

FCD CN: 66/2020
CN: 1157/2016

**IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)**

In the matter of:

Independent Commission Against Corruption

v/s

- 1. Jean Wesley Marthe**
- 2. Monique Jacqueline Marthe**
- 3. Jean Jimmy Alexis**
- 4. Moussa Beeharry**

SENTENCE

1. All four accused parties have been prosecuted for the offence of Money Laundering in breach of sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA).
2. Accused no.1 pleaded not guilty to Count 1 of the Information, and was found guilty as charged. Accused no.3, having pleaded guilty to Count 3 of the Information was accordingly found guilty. Accused no.4 pleaded guilty to Counts 4 to 24 of the Information, and as such was found guilty.

CASE FOR THE PROSECUTION

3. The circumstances of the case for the prosecution have been laid out at trial stage. The previous convictions of accused no.1 were produced as **Doc X**, for accused no.3 as **Doc X1** and for accused no.4 as **Doc X2**. Accused no.3 spent 179 days on remand, **Doc Y**.



CASE FOR DEFENCE

4. The accused no.1 made a statement from the dock where he begged for excuse.
5. The accused no.3, equally made a statement from the dock and he showed remorse by begging for excuse. He stated that he has nine children and a number of grand-children.
6. Accused no.4 stated under oath that he was arrested in 2012 by ADSU Plaines-Vertes. It concerned money laundering cases dated 2010, 2011 and 2012. He pleaded guilty to those cases and was sentenced to 5 years imprisonment together with a fine of Rs400,000. **Doc AF** was produced to that effect. He had spent 733 days on remand which were deducted from the 5 years imprisonment. One month into his sentence, he was convened by the ICAC for an investigation into money laundering offences dating for the period 2008 to 2011, which is the subject of the current Information. He has again pleaded guilty to the said Information. He further stated that, now that he has already served sentence for the first series of cases, he has been prosecuted for offences which pre-date those he was sentenced for. He has therefore asked for leniency and begged for a fine since he has already been imprisoned for similar offences.

ASSESSMENT OF THE COURT

Accused no.1

7. Accused no.1 has three previous convictions for assault which are not cognate to the current charge laid against him. The accused has expressed remorse during the pre-sentence hearing. He has begged for excuse and even stated that he agreed with the decision of the court. I take into consideration the personal circumstances of the accused. He was not a high-income earner and worked many jobs to cater for his personal needs and family affairs. Furthermore, I take note of the time elapsed from the time of arrest and the date of judgment.
8. The offence with which the accused no.1 is charged, is a serious one. The proposition from the defence counsel that the offence of money laundering is a technical one, may have been an attempt to distance the accused from the role of the architect in the criminal activity. If the offence of standalone money laundering seems a complex one, it cannot be viewed as a mitigating factor for



the accused. The technical nature of the legal principles creating the offence does not hinder the accused from understanding the straightforward factual basis that the reproached activity was criminal in nature.

9. The impugned property under Count 1 was the ground floor of a house. The evidence adduced by the prosecution as to its valuation has been assessed by the court at trial stage. There is no evidence as to what proportion of the construction costs of the ground floor was financed by criminal activity, even if, the total cost was not commensurate to the accused's income. Such is taken into account by the court.

Accused no.3

10. Accused no.3 has pleaded guilty to Count 3 of the Information. His change of plea was effected on 02.03.23 during the course of trial.

11. **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)



12. The change of plea by the accused no.3 cannot be considered as timely. Nevertheless, some discount will be afforded to the accused since the timeline for the trial has been somewhat elongated for various reasons. The accused has appeared remorseful throughout the trial and his family ties are taken into account. However, the accused no.3 is convicted of a serious offence. The property as averred in the Information, has been valued at Rs2.3M, and same was not disputed by the defence.

Accused no.4

13. Accused no.4 changed his plea to one of guilty later than accused no.3 during the course of trial. Accordingly, a lesser discount will be granted to the accused no.4.

14. The accused stated during his plea-in-mitigation that he had already been convicted of money laundering offences in 2015 for offences which were committed during the years 2011 to 2013. The current offences for which the accused has now been convicted, therefore, predate his pre-existing conviction at **Doc X2**. The said conviction at **Doc X2** is thus, not technically a previous conviction, and cannot carry the same aggravating circumstance as a previous conviction. However, the accused no.4 has to be considered as a convicted person for a cognate offence albeit one which postdates the current offence. It shows that it was not a one-off offence and that the accused has indulged in such criminal activity over a number of years. The following was held by the Supreme Court in **Herminette v The State 2019 SCJ 77**: *Having said so, we are of the view that, although the "previous convictions" referred to by the learned Magistrate were all after the commission of the present offence, they do show his propensity to involve in unlawful acts, thus, justifying her decision to send a strong signal and impose a custodial sentence.*

15. The accused has been sentenced for the money laundering offence dated 30.09.14, to a term of 5 years penal servitude and a fine of Rs100,000 for each count. The said sentence has now been served. As contended by the defence, the accused was deprived of the opportunity to undergo concurrent sentencing, had the current offences been prosecuted contemporaneously to the ones in 2014. It is understood that an accused party is not privileged to be imposed, as a matter of course, with a concurrent sentence. However, I am alive to the case of **Velvindron v The State 2006 SCJ 157**, cited by **State v Chowrimoothoo & Anor 2023 SCJ 423** where section 140 of the Criminal Procedure Act was



interpreted as “the general principle is that sentence normally runs concurrently and that a consecutive sentence is the exception”. It is therefore a strong mitigating factor benefitting accused no.4.

16. On the other hand, the accused no.4, has been convicted under 20 counts (Cts 4 to 24), with sizeable sums of money under each count. The accused has been a valuable cog in the whole criminal enterprise. It is clear that his involvement has persisted without interruption over numerous of years.
17. The time spent from the date of lodging of the case and its completion is also considered by the court. The reasons for such delay may be varied and justified. Nevertheless, all three accused’s sentences are to be reduced accordingly, vide **Boolell v State 2006 MR 175**.

CONCLUSION

Accused no.1

18. The accused no.1 is sentenced to undergo a term of imprisonment of 6 months, together with a fine of Rs100,000, under Count 1, and to pay costs of Rs500.
19. However, since this is the first conviction of the accused for the offence of money laundering and having considered the pronouncements in **Heerah v State 2012 SCJ 71**, the term of imprisonment of 6 months is suspended and I order a social enquiry report to see whether the accused is fit to perform community service work.

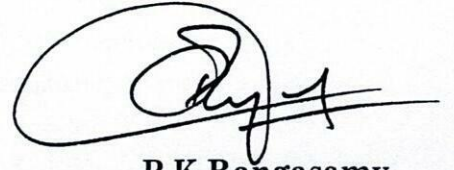
Accused no.3

20. The accused no.3 is sentenced to pay a fine of Rs200,000 under Count 3 of the Information, with costs of Rs500.

Accused no.4

21. Accused no.4 is sentenced to undergo a term of imprisonment of 8 months together with a fine of Rs10,000 under each count of the Information (Counts 4 to 24), and to pay costs of Rs500. Only the term of imprisonment under each count is to be served concurrently.





P K Rangasamy
Magistrate of the Intermediate Court
28.08.24