CN: 5/2023

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

Gamil Muhammad PARDHUN

SENTENCE

The accused has been prosecuted for the offence of Money Laundering under 141 counts of the Information, in breach of sections 3(1)(a), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA). He pleaded guilty to the Information and was consequently found guilty as charged.

CASE FOR THE PROSECUTION

Witness no.1 produced three defence statements of the accused as **Docs A, A1** and **A2**. He stated that the accused has cooperated with the ICAC during enquiry. He voluntarily explained the procedure regarding his job at Tsusho Capital (Mauritius) Ltd. During enquiry, the accused admitted that the cheques were the subject matter of the case and he confirmed his handwriting on them.

The previous convictions of the accused were produced as **Doc X**.

CASE FOR DEFENCE

The accused made a statement from the dock. He begged for forgiveness for his actions. He was in a difficult situation. He has mended his ways since and promised he will not recur. He has a child of 4 years old. He takes care of a mother-in-law who is bedridden.

ASSESSMENT OF THE COURT

At the time of indictment, the penalty for the above offence is prescribed under section 8 of FIAMLA as a fine not exceeding 10 million rupees and penal servitude for a term not exceeding 20 years.

The accused pleaded guilty to the Information. Although it was not at the first available opportunity after communication of brief, there was no unreasonable delay before the guilty plea was made.

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. <u>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.</u> 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)

Some discount will therefore be afforded to the accused.

The accused has three relatively recent previous convictions. The only conviction involving dishonesty is larceny for which he was conditionally discharged.

The circumstances of the case have been laid out in the accused's defence statements. It is clear that it has been an ongoing process over a period of time. He was upfront about the details of his scheming activities. I take into consideration that the accused is charged with a serious offence. He has indulged into a criminal activity which required much thought, dedication and attention to details.

On the other hand, I take note of the accused's early guilty plea. He has been open about his involvement in the crime. He has shown remorse. He was in a difficult financial position. He has a child of 4 years old and a sickly mother-in-law under his care.

I am alive to the pronouncements of the Supreme Court in **Heerah v State 2012 SCJ 71**:

'That a prison sentence is normally appropriate where an offender is convicted for serious offences, of that there is no doubt. But the level at which the offence should be placed on the scale of offences in terms of the degree of seriousness must not be ignored. Furthermore, not all candidates who fail the test of monetary penalties, or a Probation or Conditional Discharge Order become automatically candidates for prisons...

Courts should refrain from imposing custodial sentences as a matter of reflex and indiscriminately in all cases where fines and Probation Orders and Conditional Discharge Orders are not found appropriate. Serious consideration should be given to that intermediate option inasmuch as "the deprivation of liberty through a custodial sentence is the most severe penalty available to the courts and the proper punishment for the most serious crimes:"

CONCLUSION

The circumstances of this case do not warrant a custodial sentence. I thus sentence the accused to pay a fine for each count of the Information as follows:

Count 1 – Rs 5,000	Count 2 – Rs 15,000	Count 3 – Rs 5,000
Count 4 – Rs 15,000	Count 5 – Rs 5,000	Count 6 – Rs 5,000
Count 7 – Rs 5,000	Count 8 – Rs 5,000	Count 9 – Rs 5,000
Count 10 – Rs 5,000	Count 11 – Rs 5,000	Count 12 – Rs 2,000
Count 13 – Rs 5,000	Count 14 – Rs 5,000	Count 15 – Rs 5,000
Count 16 – Rs 15,000	Count 17 – Rs 5,000	Count 18 – Rs 5,000

Count 19 – Rs 5,000	Count 20 – Rs 5,000	Count 21 – Rs 5,000
Count 22 – Rs 5,000	Count 23 – Rs 5,000	Count 24 – Rs 15,000
Count 25 – Rs 2,000	Count 26 – Rs 5,000	Count 27 – Rs 5,000
Count 28 – Rs 2,000	Count 29 – Rs 5,000	Count 30 – Rs 5,000
Count 31 – Rs 15,000	Count 32 – Rs 5,000	Count 33 – Rs 5,000
Count 34 – Rs 15,000	Count 35 – Rs 15,000	Count 36 – Rs 5,000
Count 37 – Rs 5,000	Count 38 – Rs 15,000	Count 39 – Rs 5,000
Count 40 – Rs 1,500	Count 41 – Rs 5,000	Count 42 – Rs 15,000
Count 43 – Rs 5,000	Count 44 – Rs 15,000	Count 45 – Rs 5,000
Count 46 – Rs 8,000	Count 47 – Rs 15,000	Count 48 – Rs 5,000
Count 49 – Rs 5,000	Count 50 – Rs 15,000	Count 51 – Rs 5,000
Count 52 – Rs 5,000	Count 53 – Rs 15,000	Count 54 – Rs 5,000
Count 55 – Rs 8,000	Count 56 – Rs 5,000	Count 57 – Rs 5,000
Count 58 – Rs 5,000	Count 59 – Rs 5,000	Count 60 – Rs 5,000
Count 61 – Rs 5,000	Count 62 – Rs 5,000	Count 63 – Rs 15,000
Count 64 – Rs 5,000	Count 65 – Rs 15,000	Count 66 – Rs 15,000
Count 67 – Rs 5,000	Count 68 – Rs 15,000	Count 69 – Rs 5,000
Count 70 – Rs 15,000	Count 71 – Rs 15,000	Count 72 – Rs 5,000
Count 73 – Rs 15,000	Count 74 – Rs 5,000	Count 75 – Rs 5,000
Count 76 – Rs 5,000	Count 77 – Rs 15,000	Count 78 – Rs 15,000
Count 79 – Rs 15,000	Count 80 – Rs 15,000	Count 81 – Rs 15,000
Count 82 – Rs 15,000	Count 83 – Rs 15,000	Count 84 – Rs 15,000
Count 85 – Rs 15,000	Count 86 – Rs 5,000	Count 87 – Rs 15,000

Count 88 – Rs 5,000	Count 89 – Rs 5,000	Count 90 – Rs 15,000
Count 91 – Rs 15,000	Count 92 – Rs 5,000	Count 93 – Rs 15,000
Count 94 – Rs 5,000	Count 95 – Rs 15,000	Count 96 – Rs 5,000
Count 97 – Rs 15,000	Count 98 – Rs 5,000	Count 99 – Rs 15,000
Count 100 – Rs 5,000	Count 101 – Rs 15,000	Count 102 – Rs 15,000
Count 103 – Rs 5,000	Count 104 – Rs 5,000	Count 105 – Rs 15,000
Count 106 – Rs 5,000	Count 107 – Rs 15,000	Count 108 – Rs 15,000
Count 109 – Rs 15,000	Count 110 – Rs 15,000	Count 111 – Rs 5,000
Count 112 – Rs 15,000	Count 113 – Rs 5,000	Count 114 – Rs 15,000
Count 115 – Rs 15,000	Count 116 – Rs 15,000	Count 117 – Rs 5,000
Count 118 – Rs 15,000	Count 119 – Rs 15,000	Count 120 – Rs 5,000
Count 121 – Rs 15,000	Count 122 – Rs 15,000	Count 123 – Rs 15,000
Count 124 – Rs 5,000	Count 125 – Rs 15,000	Count 126 – Rs 15,000
Count 127 – Rs 15,000	Count 128 – Rs 15,000	Count 129 – Rs 15,000
Count 130 – Rs 5,000	Count 131 – Rs 15,000	Count 132 – Rs 15,000
Count 133 – Rs 15,000	Count 134 – Rs 15,000	Count 135 – Rs 15,000
Count 136 – Rs 15,000	Count 137 – Rs 15,000	Count 138 – Rs 15,000
Count 139 – Rs 15,000	Count 140 – Rs 15,000	Count 141 – Rs 15,000

Total 1,378,500/-

Accused is also required to pay **Rs500 as costs.**

P K Rangasamy
Magistrate of the Intermediate Court
04.12.24