IN THE INTERMEDIATE COURT OF MAURITIUS

(FINANCIAL CRIMES DIVISION)

CN: 20/2024

In the matter of:

Independent Commission Against Corruption

v/s

Sarvanand MADHUB

SENTENCE

The accused has been prosecuted for the offence of money laundering under counts 1 to 97 of the information in breach of Sections 3(1) (b), 6 and 8 of **the Financial Intelligence and Anti-Money Laundering Act 2002 ('FIAMLA')** and for electronic fraud under count 98 in breach of secions 10 (b) and 21 of the Computer Misuse and Cybercrime Act 2023. The accused has pleaded guilty to the charges and was found guilty as charged under counts 1 to 98 of the information. He was inops consili. The case for the prosecution was conducted by Counsel for the Financial Crimes Commission.

The proceedings were held in creole.

The case for the prosecution

Learned Counsel for the prosecution called witness No. 2, Investigator Bhogun posted at the FCC (then ICAC) who produced 3 defence statements for the accused, marked as **Doc A, A1**and **A2**. There was no objection to production of same from the accused. The witness explained that the case was reported by the Gambling Regulatory Authority and the Bank of

Mauritius to the CCID. He further explained that the accused was a bank officer, who had issued and cleared 97 cheques from his bank account at the Bank of Mauritius when he did not have sufficient funds in the said account. He had also used the computer at the Bank of Mauritius to do the said transactions.

He was not cross-examined.

The witness was not re-examined.

The prosecution then called witness No. 3, Inspector Marianne posted at the AML unit of the CCID, who produced 8 defence statements for the accused, which were marked as Doc A3 to Doc A10. There was no objection to production of same from the accused.

He was not cross-examined.

The witness was not re-examined.

The case was closed for the prosecution.

The case for the defence

The accused elected to speak from the dock. He begged for excuse. He stated that he had worked at the bank for 34 years. He had joined the bank as a clerk in 1987 and he was promoted as bank officer grade 1 in 2003 i.e senior clerk. He explained that he was indebted due to his gambling debts and that he desperately needed the money. He had been unable to repay the bank. He highlighted the fact that he would have had several benefits including a gratuity and a pension of around Rs 41,000/.

He was not cross-examined

The case was closed for the defence.

During the sentencing hearing, the accused stated that he has never had any issues with the law and that he has always been a law-abiding citizen. He lives with his sister who is a pensioner. He is currently unemployed. He laid emphasis on the fact that he was indebted and was helpless at the time.

The accused has a clean record.

The Court's assessment

The information was lodged on 26th July 2024. The accused pleaded guilty on 27th January 2025 after the case was fixed for trial, at an early stage.

Section 8 of the **FIAMLA** (pre-amendment) applicable in the present case provides for penalty for this offence as follows:

"8. Penalty

(1) Any person who -(a) commits an offence under this Part;

.....

shall, on conviction, be liable to a fine not exceeding 2 million rupees and to penal servitude for a term not exceeding 10 years."

Section 10 (b) of the **Computer Misuse and Cybercrime Act 2023** (which was in force at the time of the offence) reads as follows:

10.Electronic fraud

Any person who fraudulently causes loss of property to another person by-

.....

(b)any interference with the functioning of a computer system,

with intent to procure for himself or another person, an advantage, shall commit an offence and shall, on conviction be liable to a fine not exceeding 200,000 rupees and to penal servitude for a term not exceeding 20 years.

Section 69B of the **District and Intermediate (Criminal jurisdiction) Act** reads as follows:

"69B. Sentence on timely guilty plea

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."

In ***State v. Doorgachurn S. K*** [2015] SCJ 55, the Court made the following observation on 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."

In ***Mansing K. v. The State*** [2020] SCJ 248, the Court referring to the above, further made the following observation:

The guidelines published in 2018 have in substance, remained the same. They are as follows:

"The purpose of reducing the sentence for a guilty plea is to yield the benefits described above. The guilty plea should be considered by the court to be independent of the offender's personal mitigation. Factors such as admissions at interview, co-operation with the investigation and demonstrations of remorse should not be taken into account in determining the level of reduction. Rather, they should be considered separately and prior to any guilty plea reduction, as potential mitigating factors. The benefits apply regardless of the strength of the evidence against an offender. The strength of the evidence should not be taken into account when determining the level of reduction.

The guideline applies only to the punitive elements of the sentence and has no impact on ancillary orders including orders of disqualification from driving."

(Reduction in Sentence for a Guilty Plea Definitive Guideline 2018)"

In light of the aforesaid, it is clear that the accused pleaded guilty at an early stage, albeit not at the earliest opportunity and this will be considered when determining the level of reduction that may be afforded to his sentence by the Court. This is also to be considered independently from any mitigating factors.

From the evidence adduced, the Court notes that the accused committed the present offence in his capacity as a bank officer. He has taken advantage of the fact that he was duly authorized to clear cheques and used this to his advantage. He was well versed with the bank's clearing system and it is noted that this was not an isolated transaction but he proceeded to do on numerous occasions more specifically for 97 transactions. This Court cannot overlook the fact that he unscrupulously manipulated the system (at the expense of the financial institution for which he worked for) for his own personal gain albeit he claims to have been in a precarious position at the time. Additionally, the financial loss suffered as well as the prejudice caused to the financial institution cannot be disregarded. It is important to maintain the public's confidence in our banking institutions.

However, the Court notes that the accused has expressed remorse for his acts and doings. In his unsworn testimony, he has explained that he was overwhelmed by his gambling debts. He laid emphasis on the fact that he was helpless as he was struggling with his gambling debts. He has also stated that he has always been law-abiding citizen. He has a clean record and he is not in gainful employment. The accused is also in his late 60s. He also explained that in spite of his years of employment, he did not benefit from any gratuity or pension.

At this stage, I find it pertinent to reproduce the following extract from the judgment of ***Aubeeluck*** (supra) referred to by Defence Counsel where the Board analysed the following issue: " whether, and in what circumstances, a court is entitled to pass a lesser sentence than the minimum sentence provided by law for the commission of a criminal offence." In ***Dookia R R v. The State*** [2011] SCJ 49, the Court referring to the judgment of ***Aubeeluck***, highlighted the ratio of the judgment as follows:

"The Privy Council held that where a minimum sentence is prescribed by law, a trial court is not bound to indiscriminately impose such sentence. It may, on the facts of a particular case, impose a lesser sentence than that prescribed where it is of view that the imposition of the minimum sentence is grossly disproportionate when there exist strong mitigating factors on the specific facts and applying the said provision would be tantamount to inflicting an "inhuman or degrading treatment" in breach of section 7 of the Constitution."

In the present case, the offence at hand is a serious one and involves substantial sums of money which were issued by cheques by the accused to a third party in some instances or mostly to himself by depositing money in his own accounts at various commercial banks. The question is whether this Court may impose a lesser sentence than that prescribed by law in light of the mitigating factors put forth by the accused.

Having earnestly considered the above principles, the guilty plea of the accused, the mitigating circumstances, the facts and circumstances of this case, the need to individualize a sentence to fit the offender (Re: ***Lin Ho Wah v The State*** [2012] SCJ 70) and the rationale of the sentencing measures for money laundering offences as laid out in Abongo v. The State [2009] SCJ 81], this Court is of the view that a term of imprisonment together with a fine will meet the ends of justice.

In relation to count 98, this Court has taken into consideration that the fact that the accused has interfered with a computer system is intrinsically linked to the money laundering transactions under the respective counts of the information.

Therefore, I sentence the accused to undergo a term of imprisonment of 3 months under each count to be served concurrently together with a fine under the respective counts as follows:

Count 1 Rs 12,000/-	Count 2 Rs 12,500/-	Count 3 Rs 12,500/-
Count 4 Rs 25,000/-	Count 5 Rs 15,750/-	Count 6 Rs 32,500/-
Count 7 Rs 40,000/-	Count 8 Rs 40,000/-	Count 9 Rs 20,000/-
Count 10 Rs 20,000/-	Count 11 Rs 46,250/-	Count 12 Rs 30,000/-
Count 13 Rs 30,000/-	Count 14 Rs 42,500/-	Count 15 Rs 40,000/-
Count 16 Rs 50,000/-	Count 17 Rs 22,500/-	Count 18 Rs 35,000/-
Count 19 Rs 40,000/-	Count 20 Rs 32,500/-	Count 21 Rs 41,250/-

Count 22 Rs 40,000/-	Count 23 Rs 40,000/-	Count 24 Rs 40,000/-
Count 25 Rs 40,000/-	Count 26 Rs 42,000/-	Count 27 Rs 42,000/-
Count 28 Rs 36,000/-	Count 29 Rs 35,000/-	Count 30 Rs 42,000/-
Count 31 Rs 27,500/-	Count 32 Rs 30,000/-	Count 33 Rs 30,000/-
Count 34 Rs 30,000/-	Count 35 Rs 30,000/-	Count 36 Rs 30,000/-
Count 37 Rs 55,000/-	Count 38 Rs 32,500/-	Count 39 Rs 40,000/-
Count 40 Rs 35,000/-	Count 41 Rs 60,000/-	Count 42 Rs 40,000/-
Count 43 Rs 60,000/-	Count 44 Rs 66,000/-	Count 45 Rs 66,000/-
Count 46 Rs 80,000/-	Count 47 Rs 66,000/-	Count 48 Rs 66,000/-
Count 49 Rs 60,000/-	Count 50 Rs 40,000/-	Count 51 Rs 40,000/-
Count 52 Rs 40,000/-	Count 53 Rs 43,000/-	Count 54 Rs 60,000/-
Count 55 Rs 30,000/-	Count 56 Rs 40,000/-	Count 57 Rs 33,000/-
Count 58 Rs 40,000/-	Count 59 Rs 40,000/-	Count 60 Rs 40,000/-
Count 61 Rs 30,000/-	Count 62 Rs 30,000/-	Count 63 Rs 34,000/-
Count 64 Rs 37,000/-	Count 65 Rs 45,000/-	Count 66 Rs 40,000/-
Count 67 Rs 40,000/-	Count 68 Rs 40,000/-	Count 69 Rs 40,000/-
Count 70 Rs 33,000/-	Count 71 Rs 40,000/-	Count 72 Rs 35,000/-
Count 73 Rs 40,000/-	Count 74 Rs 33,000/-	Count 75 Rs 40,000/-
Count 76 Rs 45,000/-	Count 77 Rs 33,000/-	Count 78 Rs 58,000/-

Count 79 Rs 40,000/-	Count 80 Rs 36,000/-	Count 81 Rs 61,000/-
Count 82 Rs 23,750/-	Count 83 Rs 48,750/-	Count 84 Rs 41,250/-
Count 85 Rs 36,000/-	Count 86 Rs 46,250/-	Count 87 Rs 48,750/-
Count 88 Rs 43,750/-	Count 89 Rs 37,000/-	Count 90 Rs 197,500/-
Count 91 Rs 97,500/-	Count 92 Rs 47,500/-	Count 93 Rs 33,750/-
Count 94 Rs 46,250/-	Count 95 Rs 47,500/-	Count 96 Rs 48,750/-
Count 97 Rs 48,750/-	Count 98 Rs 50,000/-	

and to pay Rs 500/- as costs.

At this stage, applying the principles set out in ***Heerah v State*** [2012 SCJ 71] as follows:

" [15] 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. A custodial sentence used to be once the only option for offenders who failed such tests after the Court had ruled out a fine, a Probation or Conditional Discharge Order. However, for this category of offenders, Parliament, in its wisdom, has now added one invaluable and intermediate régime between the custodial option and the non custodial option: that is a suspended prison sentence under the Community Service Order Act.

[16]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:" [see Home Office, 1990, para. 2.11 of the White Paper on Crime, Justice and Protecting the Public. This study culminated in the passing of the Criminal Justice Act 2003 in England and Wales which vested in their Courts the power to make Community Orders]"
where their Lordships considered the alternatives to a prison sentence and the need to consider the "intermediate option".

Having considered the age of the accused (who is nearly 70 years old) and the possibility for him to reform by triggering "his sense of responsibility to society", I find that a community service order will be appropriate in this case. Therefore, I suspend the sentence of imprisonment of 3 months under each count and I order that a social enquiry report be carried to determine whether the accused may perform community service work.

N.Seebaluck
Acting Magistrate Intermediate Court
10.03.2025