

IN THE INTERMEDIATE COURT (THE FINANCIAL CRIMES DIVISION)

CN 123/2020

In the matter of:

THE INDEPENDENT COMMISSION AGAINST CORRUPTION¹ (ICAC)

V

Gunshyam JEETUN

SENTENCE

1. On the 4th July 2025 judgment was delivered by this Court and the accused was found guilty as charged. The information contains a single count. The offence is **bribery of public official** in breach of **Section 5 (1) (a) (2) of the Prevention of Corruption Act**. The body of the information sets out the facts in issue upon which the accused was convicted:

That on or about the 28th March 2014 along SSR Street, in the District of Port-Louis, one Ghunshyam JEETUN, 44 yrs, Company Director and residing at Victoria Road, Long Mountain, did willfully, unlawfully and criminally give to a public official, a gratification for abstaining from doing an act in the execution of his duties.

PARTICULARS

¹ ICAC repealed and replaced by The Financial Crimes Commission (FCC) by virtue of the **Financial Crimes Commission Act (FCC) 2023** effected by Proclamation No. 10 of 2024 Government Gazette of Mauritius No. 30 of 29 March 2024.



On or about the date and place aforesaid, the said Gunshyam JEETUN Gave to Police Corporal 3887 Cotte, sum of Rs 200/ so as not to report him the said Gunshyam JEETUN for a Road Traffic offence.

2. On the 24th July 2025 a sentence hearing was held.
3. During the sentence hearing, subsequent to the prosecution informing the Court that accused did not spend any time in police cell/remand and that accused has a clean record, the accused party made a short statement from the dock. The statement is to the effect that he begs for excuse having committed this offence and that on the material day he made an "error of judgment." Accused explained that in the spur of the moment he made an impulsive act because he was panicking. Accused pointed out that he has a company with twelve employees and that he has family ties namely he is married and has three children. Thereafter, counsel for the accused made a plea in mitigation on behalf of the accused. Counsel submitted that firstly accused has a clean record. Secondly, the accused expressed remorse. Thirdly, the accused tendered his apologies regarding the "error of judgment." Fifth, the accused has strong community ties as the bread winner of the family. Counsel referred this Court to the judgments of **Volbert v The State 2016 SCJ 88; Nazeerally v The State 2017 SCJ 412; P.Boolell v The State 2005 PRV 39; G.Aubeeluck v The State of Mauritius 2009 PRV 75; The State v M.F.B.Maigrot 2024 SCJ 348**. The prosecution on its part submitted that the sentence to be meted out by this Court should serve as a deterrent and must take into consideration the seriousness of the offence.
4. This Court has carefully considered the plea in mitigation and the prosecution's submission.
5. **Section 5 (1) (a) and (2) of the Prevention of Corruption Act (POCA)** provides that:



5. Bribery of public official

(1) Any person who gives, agrees to give, or offers a gratification to a public official for (a) doing, or for abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties; shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) Notwithstanding section 83, where in any proceedings against any person for an offence under subsection (1) it is proved that the accused gave, agreed to give or offered gratification, it shall be presumed, until the contrary is proved, that the accused gave, agreed to give or offered the gratification for any of the purposes set out in subsection (1)(a) to (e).

6. In *Mudhoo A. B & Anor v The State* 2025 SCJ 274 the Supreme Court (Court of Criminal Appeal) held that:

The applicable principles regarding sentencing are as follows: "... the quantum of the sentence imposed upon an offender remains first and foremost a matter for the sentencing Judge to decide. The Judge must impose a sentence tailored to the particular offence and the personal circumstances of the offender. It is accordingly incumbent upon the Judge when passing sentence to take into account all the relevant factors with respect to the commission of the offence as well as any aggravating factors, the personal circumstances of the particular offender and any mitigating factors which are in his favour. It follows therefore that each case must be considered on its own merits by the sentencing court in the light of the above principles." (*Agathe J. A. A. v. The State* [2022 SCJ 258]).

7. *Chuttoo v ICAC* 2025 SCJ 330 the Supreme Court held that:



In Elaheebocus Haroon Rashid v State of Mauritius [2009 MR 323], paragraph 39 of the judgment in Boolell was referred to, where it was held that it was unacceptable that a prison sentence be put in operation 15 years after the offence was committed "unless the public interest affirmatively required a custodial sentence, even at this stage."

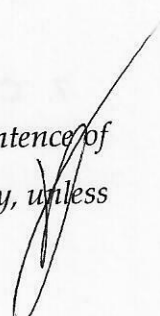
8. In Elaheebocus the custodial sentence was reduced in view of the delay and remained imprisonment only because of greater criminality involved. In the present matter, it is not so much of a criminal enterprise. This Court therefore has taken into account the following facts:

- (a) The accused has a clean record.
- (b) He is well established in society.
- (c) He has committed this act indeed on the spur of the moment, there was no premeditated act to corrupt.
- (d) The present offence occurred in 2014, that is eleven years ago.
- (e) There is no criminal enterprise or organised crime involved against the state.

9. This court finds that in view of these strong mitigating factors as opposed to the seriousness of the offence, sentencing the accused to penal servitude as set out by **Section 5 (1) (a) and (2) of the Prevention of Corruption Act (POCA)** would be disproportionate. Nevertheless, this Court finds that a custodial sentence is warranted given that the prosecution has contended that this sentence should serve as a deterrent. This Court consequently in line with **Section 151 of the Criminal Procedure Act** attenuates the sentence of "penal servitude:

151 Imprisonment in lieu of penal servitude

Where under any enactment a Court is empowered or required to pass a sentence of penal servitude other than a sentence of penal servitude for life, the Court may, unless



the enactment otherwise provides, inflict imprisonment with or without hard labour, for any term not exceeding 5 years. [Reprint No. 1 of 1983] Amended by [Act No. 36 of 2008.

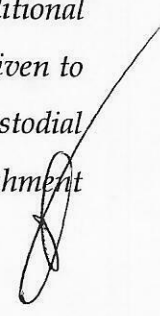
10. And imposes a sentence of imprisonment on the accused in lieu of penal servitude.

11. The accused is accordingly sentenced to three months imprisonment + 500 costs.

12. Having said that, this court has also taken into consideration **Heerah v The State 2012 SCJ 71** whereby the following principles regarding the application of a community service order were underscored:

[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 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..

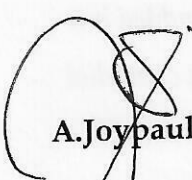
[16] Courts should refrain from imposing custodial sentences as a matter of reflex and indiscriminately in all cases where fines and Probation Orders and Conditional Discharge Orders are not found appropriate. Serious consideration should be given to that intermediate option inasmuch as "the deprivation 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].

[17] In a number of cases, the objectives of the criminal justice system are better served when the offender's sense of responsibility to society and his self-reliance are triggered. As the Home Office Paper comments: Imprisonment "is likely to diminish an offender's sense of responsibility and self-reliance," and "provides many opportunities to learn criminal skills." What is more serious, imprisonment can have a devastating effect on some offenders as well as on their families. It would be unrealistic for society to expect that those who deserve lesser but are sentenced to imprisonment for not so serious offences would ever "emerge as reformed characters."

13. **Heerah v The State 2012 SCJ 71** was reaffirmed in **Ramsurrun v The State 2023 SCJ 199**; **Rajackhan v The State 2021 SCJ 388**; **Soogare v The State 2021 SCJ 194**. In light of **Heerah v The State 2012 SCJ 71** so that the accused be given the opportunity to rehabilitate, it is important for the court to determine if the accused is a suitable person to a non-custodial sentence. Consequently, this Court suspends the sentence of imprisonment and orders for a **Social Enquiry Report** to consider whether the accused can benefit from a Community Service Order requiring him to perform unpaid work in the open for a specified period.


A. Joypaul

Intermediate Court Magistrate

Financial Crimes Division

08.8.2025



