

IN THE CONSTITUTIONAL COURT OF SEYCHELLES

WAVEL RAMKALAWAN

PETITIONER

Versus

- 1. THE REPUBLIC**
(herein rep. by the Attorney General)
- 2. THE ATTORNEY GENERAL**
of National House

RESPONDENTS

Constitutional Case No 1 of 2001

[Before: A.R. Perera (Presiding AC)], N. Juddoo, J and D. Karunakaran]].

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Mrs. A. Georges for the Petitioner
Mr. A. Fernando and Ms. F. Laporte for the Respondents

J U D G M E N T

Juddoo J

The petitioner, as defendant, has been charged before the Magistrates' Court with *assault occasioning actual bodily harm*, in contravention of and punishable, under Section 236 of the Penal Code (Cap 158). He is alleged on 11th November 1997, within the precincts of the National Assembly, to have assaulted one Barry Faure. Both the petitioner and the said Barry Faure were members of the National Assembly at the material time.

In essence, the petitioner claims before this Court that his right to a fair trial under Article 19 of the Constitution has been infringed by reason of the refusal of the current Speaker of the National Assembly to issue him with a certificate under Section 15 of the National Assembly (Privileges, Immunities and Powers) Act (hereinafter referred as 'The Act') whereby "*the petitioner has*

been deprived of his right to have the criminal proceedings in respect of the charge against him stayed”.

There is no denial that an incident occurred on 11th November 1997 involving certain members of the National Assembly. Following the said incident, the National Assembly resolved that a “*committee on special inquiry*” be appointed “*to investigate into an incident which occurred in the precincts of the National Assembly during the morning tea break of Tuesday 11th November 1997 between Hon. Wavel Ramkalawan and Hon. Barry Faure*” and to report its findings and make recommendations to the House at the next sitting.

The petitioner was called as a witness before the authorised committee and was questioned as to his participation in the incident. The said committee heard witnesses, completed its inquiry and submitted its report and recommendations before the National Assembly on 18th November 1997. The session of the National Assembly wherein the authorised committee was instituted, had carried forth its mandate and submitted its report and recommendations was dissolved on 19th February 1998.

On 12th November 1998, the petitioner was charged under Section 236 of the Penal Code with the offence of assault occasioning actual bodily harm in relation to the incident. Before the petitioner entered a plea it was moved that the criminal charge laid against him be stayed on the ground that the petitioner, as defendant, had appeared as a witness before an authorised committee of the National Assembly in the determination of matters the subject of the proceedings, and a certificate under the hand of the former Chairman of the Committee, Mr. Georges Bibi, dated 18th November 1998, to the effect that the defendant was required to answer questions put to him by the Committee and answered the questions fully and faithfully to the satisfaction of the Committee was produced. The Magistrate Court denied the motion for stay of the proceedings against the petitioner on the ground that the

said Mr. Bibi was *functus officio* at the time he signed the certificate. This finding was upheld on review by the Supreme Court. The said decision maintained on appeal by the Court of Appeal on 3rd November 2000. Accordingly, the said certificate or its content is null and void for all intents and purposes.

Subsequently, by letter dated 17th November 2000, the petitioner made an application to the current Speaker of the National Assembly to be issued with a certificate under Section 15 of the Act. The material part of the letter reads as follows:

".....On appeal to the Court of Appeal that Court, while agreeing with the other Courts that Mr. Georges Bibi was "functus officio", nonetheless stated that I was entitled to a certificate and that the same could be issued under your hand.

I enclose a copy of the judgment for your information and in support of my request to you that a certificate under Section 15 of the National Assembly (Privileges, Immunities and Powers) Act that I was called as a witness and did fully and faithfully answer the questions that were put to me be issued to me under your hand..."

By a reply letter, dated 5th January 2001, the Speaker of the National Assembly informed the petitioner of his refusal to issue a certificate to him under Section 15 of the Act. Whilst averring in the petition that the "*exercise by the Speaker of his powers to issue the said certificate is not subject to the jurisdiction of any Court...*" the petitioner claims that "*the Speaker was obliged in law to issue a certificate stating that the petitioner was called as a witness by the Committee and had fully and faithfully answered the questions that were put to him...*" and additionally that the petitioner had "*made an admission to the Committee that he had assaulted the said Barry Faure and had fully and faithfully answered questions put to him by the Committee.*" Accordingly, the

petitioner further claims that by reason of the refusal of the Speaker to issue him with a certificate, he has been deprived of his right to have the criminal proceedings against him stayed infringing upon his right to a fair trial guaranteed under Article 19 of the Constitution.

The core determination before this Court is whether the right of the petitioner to a fair trial, as a party charged before the Magistrates' Court, has been infringed. This in turn, raises the issue whether the petitioner is entitled to the statutory right for the proceedings instituted against him before the Magistrates' Court to be stayed by virtue of the operation of Section 15 of the Act which reads as follows:

- “(1) Every witness before the National Assembly or an authorised Committee who shall answer fully and faithfully any questions put to him by the National Assembly or 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 question.*
- (2) Every certificate under subsection (1) shall, in the case of a witness before the National Assembly, be under the hand of the Speaker and in the case of a witness before a Committee, be under the hand of the Chairman thereof.*
- (3) On production of such certificate to any Court of Law, such Court shall 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 the time and revealed by the evidence of such witness...”*

In **Ramkalawan v R**, Criminal Appeal No. 15 of 1999 (Judgment delivered on 3rd November 2000) the Court of Appeal observed that:-

“On a proper reading of subsections (1) and (2) of the section, it is clear that a witness who gives evidence, either before the Assembly or its authorised committee, and satisfies the requirements of subsection (1), is entitled to a certificate as a matter of course, that is to say, the Speaker of the Assembly or the Chairman of an authorised committee, as the case may be, should issue such certificate either on request by the witness or ex mero motu after evidence has been given but before presentation of the report, in the case of the committee chairman ...

In our view, as the Speaker presides over the proceedings of the Assembly, once the Chairman of the authorised committee tables the committee’s report before the Assembly (and thereby ceases to be its chairman) the Speaker “shall” exercise his powers under section 15(2), including those conferred upon the former committee chairman and, in his absence, the Clerk shall exercise such powers from the records of the Assembly. This interpretation is consonant with the purpose of section 15 which entitles the witness to a certificate to be issued at once or subsequently.”

In order for the petitioner to succeed in the present case, it needs to be shown that the petitioner satisfies the requirements section 15(1) of the Act and was entitled to the issue of a certificate, either at once or subsequently, and that such a certificate if produced before the lower court would result in a stay of the proceedings under section 15(3) of the Act. It needs to recall at this stage that the statutory stay of proceedings under section 15(3) of the Act is mandatory rather than discretionary. This means where the conditions are fulfilled, section 15(3) of the Act operates to grant a stay to the criminal charge brought against a former witness.

Under the Act itself, there are obvious circumstances where the entitlement and production of a certificate will not result in a stay of the proceedings. A simple illustration is where the charge is for an offence under section 102 or section 122 of the penal code. A further illustration is where the charge against the defendant is not for “*any act or thing done by*

him before the time and revealed by the evidence of such witness..." In the latter case, it becomes secondary whether the petitioner, as witness, had answered fully and faithfully any questions put to him to the satisfaction of the authorised committee in compliance with section 15(1) or whether the petitioner, as witness, should have been entitled to the issue of a certificate under section 15(2) of the Act.

It is averred in the petition that "*By operation of section 15 of the Act, the Petitioner, if able to produce a certificate to the effect that he was required to answer and did answer questions put to him by a committee of the Assembly, and that he answered them fully and faithfully, would be afforded a stay of the criminal proceedings against him.*" In support thereof, it is submitted "*...section 15, as presently worded, is wide enough to cover this case. The assault with which the accused stands charged was alleged to have been committed on 11th November 1997. The Committee was set up to investigate the alleged assault. The appellant testified before the Committee on the 12th November 1997. On the 12th he was testifying to something that had happened 'before the time'. When, on 12th he was called to testify as a witness he was forced to divulge matters, in other words 'reveal' matters which had happened on the 11th. The fact that the matters revealed by him were already known, or had been revealed by other sources, is immaterial. To hold otherwise would be to seek to add the words 'for the first time' after 'reveal' in section 15(3)...*" It is further submitted "*Because a witness before a Parliamentary Committee cannot refuse to answer a question, even if it incriminates him, a protection has to be afforded to the witness...this is why section 15(3) specifically provides a witness who has incriminated himself with immunity.*"

Section 15(3) of the Act has to be read in its proper perspective. It does not provide immunity to a witness merely because the latter has incriminated himself when called as a witness before an authorized

committee. Section 15(3) has to be read with the provisions under sections 14(1) and 15(1) of the Act. Under section 14(1), thereof, every witness who appears before the authorized committee "*shall be entitled...to the same right and privileges as before a court of law*" and, under section 15(1), thereof, a witness who has been required to answer and did fully and faithfully answer any question put to him to the satisfaction of the authorized committee is entitled to a certificate. Accordingly, where the witness is so required to answer and has answered fully and faithfully to the satisfaction of the authorised committee, the witness is entitled to the issue of a certificate as a matter of course either at once or subsequently. Such a certificate will operate to stay any subsequent proceedings against the witness for any act or thing done by the witness and revealed by his evidence before the authorized committee.

The ascertainment as to whether the petitioner as witness was required to answer a question put to him is a question of fact to be ascertained from the records produced and the surrounding circumstances. In the present case, the act complained of is an assault by one person upon another. The alleged assault occurred within the precincts of the National Assembly and was witnessed by others including the complainant. Given that the alleged incident occurred within the precincts of the National Assembly and involved two of its members, an authorised committee was set up to investigate into the incident. The said committee summoned and heard eleven witnesses; two security officers, two employees of the National House and seven members of the National Assembly including the petitioner and the said Barry Faure.

From the records of the proceedings of the authorised committee, it is disclosed that the petitioner attended as a witness before the said Committee on 12th November 1997. He was requested by the Chairman of the Committee to inform the members about his version of the incident. He raised two objections to the composition of the authorised committee and thereafter

volunteered his version of the incident including an admission, amongst others, that he had dealt a slap to Mr. Barry Faure. At no time had the petitioner, then as witness, claimed to exercise his privilege against self-incrimination in respect of any part of his evidence nor has the authorised committee been put to an election whether they would request the witness to answer any specific question in spite of the privilege that the latter may enjoy supplementing such a request with the ability and power of the authorised committee to grant some form of immunity to the witness by way of a certificate issued to him under the Act .

It is of interest that the petitioner, himself, whilst he was giving evidence before the authorised committee disclosed his awareness that the acts and events pertaining to the incident which was being inquired could well be the basis of Court actions against or by him (vide pages 53 and 57 of the authorised committee proceedings). Learned Counsel on behalf of the petitioner submitted that the right to a certificate by a former witness under the Act only becomes relevant at the time when Court proceedings are instituted. Such a restrictive interpretation cannot be imposed on section 15(1) of the Act for it would take away the prerogative and privileges entrusted to the authorised committee members to assess whether the witness had fully and faithfully answered the question put to him at the material time. This is irrespective as to whether the actual certificate is issued during the life time of the authorised committee or at a later date.

Upon an examination of the records of the proceedings of the authorised committee there is no evidence that any stage of its deliberation it was resolved that the petitioner, who was summoned to give evidence as witness, and did give evidence which "satisfied" the requirements under section 15(1) of the Act and was entitled to the issue of a certificate. The requirement under Section 15(1) of the Act is for a witness to have fully and faithfully answered any question put to him to the satisfaction of the

authorised committee. Such determination falls upon the said committee members and is to form part of the records. Any decision or determination of the committee members has to be carried forth in satisfaction of the voting procedure under which the authorised committee is governed. Had there been such a determination in the proceedings or report then the issues would rightly arise as to whether a certificate ought to have been issued to the petitioner under section 15(2) of the Act, and additionally whether the current speaker of the National Assembly was "obliged" (as pleaded) to exercise his powers, if any, under Section 35 of the Act to issue the said certificate (taking into account that it was averred by the respondent that the current Speaker had no such power under the present Constitution) and lastly whether refusal to issue a certificate infringes on the constitutional right of the petitioner under Article 19 of the Constitution. In the latter respect, I would venture to suggest that where the act or discretion of the Honourable Speaker is put into cause, there is need to include him as a party and grant him a right of reply.

The petitioner's submission is that, otherwise than by a determination of the authorised committee, this Court is able to scrutinise the testimony of the petitioner before the authorised committee and taking into account his admission that he assaulted the said Barry Faure this Court can determine whether he had fully and faithfully answered the questions put to him to the satisfaction of the authorised committee in fulfillment of section 15(1) of the Act. This would amount to a usurpation of the powers and privileges of the authorised committee especially taking into account that the petitioner, as witness, had the right and opportunity to call upon the committee to examine whether he satisfied the requirements under Section 15(1) of the Act when he thought he was required to answer any question that might reasonably incriminate him and taking account of his expressed awareness that court proceedings (civil or criminal) may result on the basis of matters which were being investigated. Such intervention under the guise of legitimate relief is not warranted in the circumstances.

In relation to the charge facing the petitioner before the Magistrates' Court, it is not disputed that there is evidence of the 'alleged assault' otherwise than by virtue of the admission made by the petitioner when he appeared as witness before the authorised committee. The incident occurred in the presence of several witnesses, including Mr. Barry Faure who appears to be the complainant as per the information laid before the lower Court. By way of his admission, the petitioner, as witness did not "reveal" any act or thing done by him. The word "reveal" as used in the language of the section is to make known a fact which was otherwise unknown before the revelation made by the witness. Neither has it been shown that the criminal charge laid against the petitioner, as defendant, is dependant upon the admission or evidence that was revealed before the authorised committee. Where such an "act or thing" done is considered to be revealed before an authorised committee there is unlikely to be then in existence other means of being aware of the fact or thing so revealed.

In the end result and for reasons given hereabove, it cannot be said that the petitioner has satisfied the requirements of Section 15(1) of the Act, so as to be lawfully entitled to the issue of a certificate nor that such a certificate would result in a stay of the criminal charge instituted against the petitioner, as defendant. Accordingly, in that respect, the petitioner's right to a fair trial before the Magistrates' Court under Article 19 of the Constitution cannot be said to have been infringed.

Accordingly the petition is dismissed. No order as to costs.

N. JUDOO
JUDGE

Delivered at Victoria, Mahe, this 25th day of September 2001.

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IN THE CONSTITUTIONAL COURT OF SEYCHELLES

Wavel Ramkalawan of
St Louis, Mahe

Petitioner

Versus

1. **The Republic** (herein represented
by The Attorney General)

2. **The Attorney General of**
National House, Victoria

Respondents

Constitutional Court Case No 1 of 2001

.....
(Before A.R.Perera J (Presiding), N.Juddoo J, D.Karunakaran J)
.....

Mrs. A.Georges with Mr B.Georges for the Petitioner
Mr. A.Fernando Attorney General with Miss F.Laporte for the Respondent

JUDGMENT

Perera ACJ

The petitioner, a member of the National Assembly, was summoned as a witness before a Committee set up under Standing Order 80(1), “*to investigate an incident which occurred in the precincts of the National Assembly during the morning tea break of Tuesday 11th November 1997 between himself (Hon. Wavel Ramkalawan) and Hon. Barry Faure.*” The Committee, after inquiry, submitted its Report dated 18th November 1997 to the National Assembly. That Committee concluded that there were verbal provocations and insults by both members, but that the physical assault by Hon. Ramkalawan, on Hon. Faure, was disproportionate to the provocation offered. They therefore recommended that –

- (1) ***Provocation and insult*** on personal basis in the Chamber and in the precincts of the Assembly be ***reprimanded by the Speaker***.
- (2) In the circumstances of ***threats and physical assaults***, strict punitive measures be applied.
- (3) The "offending member Hon. W.Ramkalawan" be subject to "strict disciplinary measures under the provisions of Section 28 of the National Assembly (***Privileges, Powers and Immunities***) Act.
- ~~(4) ***The Speaker invokes order 91 of the standing orders in order to initiate action, against Hon. W.Ramkalawan under Section 23 (a) of the said Act***~~

It is not in dispute that consequent to the 3rd recommendation, the petitioner was suspended from seven sittings of the National Assembly with loss of salary and allowance during that period. Such punishment was imposed under Section 28 of the National Assembly (*Privileges, Powers and Immunities, Act*) (hereinafter referred to as the "National Assembly Act") as a "contempt of the Assembly", and not for the offence of "assault" under Section 23 (a) thereof.

The National Assembly accepted the 4th recommendation of the Committee and referred the finding of assault, to the Attorney General under Standing Order 91(c), upon a motion that was passed by 21 votes for, with no vote against (see page 35 of National Assembly proceedings of 18th November 1997). Consequently, criminal proceedings were instituted before the

Magistrates' Court in case no C799/98, on 12th September 1998, charging the petitioner with the offence of Assault Occasioning Actual Bodily Harm, under Section 236 of the Penal Code. That case is still pending before that court.

Section 15(1) of the National Assembly Act provides that "*every witness*" before the Assembly or an ***Authorised Committee*** "*who shall answer fully and faithfully 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*" such question. Under subsection (3) thereof, on the production of such certificate a civil or criminal, court shall stay proceedings ***against such witness*** for any Act or thing done by him ***before the time and revealed by the evidence of such witness***.

It is not in dispute that the petitioner did not obtain such a certificate from the Chairman of the Committee before the report was presented to the National Assembly, on 18th November 1997. However, the petitioner obtained such a certificate from Mr Georges Bibi, who was the ex-chairman of the said Committee, on 18th November 1998. That was one month after the criminal case was filed in the Magistrates' Court, and nearly eight months after a new Assembly had been elected after the General Election. The Learned Senior Magistrate rejected that certificate on the ground that Mr Bibi was "functus officio" and that hence it was invalid. That decision was upheld by the Supreme Court in revision, and also subsequently by the Court of Appeal. The Court of Appeal upholding the decisions of the Magistrates' Court and the Supreme Court as regards the ***validity of the certificate***, proceeded to state that-

“The Speaker of the National Assembly may, however, in terms of Section 35 of the Act “at all times exercise the powers conferred upon him by this Act even though the Assembly may have been prorogued or dissolved”.

This Court in a previous ruling unanimously decided that such pronouncement was ***obiter dicta***, as the matter before that court was limited to a consideration of Section 15(1) and (2) as regards the validity of the certificate. The Court of Appeal itself confirmed this when they stated that-

“At this stage, the relevant portions of Section 15 are Section (1) and 2) since our present inquiry is focussed on the validity or otherwise of the certificate that was issued by Mr Georges Bibi, Erstwile Chairman of the National Assembly Committee”. The petitioner had however interpreted that pronouncement ***as a finding*** of the Court of Appeal, and in his letter dated 17th November 2000 to the Speaker, claimed that that Court had nonetheless stated that (he) ***was entitled to a certificate*** and that the same could be issued under the hand of the speaker. The Speaker, by letter dated 5th January 2001 replied that having read the judgment of the Court of Appeal, and gone through the report of the Committee of inquiry, and the judgment of the Supreme Court, he had reached the following conclusions.

- “1. *Since I did not chair the Committee of Inquiry nor was a member of that Committee, I am not in a position to say whether the requirements of SS(1) of S.15 were met, nor do I believe I can issue the certificate under S.S.(2) which clearly states that in case of a witness before a committee, the certificate shall be under the hand of the chairman thereof.*
2. *However, even if I was entitled to issue a certificate in compliance with S.15 (1) and the Court of Appeal Judgment on page 3 refers to satisfying the requirements of*

S.S.(1) of S.15, on a reading of the report of the Committee of inquiry it cannot be said that you answered fully and faithfully questions put to you to their satisfaction.

3. *I am not convinced that S.35 of the Act is relevant to this case."*

In paragraph 9 of the Petition, the petitioner summarising that reply avers that

"By a letter dated 5th January 2001, the Speaker, contrary to the said finding of the Court of Appeal, refused to issue the said certificate on the grounds, inter alia, that he was not entitled to issue the said certificate and that, even if he had been so entitled, he was not of the opinion that the petitioner had fully and faithfully answered questions put to him".

In paragraph 10 of the petition, the petitioner avers that the Speaker erred in his decision that he was not entitled to issue the said certificate and also that the petitioner had not fully and faithfully answered questions put to him by the Committee.

Further in paragraph 11 of the petition, the petitioner avers that the Speaker was "*obliged in law*" to issue such certificate as he had admitted the offence of assault and that thereby fully and faithfully answered the questions put to him by the Committee.

The prayers in the petition therefore are-

(1) *That the refusal of the Speaker to issue the said certificate contravenes Article 19 of the Constitution by denying him a fair trial.*

- (2) *That his trial for the offence of assault before the Magistrates' Court contravenes Article 19 of the Constitution.*

The alleged convention of Article 19 is based on the “refusal of the Speaker to issue the certificate”, and the consequent continuance of the trial before the Magistrates' Court.

It is manifest in the prayer for the said declarations in the petition that there is an invitation to this court to review the conclusions reached by the Speaker as regards the issuing of the certificate. It was however submitted by Learned Counsel for the petitioner that it was not felt necessary to determine the issue of the power of the court to review that decision as the declaration sought is under Article 46 (5) (a) of the Constitution, and not under Article 46(5) (c) thereof. That would involve a mere declaration *simpliciter*, and not one followed by the issuance of a writ or directions to enforce the charter of Fundamental Rights. Learned Counsel relied on the Court of Appeal decision in *Citra Hoareau v. The Government of Seychelles (S.C.A. no 42 of 1999)* in this respect. In that case this court interpreted Articles 130(4) (a) and (b) disjunctively, and ruled that a petitioner could not pray only for the issuing of a writ under sub-article (c) without praying for a declaration either under sub-article (a) or (b). The Court of Appeal accepted the contention of Counsel for the Appellant and held that “*implicit in her client's remedy* under 130(4) (c) for writs of *certiorari* and *mandamus* to issue (was) a prayer for a finding that the Act or omission constitutes a contravention of the Constitution”. That decision only established that one could pray for a remedy such as the issuing of a writ leaving the Court to gather the alleged contravention from the pleadings. That Court, did not hold that a prayer for a declaration was not necessary. Even in a

case for judicial review, there must first be a finding that the decision of a Minister or a statutory authority is ultra vires or illegal for any of the writs prayed for to be issued. The prayer in that case was only for a writ of certiorari to quash the decision of a Minister and for a writ of mandamus to compel him to perform a particular duty. In the present case, the petitioner has prayed only for two declarations. He has admitted in paragraph 13 of the petition that the exercise by the Speaker of his powers to issue the said certificate is not subject to the jurisdiction of any Courts and hence he is bound by that decision. This is based on the "ouster clause" contained in Section 34 of the National Assembly Act. However Learned Counsel for the petitioner submitted that, all that the petitioner was asking the Court to do, was not even to consider whether the Speaker was right or wrong, but to examine the proceedings of inquiry independently, and to declare that as the petitioner had admitted the assault, he had answered "*fully and faithfully*" and hence was entitled to a certificate, but as such certificate has not been issued, his right to a fair trial has been contravened.

Learned Counsel for the petitioner further submitted-

*"Thus, in making the declarations the court will impliedly be saying that the Speaker ought to have issued the certificate and that **the Court, if possessed of the Speaker's powers**, would have issued the certificate. This may appear to be a review of the Speaker's decision but actually it is not, because the satisfying of the two conditions are **matters external to any action of the Speaker** which the Court is today **in as good a position as the Speaker** to appreciate, and the issuing of the certificate is an automatic non-discretionary consequence of the conditions being satisfied."*

“If therefore the granting of the declarations sought gives the appearance of the Court reviewing the Speaker’s decision, that is merely an appearance and not a fact because the decision need not be reviewed for the declarations to be granted”.

The gist of that submission was that the satisfaction of the two conditions required to be entitled to a certificate, namely that (1) the petitioner was a witness before the Committee and (2) that he answered the questions put to him fully and faithfully were matters which the Speaker could have considered from the report of the Committee of inquiry, and which this court as well could consider independently. The petitioner contends that as the inquiry was regarding an assault on a member, and as he admitted that offence when he was called as a witness, obviously he had answered fully and faithfully on that issue, and hence he was automatically entitled to a certificate under Section 15(1).

The Learned Attorney General conceded that this Court could refer to the proceedings before the Committee. He however submitted that in view of paragraph 13 of the petition where the ouster clause in Section 34 is admitted, the Court ought ***not to review the decision of the Speaker.***

It was submitted by Learned Counsel for the petitioner that the Petitioner and Hon. Faure should have been called before the committee as “parties” or “defendants”, and not as “witnesses”. But before a fact finding Committee without any Penal Powers, everyone summoned to appear would be “witnesses”. In fact, the Chairman of the Committee of inquiry by letter dated 11th November 1997 (exhibit AG2) addressed to the petitioner requested him

to attend a meeting of the Committee “*to assist the Committee in its investigations*”. Section 14 of the National Assembly Act refers to “*every person summoned to attend to give evidence.*” Generally such witnesses may become “*parties*” or “*defendants*” to the incident inquired into only upon the conclusion of the investigation, and on the basis of the findings. Hence though summoned as a “*witness*”, or “*someone who could assist in the investigation*” the certificate under Section 15 (1) would be available to any person against whom an accusation relating to the Commission of an offence has, or can be levelled, on the basis of acts revealed in his testimony, which in the normal course may result in a prosecution.

The rationale of Section 15 of the National Assembly Act, is the privilege against self-incrimination. One of the Fundamental values enshrined in criminal jurisprudence is that an accused person cannot be required to facilitate his conviction by providing evidence against himself. In Seychelles, this is a Fundamental Right recognized in Article 19(2) (g) of the Constitution. Section 14, read with Section 15 of the said Act is intended to encourage persons to come before the National Assembly or an authorised Committee, and to give evidence “*fully and faithfully*” without being apprehensive of Civil or Criminal liability. The purpose of this privilege is to protect the Assembly collectively, and the members individually, from any obstruction or interference of their functions, thereby maintaining the Assembly’s independence and authority. In the case of *Bradlaugh v. Gossett (1884) 12. Q.B.D. 271*, the Court refused to declare void an order of the House of commons preventing a member who had been elected from taking oath. Similarly, in *The King v. Graham Campbell, Exparte Herbert (1935) 1.KB 594*, it was held that the House of Commons had the privilege of regulating its own internal affairs and procedure, including the sale of intoxicating liquor without a licence, through

its employees in the Refreshment Department of the House, and that although it was an offence under the Licensing Act, such offence fell within the privileges of the House so that no Court of Law had jurisdiction to interfere.

What then is the position of the judiciary and the legislature in Seychelles? Basically, there is a separation of powers, and the Courts should not interfere with the Internal Affairs of the National Assembly including their privileges, immunities and powers.

However, Eskiné May states that-

*“After some three and a half centuries, the boundary between the competence of the law Courts and the jurisdiction of either House in matters of privilege is still not entirely determined. the courts on the other hand regarded the **Lex Parliamenti** not as a particular law but as part of the law of the land, and therefore within their judicial notice. There might be areas of the application of privilege within which it was proper for either House exclusively to make decisions, **but particularly – though not solely – where the rights of third parties were concerned, the Courts considered that it was for them to form their own view of the law of parliament and to apply it”**.*

In the present case, the petitioner is not a “third party” in that sense. Although he is a member of the Assembly, he is an accused before a court of law as an ordinary citizen. The Act of assault in the precincts of the Assembly was an offence under Section 23(a) of the National Assembly Act. This Act of assault was referred to the Attorney General under Standing Order 91(c) upon a motion being duly passed to that effect, for prosecution under the National

Assembly Act as “*a specified offence*” under that Act. However the Attorney General exercising his discretion under Standing Order 91(d) prosecuted him under the Penal Code, as an ordinary citizen. The vital issue is whether the petitioner was charged under the Act or the Penal Code, he had the right to a fair hearing guaranteed by Article 19 of the Constitution. The prosecution of the petitioner is now a matter completely outside the province of the National Assembly. This Court has already accepted the submission of Learned Counsel for the Petitioner that the fairest hearing, is to be able to argue that one ought not to have a hearing at all.

The petitioner avers that the resulting position of the Speaker’s reply is that he has been deprived of the possibility of obtaining a certificate, which will stay criminal proceedings against him in the Magistrates’ Court. This Court is vested with the sole jurisdiction in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution. In terms of Article 5, thereof, the Constitution is the Supreme Law of Seychelles and any other law found to be inconsistent with it would be, to the extent of the inconsistency void. The petitioner is before this Court on an alleged contravention of Article 19 of the Constitution. This complaint has to be considered by this court. In doing so, it becomes necessary to examine the source of such alleged contravention. The petitioner avers that it is the refusal of the Speaker to grant a certificate under Section 15(1) of the said Act. Here the provisions of the Constitution, which is the Supreme Law must prevail over Section 34 of the National Assembly Act to suppress the mischief and to advance a remedy. Hence although Section 34 grants immunity to the Assembly and the Speaker to exercise their powers and functions vested in them without interference by the court, yet when a person’s Fundamental Right

is alleged to have been contravened by the exercise of such power, this court cannot refuse to consider such complaint on the ground that the decision of the Speaker or of the Assembly is not justiciable. To do so would be to abdicate the powers vested in this Court by the Constitution.

In the case of **The Queen v. Holl** (1881) Vol. 7 Page 575, the Court held that a certificate issued by commissioners inquiring corrupt practices at an election was a “certificate of their judgment which was conclusive and that their refusal to give such certificate, whether that judgment was right or wrong could not be reviewed by a writ of mandamus. That was on the basis that such writ was available to compel a public duty which had been imposed by law. But if that duty was owed by the crown or a servant of the crown, then mandamus could not issue. But in the present matter, the petitioner does not seek relief under Article 46(5) (c), but under Article 46(5) (a) alone. This Court is therefore concerned only with the alleged contravention of the Constitution.

Article 45 of the Constitution provides that the Chapter on the Seychelles Charter of Fundamental Human Rights and Freedoms “*shall not be interpreted so as to confer on any person or group the right to engage in any activity aimed at the suppression of a right or freedom contained in the Charter*”. Article 46 proceeds to give a right to a person who claims that a provision of the Charter has been or is likely to be contravened in relation to him by any law, Act or omission, to apply to this court. This court has already ruled that the petitioner has ***locus standi*** to prosecute the petition before court. Hence despite the immunity contained in Article 34 of the National Assembly Act, and the General reluctance on the part of the courts to interfere with internal the affairs of the legislature, a court vested with jurisdiction over Constitutional matters is in no

way fettered from examining, any Act or omission of the National Assembly, the Speaker, or any officer in determining an allegation of a contravention of a Fundamental Right or for that matter any other right vested by the Constitution in any person. In the case of **Fotofili and Others v. Siale** (1988) L.R.C (Const) 102, the Privy Council, in an Appeal from Tonga held **inter alia**, that although in England an Act of Parliament could not be challenged on the ground of irregular parliamentary procedure, the position was different under a written Constitution, where, if on a true Construction of the Constitution some event was made a condition for the validity of a law, the Court had jurisdiction to examine whether the condition had been met even if that involved an inquiry into the internal proceedings of the Assembly.

In the case of the **Attorney General v. Ramgoolam** (1993) SCJ 198(Mauritius), the respondent was absent from the sittings of the National Assembly for a continuous period of three months without the leave of the Speaker as required by Section 35(1) (e) of the Constitution. The Attorney General sought a determination from Court whether the seat of the Respondent had become vacant. The Court held **inter alia** that –

“Upon the contention that it would not be proper for the Court to hear evidence which might breach the privileges of the National Assembly in the application of the standing orders made in pursuance to Section 48 of the Constitution; in Mauritius, our Constitution had conferred on the Supreme Court a fundamental jurisdiction concerning Constitutional matters unknown to the Courts in the United Kingdom, and hence Eskine may necessarily had to be read subject to the particular jurisdiction which the Constitution had so vested in the Supreme Court”.

It was further held that **“where Parliament exercises sovereign powers under the Constitution and the Courts are empowered to exercise a particular jurisdiction which itself requires an enquiry into the exercise of these powers by Parliament, then the jurisdiction of the Courts must be exercised to the appropriate extent in order to enable it to determine the particular question that is before it.”**

In the case of **Tong v. Taniera & Or (1987) L.R.C. (Const) 1**, the leader of the Christian Democratic Party of Kiribati applied to the court for a declaration that the Speaker of the House of Assembly had been in breach of Section 77(2) of the Constitution in not summoning the Assembly upon being advised to do so by 1/3 of the members. The court ***inter alia*** held that by virtue of Section 88(1) of the Constitution (*which is similarly worded as Section 46(1) of our Constitution*) it had jurisdiction to consider the reasons given by the Assembly. The Court after considering the reasons found that the Speaker had a discretion in the matter and that he had exercised that discretion upon *“relevant considerations”*.

The principle established in those cases therefore was that the Court had jurisdiction to consider a decision of the National ~~of~~ Assembly to ascertain the validity of an allegation of a contravention of a Constitutional right.

In the present case, examining the reasons adduced by the Speaker in his reply dated 5th January 2001 for the purpose of ascertaining whether there is a contravention of Article 19 of the Constitution as alleged by the petitioner, I would first consider the 3rd reason as to the relevancy of Section 35 of the

National Assembly Act. That section envisages a position where the Speaker continues to hold office despite the prorogation or dissolution of the National Assembly. The Learned Attorney General submitted that the original House of Assembly (*privileges, immunities and powers*) Ordinance 1975 came into force on 3rd November 1975 after the promulgation of the Constitution of 1975 which provided in Article 38(2) thereof that “*the Speaker held office during her majesty’s pleasure*”, and that **he shall not vacate his office by reason only of a dissolution of the House of Assembly.** This position was the same under the Constitution of the 1st Republic 1976, save that the Speaker held office at the pleasure of the President. In the Constitution of the 2nd Republic 1979, the Speaker was appointed by the President. The Constitution of the 3rd Republic promulgated in 1993 introduced for the first time a provision that the Speaker and Deputy Speaker shall be elected by the National Assembly **from among the members of the Assembly.** (Article 83(1)).

Section 35 of the National Assembly Act provides that –

*‘For the purposes of this Act, the Speaker may, **at all times** exercise the powers **conferred upon him** by this Act **even though the Assembly may have been prorogued or dissolved.***

The powers conferred on the Speaker by the National Assembly Act however, are powers to safeguard the privileges, immunities and powers of the Assembly and its members. Under Section 15(1), he has the power to issue a certificate under his hand, to a witness who had answered questions put to him fully and faithfully **before the Assembly of the House** . The Court of Appeal however extended the meaning of that Section to include “*the powers conferred upon the former Committee Chairman*” and, in his absence, the

clerk who shall exercise such powers from the records of the Assembly. These dicta are based on the provisions of 36(2) (b) of the said Act which state that when the Speaker is absent, the powers vested in him shall be vested in the Clerk.

The Court of Appeal further stated thus-

“It is obvious that when exercising the Speaker’s powers, the Clerk will do so from records of the Assembly. In our view, as the Speaker presides over the proceedings of the Assembly, once the Chairman of an authorised Committee tables the Committee’s report before the Assembly (and thereby ceases to be its Chairman) the Speaker “shall” exercise such powers under Section 15(2), including these conferred upon the former Committee Chairman and in his absence, the Clerk shall exercise such powers from the records of the Assembly. This interpretation is consonant with the purpose of Section 15 which entitles the witness to a certificate either to be issued at once or subsequently”.

With respect, that pronouncement was based on the following premises-

- (1) *A certificate under Section 15(1) can be issued by the Speaker or the Clerk from the records, on an objective consideration of the findings.*
- (2) *The words “to its satisfaction” in Section 15(1) and the words “conferred upon him” in Section 35 could be considered objectively.*
- (3) *That the office of the Speaker continues in perpetuity, and a Speaker elected by an Assembly consequent to a General Election held subsequent to the dissolution of the Assembly in which the inquiry was held, would also be eligible to issue a certificate in respect of an inquiry held under the Chairmanship of the*

previous Speaker, or that of an authorised Committee set up under his chairmanship.

- (4) *That a witness was entitled to a certificate at any time irrespective of whether the Assembly had been prorogued, dissolved, and even where a new Assembly had been convened after a General Election.*

The rationale of that pronouncement was that if in the “*absence*” of the Speaker, the Clerk could under in Section 36(2) (b), exercise the powers vested in the Speaker by Section 15 and 31, by reference to records, the Speaker himself was in a better position to do the same.

Section 15(2) in particular, provides that a certificate in respect of a witness ***before the Assembly be under the hand of the Speaker***, and that of a witness ***before a committee be under the hand of the Chairman thereof***.

Section 31 protects persons responsible for publications authorised by the Assembly. Such an authorisation would usually be a matter of record. Hence a person sued in a Civil or Criminal case could obtain a certificate ***under the hand of the Speaker*** certifying such authorisation, and such certificate when produced before the Court will not only stay proceedings but also would deem such proceedings to be finally determined.

The powers of the Speaker under Section 15(2) and Section 31 are limited to the issuing of the respective certificate. Both certificates are based on matters of record arising from proceedings before the Assembly. They need not be based on any subjective consideration of the Speaker. Hence, as

was submitted by Learned Counsel for the petitioner, the satisfying of the two conditions in Section 15(1) are matters external to any action of the Speaker.

The power to issue certificates under Section 15(2), is therefore vested in the Speaker only when they arise from records of evidence of witnesses before the Assembly and in the case of Section 31, from reports, papers, minutes, votes or proceedings in which the Assembly has authorised any publication.

It was the view of the Court of Appeal that since the Speaker presides over the proceedings of the Assembly, once the Chairman of an authorised Committee tables the report, the Speaker, would be able to exercise his powers under Section 15(2) including those conferred upon the former Committee Chairman. However, in his absence, the Clerk shall exercise such powers from the records of the Assembly. Hence it was envisaged that the Clerk could also issue a certificate by reference to the record. In the case of the Speaker, the Court was of the view that after the Chairman of an authorised Committee hands over the report of the Committee, the Speaker could have the power to issue a certificate in the same way as he would have done in respect of a witness before the Assembly. But in case of a witness before the Assembly, a certificate would be issued under the hand of the Speaker only if the Assembly was satisfied that he had answered questions put to him fully and faithfully. Hence in the same manner, if the Speaker was to issue a certificate in respect of a witness before an authorised Committee, there must be sufficient material on record to conclude that the Committee was satisfied that such witness had answered fully and faithfully. In the absence of such material on record, the Speaker would not be able to substitute his own opinion on a review of the record if such opinion is

inconsistent therewith. In those circumstances, the Clerk would be in no better position.

In the case of *Holl (supra)*, *Bramwell LJ* posed the question – “*If the certificate of the Commissioners is to be an expression of their judgment and opinion, how can you substitute the judgment and opinion of any other tribunal?*” The Learned Judge himself answered, that the legislature would not have intended that where a Court or Tribunal is of opinion that a person has answered bona-fide, and the Commissioners remain of opinion that he did not, such Court or Tribunal should certify a falsity. Applying these dicta to the instant matter, if the material on record discloses that the witness has satisfied the conditions in Section 15(1), the Speaker cannot substitute a contrary opinion. Whether he had done it or not is a matter to be considered by this Court when determining the alleged infringement of a Constitutional right.

Another matter that arose for consideration was whether a certificate under Section 15(2) could be obtained at any time. The certificate becomes necessary only if a Civil or Criminal case is filed against a witness who had testified. In terms of Article 2271 of the Civil Code, a Civil action is prescribed after a period of five years. In criminal cases however, there is no such period of prescription.

In the instant case, the Assembly referred the report to the Attorney General on 18th November 1997, but the criminal proceedings were initiated only on 12th September 1998, 10 months later. That reference was recommended by the Committee in its report and was approved by majority vote in the Assembly on 18th November 1997. Hence the petitioner ought to

have been aware of the impending prosecution and applied for the certificate from the Speaker forthwith as by then the Committee, and its Chairman had become *functus officio*. However the entitlement to the certificate could be exercised at anytime when the need arises, subject however to statutory limitations.

In submitting that Section 35 of the National Assembly Act permitted the Speaker to issue a certificate under Section 15(1) despite prorogation or dissolution of the Assembly, Learned Counsel for the petitioner relied on Article 83(3) (a) of the Constitution which provides that the person holding the office of Speaker or Deputy Speaker shall vacate that office “when the National Assembly first meets after the holding of a General Election.” However Sub Article (b) thereof provides that the Speaker or Deputy Speaker shall vacate office “where the person ceases to be a member of the National Assembly”.

Sub Article (a) recognises that after dissolution of the National Assembly, the Speaker continues to hold office as Speaker with all powers vested in him until a “new” Speaker is elected when the Assembly first meets after a general election. Sub-Article (b) provides a position inconsistent with Sub Article (a) when it provides that the Speaker, who is necessarily a member of the National Assembly ceases to be a member upon dissolution of the Assembly. What then is the status of the Speaker after dissolution of the Assembly?

It is clear that both provisions cannot co-exist. The office of Speaker is an integral part of a parliamentary system, and its practice.

In the Constitution of Mauritius, Section 32(3) provides that the office of Speaker or Deputy Speaker become vacant-

- (a) *Where he ceases to be a member of the Assembly **otherwise than by reason of a dissolution of the Assembly or***
- (b) *When the Assembly first sits after any general election.*

Sub Section (6) provides that –

“No business shall be transacted in the Assembly (other than the election of a Speaker) at any time when the office of Speaker is vacant.”

Section 32(3) (a) and (e) of that Constitution are consistent, as Sub Section (e) provides that the Speaker vacates his office when the Assembly first sits after a general election. Sub Section (a) saves the office of Speaker upon dissolution.

The corresponding position in the Constitution of India is contained in Article 199. It provides that a member holding office as the Speaker or the Deputy Speaker shall vacate office (1) if he ceases to be a member of the Assembly, (2) if he resigns, or (3) if removed by a resolution of the Assembly. There is however a proviso which reads thus-

“Provided further that whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution”.

In our Constitution Article 83(1) (a) and (b) are inconsistent and therefore cannot co-exist in the present form. This can only be resolved by

enacting Sub Article (a) as a proviso, as in the Constitution of India. However, this inconsistency does not affect the interpretation that is being given by me to Section 35 of the National Assembly Act in this judgment.

Erskine May on Parliamentary Practice considering the functions of office of Speaker of the House of commons after the dissolution and during prorogation States under the heading "*the Speaker's Administrative Duties*" that "*by Section 3(2) of the Ministerial and other Salaries Act 1972, it is provided that in the case of a dissolution, **the then Speaker shall be deemed to be the Speaker** for the purpose of the Act, until a Speaker shall be chosen by the new Parliament*". Hence whether a Speaker vacates his office when he ceases to be a member or when the Assembly first meets after a general election, the powers conferred on a Speaker would continue uninterruptedly through any succeeding Speaker despite dissolution. The emphasis on the term "*the then Speaker*" is significant. In the present case, when the Court of Appeal expressed their view on Section 35 and 36 of the National Assembly Act in the judgment dated 3rd November 2000, the National Assembly had not only been prorogued and dissolved, but also a new National Assembly had been elected and convened on 30th March 1998 (*S.I11 of 1998*), and a new Speaker duly elected (*although it was the same person*). This makes no difference for purposes of Section 35.

Section 31 presents no difficulty as the certificate would be based purely on matters of record. However for a certificate to be issued under Section 15, the words "***to its satisfaction***" in Sub Section (1) presents an ambiguity. On one hand, it could mean that the Speaker can certify only what the Assembly or the Committee had as a body decided as regards the answers given by the witness, ***leaving no room for an individual assessment***. On the other hand

it could mean that the Speaker, or the Clerk in his absence ***can make an objective assessment*** from the evidence on record and the conclusions and recommendations therein, and determine whether the Assembly or the Committee had been manifestly satisfied that the witness had answered fully and faithfully. As the certificate becomes necessary only if a Civil or Criminal case is instituted, and as such actions may be filed much later, on a fair and liberal interpretation, the latter meaning is consonant with the provisions of Section 15.

Therefore whether a witness had answered questions put to him fully and faithfully could be assessed from the record of proceedings. It could ideally be done by the members of the Assembly or the members of the Committee, as the case may be if an application is made before they become ***functus officio***. However as under Section 35 of the Act, the Speaker ***may at all times*** exercise his powers, ***despite prorogation or dissolution of the Assembly***, it could be done by him at any time by reference to the record.

The Speaker, in his letter dated 5th January 2001 stated that he does not believe that he can issue a certificate under Section 15(2) of the National Assembly Act which clearly states that such a certificate, in the circumstances of this matter, be issued by the Chairman of the authorised Committee. He further stated that as he was not the Chairman of the Committee of inquiry nor was a member of that Committee, he was not in a position to say whether the requirements of Section 15(1) were met. These conclusions, were based on the view that the assessment of the evidence was a matter entirely within the scope of the members of the Assembly or the members of the Committee.

It was the petitioner, who by letter dated 13th November 2000 regarded the *obiter dicta* of the Court of Appeal as a “*finding*” of that Court which bound the Speaker. Learned Counsel for the petitioner submitted that the arguments based on Section 35 and 36 in relation to Section 15 were placed before the Court of Appeal and that what appears in the judgment are the findings of that Court. With respect, the judgment does not support this assertion, and moreover, what was before that Court for determination was the limited issue of the validity of the certificate issued by Mr Bibi, the Ex-Chairman of the Committee of inquiry. Hence the Speaker was correct in coming to his own conclusions after considering the judgments of the Supreme Court, the Court of Appeal, and the report of the Committee of inquiry.

The Speaker also came to the conclusion that *even if he was entitled to issue a certificate*, the Court of Appeal judgment had stated that the petitioner should have satisfied the requirements of Section 15(1) as to satisfying the Committee that he had answered questions put to him fully and faithfully. He stated that on a reading of the report of the Committee of inquiry, “*it could not be said that (the petitioner) had answered fully and faithfully questioned put to (him) to their satisfaction.*” The use of the word “their” clarifies that he was making an objective assessment, and not a subjective one.

It is obvious from the words “*to its satisfaction*” in Section 15(1), that the assessment of whether a witness had answered “*fully and faithfully*” must be made by the members of the Committee collectively as a subjective assessment. By the time the certificate was obtained from Mr Bibi, both the Committee and the Chairman had become *functus officio*. Hence Mr Bibi could not issue such a certificate on his own individual assessment of the evidence. But the

office of Speaker does not become “*functus officio*” despite prorogation or dissolution of the Assembly. Hence, as already stated, the Speaker could, by reference to record, decide whether from the material on record it could be said that the Assembly or the Committee had been satisfied that the witness had answered the questions put to him fully and faithfully, and so certify it under his hand.

However, was the Speaker justified when he concluded that on a reading of the record it could not be said that the petitioner had not answered the questions to the satisfaction of the Committee? The certificate envisaged in Section 15 postulates a full and faithful answering of question put to a witness. What would be the position where the witness is a party to the incident under inquiry?

In the case of *R. v. Leatham* (1861) Cox’s c.c. Vol VIII- Page:498, the Queen’s Bench Division considered Sections 9 and 10 of a Victorian decree in respect of corrupt practices at an election. Section 9 provided that where a witness gives evidence touching such corrupt practice before the Commission of Inquiry and makes a “*true discovery to the best of his knowledge touching all things to which he is so examined*” will be freed from any penal action or criminal prosecutions to which he might become liable. Section 10 provided that “*such witness so examined shall not be indemnified under the Act unless he receives from the Commissioners a certificate in writing under their hands stating that he has upon his examination made a true disclosure touching all things on which he was so examined..... and if any action, information or indictment shall be at any time pending in any Court Such Court shall on the production of such certificate stay the proceedings.....*”

Blackburn J, examining these Sections stated –

"It is perfectly plain that the Legislature, when instituting a commission before which all parties were to come, meant that the disclosure should be full and complete as to all matters connected with the corrupt practices into which the commissioners were inquiring, and for which purpose they provided that the witnesses summoned before the commissioners should answer all questions, and produce all documents, bearing upon that question. **The Legislature then had a knowledge and were aware, that a witness who did thus answer might very well give evidence which would criminate him, and show that he was guilty of the corrupt practices as to which the inquiry was taking place, and might also make a statement that would be evidence against him as to other matters,** and the Legislature having this before them, and seeing the inconveniences that might arise from it, provided by section 9 and 10, that if the person who is summoned has been a party to any corrupt practice and makes a full disclosure, and a true discovery to the best of his knowledge touching all things, he shall obtain a certificate, and be absolutely indemnified against any corrupt practices in which he has taken part. **If he, being called and examined, equivocates, and does not make a true discovery, then the legislature deprive him of that protection, and he still may be prosecuted for any corrupt practice in which he has taken part, although it may be that before the Commissioners he may have made statements, and true statements as to part.** Then the Legislature have still a further consideration. They think if he does not make a true discovery that he may still be prosecuted for the corrupt practice, or even supposing he does make a true discovery, that still there may be an action or suit brought against him of a civil or criminal nature, in which the statement

he made might be used as evidence against him; and, thinking it hard that such things should be given in evidence against him, they provide by the 8th Section, that "no statement made by any person, in answer to any question put by such Commissioners, shall, except, in cases of indictment for perjury committed in such answer, be admissible in evidence in any proceeding, civil or criminal."

Hence where a witness is also a party, a certificate would be issued not in respect of an admission of the offence under inquiry, but in respect of an Act or statement made by him "*that would be evidence against him as to other matters*".

In the present case, the Committee, *including* Mr Bibi as Chairman, signed the report which concluded *inter alia* that "*the Hon B.Faure was hit from behind and not from front.*" That conclusion was reached after stating in paragraph 14 of the established facts that "*majority of witnesses confirmed that Hon. W.Ramkalawan hit Hon Barry Faure from behind*". Hence it could very well be that the members, or a majority of them, would not have agreed to the granting of a certificate under Section 15(1), on the ground that he had not fully and faithfully answered the questions put to him. The Speaker was therefore justified in holding that on a reading of the Report it could not be said that the petitioner had answered fully and faithfully questions put to him "*to their satisfaction*". Learned Counsel for the petitioner submitted that although the certificate was inadmissible for purposes of Section 15, "*it still remains as the best possible evidence of its contents*". She further submitted that "*the fact remains that Mr Bibi who chaired the committee of inquiry, issued a certificate in direct contradiction of the Speaker's findings to the effect that the petitioner did fully and faithfully answer all the questions that were put to him*". But that was his personal assessment of the

evidence and was therefore unworthy of credit. Furthermore, it was issued when he was *functus officio*. Hence for the reasons stated by me, this submission is without merit.

As regards the second limb of the certificate, the rationale of Section 15 of the National Assembly Act is the necessity of the Assembly to obtain a full and faithful disclosure of all matters pertaining to the inquiry whether the evidence is taken before the Assembly or before the authorised committee. For this purposes it would become necessary for a witness to reveal material that may incriminate him. Immunity is therefore given to him for such statements, made. It appears from the wording of Section 15(1) that an answer elicited from a witness must emanate from a "*question put to him*" by the Committee. Hence there must be some form of questioning, and not a qualified or unqualified admission which amounts to a confession. If it is a voluntary disclosure of guilt, then such witness would not be entitled to a certificate of immunity. This is similar to a confession voluntarily made which, in the law of evidence, is admissible against him. Hence immunity is not granted as a reward for speaking the truth where the witness is also a party whose conduct is being investigated. Immunity is given to a witness for revealing facts to assist in the investigation, either by incriminating himself or others - thus opening himself to civil or criminal prosecution. It was submitted by the Learned Attorney General, that otherwise a witness who had committed the most serious crime, would be exempt from criminal liability merely because he had admitted guilt before the committee. The Legislature would not have intended such an absurdity. The most "*serious crimes*" specified under the National Assembly Act are, bribery and assault. Hence the Speaker makes the decision under standing order 91 whether the offence reported by a

member amounts to an offence under the said Act or not. A committee of inquiry is appointed if he rules that such offence is a specified offence under the Act. Hence, for instance if the offence is murder, rape, drug trafficking or such other serious offence, it would be a matter for the Attorney General to prosecute under the Penal Code or the Misuse of Drugs Act, as they are not specified offences under the Act. The words "*questions put to him*" would have meaning in the sense of some form of testimonial compulsion and not a voluntary confession or admission made merely to evade criminal or civil liability. The mere summoning of a witness does not compel him to give any particular answer. The petitioner produced a certified copy of the report of the Committee of Inquiry wherein in his evidence he had, *inter alia* admitted the Act of assault on Hon. Faure.

Although this admission for all intents and purposes could be considered as "*full and faithful*" and was in respect of "*any Act or thing done by him before the time,*" there was nothing "*revealed*" for the first time. Mere admission of a matter of that nature fell short of the legal basis for issuing such certificate. The inquiry before the authorised Committee was limited to the issue of an assault on a member. Hence the petitioner could do no more than admit the assault. The immunity envisaged in Section 15(3) must necessarily be given to a disclosure of something hitherto unknown. Hence the assertion of the petitioner that the inquiry was regarding the Act of Assault, and that he made a full and faithful admission thus entitling him to a certificate, is a misconception as the inquiry itself was in respect of that incident of assault.

Finally, The Learned Attorney General also submitted that the Criminal proceedings against the petitioner did not commence in respect of, or on

account of, what he stated before the Committee, but on the basis of independent evidence available as regards an alleged assault, and that hence, proceedings cannot be stayed. This is obviously so, as the charge before the Magistrates' Court is under the Penal Code, and not under Section 23(a) of the National Assembly Act, as recommended by the Committee and approved by the Assembly.

On the whole therefore, the Speaker was justified in refusing to grant the certificate. In these circumstances the petitioner cannot complain, (1) that his right to a fair trial has been contravened by the refusal of the Speaker to issue the certificate on the basis that had it been issued, he would not have a trial at all, and (2) that the continuation of the trial before the Magistrates' Court is a contravention of Article 19 of the Constitution.

The petition is accordingly dismissed. In view of the importance of the issues involved in this matter, there will be no order for costs.



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A.R.PERERA

ACTING CHIEF JUSTICE

Dated this 25th day of September 2001