

FCD CN: 4/2020
CN: 373/12

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 & 2 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.

CASE FOR THE PROSECUTION

As part of the prosecution's case, a number of documents were produced, from Doc A to Doc T.

The circumstances of the case are that the accused facilitated two payments to one Vinod Pohoroo to the amounts of Rs31,760 and Rs29,675, respectively for fictitious works at School Lane, Roche Terre. He did so by filling in works order forms, using his position at the PRDC and to create the paperwork for the fictitious operations.

CASE FOR DEFENCE

Under oath, the accused shared that his appearances before this court have spanned approximately 25 years, emphasising that illness was the only thing that ever kept him from attending. He has chosen to enter a guilty plea simply to avoid consuming any more of everyone's time. He is currently a cardiac patient, having survived a life-or-death medical emergency thanks to the intervention of his doctors. Following the insertion of an arterial stent, he now depends on heavy daily medication, leaving his health permanently compromised. Consequently, his physical condition prevents him from engaging in heavy manual labour or maintaining permanent employment.

Regarding his professional history, he earned a promotion in 2005. However, following his arrest, the remuneration for that promotion were suspended while this case remained pending. Although he remained at home for 11 years, he was eventually recalled by the Ministry to serve as Chief Inspector for the Rivière Noire and Savanne districts. He executed his duties blamelessly in this role, ultimately retiring at age 65 after completing 45 years of service.

Financially, he is now facing severe hardships due to the burden of his costly medical treatments. His sole regular income is a monthly pension of Rs 17,000, and his wife is also a cardiac patient who is unable to work. On top of these struggles, he is grieving the loss of both parents, with his mother having passed away recently.

While this case was being heard, he used the time to complete a degree in theology. He now instructs students in religious studies at several institutions, including QEC, SSS Ebene, and BPS. Because of this, he carries a deep sense of shame, feeling the contradiction of preaching upright moral conduct to others while still being entangled in the long-standing case in court.

He prayed for forgiveness for all the prejudice and distress he has 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 guilty 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.

The accused's age and state of health is given due consideration. As a cardiac patient saddled with heavy medication, it is important that the sentence caters for the toll it might add on the accused's health condition.

His family ties are considered, including his wife being a cardiac patient with no possibility of work.

His financial situation is viewed with the fact that he is the sole bread winner of his family. It was not disputed that he receives a pension less than the minimum wage.

It is noted that the Ministry did reinstate the accused at some point and gave him a position of authority. He had completed studies in theology and carries out social work in the community. Such aspects point to a reformed individual who has repented his ways. He has been remorseful during his statement in court. On the other hand, it is noted that the accused has been convicted of a serious offence of corruption. He

was a public official who had failed to uphold the required high standards of 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 both 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