

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

ICAC

V

Rohitanund RAMBARASSAH

SENTENCE

1. Accused was being prosecuted for the offence of Public Official Using His Position for Gratification in breach of section 7 of the Prevention of Corruption Act 2002 (the 'POCA').
2. He pleaded not guilty and was represented by Counsel, Mr. S. Ghoorah during the trial.
3. Accused was found guilty by the Court and a sentencing hearing was conducted.
4. Accused chose to remain silent during the sentencing hearing. Mr. S. Ghoorah submitted that a non-custodial sentence will meet the ends of justice given the old age of accused and the amount of money involved.
5. Accused was a Management Supporting Officer at the Private Secondary Education Authority (the "PSEA"). On 21st December 2017, he made use of his position to solicit a sum of Rs. 5000/- from one Mrs. Gita Devi Bachwa (witness no.3) to regularize a matter relating to travel grant. Mrs. Gita Devi Bachwa (witness no.3) was a teacher at Friendship Girls College and has explained how accused solicited that sum of money from her.
6. Accused, on the other hand, has all throughout denied the allegations against him
7. According to section 7 (1) of the POCA, the maximum sentence for the present offence is penal servitude for a term not exceeding 10 years. However, the term of penal servitude not being specified, the minimum term to be imposed is 3 years by virtue of section 11(1) of the Criminal Code.
8. The sentence provided by section 7 (1) of the POCA, in itself, shows the intention of the legislator to consider the present offence as being serious enough to exclude the possibility of



a fine. Nevertheless, the cardinal rule remains that the sentence to be imposed should be commensurate with the gravity of the offence and the overall circumstances of each case. In the present case, though accused pleaded not guilty, his old age (65 years) and the sum of money solicited, i.e., Rs. 5000/- are relevant considerations to be borne in mind for the sentence to be inflicted. Accused is also of clean record and was not subject to any pre-trial detention.

9. Taking into account the overall circumstances of the present case and by applying section 151 of the Criminal Procedure Act, accused is sentenced to undergo 3 months imprisonment.

10. Furthermore, as was highlighted in **Heerah v/s The State (2012) SCJ 71**:

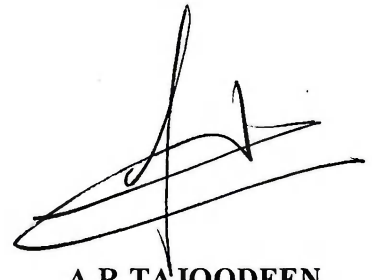
“[16] Courts should refrain from imposing custodial sentences as a matter of reflex and indiscriminately in all cases where fines and Probation Orders and Conditional Discharge Orders are not found appropriate. Serious consideration should be given to that intermediate option inasmuch as “the deprivation of liberty through a custodial sentence is the most severe penalty available to the courts and the proper punishment for the most serious crimes:” [see Home Office, 1990, para. 2.11 of the White Paper on Crime, Justice and Protecting the Public. This study culminated in the passing of the Criminal Justice Act 2003 in England and Wales which vested in their Courts the power to make Community Orders].

[17] In a number of cases, the objectives of the criminal justice system are better served when the offender’s sense of responsibility to society and his self-reliance are triggered. As the Home Office Paper comments: Imprisonment “is likely to diminish an offender’s sense of responsibility and self-reliance, “and “provides many opportunities to learn criminal skills. “What is more serious, imprisonment can have a devastating effect on some offenders as well as on their families. It would be unrealistic for society to expect that those who deserve lesser but are sentenced to imprisonment for not so serious offences would ever “emerge as reformed characters.”

11. Indeed, a Court should refrain from indiscriminately applying custodial sentences in all cases. Accordingly, an accused, in appropriate cases, should further be given an opportunity to redeem himself by a means other than a custodial sentence. In that respect, the Court is of the view that the facts and circumstances of the present case are such that accused should be given a chance to redeem himself by a means other than a custodial sentence. Therefore, the sentence of 3 months imprisonment against accused is suspended and I order a social enquiry report to determine whether accused is fit to perform community service work.



12. Accused is further ordered to pay Rs. 500/- as costs.



A.R.TAJOODEEN

Ag Magistrate of the Intermediate Court (Financial Crimes Division)

26.09.2023