

**IN THE INTERMEDIATE COURT OF MAURITIUS**  
**Financial Crimes Division**

**CN : FR/L127/2020**

In the matter of:

**The Independent Commission Against Corruption<sup>1</sup>**

**V**

**Swaleh OCHATOYA**

**Sentence**

The accused stands convicted on 15 counts with whilst being an employee of a public body, which was proposing to deal with a company, in which he had a direct interest, wilfully, unlawfully and criminally failing to forthwith disclose, in writing, to that public body the nature of such interest in breach of **section 13 (1) (3) of the Prevention of Corruption Act 2002 (The POCA)**.

He was represented by Mr A. Khandai.

The statements of the accused are on record. As part of the defence case, the accused deposed to the effect that since the Municipality was in dire need of retreaded tyres, his intention in providing the tyres was only to help. He is now nearly 65 years old. He has two children and lost one of them to cancer. He has the responsibility of his mother and ailing brother. He does not quite enjoy a good health. He is a patient of diabetes and hypertension, leading to dimness of vision. He prays for leniency.

Learned counsel for the defence submitted that in view of the various mitigating factors including his age, his guilty plea and clean record, the accused should be given a non-custodial sentence.

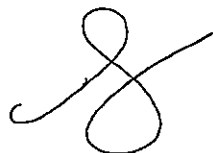
**Section 13 of the POCA** provides for penal servitude for a term not exceeding 10 years.

I have given due consideration to the seriousness of the offence. The accused was a vulcanizer at the Municipality City Council of Port Louis and whilst having a direct interest in Modern Tyre Works Ltd, being the sole director, he failed to disclose in writing to the Municipality the nature of such interest when the Municipality proposed to deal with the Company for the purchase of retreaded tyres, inner tubes and patches for vehicles.

The undisputed fact remains that the Accused signed the remittance notes and accepted payment by cheque on behalf of the Company. According to the Municipality's record, the Company has ceased business since August 2011, but from the Registrar of Companies, it is still alive.

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<sup>1</sup> 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 replaced the ICAC.



The purchase of those spare parts was repeatedly done over the years, from 2011 to 2015, amounting to nearly one million rupees, without the approval of the Procurement Committee.

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. 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 and the need to fight against corruption cases, I find that the purchase involved in each count relates to small amounts (varying from 2 to 9 tyres). Furthermore, the involvement of the accused, the accused's regrets, his family background and his clean record, are elements in mitigation which should weigh heavily in the balance.

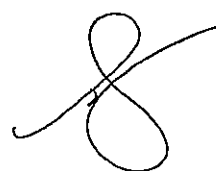
I also bear in mind, most importantly, that he offered a guilty plea, despite being given after the case started on trial, which in view of **Section 69B of The District and Intermediate Courts (Criminal Jurisdiction) Act** is, a mitigating factor. I take into account that he is with his first encounter with the law.

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."*

The non-disclosure in writing from the Accused that he was the director of the Company with which the Municipality was dealing is crucial in determining the sentence. But I still consider that a suspended sentence is warranted given that it is not disputed that the tyres provided were not above the normal market price.

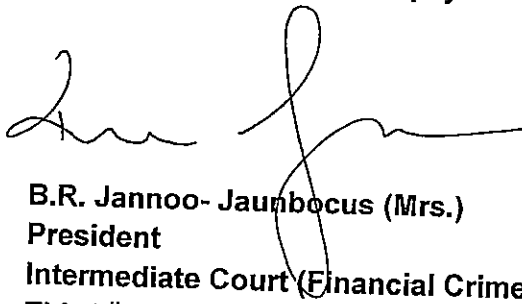


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Taking into account the above mitigating factors, I consider it appropriate to make use of Section 151 of the Criminal Procedure Act to impose imprisonment instead of penal servitude on the accused.

**Counts 1 to 15: I therefore sentence the accused to undergo a term of imprisonment of 12 months in respect of each count.**

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- Jaunbocus (Mrs.)  
President  
Intermediate Court (Financial Crimes Division)  
This 7<sup>th</sup> May 2026.**

