CN: 44/2023

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

Abdool Nasser SOOKHROO

SENTENCE

The accused has been prosecuted for the offence of limitation of payment in cash, in breach of sections 5(1) and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA). He pleaded guilty to the Information and was consequently found guilty as charged.

CASE FOR THE PROSECUTION

Witness no.3 produced the defence statement of the accused marked as **Doc A**. He stated under cross-examination that the accused has cooperated with the ICAC during enquiry. He was not assisted by a legal representative at the time his defence statement was recorded. The accused stated in his defence statement that he was not aware that his act amounted to an offence. He showed remorse straight away when he was informed that it was offence. He further stated that the notary public should have advised him that such transaction was an offence under the law.

Witnesses no.2 and 3 produced two defence statements of the accused marked as **Docs A1** and **A2**, respectively.

CASE FOR DEFENCE

The accused, under oath, stated that he left primary school when he was in Standard VI. He had to look after his family. He went to the notary public to buy a plot of land. He had saved about Rs650,000 and he deposited same to the notary public. The latter did not inform him that the said transaction was a criminal offence. He regrets te situation and promised not to re-offend.

ASSESSMENT OF THE COURT

At the time of offence, the penalty for the above offence is prescribed under section 8 of FIAMLA (pre-amendment) as a fine not exceeding 10 million rupees and penal servitude for a term not exceeding 20 years.

The accused pleaded guilty to the Information.

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 case of **State v Doorgachurn 2015 SCJ 55** provides further analysis on the concept of timely guilty plea:

In the case of State v Tony Mootien [2009 SCJ 28], the Court considered the recommendation contained in the SGC Revised Guideline "Reduction in Sentence for Guilty plea (July 2007) referred to in Blackstone's Criminal Practice (2008) and agreed that the Criminal Division of the Supreme Court seemed to have applied the recommendation that one third deduction be given where the plea is indicated at the first reasonable opportunity. However, the Court was of the view that the discount to be given for a plea of guilty still remained within the discretion of the Court having regard to the circumstances of each case. In view of the circumstances of the present case and the fact that the accused committed two serious offences within seven years and he tried to conceal the present offence, it is a proper and fit case not to give a full discount of one third. (Emphasis is mine)

The accused pleaded guilty very soon after the appointment of his legal representative. His plea was therefore made in a timely fashion. He will be afforded the full discount.

The accused has a clean record. Whilst such is not a guarantee for leniency, vide **Khoyratty v State 2018 SCJ 382**, it does give an insight into the character of the accused, and the prediction of his future behaviour is tilted in his favour.

The court is aware of the maxim that ignorance of the law is no excuse. However, when it comes sentencing, the offence under section 5 of FIAMLA can be viewed as a technical one depending on the circumstances of each case. Having considered the level of academic education enjoyed by the accused, the fact that he was dealing with a notary public, and the amount by which he exceeded Rs500,000, a sentence at the lower end of the scale is justified.

I am alive to the pronouncements of the Supreme Court in **Heerah v State 2012 SCJ 71**:

'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:"

The circumstances of this case do not warrant a custodial sentence.

CONCLUSION

I sentence the accused a pay a fine of Rs20,000, plus Rs500 as costs.

P K Rangasamy
Magistrate of the Intermediate Court
29.02.24