

IN THE INTERMEDIATE COURT OF MAURITIUS
Financial Crimes Division

CN : FR/L5/2024

In the matter of:

The Independent Commission Against Corruption¹

V

Girdharry KHURUN

SENTENCE

The accused stands in respect of Count 2 with wilfully, unlawfully and criminally, whilst being a public official, making use of his position for a gratification for himself, in breach of **Sections 7 and 83 of the Prevention of Corruption Act (The POCA)**.

He was represented by Mr R. Samputh during the pre-sentence hearing.

Mr Ponon appeared for the prosecution.

Section 7 of the POCA provides for penal servitude for a term not exceeding 10 years.

The accused stated from the dock that he is married, has 2 children and bears family responsibility. He tenders his apologies.

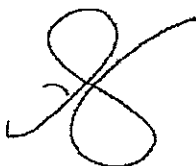
Mr Samputh prayed for a non-custodial sentence in view of his clean record.

I have given due consideration to the seriousness of the offence. The accused as Vehicle Examiner at the National Land Transport Authority (the NLTA), made use of his position to issue favorable vehicle examination report without any physical vehicle examination in respect of vehicle 4023 SP 06 for a gratification of Rs 1,000.

In **B Jhurry v ICAC and Anor 2015 SCJ 258**, the Supreme Court maintained a custodial sentence for a corruption case (Section 7), despite reducing a term of imprisonment of 12 months to 9 months, stating that there is a compelling public interest in maintaining the custodial sentence imposed upon the appellant because of the seriousness of the offences. The Court held that in view of the nature and extent of the involvement of the appellant in the perpetration of these corruption offences, it would not be appropriate in a case of this type to impose only a short sentence notwithstanding the delay which has occurred.

The circumstances of the present case are different. Whilst I bear in mind the compelling public interest, the need to fight against corruption cases and the involvement of the accused, the

¹ By virtue of Section 168(1) of the Financial Crimes Commission Act 2023, promulgated on the 29th of March 2024, The Financial Crimes Commission has now replaced the ICAC.



accused's regrets and the personal circumstances are elements in mitigation which should weigh heavily in the balance.

In **G Lin Ho Wah v The State 2012 SCJ 70**, the Court commented on the need to individualize sentences to each offender, at paragraph 9:

"...A just sentence which fits the offender gives greater public confidence to the public in our judicial system. Sentencing an offender was never a mechanical and willy-nilly application of the general penalty prescribed with reference to the numbers and the letters of the law. The judicial discretion to sentence inherent in our court system should not be taken for granted and honoured more in the ignorance than in its application. While the formulation and application of general principles assist in obtaining a coherence in sentencing amongst the various courts of the land and while the principle of proportionality assists in obtaining a just balance between what the law prescribes and what the particular facts of the case exact, the principle of individualization concretizes the rights and freedoms guaranteed by the Constitution to the individual. A just sentence is an essential part of a citizen's right to a fair trial."

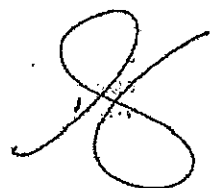
In **M.M. Ashrafi v The state and Ors 2017 SCJ 85**, the Supreme Court was of the view that a suspended sentence may apply for an offence under Section 14 of the POCA (which carries the same penalty), bearing in mind the circumstances. The Learned Judges observed that: *"It is, therefore, apparent that the appropriate penalty for a corruption offence would depend on all the particular facts of each case. This is in line with the well-settled principle that a sentence must be individualised and proportionate to the circumstances of the case."*

Whilst such type of offences involving a public official deserve to be looked at with utmost concern, normally implying that a custodial sentence is warranted, the circumstances of the present case dictate otherwise. I have taken into account the circumstances of the present case, the participation of the accused and the amount of money involved. I take note that the offence dates back to 2015, the case being lodged in 2024 and that some 11 years have now elapsed. There is certainly no implication that the due process of law has been breached but as stated in **Boolell P v The State 2005 PRV 39**: *"...their Lordships would not regard it as acceptable that the prison sentence imposed by the Intermediate Court should be put into operation some 15 years after the commission of the offence unless public interest affirmatively required a custodial sentence, even at this stage."*

Bearing in mind the delay and all above factors, I consider it appropriate to make use of Section 151 of the Criminal Procedure Act to impose imprisonment instead of penal servitude on the accused. I finally consider that a suspended sentence will be more proportionate.

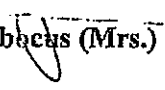
Taking into account the above mitigating factors, I consider it appropriate to make use of Section 151 of the Criminal Procedure Act to impose imprisonment instead of penal servitude on the accused.

Count 2: I therefore sentence the accused to undergo a term of imprisonment of 12 months.



By virtue of **Section 3(1) (b) of the Community Service Order Act**, I suspend the term of imprisonment pending a Community Service Suitability Report from the Probation Office.

The accused is ordered to pay 500 rupees as costs


B.R.Jannoo- Jaunbeas (Mrs.)
President
Intermediate Court (Financial Crimes Division)
This 27th April 2026.

