

IN THE INTERMEDIATE COURT OF MAURITIUS
Financial Crimes Division

CN : FR/L20/2023

In the matter of:

The Independent Commission Against Corruption

V

Joseph Noel Andre

SENTENCE

The Accused stands convicted in respect of 6 counts as follows:

Counts 1 to 5: wilfully, unlawfully and criminally transferring property which, in whole or in part, directly or indirectly represented the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived, in whole or in part, directly or indirectly from a crime, in breach of **Sections 3(1) (b), 6 and 8 of The Financial Intelligence and Anti-Money Laundering Act.**

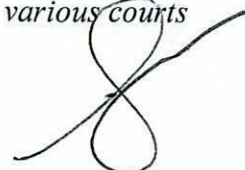
Count 6: wilfully, unlawfully and criminally being in possession of property which, in whole or in part, directly or indirectly represented the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived, in whole or in part, directly or indirectly from a crime, in breach of **Sections 3(1) (b), 6 and 8 of The Financial Intelligence and Anti-Money Laundering Act.**

He was not represented by counsel. During the pre-sentence hearing, he was explained of his right to adduce evidence and he elected to speak from the dock. He prays for leniency, tenders his apologies and states that he is not working.

Before its amendment in 2019, **Section 8** of the FIAMLA provided for a fine not exceeding 2 million rupees and to penal servitude for a term not exceeding 10 years. **Subsection 3** excludes the application of Sections 150, 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act. The present offences occurred in 2016.

In **G Lin Ho Wah v The State 2012 SCJ 70**, the Court commented on the need to individualize sentences, 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."

I have given due consideration to the seriousness of the offence and the international ramification which it carries. The case relates to various sums of money, totaling 2.4 million rupees remitted by the accused between the 9th March 2016 to 18th March 2016 to acquire a boat from Société des Bains de Mer Ltée, which money the court found to be proceeds of crime. The accused purchased the boat in the name of Mike Didier Brasse, who was ultimately arrested around November 2016 in Reunion Island with 100 kg of drugs, of value 150 million rupees and was sentenced there to 7 years in jail.

I find relevant to quote the following from **Abongo v The State 2009 SCJ 81**, with regard to the rationale of sentencing measures:

"The Financial Intelligence and Anti-Money Laundering Act was enacted essentially for the purpose of combating money laundering offences which had the potential of adversely affecting the social and economic set up, both at national and international level to such an extent that they may constitute serious threats not only to the financial system but also to national security, the rule of law and the democratic roots of society. By enacting sections 5, 6 and 8 of the Act, the policy of the legislator was clearly designed to achieve the compelling objective of safeguarding the national and international financial systems against any disruptive intrusion which may be caused by the perpetrators of certain criminal activities."

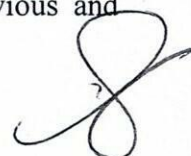
In the case of **M C Laval & Anor v ICAC and The State 2013 SCJ 431**, Caunhye and N Matadeen JJ. maintained a sentence of 30,000 rupees in respect of each count (Accused 1 had 13 counts, Accused 2 had 8 counts), endorsing the totality principle. The appellants were of clean record. The court found that:

"Quite significantly, the total amount of money which each of the two appellants had received as proceeds of drug crimes exceeded by far the total amount of the fine which was inflicted in respect of all the offences for which they were convicted. There is thus no merit in the argument that the totality of the fines inflicted on each of the first and second appellants was manifestly harsh and excessive."

The case of **Laval** should be distinguished in that the amount involved was much less and the appellants had clean records, pleaded guilty and apologized. It is obvious in the present case that the amount involved is more substantial.

The accused is not at his first brush with the law. He has two previous convictions dated 2007 and 2015 for drug offences met with fines and one conviction in 2022 for breach of conditions of release.

It is well settled that the conduct of an offender up to the time of his sentence is always a relevant factor in determining an appropriate sentence and in that context, previous and



subsequent convictions should be placed before the Court and may be taken into consideration:
Ramdass V The State 2009 SCJ 324.

But on the other hand, I have taken into account the personal circumstances of the accused as revealed during the pre-sentence hearing. He expressed remorse and prays for leniency.

However, bearing in mind the considerable sum of money involved and the seriousness of the offence, I consider that a custodial sentence is justified. The minimum provided by the law is 3 years.

In **K Mootosamy v The State 2014 SCJ 196**, the Supreme Court aptly referred to Lord Lane C.J. in **R. v Bibi (C.A.) [1980] 1 W.L.R.** at page 1195: -

"...sentencing courts must be particularly careful to examine each case to ensure, if an immediate custodial sentence is necessary, that the sentence is as short as possible, consistent only with the duty to protect the interests of the public and to punish and deter the criminal.

Many offenders can be dealt with equally justly and effectively by a sentence of six or nine months' imprisonment as by one of 18 months or three years. We have in mind not only the obvious case of the first offender for whom any prison sentence however short may be an adequate punishment and deterrent, but other types of case as well."

I also bear in mind the need for proportional and personalized sentencing as stated in **Sabapathee V The Director of Public Prosecutions 2014 UKPC 19** in the following:

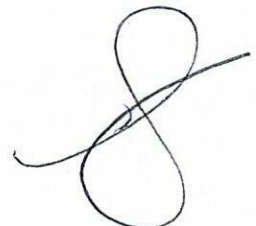
"Section 11(1) of the Criminal Code provides that the punishment of penal servitude is imposed for life or for a minimum term of three years. However, section 7 of the Constitution, which provides that "no person shall be subjected to torture or to inhuman or degrading punishment or other such treatment", has been interpreted as making it unconstitutional for a court to impose a sentence which is grossly disproportionate to what the offender deserves and therefore capable of overriding a statute dictating a minimum sentence: Aubeeluck v The State of Mauritius [2010] UKPC 13..."

Given that the accused had no dealing in any drug transaction and that his participation was limited to money laundering, I find that it will be grossly disproportionate to give the minimum sentence of 3 years penal servitude and that a lesser term is justified.

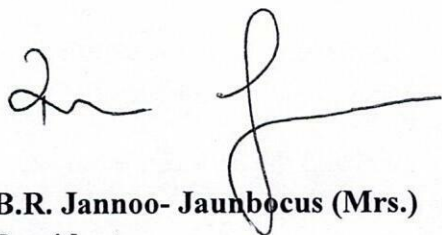
Counts 1 to 6: I sentence the Accused to undergo a term of imprisonment of 12 months in respect of each count.

The time spent in police cell (25 days) is deducted therefrom.

The accused is ordered to pay 500 rupees as costs.



The Prohibition Order lapses after satisfaction of sentence and/ or delay of appeal.

A handwritten signature in black ink, consisting of a cursive 'J' followed by a horizontal line and a vertical stroke that loops back down.

B.R. Jannoo- Jaunbocus (Mrs.)

President

Intermediate Court (Financial Crimes Division)

This 5th August 2024.