

CN 22/23

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

ICAC

v/s

Siu Yin Annick HOW TUE

SENTENCE

The accused has been prosecuted and convicted for the offence of corruption of agent in breach of sections 16(1) & 83 of the Prevention of Corruption Act 2002 (POCA) under two counts of the Information. The accused pleaded guilty to the Information and was represented by counsel throughout the proceedings.

The sentence prescribed for the offence under section 16 of POCA is penal servitude for a term not exceeding 10 years.

CASE FOR THE PROSECUTION

Witness no.1, Investigator Mohur, the enquiring officer, produced four defence statements of the accused as **Docs A, A1, A2 and A3**.

The witness further produced the following:

- a. Business Registration Card of 'Mauritius Estate Development Corporation Limited', as Doc B.
- b. The contract of employment of the accused dated 26.09.16 provided to the ICAC by witness no.6, as Doc C.



- c. Copies of two cheques, the first dated 09.08.19 drawn to pay 'S. Jaunky & Son Aluminium' a sum of Rs143,744, as **Doc D**. The second dated 26.11.19, to pay 'Suoddanun Jaunky' the sum of Rs125,712, as **Doc D1**.
- d. The bank statements of the accused for the period starting 30.04.14 and ending 30.04.21, as **Doc E**.
- e. The bank statements of witness no.8 for period starting 01.07.19 and ending 31.12.19, as **Doc F**.
- f. A deposit form showing that a sum of Rs45,000 was deposited into the bank account of the accused, as **Doc G**.
- g. A report drafted and signed by the handwriting expert, witness no.3, as **Doc H**.

Under cross-examination, the witness stated that as per the accused's out of court version, she lent money to witness no.7. She received money from witness no.7 in December 2019. The impugned money is to the amounts of Rs45,000 and Rs25,000. The accused has voluntarily put up her defence statements and she fully cooperated with the ICAC.

CASE FOR DEFENCE

The accused made a statement from the dock. She shown remorse by begging for excuse. She stated that she was a battered wife. She has two children who are at university. She is the only one providing for her children. She has also incurred other financial liabilities in that she has to reimburse a home loan. She pleaded for leniency.

ASSESSMENT OF THE COURT

The accused has pleaded guilty at the earliest opportunity after the lodging of the case.

Section 69B of the District and Intermediate Courts (Criminal Jurisdiction) Act reads as follows:

The District Court or the Intermediate Court may mitigate the sentence on an accused party who appears before it and makes, in the opinion of the Court, a timely plea of guilty to the offence with which he stands charged.



The appropriate discount will therefore be granted to the accused in light of her timely guilty plea.

The accused has clean record. Whilst a clean record does not guarantee leniency, vide **Khojratty v State 2018 SCJ 382**, it does lay the foundation for a predictive analysis of the accused's future behaviour.

The offence encapsulated by section 16 of POCA is a serious one, as illustrated by the sentence prescribed under the above section. However, the circumstances of the case are hereby considered and the sums of money involved in the commission of the offence are at the lower end of the scale. I have further considered the family ties of the accused and her financial constraints when viewed against her monthly income capacity.

I can safely construe that the accused is not a person who represents a danger to society. Having considered her version from her defence statements, she did not create nor embark into a complex machinery to deceive her principal in the execution of her duties.

Both the defence and the prosecution have submitted for the imposition of a non-custodial sentence and I find appropriate to do so. **Section 151 of the Criminal Procedure Act** is therefore applied and I sentence the accused to undergo 3 months imprisonment, plus Rs500 as costs.

However, the following extracts from the case of **Heerah v State 2012 SCJ 71** are also applied:

“That a prison sentence is normally appropriate where an offender is convicted for serious offences, of that there is no doubt. But the level at which the offence should be placed on the scale of offences in terms of the degree of seriousness must not be ignored. Furthermore, not all candidates who fail the test of monetary penalties, or a Probation or Conditional Discharge Order become automatically candidates for prisons...

Courts should refrain from imposing custodial sentences as a matter of reflex and indiscriminately in all cases where fines and Probation Orders and Conditional Discharge Orders are not found appropriate. Serious consideration should be given to that intermediate option inasmuch as “the deprivation of liberty through a custodial sentence is the most severe penalty available to the courts and the proper punishment for the most serious crimes:”



For the above reasons, the term of 3 months imprisonment is therefore suspended and I order a social enquiry report to see whether the accused is fit to perform community service work.



P K Rangasamy
Magistrate of the Intermediate Court
31.08.23