

IN THE INTERMEDIATE COURT OF MAURITIUS
Financial Crimes Division

CN : FR/L21/2023

In the matter of:

The Independent Commission Against Corruption

V

Kamlesh DAWKEE

Sentence

The accused stands convicted in respect of 7 counts with wilfully, unlawfully and criminally obtaining a gratification from another person for himself in order to make use of his influence to obtain a benefit from a public body in breach of **sections 10(4) and 83 of the Prevention of Corruption Act 2002**.

He was represented by Mr Bridgemohane.

Five statements recorded from the accused were read and produced as evidence during the pre-sentence hearing. As part of defence case, the accused deposed to the effect that he was going through difficult moment during that period since he was not working. He was influenced by one Lalida (witness 6) who took part of the money and left the country.

He regrets what happened and showed remorse. He now has three children and he looks after them, he also has the responsibility of his mother. He promised to return the money.

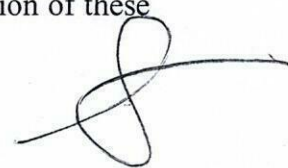
Learned counsel for the defence submitted that in view of the various mitigating factors, the accused should be given a non-custodial sentence.

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. The accused obtained the total sum of 152,800 rupees as gratification by making the complainant believe that he can make use of his influence at the National Housing Development Company to obtain a housing unit for her at Carreau Songes.

The accused is not at first attempt to break the law. The certificate of convictions shows that he has various convictions from 2002 to 2023 for dishonesty offences, some met with short term imprisonment.

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, the accused's regrets for having obtaining the money and his family background, his cooperation with the authorities, 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.

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 housing unit from a public company is crucial in determining the sentence to be meted out, I still consider that a suspended sentence is warranted in view of his guilty plea.

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.

Count 1: I therefore sentence the accused to undergo a term of imprisonment of 12 months.

Count 2: I therefore sentence the accused to undergo a term of imprisonment of 12 months.



Count 3: I therefore sentence the accused to undergo a term of imprisonment of 12 months.

Count 4: I therefore sentence the accused to undergo a term of imprisonment of 12 months.

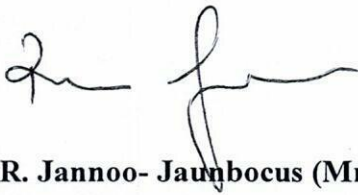
Count 5: I therefore sentence the accused to undergo a term of imprisonment of 12 months.

Count 6: I therefore sentence the accused to undergo a term of imprisonment of 12 months.

Count 7: I therefore sentence the accused to undergo a term of imprisonment of 12 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



B.R. Jannoo- Jaunbocus (Mrs.)

President

Intermediate Court (Financial Crimes Division)

This 6th August 2024.

