 25 June 2002 he went to Mr Malete's shop after he was phoned by Mr Malete to come and fetch papers from Bankfin which he had received. He confirmed that he went into the shop and that Mr Malete followed him with some papers. He never saw or received any money from Mr Malete. He testified that he does not know how the R2 000-00 got in the vehicle and said many police use that vehicle. In cross-examination he suggested that Mr Malete was angry with him as he saw him and the police superintendent smoking dagga. He also suggested that Mr Malete was angry as he wanted him to return the vehicle. He also said that captain Mosina might have planted the money in his vehicle.

The co-accused testified that the appellant requested him on that particular day to take him to the police station to deliver post. He never saw Mr Malete before that day. He said that appellant came out of the shop followed by Mr Malete. Mr Malete got in the car and discussed some family problems with appellant. He had papers in his hand and he also saw a R100 note. Mr Malete gave R100 to the appellant. He testified that he knew nothing about Mr Malete's vehicle or the problems that he had. He confirmed the arrest and that the money was found in the vehicle but he did not know how it got there.

After the evidence the accused were convicted as charged. The magistrate remarked that the state witnesses made a good impression. On the other hand the appellant made a bad impression, he avoided questions, and changed his version on various occasions. The magistrate found that the accused acted with common purpose in executing a corrupt act.

This court can only interfere if it is found that the trial court misdirected itself. Consequently the appellant must convince the court that the trial court erred in accepting the evidence of the state witnesses. See **S v Frances 1991 SACR 198 A 198J-199A** and **S v Hadebe & Others 1997 (2) SACR (SCA) 645 E-F**.

On an evaluation of the evidence there is no indication that the magistrate misdirected himself. The finding that the appellant acted as a member of a group with a common purpose as envisaged by Schedule 2, Part 2 of the General Law Amendment Act 105 of 1997 seems to be correct. The **Shorter**

Oxford Dictionary defines the word “group” as “two or more people, animals or things standing positioned close together so as to form a collective unity”. It is thus clear that a group can consist of two people. The two accused acted together and as such the finding of the magistrate in this regard cannot be faulted.

The trial court evaluated the evidence and applied the necessary cautionary rules regarding both single witnesses and police traps. See **S v Chesane 1975 (3) 172 (T) 713G**.

There is no indication that the learned magistrate misdirected himself and consequently the appeal against conviction must fail.

Some concern was raised by the respondent's counsel regarding the fact that the appellant's co-accused was not before this court. Apparently the co-accused failed to take steps to finalize his appeal. The concern was raised that a ruling by this court may have an effect on the co-accused's rights if this court should find that the accused did indeed act with a common purpose. In my view this appeal only relates to the appellant's role in this incident. The appellant's co-accused is not before this court and a decision by this court will not have any bearing on the position of the other accused who is not before this court and another court will not be bound by any finding of this court.

Sentence

The appellant was 38 years old at the time of the incident. He worked at the SAP since 1989. He is married with children. He lost his job as a result of this incident and sold vegetables earning R2 500-00 at the time of the incident. He took care of his father and sisters. His wife was employed and earned R2 500-00. The R2 000-00 was found and as such no financial loss was suffered.

The magistrate took all of this in consideration.

The accused were police officers who were in a position of trust, which they violated. The magistrate found that the conviction falls within the ambit of Part II of the Second Schedule to the Criminal Law Amendment Act 105 of 1997 as the accused acted as a group. Consequently the offence attracted a minimum sentence of 15 years, unless there are substantial and compelling circumstances which justify a lesser sentence.

Police corruption is a prevailing problem in our society and the courts are obliged to protect society against this threat to our democracy. In **Du Toit, commentary on the Criminal Procedure Act**, the following is said on **28-18D-6**:

In *S v Shaik & others* 2007 (1) SACR 247 (SCA) at [233] five judges, after having referred to *South African Association of Personal Injury Lawyers v Health & others* 2001 (1) SA 833 (CC) at [4], observed as follows:

"The seriousness of the offence of corruption cannot be overemphasized. It offends against the rule of law and the principles of

good governance. It lowers the moral tone of a nation and negatively affects development and the promotion of human rights. As a country we have travelled a long and tortuous road to achieve democracy. Corruption threatens our constitutional order. We must make every effort to ensure that corruption with its putrefying effects is halted. Courts must send out an unequivocal message that corruption will not be tolerated and that punishment will be appropriately severe."

There exists no substantial and compelling circumstances to deviate from the prescribed minimum sentence and it cannot be found that the magistrate misdirected himself when imposing the sentence. See **S v Malgas 2001 (1) SACR 469 (SCA)**.

Consequently I recommend that the following order be made:

That the appeal against both conviction and sentence is dismissed.


R G TOLMAY
JUDGE OF THE HIGH COURT

I agree, and it is so ordered:


N M MAVUNDLA
JUDGE OF THE HIGH COURT