

FCD CN: 36/2023
CN: 1138/2011

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

Hedley Desire Laval ANTHONY

SENTENCE

The accused has been prosecuted and found guilty for the offence of a Public Official Using his Office for Gratification in breach of section 7(1) of the Prevention of Corruption Act 2002 (POCA), under Counts 1 to 4 of the Information.

The accused had changed his plea to one of guilty during the course of trial.

The case was restarted before the Financial Crimes Division of the IC which explains the new markings of the documents produced. It is noted that a Discontinuance of Proceedings has been in favour of three other accused parties in this case.

CASE FOR THE PROSECUTION

The prosecution produced a number of documents from **Doc A** to **Doc U**, and the evidence of a number of witnesses is on record.

The circumstances of the case are that the accused was the Senior Works Inspector of the PRDC at the material time. He had used his position to certify works as follows:

- a. The construction of a ramp at Pamplemousses market by one Pravin Persand. The accused facilitated the payment of Rs35,000 to the former.

- b. The maintenance of two toilets and marking of stalls at Pamplémousses market by one Bhageeruth Boodhoo. The latter was paid Rs40,000.
- c. The construction of a stele at Pmaplémousses market by the said Praveen Persand, whose payment of Rs35,000 was facilitated by the accused.
- d. Fencing work and removal of debris at Pamplémousses market by the said Vinod Porohoo. The accused facilitated the latter's payment of Rs60,000.

Each of the above works had not been performed by the above individuals.

CASE FOR DEFENCE

The accused stated under oath that he has been coming to court for about 25 years. He has always attended court except for the times when he has been sick. After all this time, he has decided to plead guilty to stop wasting the time of everyone involved. He is now a cardiac patient. He was in a life-or-death situation and was saved by the doctors. A stent has been inserted in his artery. He is undergoing treatment with heavy medication. His health has been permanently affected. He cannot do heavy manual work, nor take on work on a permanent basis due to his health condition.

He was promoted at work in 2005. But when he was arrested, he was remunerated for the promotion, pending the outcome of this case. He stayed at home for 11 years but was recalled by the Ministry. He was assigned to the Riviere Noire and Savannes districts as Chief Inspector. He carried out his duty without any blemish. He retired at the age of 65 years after 45 years of service.

He is now in serious financial difficulty due to his onerous treatment. He has a pension of Rs17,000 per month. His wife is equally a cardiac patient who cannot not work. He had lost both of his parents with his mother only recently.

He has completed studies in theology while this case was being heard in court. He teaches religious studies at colleges, including QEC, SSS Ebene, BPS and others. He feels shameful that he preaches good conduct when he has had this case to defend.

He prayed for forgiveness for all the prejudice he had caused.

ASSESSMENT OF THE COURT

The penalty prescribed under section 7(1) of POCA at the time of indictment is penal servitude for a term not exceeding 10 years.

The accused pleaded guilty years after the case was lodged.

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

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.

The case of **State v Doorgachurn 2015 SCJ 55** provides further analysis on the concept of 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. However, the Court was of the view that the discount to be given for a plea of guilty still remained within the discretion of the Court having regard to the circumstances of each case. In view of the circumstances of the present case and the fact that the accused committed two serious offences within seven years and he tried to conceal the present offence, it is a proper and fit case not to give a full discount of one third. (Emphasis is mine)

It is clear that the accused cannot benefit from the full discount due to his late guilty plea. It is however taken into account that the case is a long standing one, which has been cut short due to the guilt plea.

The accused has no cognate previous conviction, vide **Doc X**. Whilst such does not guarantee a non-custodial sentence, it gives an indication on the accused's behavioral pattern over a sizeable period of time in this case.

Due consideration has been given to both the age and the fragile state of health of the accused. Given his condition as a cardiac patient relying on heavy medication, any sentence imposed must carefully account for the adverse impact it could have on his physical well-being.

Furthermore, the Court has weighed his family responsibilities, noting that his wife is also a cardiac patient who is entirely unable to work. This places the family in a difficult financial position, as the accused is the household's sole breadwinner, surviving on a pension that is undisputedly lower than the minimum wage.

Several factors point toward a reformed and repentant individual, including the genuine remorse he demonstrated during his statement in court. This is supported by the fact that the Ministry chose to reinstate him into a position of authority at one point, and that he has since completed studies in theology and dedicated himself to community social work.

Conversely, these mitigating factors must be balanced against the gravity of the offense. The accused has been convicted of a serious crime of corruption, having failed to maintain the high standards of integrity expected of a public official in the public service.

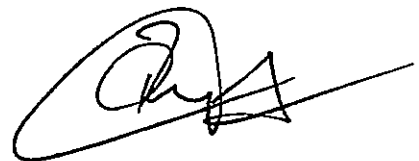
The delay is a mitigating factor and the findings of **Boolell v State 2006 MR 175** are applied.

CONCLUSION

Having carried out the required balancing exercise, I apply the proportionality principles as propounded in **Aubeeluck v The State of Mauritius [2010] UPKC 13**, as imposing a sentence of penal servitude would be grossly disproportionate in this case.

I therefore sentence the accused to undergo two months imprisonment under each of the four counts of the Information, to be served concurrently, plus Rs500 as costs.

However, to further reflect the circumstances of this case and applying the principles set forth in **Heerah v State 2012 SCJ 71**, the accused is given the opportunity to reform himself through means other than incarceration. The above sentence is therefore suspended and I order a social enquiry report to see whether the accused is fit to perform community service work.



P K Rangasamy
Magistrate of the Intermediate Court
17.06.26