

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

1. **Mohammud Nizam Domah**
2. **Azur Medical Ltd**

SENTENCE

1. Accused no.1 has been prosecuted and convicted for the offence of Receiving gift for a corrupt purpose in breach of section 15(a) of the Prevention of Corruption Act 2002 (POCA) under counts 1 & 2 of the Information.
2. The case against the accused no.2 laid at counts 3 & 4 of the Information has been dismissed.
3. The circumstances of this case have been thoroughly canvassed at trial, and in my judgment delivered on 31.03.26. During the pre-sentence hearing, the accused party elected to make a statement from the dock. He stated that he worked as an interventional cardiologist, trained in France where he worked for about three years before he came to Mauritius. He has a clean record and has been a law-abiding citizen. He is 70 years old and has two children. He further stated that he is a doctor of excellent reputation, respected by his peers and the public. He has been for many years the consultant in charge at the Victoria Hospital, which comes with enormous responsibilities. He is still a practising doctor with ongoing patients who need close monitoring. He has performed more than 30,000 medical procedures, related to cardiology. He has helped make significant advances in cardiology by pioneering new techniques. That has helped reduce mortality rates and raised the quality of life for patients. He undertook extra sessions with the approval of the Ministry of

Health and Quality of Life to shorten the waiting list for patients. The sessions would start at 21:00 and end at 01:00. He has been the president of the cardiovascular society of Mauritius. He stated that this case has caused some prejudice to him in terms of his reputation, although he concurs with the decision of the court.

The Law

4. The section 15 of POCA is reproduced below:

Any public official who solicits, accepts or obtains a gratification for himself or for any other person—

(a) from a person, whom he knows to have been, to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his functions or those of any public official to whom he is subordinate or of whom he is the superior; or

(b) from a person whom he knows to be interested in or related to the person so concerned,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

5. The POCA 2002 has been repealed and replaced by the **Financial Crimes Commission Act 2023**. Section 31 is reproduced below:

Any public official who solicits, accepts or obtains a gratification, for himself or for another person –

(a) from a person whom he knows to have been, to be or likely to be, interested or related to a person interested, in any proceedings or business transacted or about to be transacted; or

(b) where he knows that, or ought reasonably to know, that the proceedings or business has a connection with his functions or duties or with the functions or duties of any public official to whom he is the subordinate or superior,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

6. Whilst the two above sections have not been identically reproduced, it is construed that the same offence has now been enacted under section 31 of the FCCA 2023.
7. The new FCCA 2023 has introduced an alternative to custodial sentence for the above offence, in the form of a fine not exceeding Rs20M.

The Supreme Court quashed the sentence in the case of **Dookia v The State 2011 SCJ 49**, by applying of the principle of '*la peine la plus douce*'. The following extracts are of relevance:

We bear in mind the principle of "la peine la plus douce" in sentencing matters enshrined under article 15 (1) of the International Covenant as a right to benefit from a lighter penalty which is to the following effect—"that if, subsequent to the commission of an offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit therefrom."

The Supreme Court concluded as follows:

We find that the principle finds its application in the present case and that the appellant should benefit from the less draconian provisions brought about by the amendments to the Dangerous Drugs Act [Act 14 of 2009 refers] so that he may be sentenced to either imprisonment or a fine, without any minimum being prescribed in either case.

8. The accused has a clean record. Whilst a clean record does not guarantee leniency or a non-custodial sentence, vide **Khojraty v State 2018 SCJ 382**, it gives an insight into the character of the accused party.
9. The accused party is unquestionably a medical practitioner with a level expertise in his field which is considered to be among the highest in the country. It is not disputed that his wealth of experience has mostly been put to the benefit of the society. I have considered the fact that the accused still has a medical practice with ongoing patients requiring treatment.
10. The defence has conducted its case partly on the basis that the sponsorships in question were part of a ubiquitous practice in the industry. While such is no absolution to the commission of the offence, it is a strong mitigating factor for sentencing purposes. The maxim of 'ignorance of the law is no excuse' is well rooted in our fundamental legal principles. Considering the novelty of the prosecution under section 15 of POCA, it can nevertheless be a ground for

mitigation if not an excuse, in this case. However, the court is mindful that such practice has to be curbed to such an extent that it is clearly understood that public officials in like capacity cannot act without checks and balances.

11. The commission of the offence is dated in 2015. The findings of **Boolell v State 2006 MR 175** are considered and applied. The age of the accused party is also taken into account.

CONCLUSION

12. For these reasons, I hold that the principle of '*la peine la plus douce*' is applicable. A custodial sentence is not warranted in this case.

13. I, thus, sentence the accused no.1 to pay a fine of Rs100,000 under count 1, and a fine of Rs100,000 under count 2 of the Information, plus Rs500 as costs.



P K Rangasamy
Magistrate of the Intermediate Court
05.05.26