

**IN THE INTERMEDIATE COURT OF MAURITIUS**

**(Financial Crimes Division)**

**Cause Number: 24/2024**

**The Financial Crimes Commission**

**v**

**1. Vikram Babbea**

**2. Nagraj Conhye**

**SENTENCE**

1. In an Information lodged against both accused, they are being reproached for violating Sections 5(1) and 8 of the Financial Intelligence and Anti Money Laundering Act 2002 ("the Act").
2. The case for the prosecution, under Count 1 of the Information, against accused No. 1 is that on 21.04.2023, the latter did wilfully, unlawfully and criminally make a payment in cash in excess of Rs 500, 000 namely that the accused made a cash payment of Rs 520, 000 to accused No. 2 for the purchase of a motor vehicle.
3. Accused No. 1 pleaded guilty to Count 1 and was not represented by Counsel.
4. The prosecution's case, under Count 2 of the Information, against accused No. 2 is that on 21.04.2023, the latter wilfully, unlawfully, and criminally accepted a payment in cash

in excess of Rs 500, 000. Specifically, that the accused accepted Rs 520, 000 in cash from accused No. 1 for the sale of a motor vehicle.

5. Accused No. 2 pleaded guilty to Count 2 and was also not represented by Counsel.

6. The record contains the two defence statements of accused No. 1, identified as Doc A and Doc A1, as well as the two defence statements of accused No. 2, identified as Doc B and Doc B1. Additionally, the Sale Deed of the motor vehicle, identified as Doc C, is also on record.

7. Witness No. 1 attested that the inquiry unveiled a transaction between both accused amounting to Rs 520,000, exceeding the permissible cash limit.

8. Accused No. 1, while addressing the court, expressed his lack of awareness regarding the illegality of making a cash payment exceeding Rs 500,000. He pleaded for clemency and assured that he would not re-offend.

9. Accused No. 2 asserted his ignorance of the law. He emphasized his role as the primary provider for his family, comprising two children and an ailing wife. He begged for an excuse and prayed for the leniency of the Court.

10. On 23.08.2024, I delivered my judgment, finding accused No. 1 guilty as charged under Count 1 and accused No. 2 guilty as charged under Count 2 of the Information based on their unequivocal and unambiguous pleas.

11. During the Pre-Sentence Hearing, accused No. 1 averred that he had two children, was the sole breadwinner in his family and prayed for the Court's leniency. Accused No. 2 stated that he was the sole breadwinner in his family and that his wife was ill. He averred that he has a loan and his wife's medical expenses to pay. He also prayed for the leniency of the Court.

12. I have duly considered all the evidence adduced on record.

13. Both accused entered timely guilty pleas, thereby saving the court time and resources, for which I give them credit. Their remorse and commitment to mend their ways, along with their strong family ties and sole breadwinner status, were also considered by me.

14. Accused No. 1 is borne on record for a non-cognate offence and accused No. 2 is of a clean record.

15. In **The State v Cheetamun [2017] SCJ 443**, the Court held that: -

*“... a guilty plea which saves the time of the court and expenses on the State is a strong mitigating factor which may entitle an accused party to a discount of sentence.”*

16. In **Goolfee v The State [1996] SCJ 144**, the Court held that: -

*“... we are of the view that a plea of guilty should operate as a strong mitigating factor. It would be pointless for accused parties to plead guilty, thereby showing remorse, saving the time of the court and sparing witnesses the ordeal of testifying, if in spite of such a plea, they are to be visited with the maximum penalty that a court can inflict for the offence. Of course there may be cases where the crime is so heinous that a plea of guilty should not operate as a veil.”*

17. In **Joghee v The State [1997] SCJ 57**, it was held that: -

*“It has been held time and again that a previous conviction is no ground for inflicting a severe sentence on a convicted person, nor is a clean record a passport to being treated leniently. Sentence depends on the overall circumstances of a case.”*

18. In **The State v Bruls & Anor [2008] SCJ 78**, it was held that: -

*“However, this Court has repeatedly stated that the sentence passed must reflect the seriousness of the offence and also to serve as a deterrent to would-be offenders.”*

19. In **Sinon v The Queen [1956] MR 206**, it was held that: -

  
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*"The court can take into account previous convictions, together with the nature of the offence and the effect of previous sentences, but there is no principle which necessitates a heavier or lighter sentence according to whether the convicted person has a bad or a good record. Each case must be dealt with on its own merits: see Mobar v. The Queen, [1955 MR 168]."*

20. Section 5(1) of the Act reads as follows:

*Notwithstanding section 37 of the Bank of Mauritius Act 2004, but subject to subsection (2), any person who makes or accepts any payment in cash in excess of 500,000 rupees or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.*

21. Section 8 of the Act provides:

(1) *Any person who -*

- (a) *commits an offence under this Part; or*
- (b) *disposes or otherwise deals with property subject to a forfeiture order under subsection (2), shall, on conviction, be liable to a fine not exceeding 10 million rupees and to penal servitude for a term not exceeding 20 years.*

(2) *Any property belonging to or in the possession or under the control of any person who is convicted of an offence under this Part shall be deemed, unless the contrary is proved, to be derived from a crime and the Court may, in addition to any penalty imposed, order that the property be forfeited.*

(3) *Sections 150, 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction under this Part.*

22. Both accused asserted their lack of awareness regarding the law. However, it is important to note that unfamiliarity with the law does not offer a valid legal defence. Their lack of awareness is understandable, but it does not excuse their actions.

23. Based on the facts and circumstances of the case, I am of the opinion that the dispensation of justice would be best served by imposing a fine. Therefore, I hereby pronounce the following sentence:

- a. Accused No. 1 to pay a fine of Rs 5,000; and
- b. Accused No. 2 to pay a fine of Rs 5, 000.

24. Each accused to pay Rs 500 as costs.



**Neeshal K JUGNAUTH**

**Magistrate**

**11.09.2024**