

1. In Case OB 370/2011 - Publishing False News, the Commissioner of Police seeks advice as to whether :

(a) **Honourable Paul Raymond Berenger** , the Leader of the Opposition is amenable for prosecution for the offence of:-

(i) Publishing False News in breach of Section 299 of the Criminal Code Act; and

(ii) Conspiracy to implicate the Prime Minister in the Medpoint Deal and to discredit him as Prime Minister in breach of Section 109 (1) of the Criminal Code (Supplementary) Act; and

(b) (i) **Honourable Showkutally SOODHUN** and

(ii) **Dr. Zouberr Houssen Issa JOOMAYE**

for the offence of Conspiracy to implicate the Prime Minister in the Medpoint Deal and to discredit him as Prime Minister in breach of Section 109 (1) of the Criminal Code (Supplementary) Act.

(c) As to whether any offence may have been committed by the under named Editor-in-Chief of the printed media and radios who were interviewed under warning:-

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| (i) | Mr. Jean Luc EMILE | Radio One |
| (ii) | Mr. Mohamed Nawaz NOORBUX | Radio Plus |
| (iii) | Mr. Jimmy Julien JEAN-LOUIS | Top FM |
| (iv) | Mr. Indra Datta RAMYEAD | Mauritius Broadcasting Corporation |
| (v) | Mr. Jacques Raoul RIVET | Week-End & Le Mauricien |
| (vi) | Mr. Rama Krishna VEERAMUNDAR | Capital |
| (vii) | Mr. Kushalrajsing MEETARBHAN | L' Express |
| (viii) | Mr. Ehshan KODABUX | Hebdo, 5-Plus & Le Defi |
| (ix) | Mr. Maraz Gowree Sunkur RAMSAHAYE | Le Matinal |

2. I have first reviewed the evidence gathered by the Police in the course of its investigation against Honourable Paul Raymond Berenger, Honourable Showkatally Soodhun and Doctor Zouberr Joomaye and I have asked myself whether there is enough evidence to provide a realistic prospect of a conviction and, if so, whether a prosecution is required in the public interest. Honourable Berenger, Honourable Soodhun and Dr Joomaye are entitled to be presumed innocent and this is the basis upon which I have approached this case.

BACKGROUND

3. During the course of a press conference on the 2nd of July 2011 Honourable Berenger the Leader of the Opposition stated "*Deuxieme point mo revine lor zafer Medpoint. Mo fine gagne ene linformation cle lor lidentite du mysterieux personnage ki fine declenche le processus ki fine debouche lor la deuxieme evaluation par le chief Government Valuer, Yodhun Bissessur. Et si mo linformation confirme, li pou provoque buku bouleversement*". The following week, at his weekly press conference, on the 9th of July the Leader of the Opposition spoke again on the Medpoint case and this time told members of the press present that he has obtained information to the effect that the Prime Minister had met Dr Krishna Malhotra, a Director of the Medpoint clinic and had thereafter phoned the Chief Government Valuer.
4. The press conference of the Leader of the Opposition was widely reported in the media and the publications conveyed to the public that it was the Prime Minister who had phoned the Chief Government Valuer for a second valuation of the Medpoint clinic after he had met Dr K. Malhotra.
5. These publications meant and/or were understood to mean that the Prime Minister had usurped his prime ministerial office and functions by instructing a government officer to act in breach of established procurement procedures with a view to offering a larger sum of money to a private company and its director to the detriment of Government.
6. In its edition of 12 July, L'Express newspaper mentioned the fact that it had carried out a survey interviewing a sample of 600 of its readers and that a majority of them, 74% to be precise, was of the view that "*Le Premier Ministre aurait ordonné une deuxieme evaluation de la clinique Medpoint*".

THE INVESTIGATION

7. After reviewing all available materials, I am satisfied that the police has carried out a thorough investigation and I have enough evidence before me to reach a fully informed decision as to whether the evidential and public interest stages have been fully met.
8. I am satisfied that following the investigation there is sufficient evidence to establish inter-alia the following :
 - (a) the Prime Minister had never met Doctor K. Malhotra in connection with the Medpoint Clinic ;
 - (b) the Prime Minister had never phoned the Chief Government Valuer, Mr Yodun Bissessur to cause him to carry out a second valuation of the Medpoint Clinic;
 - (c) the statement made by Honourable P. R. Berenger in that connection (referred to above) was false;
 - (d) the source of the false information was Honourable Soodhun then a government Minister;
 - (e) Honourable P. R. Berenger had obtained the false information through Dr Joomaye who acted as intermediary ;
 - (f) Honourable P.R. Berenger had asked Dr Joomye to obtain confirmation of the information from Honourable Soodhun before bringing it in the public domain .

SECTION 299

9. I shall deal with the offence of publishing false news first. This offence is provided under Section 299 of the Criminal Code. The constitutive elements of the offence of publishing false news are:
 - (a) «La publicité»;
 - (b) «Le caractère faux de la nouvelle»;
 - (c) «Nouvelle de nature à troubler la paix publique»;
 - (d) «L'intention coupable».

10. In the case of Honourable P.R. Berenger, I am satisfied that he acted upon information received from a Government Minister (Honourable S. Soodhun) and he went public on this issue after he had obtained confirmation of the veracity of the information from the same source through an intermediary. I am also satisfied that on the basis of the evidence it cannot be established beyond reasonable doubt that he had knowledge of the “*faussete de la nouvelle*” or that he acted in bad faith taking into account that the source of the information was no other than a Government Minister.

ADVICE

11. Against that background I have therefore concluded that there is insufficient evidence to provide a realistic prospect of securing a conviction against Honourable P.R. Berenger under section 299 of the Criminal Code. Similarly in the case of Dr Z. Joomaye I am satisfied that his participation was that of a mere intermediary. I therefore advise no further action accordingly.
12. I do not take the same view as regards Honourable Showkatally Soodhun. After considering the evidence I have concluded that there is a realistic prospect of securing a conviction under section 299 of the criminal code and the public interest dictates that he should be prosecuted given the position of responsibility that he occupied as a Minister at the time of the offence. Honourable Soodhun is entitled to be presumed to be innocent and I shall not make any comment which may prejudice his right to a fair hearing.

Section 109

13. I now want to consider the question of whether there was a conspiracy contrary to section 109(1) of the Criminal Code (Supplementary) Act by Honourable P.R. Berenger, Honourable S. Soodhun and Dr Z. Joomaye to implicate the Prime Minister in the Medpoint case.
14. Section 109(1) of the Criminal Code (Supplementary) Act provides that any person who agrees with one or more other persons to do an act which is unlawful, wrongful or harmful to another person, or to use unlawful means in the carrying out of an object not otherwise unlawful, shall commit an offence.
15. On the basis of the law as authoritatively explained in *Deedaran v R (1981) MR 169*, I am satisfied that there is no evidential basis upon which to conclude that there was a conspiratorial agreement. I advise no further action accordingly.

EDITORS

16. I am now left to consider whether any offence may have been committed by the respective Editors-in-Chief who were responsible to print or broadcast the press conference of the Leader of the Opposition. I have reviewed the various publications made by the media following the press conferences of the Leader of the Opposition on the 2nd and 9th of July 2011 respectively. The investigation was concerned with articles from Week-End (3.07.11, 10.07.11), L'Hebdo (3.07.11, 10.07.11), L'Express (04.07.11, 11.07.11), Le Mauricien(04.07.11, 11.07.11), Le Matinal(04.07.11), Capital (06.07.11, 13.07.11), Le Defi Quotidien (11.07.11,15.07.11) and News on Sunday (15-21 July 2011) and news coverage by Radio Plus, Top FM and Radio One.
17. I am satisfied that the thrust of the publications was a fair and accurate account of the press conferences held by the Leader of the Opposition. The reporters were carrying out their respective duties and I do not find any evidence which establishes bad faith or malice on the part of the newspapers and radios concerned. In the absence of any offence having been committed, I advise no further action against the newspapers.
18. Finally, I should add that each case is decided in the light of its own merits and that the present decision in itself does not necessarily establish any benchmark in cases related to section 299 of the Criminal code.

Satyajit Boolell, SC
Director of Public Prosecutions

17 August 2012