



**18 April 2019**

**Zondo Commission – corrupt accused pulled out all the stops to avoid prosecution, said Booyesen**

Despite all efforts of the KwaZulu-Natal Hawks to bring Durban businessman Thoshan Panday and Navin Madhoe, his accomplice in the provincial South African Police Service (Saps), to book after a lengthy investigation of corruption, charges against them for the attempt to bribe Johan Booyesen were withdrawn. Booyesen is the former head of the KwaZulu-Natal Hawks, and is testifying before the commission of inquiry into state capture.

Soon after the arrival in mid-2012 of a new provincial head of public prosecutions, Moipone Noko, the charges – first brought against Panday and Madhoe in 2011 – were withdrawn. Madhoe had allegedly tried to bribe Booyesen to doctor a vital piece of incriminating evidence. Booyesen would be paid R2-million for stealing and altering the investigation report that pointed to the two having transferred public funds to one of Panday's companies, over a certain period. The payments were related to a service provided by Panday company Gold Coast Trading, in the run-up to the 2010 soccer world cup, for which costs were inflated for the direct benefit of Gold Coast.

Following the National Prosecuting Authority's (NPA) withdrawal of charges, the investigating officer in the matter enquired with Noko's office for an explanation, but got no answers. She also refused to return the docket, as per procedure, to Saps. Noko was only in the office for a month when she made the decision to withdraw the charges.

It would take another nine months before Noko issued a media statement on her decision. In the statement – issued in April 2013 - she claimed it was based on the interest of justice.

Earlier in the life of the case, prosecutor Bheki Mnyathi had been interrogated by senior NPA advocate Lawrence Mrwebi, to answer to questions in representations by Madhoe's lawyer. Mrwebi was already heading up the special commercial crimes unit within the NPA at the time. Mnyathi's response to Mrwebi was a detailed legal opinion in which he concluded that the case against Madhoe was indeed a prosecutable one, and recommended that it be taken to the high court.

"Every conceivable type of evidence is in that docket, fingerprint evidence ... eyewitness statements of how the money was put in my car ... the evidence was overwhelming," Booyesen told the inquiry.

Madhoe had been arrested during a sting operation orchestrated by Booyesen in September 2011. The trap was set for him to deliver bribe money for Booyesen, in exchange for an incriminating investigation report. Panday was only arrested later, but not before many attempts to avoid it.

In the early stages of the case, provincial police commissioner Mmanonnye Ngobeni had interfered by repeatedly instructing Booyesen to stop the initial investigation. Anwa Dramat, the national head of the Hawks at the time, had even intervened, as did then national police commissioner Bheki Cele, the current minister of police.

Booyesen motivated with Noko's boss, then NPA head Mxolisi Nxasana, to take the withdrawal on review and reinstate the charges. The accused pair in turn filed a review application against this, and what struck Booyesen was that he was never apprised of the existence of the application. "I would have at least expected myself to have been a co-respondent." The founding affidavit for the review application, said Booyesen, made serious accusations against him and Nxasana, whom Madhoe accused of conspiring to reinstate the charges.

"The fact that we were not co-respondents, I was expecting at least advocate [Shaun] Abrahams to deny the allegations, and ask us for confirmatory affidavits or at least to inform us to make affidavits to support him in opposing the review application."

The NPA did oppose the review application, but Booyesen believes that it was just a paper exercise, and the NPA never intended to prosecute them. He learned recently that the review matter has been struck off the roll.

"My understanding is that Advocate Wendy O'Brien at the Special Commercial Crimes Court in Durban is preparing to re-prosecute Madhoe and Panday for their attempt to bribe me."

The original corruption case was declined for prosecution years ago.

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