

**IN THE INTERMEDIATE COURT OF MAURITIUS**  
**Financial Crimes Division**

**CN : FR/L2/2024**

In the matter of:

**The Independent Commission Against Corruption**

V

**Ruben Jehu DESIRE**

**Sentence**

The accused, having pleaded guilty, now stands convicted with wilfully, unlawfully and criminally giving a gratification to another person to use his real or fictitious influence, to obtain a benefit from a public body in breach of **sections 10(2) of the Prevention of Corruption Act 2002**.

He was represented by Mr K. Luckeeram.

Three statements recorded from the accused were put in as evidence during the pre-sentence hearing. As part of defence case, the accused made a statement from the dock. He explained that he is married, has three minor children and he has loan to pay. He regrets the mistake he made and begged for excuse.

Learned counsel for the defence submitted that mitigating factors should reflect leniency from the court.

**Section 10 of the POCA** provides for penal servitude for a term not exceeding 10 years.

I have given due consideration to the seriousness which the offence deserves. On the 15<sup>th</sup> of December 2015, the accused gave 200 rupees to another person to use his influence in order to obtain a certificate of fitness for motor vehicle bearing registration number FH 270 from the then National Transport Authority without undergoing any physical vehicle examination.

In **B Jhurry v ICAC and Anor 2015 SCJ 258**, the Supreme Court maintained a custodial sentence for a corruption case (Section 7), despite reducing a term of imprisonment of 12 months to 9 months, stating that there is a compelling public interest in maintaining the custodial sentence imposed upon the appellant because of the seriousness of the offences. In view of the nature and extent of the involvement of the appellant in the perpetration of these corruption offences, it would not be appropriate in a case of this type to impose only a short sentence notwithstanding the delay which has occurred.

The circumstances of the present case are different. Whilst I bear in mind the compelling public interest, the need to fight against corruption cases and the involvement of the accused, in inconsequential amount of money involved, the accused's regrets for having given the money

and his family background are elements in mitigation which should weigh heavily in the balance.

I also bear in mind, most importantly, that he offered a timely guilty plea, which in view of **Section 69B of The District and Intermediate Courts (Criminal Jurisdiction) Act** is, a mitigating factor.

The delay of 9 years between the offence and the lodging of the case is clearly a factor which should weigh in the balance for mitigation.

In **G Lin Ho Wah v The State 2012 SCJ 70**, the Court commented on the need to individualize sentences to each offender, at paragraph 9:

*“...A just sentence which fits the offender gives greater public confidence to the public in our judicial system. Sentencing an offender was never a mechanical and willy-nilly application of the general penalty prescribed with reference to the numbers and the letters of the law. The judicial discretion to sentence inherent in our court system should not be taken for granted and honoured more in the ignorance than in its application. While the formulation and application of general principles assist in obtaining a coherence in sentencing amongst the various courts of the land and while the principle of proportionality assists in obtaining a just balance between what the law prescribes and what the particular facts of the case exact, the principle of individualization concretizes the rights and freedoms guaranteed by the Constitution to the individual. A just sentence is an essential part of a citizen’s right to a fair trial.”*

In **M.M. Ashrafi v The state and Ors 2017 SCJ 85**, the Supreme Court was of the view that a suspended sentence may apply for an offence under Section 14 of the POCA (which carries the same penalty), bearing in mind the circumstances. The Learned Judges observed that: *“It is, therefore, apparent that the appropriate penalty for a corruption offence would depend on all the particular facts of each case. This is in line with the well-settled principle that a sentence must be individualised and proportionate to the circumstances of the case.”*

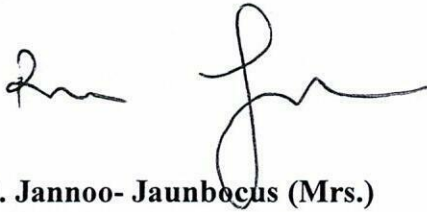
Whilst I find the fact that the accused was involved in a case which comprises the giving of money to obtain a certificate of fitness for a vehicle on the road, with all the implications it can have, is crucial in determining the sentence to be meted out, I still consider that a suspended sentence is warranted.

Taking into account the above mitigating factors, I consider it appropriate to make use of Section 151 of the Criminal Procedure Act to impose imprisonment instead of penal servitude on the accused.

**I therefore sentence the accused to undergo a term of imprisonment of 6 months.**

By virtue of Section 3(1) (b) of the Community Service Order Act, I suspend the term of imprisonment pending a Community Service Suitability Report from the Probation Office.

The accused is ordered to pay 500 rupees as costs

A handwritten signature in black ink, consisting of a series of loops and flourishes, positioned above the typed name.

**B.R. Jannoo- Jaunbocus (Mrs.)**

**President**

**Intermediate Court (Financial Crimes Division)**

**This 2<sup>nd</sup> July 2024.**