

40/82

No. 6 of 1981

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

LUTCHMEEPARSAD BADRY

Appellant

-and-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

RECORD OF PROCEEDINGS

Messrs. Donald Nelson & Co.,
124 Wigmore Street,
London W1

Messrs. Charles Russell & Co.,
Hale Court,
Lincoln's Inn,
London WC2

Solicitors for the Appellant

Solicitors for the Respondent

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[Handwritten signature]

26.5.82.

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Charles Russell & Co.
14/4/82

IN THE PRIVY COUNCIL

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FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

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RECORD OF PROCEEDINGS

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No.1

MOTION PAPER

Counsel is instructed to move this Honourable Court for a Rule calling upon Lutchmeeparsad Badry, the Respondent, to appear on the floor of the court, on a day and hour to be appointed to show cause, if any, why he should not be committed to prison or otherwise punished for Contempt of Court for having at a regional congress held by the Labour Party at Mare d'Albert, on the 18th of May, 1980 used the words contained in the affidavits sworn in this matter by C. de Labauve d'Arifat, Esq., Director of Public Prosecutions, and Desire Louis Appou, a press reporter of L'Express, which words contain certain scandalous matters respecting Mr. Justice Glover, and which were clearly and beyond any reasonable doubt calculated and intended to bring into suspicion and contempt the administration of justice in Mauritius on the ground that the findings of Mr. Justice Glover were not honest and impartial. With costs.

In the
Supreme Court
of Mauritius

No. 1
Motion Paper
7th July 1980

Under all legal reservations,

Dated at Port Louis this 7th July, 1980

(s) G. Bisasur

of Jules Koenig Street, Port Louis.

Senior Crown Attorney and Applicant's Attorney,

(s) K. Matadeen.

Of Counsel for applicant

No. 2

NOTICE OF MOTION

In the
Supreme Court
of Mauritius

No. 2
Notice of Motion
7th July 1980

Take notice that the applicant in the above matter will on Monday the 7th July, 1980 at 10.30 of the clock in the forenoon move this Honourable Court for a Rule calling upon you, the Respondent abovenamed, to appear on the floor of this Court to show cause, if any, why you should not be committed to prison or otherwise punished for Contempt of Court for having on the 18th May 1980 in the course of a regional congress of the Labour Party held at the Social Welfare Centre of Mare d'Albert used the words contained in the affidavits sworn in this matter by Cyrille de Labauve d'Arifat Esq., Director of Public Prosecutions and Desire Louis Appou Esq., a press reporter of the newspaper l'Express which words contain certain scandalous matters respecting Mr. Justice Glover, and which were clearly and beyond any reasonable doubt calculated and intended to bring into suspicion and contempt the administration of justice in Mauritius on the ground that the findings of Mr. Justice Glover were not honest and impartial.

AND TAKE FURTHER NOTICE that the said motion will be made on the day and hour abovementioned whether you are present or not.

AND FURTHER TAKE NOTICE in order that you may not plead or pretend ignorance of same, that herewith are served upon you true and certified copies of the affidavits aforesaid.

Under all legal reservations.

Dated this 28th June 1980

(s) G. Bisasur

Senior Crown Attorney and Applicant's Attorney.

To the Respondent abovenamed and styled

This Notice of Motion together with the annexed affidavits was duly served by me, the undersigned usher upon Lutchmeeparsad Badry, by leaving true and certified copies thereof, with him, in person, found at his domicile, situate at No. 17, Inkerman Street, Port Louis.

On Monday the 30th day of June 1980

(s) S. Khoyratty

Senior Usher, Supreme Court.

Reg DH 422 No 3144.

In the Supreme
Court of Mauritius

No. 2
Notice of Motion
7th July 1980
(continued)

NO.3

AFFIDAVIT SWORN BY
CYRILLE LABAUVE D'ARIFAT.

I, Cyrille de Labauve d'Arifat, Director of Public Prosecutions, make oath and say:

1. That on the 21st December 1978 a Commission was issued by His Excellency the Governor General requiring His Lordship Mr. Justice V. Glover to enquire into allegations of fraud and corruption, if any, made against Messrs. Lutchmeeparsad Badry and G. Daby then Minister of Social Security and Minister of Co-Operative and Co-Operative Development respectively.
2. That on the 2nd May 1979, the Commission of Enquiry reported adversely against Mr. Lutchmeeparsad Badry.
3. That it has been reported to me that on the 18th May 1980 the Labour Party held a regional Congress at the Social Welfare Centre of Mare d'Albert.

No. 3
Affidavit sworn by
Cyrille Labauve
d'Arifat.
2nd June 1980

4. That Mr. Lutchmeeparsad Badry, a Member of the Legislative Assembly, was one of the person who addressed the gathering at that congress.

In the Supreme Court
of Mauritius

No. 3

Affidavit sworn by
Cyrille Labauve
d'Arifat.
2nd June 1980
(continued)

5. That in the course of his speech, Mr. L. Badry said: "Ape utilise rapport Glover pour detruire moi- pas tout ce qui li fine ecrire qui vrai - ainan aine paquet quiquechose qui li pas fine prend en consideration".

Sworn by the abovenamed deponent,)
at Chambers, Supreme Court House,) (s) C. de Labauve
this 2nd day of June, 1980) d'Arifat

Before me
(s) J. Forget

Reg A 421 No 6211

Master and Registrar

Translation Paragraph 5:

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

No. 4

NO.4
AFFIDAVIT SWORN BY
D.L. APPOU

Affidavit sworn by
D.L. Appou
30th May 1980

I, Desire Louis Appou, a press reporter of Royal Road Pointe Aux Sables, make oath and say:

1. That I am a reporter for the newspaper L'Express.

2. That on the 18th May 1980, I attended a regional congress of the Labour Party held at the Social Welfare Centre of Mare d'Albert.

3. That I reached the Social Welfare Centre at about 9.45 a.m. when Mr. Lutchmeeparsad Badry, a Member of the Legislative Assembly was addressing the gathering of about some two hundred and fifty persons.

4. That in the course of his speech Mr. Badry said inter alia:

"Ape utilise rapport Glover pour detruire moi- pas tout ce qui li fine ecrire qui vrai - ainan aine paquet quiquechose qui li pas fine prend en consideration".

Sworn by the abovenamed deponent,)
at Chambers, Supreme Court House,) (s) D.L. Appou
this 30th day of May 1980)

Before me

(s) J. Forget

Reg A 421 No 6212

Master and Registrar

Translation paragraph 4:

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

NO.5

MINUTE DATED 7TH JULY 1980

No. 5

Minute dated
7th July 1980

On Monday 7th July 1980

Before the Hon. C.I. Moollan, Ag.
Chief Justice

D.P.P. v L. Badry

D.P.P. v L. Badry

D.P.P. v L. Badry

K. Matadeen appears for applicant in all three cases, and moves in terms of the motion paper which he files together with the notice of motion and two affidavits in support in each case.

No.5
Minute dated 7th July
1980
(continued)

E. Juggernaut appears for respondent and moves for one week's postponement to consider his position as his services have just been retained.

To 14th July, 1980 Mention (affidavit,
if any, should be exchanged in the
meantime)

(s) Y.A. Beebeejaun
For Master and Registrar

NO.6

AFFIDAVIT AFFIRMED BY
LUTCHMEEPARSAD BADRY

No. 6
Affidavit affirmed by
Lutchmeeparsad Badry
11th July 1980

I, Lutchmeeparsad Badry, a member of the Legislative Assembly, residing at Inkerman Street Port Louis, make solemn affirmation as a Hindoo and say:

1. That I am the respondent in the above matter.
2. That I have taken cognizance of the affidavits sworn by Mr. Cyrille de Labauve d'Arifat on the 2nd day of June, 1980 and by Desire Louis Appou on the 30th May 1980.
3. That as regards the affidavit of Mr. C. de Labauve d'Arifat, I admit paragraphs 1,2,3 and 4 thereof.
4. That I deny paragraph 5 in its form and tenor.
5. In the circumstances I pray that the application be set aside with costs.

6. That as regards the affidavit sworn by Desire Louis Appou, I am not aware of the averments made in paragraphs 1, 2 and 3 thereof.

7. That I deny the averments made in paragraph 4 of the said affidavit in its form and tenor.

No.6
Affidavit affirmed by
Lutchmeeparsad Badry
11th July 1980
(continued)

Solemnly affirmed by the abovenamed)
deponent, Court House, Port Louis,) (s) L. Badry
this 11th day of July, 1980)

Before me
(s) J. Forget
Ag. Master and Registrar

Drawn up by me
(s) M. Mardemootoo
Solicitor

Reg A 421 No 6846

NO.7
AFFIDAVITS OF
L. RAMDAWON AND L.R.L. SOPHINE

No. 7
Affidavits of
L. Ramdawon and L.R.L.
Sophine
11th July 1980

We (1) Indarjeet Ramdawon, a labourer and Chairman of the Mare d'Albert Social Centre, residing at Mare d'Albert.

(2) Louis Rene Löllothe Sophine, a fisherman and Secretary of the Mauritius Fisherman Co-operative and Federation of Labourdonnais Street, Mahebourg. make solemn affirmation and oath and say respectively:

1. That on the 18th day of May 1980, we attended a regional congress of the Labour Party held at the Social Welfare Centre at Mare d'Albert.

2. That we reached the Social Welfare Centre at about 9.a.m.

3. That we were listening when Mr. Badry was addressing the gathering and we did not hear the words contained in the affidavits of Mr. Cyrille de Labauve d'Arifat and Mr. Desire Louis Appou and Jean Berky Ombrasine.

In the Supreme Court
of Mauritius

No. 7.
Affidavits of L.
Ramdawon and L.R.L.
Sophine
11th July 1980
(continued)

Solemnly affirmed and sworn by the)
abovenamed deponents respectively,)
at Chambers, Court House, Port Louis,) (s)I. Ramdawon
this 11th day of July 1980) (s)L.R. Sophine

Before me
(s) J. Forget
Ag. Master and Registrar

Drawn up by me
(s) M. Mardemootoo
Solicitor, 11.7.80

Reg A 421 No 6847

NO.8

MINUTE DATED 14th JULY 1980

No. 8

Minute dated 14th July
1980

On Monday 14th July 1980
Before the Hon. C.I. Moollan, Ag.
Chief Justice

23519	D.P.P.	v	L. Badry
23520	D.P.P.	v	L. Badry
23521	D.P.P.	v	L. Badry

K. Matadeen appears for applicant
in all three cases.

E. Juggernaut (L. Seetohul with him)
appears for respondent and files two affidavits in each case.

Matadeen moves for rule to issue and
waival of service.

No. 8
Minute dated 14th July
1980
(continued)

To 16 and 17th September 1980 Merits

(s) Y A Beebeejaun
For Master and Registrar

NO.9
RULE

No.9
Rule
14th July 1980

On Monday the 14th July 1980 in the
29th year of the reign of Queen
Elizabeth II

In re:

The Director of Public Prosecutions Applicant
v.
Lutchmeeparsad Badry, of Port Louis Respondent

UPON hearing K.P. Matadeen, of counsel, for the
applicant, and E. Juggernaut, of counsel, for the
respondent stating that he waives service of the Rule:

IT IS ORDERED that the abovenamed respondent DO
appear on the floor of the Court on the 16th and 17th
September, 1980 at 10.30 of the clock in the forenoon
to show cause, if any, why he should not be
committed to prison or otherwise punished for
contempt of court for having on the 18th May 1980
in the course of a regional congress of the Labour
Party held at the Social Welfare Centre of Mare
d'Albert used the words contained in the affidavits
sworn in this matter by Cyrille de Labauve d'Arifat,
Esq., Director of Public Prosecutions and Desiré Louis
Appou Esq., a press reporter of the Newspaper L'Express

which words contain certain scandalous matters respecting Mr. Justice Glover and which were clearly and beyond reasonable doubt calculated and intended to bring into suspicion and contempt the administration of justice in Mauritius on the ground that the findings of Mr. Justice Glover were not honest and impartial.

No. 9
Rule
14th July 1980
(continued)

By the Court
(s) O.A. Khodadin
For Master and Registrar

Reg B 122 No 9107

NO.10

RESPONDENT'S LIST OF WITNESSES

Respondent's List of witnesses
Same as in Record No. 5 of 1981

No. 10
Respondent's List of
Witnesses
1st September 1980

NO. 11

MINUTE DATED 16th SEPTEMBER 1980

Minute dated 16th September 1980
Same as in Record No. 5 of 1981

No. 11
Minute dated 16th
September 1980

NO.12

MINUTE DATED 17th SEPTEMBER 1980

Minute dated 17th September 1980
(not copied)
Same as in copy of Record No. 5 of 1981

No.12
Minute dated 17th
September 1980

NO. 13
CIRCULAR LETTER

Circular letter
(not copied)
Same as in copy of Record No. 5 of 1981

In the Supreme Court
of Mauritius

No. 13
Circular letter
21st October 1980

NO.14
MINUTE DATED 23rd OCTOBER 1980

Minute dated 23rd October 1980
(not copied)
Same as in copy of Record No 5 of 1981

No. 14
Minute dated 23rd
October 1980

NO.15
JUDGMENT

Judgment
(not copied)
Same as in copy of Record No 5 of 1981

No. 15
Judgment
23rd October 1980

NO.16
SHORTHAND TRANSCRIPT NOTES

Sitting of the 16th September 1980
(Not copied)
Same as in copy of Record No. 5 of 1981

No. 16
Shorthand Transcript
Notes
16th September 1980

NO.17
SHORTHAND TRANSCRIPT NOTES

Sitting of 17th September 1980
(Not copied)
Same as in copy of Record No. 5 of 1981

No. 17
Shorthand Transcript
Notes
17th September 1980

No. 18

EXTRACT OF NEWSPAPER

In the Supreme Court
of Mauritius

No. 18

Extract of Newspaper
19th May 1980

Extract of Newspaper L'Express dated 19th
May 1980 Marked "A"
(not copied)

Same as in copy of Record No. 5 of 1981

NO. 19

MOTION PAPER

No. 19

Motion Paper
23rd October 1980

Counsel is instructed to move this Honourable Court
for an order;

- (a) granting leave to the applicant to appeal
to Her Majesty in Council against the judgment of
the Supreme Court of the 23rd October 1980, sentencing
the applicant to undergo six weeks simple
imprisonment, with costs;
- (b) fixing the time within which the record of
the case shall be prepared; and
- (c) fixing the amount of recognizance to be entered
into by the applicant for the prosecution of his said
appeal;
- (d) for a stay of execution of the sentence

And this for the reasons fully set forth in the
hereto annexed affidavit.

Under all legal reservations

Dated at Port Louis, this 23rd October, 1980

(s) M. Mardemootoo
of George Guibert Street, Port Louis.
Attorney for the applicant.

No. 19
Motion Paper
23rd October 1980
(continued)

(s) E. Juggernaut
of Counsel for the applicant.

NO. 20

AFFIDAVIT OF L. BADRY
AFFIRMED ON 23rd OCTOBER 1980

No. 20

Affidavit of L. Badry
affirmed on 23rd
October 1980

I, Lutchmeeparsad Badry, a member of the Legislative Assembly, of Port Louis, make solemn affirmation as a Hindoo and say:

1. That on the 7th day of July 1980 a motion was made to the Supreme Court of Mauritius for a Rule calling upon me to show cause why I should not be committed to Prison or otherwise for Contempt of Court for having on the 18th day of May 1980 at a regional congress of the Labour Party held at Mare d'Albert, uttered the following: "Ape utilise rapport Glover pou detruire moi - pas tout ce qui li fine ecrire qui vrai - ainan aine paquet quiquechose qui li pas fine prend en consideration".

2. That on the 23rd October 1980 the Supreme Court of Mauritius sentenced me to undergo six weeks simple imprisonment with costs.

3. That by section 70A of the Courts Ordinance, an appeal lies as of right to Her Majesty in Council against the final judgment of the Supreme Court.

4. That I wish to appeal against the said judgment of the Supreme Court of Mauritius

5. That it is therefore urgent and necessary that the Supreme Court should:

No. 20

Affidavit of L. Badry
affirmed on 23rd
October 1980
(continued)

- (a) grant me leave to appeal to Her Majesty in Council against the judgment of the Supreme Court of the 23rd October, 1980 and sentencing me to undergo six weeks simple imprisonment, with costs;
- (b) fixing the time within which the record of the case shall be prepared;
- (c) fixing the amount of recognizance to be entered into by me for the prosecution of the said appeal;
- (d) releasing me on such terms as the court may impose pending the determination of the appeal.

6. That I therefore pray accordingly

Solemnly affirmed by the abovenamed deponent,)
at Chambers, Court House, Port Louis, this) (s) L. Badry
23rd October 1980.)

Before me

(s) J. Forget

Ag. Master and Registrar

Drawn up by me

(s) M Mardemootoo
Solicitor.

Reg. A 424 No 2770

Translation paragraph 1:

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

NO. 21
MINUTE DATED 23rd OCTOBER 1980

Minute dated 23rd October 1980
(not copied)
Same as in copy of Record No. 5 of 1981

No. 21
Minute dated 23rd
October 1980

NO. 22
PRAECIPE

Praecipe
(not copied)
Same as in copy of Record No. 5 of 1981

No. 22
Praecipe
27th October 1980

NO. 23
AFFIDAVITS OF SURETIES

Affidavits affirmed by J.S. Maharaj and
T. Canarapen on 27th October 1980
Same as in copy of Record No. 5 of 1981

No. 23
Affidavits of Sureties
27th October 1980

NO. 24
RECOGNIZANCE

Recognizance
Same as in copy of Record No 5 of 1981

No. 24
Recognizance
27th October 1980

NO. 25
RULE GRANTING LEAVE TO APPEAL

On Thursday the 23rd day of October
1980 in the 29th year of the reign of

No. 25
Rule granting leave to
appeal
23rd October 1980

Queen Elizabeth II

No. 25

In the matter of:

Rule granting leave to
appeal
23rd October 1980
(continued)

L. Badry

Applicant

v

The Director of Public Prosecutions

Respondent

UPON hearing E. Juggernaut, with L. Seetohul,
of counsel, for the applicant, and S. Hattea of
counsel, for the respondent;

IT IS ORDERED that the applicant BE and HE IS
HEREBY granted leave to appeal to Her Majesty in
Council against the judgment of the Supreme Court
delivered on 23rd October 1980 sentencing the applicant
to undergo six weeks simple imprisonment with costs,
upon conditions that:

(i) The applicant shall by Monday the 27th October,
1980 enter into good and sufficient security to the
satisfaction of the Master and Registrar in the sum
of RS 10,000 for the due prosecution of the appeal
and the payment of such costs as may become payable
by the applicant in the event of his not obtaining
an order granting him final leave to appeal, or
if the appeal being dismissed for non prosecution,
or of the Judicial Committee of the Privy Council
ordering the applicant to pay the costs of the appeal
(as the case may be);

(ii) In the case the said conviction be affirmed
the said applicant do surrender to prison in

In the Supreme Court
of Mauritius

accordance therewith and do also pay such costs as may be ordered to be paid by the Judicial Committee of the Privy Council;

(iii) The applicant shall procure the preparation of the record and despatch thereof to England within 90 days from this day.

No. 25

Rule granting leave to appeal

23rd October 1980
(continued)

By the Court

(s) V Koloomuth

For Master and Registrar

Reg B 123 No 1679

No. 26

CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of all proceedings, judgments, decrees and or orders had and made, of all exhibits received or given in the above matter.

Given under my hand and the seal of the Supreme Court of the Island of Mauritius.

This 15th day of January 1981.

No. 26

Certificate of the
Master and Registrar
15th January 1981

Master and Registrar
Supreme Court

Order granting final
leave to appeal to
Her Majesty in

Record No 24273

IN THE SUPREME COURT OF MAURITIUS Council

19th February

On Monday the 9th of February, 1981 in 1981



the 29th year of the reign of Queen Elizabeth II

In the matter of:-

L. Ladry Appellant

v.

The Queen Respondent

....

UPON hearing G.Chinien replacing E.

Juggernaut of counsel for the appellant, K.Matadeen
of counsel for the respondent having no objection;

IT IS ORDERED that the appellant BE and
HE IS HEREBY granted final leave to appeal to Her
Majesty's Privy Council against a judgment of the
Supreme Court delivered on the 23rd October, 1980,
sentencing the appellant to undergo six weeks'
simple imprisonment.

By the Court

(s) (v.Koolomuth)

for Master and Registrar

REGISTERED AT MAURITIUS ON THE
NINETEENTH DAY OF FEBRUARY ONE
THOUSAND NINE HUNDRED AND
EIGHTY-ONE
REG. B123 NO. 2805

Certified true copy

A. Singh
Ag. Master & Registrar

Supreme Court.

No. 6 of 1978

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

LUTCHMEEPARSAD BADRY

Appellant

-and-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

RECORD OF PROCEEDINGS

Messrs. Donald Nelson & Co.,
124 Wigmore Street,
London W1

Messrs. Charles Russell & Co.
Hale Court,
Lincoln's Inn,
London WC2

Solicitors for the Appellant

Solicitors for the Respondent