IN THE INTERMEDIATE COURT OF MAURITIUS

(Financial Crimes Division)

Cause Number: 27/2023

The Independent Commission Against Corruption

v

Jose Judex Mohanund

SENTENCE

1. In an Information preferred against the Accused, the latter stands charged with the offence of Money Laundering in breach of Sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 ("the Act").

2. Both the Prosecution and the Accused were represented by Counsel.

3. The two defence statements of the Accused, namely Doc A and Doc B are on record.

4. The Prosecution claimed that the Accused had knowingly and illegally possessed property that was obtained from criminal activities, and that he had reasonable grounds to

suspect that the property was obtained through such means. The specific property in question was a plot of land measuring 1010.79 M^2, which was acquired through a loan of Rs 645,000 that was fraudulently obtained from a banking institution.

5. The Accused made a statement from the Dock and begged for mercy. He claimed to be sick and caring for his three children, as well as being married.

6. During the pre-sentence hearing, the Accused made a statement from the dock. He pleaded for mercy and assured the Court that he would not commit any further offences. He also mentioned that his wife is gravely ill and that he is her primary caregiver.

7. Learned Counsel for the Accused submitted that the Court considers the Accused's guilty plea and confession when he gave his statement and the remorse shown by the Accused.

8. Learned Counsel for the Accused referred this Court to the cases of ***Coonjul v The State*** **[2018] SCJ 97** and ***Legallant v The State & Anor*** **[2019] SCJ 319**. He submitted that the offence in the present case is far less serious than in ***Coonjul*** and ***Legallant***. He also prayed for the Court's leniency.

9. On the other hand, learned Counsel for the Prosecution submitted that drug offences are predicate offences to money laundering. He submitted that money laundering is a serious offence and that the Prosecution will leave the Accused's sentencing in the Court's hands.

10. I have duly considered all the evidence adduced, the authorities submitted and the submissions of both learned Counsel.

11. The Accused pleaded guilty to the charge on 19.01.2024 and therefore according to Section 72(2) of the District and Intermediate Courts (Criminal Jurisdiction) Act, I am required to "*pass such sentence as the nature of the offence may require.*"

12. In ***Coonjul***, the Appellant was charged before the lower court with the crime of money laundering, which was in violation of Section 3(1)(b) and 8(1)(a)(2) of the Financial Intelligence and Anti-Money Laundering Act 2002 and he pleaded not guilty to the charge. The lower court found the Appellant guilty and sentenced him to one year in prison and a fine of Rs. 500. The Appellant appealed the conviction and sentence, but the Appellate Court upheld the lower court's decision and dismissed the appeal.

13. In the case of ***Legallant***, the Appellant was charged with 14 counts of money laundering, which is a violation of sections 3(1)(a), 6(3), and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA). The Appellant pleaded not guilty to the charges before the lower Court. However, the trial Court found her guilty as charged and sentenced her to twelve months of imprisonment for each count, as well as a fine of Rs 500. The Appellant appealed against the sentence, claiming that it was wrong in principle and was excessively harsh. However, the Appellate Court upheld the sentence of the lower Court. In paragraph 14 of the judgment, the Appellate Court stated that although the minimum sentence provided by law for the offence charged is three years' imprisonment, the lower Court had already given a lesser sentence of 12 months' imprisonment, which was already considered lenient.

14. In ***Bibi Marie Christelle Isabelle v The State & Anor*** **[2022] SCJ 60**, the Appellant was prosecuted before the lower court for the offence of money laundering in breach of sections 3(1)(b) and 8 of the Financial Intelligence and Anti-Money Laundering Act under three counts. The appellant was sentenced to undergo three years of penal servitude under each count and to pay Rs.500 as costs. The Appellant appealed against the judgment of the lower Court, and the Appellate Court upheld the lower Court's decision in convicting the Appellant under all three counts.

15. In ***Laval & Anor v ICAC & Anor*** **[2013] SCJ 431**, the three Appellants were charged with the money laundering offences, in breach of sections 3(1)(b), 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act ("The Act"). The appellants all pleaded guilty. The first Appellant, Marie Cindy Laval, was fined Rs. 30,000/- for each count, while the second Appellant, Cyril Pierrot Laval, was also fined with the same amount for each count. The third Appellant, Antonio Nevil Rome, was sentenced to serve three years of penal

servitude for money laundering. Additionally, the lower court ordered the forfeiture of an immovable property belonging to the first Appellant. The appeal was made based on the grounds that the sentence given to each Appellant was excessively harsh, and a lesser punishment would have been reasonable. However, the Appellate Court upheld the decision of the lower court, and the sentence given to each Appellant remained the same.

16. In ***Dip & Ors v The State*** **[2021] SCJ 36**, the second and third Appellants were convicted for the offences of money laundering in breach of Sections 3(1)(b), 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act. These two Appellants were sentenced each to six months imprisonment by the lower court and they appealed against their convictions and sentence. On appeal, the Appellate Court maintained the convictions and sentences of the second and third appellants for the money laundering offences.

17. In ***Joghee v The State*** **[1997] SCJ 57**, it was held that: -

> *"It has been held time and again that a previous conviction is no ground for inflicting a severe sentence on a convicted person, nor is a clean record a passport to being treated leniently. Sentence depends on the overall circumstances of a case."*

18. In ***The State v Bruls & Anor*** **[2008] SCJ 78**, it was held that: -

> *"However, this Court has repeatedly stated that the sentence passed must reflect the seriousness of the offence and also to serve as a deterrent to would-be offenders."*

19. In ***Sinon v The Queen*** **[1956] MR 206**, it was held that: -

> *"The court can take into account previous convictions, together with the nature of the offence and the effect of previous sentences, but there is no principle which necessitates a heavier or lighter sentence according to whether the convicted person has a bad or a good record. Each case must be dealt*

with on its own merits: see Mobar v. The Queen, [1955 MR 168]."

20. In ***Abongo v The State*** **[2009] SCJ 81**, the Court explained the justification of the enactment of the FIAMLA and the Court stated the following:

> "*The Financial Intelligence and Anti-Money Laundering Act was enacted essentially for the purpose of combating money laundering offences which had the potential of adversely affecting the social and economic set up, both at national and international level to such an extent that they may constitute serious threats not only to the financial system but also to national security, the rule of law and the democratic roots of society. By enacting sections 5, 6 and 8 of the Act, the policy of the legislator was clearly designed to achieve the compelling objective of safeguarding the national and international financial systems against any disruptive intrusion which may be caused by the perpetrators of certain criminal activities. It is beyond dispute, therefore, that section 5 of the Act was designed and meant to provide an effective remedy to respond to a pressing need in the public interest to combat money-laundering. The conventional methods of sentencing being inadequate to deal effectively with offenders of that sort, the legislator considered that there was an imperative need to resort to sentencing measures which would deprive such offenders of the illicit gains and proceeds of their crimes.*"

21. The P.F. 15, which is the Certificate of Previous Conviction of the Accused (Doc X), was read out to the Accused in Creole language in the court. The Accused admitted to the previous convictions as mentioned in the certificate. Based on this admission, it can be safely concluded that Doc X is proven against the Accused. ***Diouman v R*** **[1990] MR 312**, held that "*Section 211 of the Criminal Procedure Act sets out the manner in which the previous conviction of an accused must be proved. From the text it is apparent that not only the certificate containing the substance and effect of the charge and conviction signed by the clerk or registrar may be produced but proof of the identity of the person must be established. Those requisites naturally become superfluous if the accused admits his*

previous convictions as set out in the previous conviction certificate". In the present case, the Accused admitted his previous convictions as set out in his P.F. 15.

22. The Accused claimed that he takes care of his sick wife in his statement from the dock. However, after examining Doc A at folio 185013, it was found that he had previously stated that his wife had passed away. Based on this discrepancy, it is believed that the Accused was not telling the truth.

23. In ***The State v Cheetamun*** **[2017] SCJ 443**, the Court held that: -

> *"... a guilty plea which saves the time of the court and expenses on the State is a strong mitigating factor which may entitle an accused party to a discount of sentence."*

24. In determining an appropriate sentence for an accused, the court must consider the principles of proportionality and individual sentencing, as set out in ***Aubeeluck v The State*** **[2010] UKPC 13**.

25. Also, in ***Hossen v The State*** **[2013] SCJ 367**, the Court of Appeal held:

> *"... each case depends on its own facts and the sentence must be proportionate to the facts of the case."*

26. In addition, in ***Heerah v The State*** **[2012] SCJ 71**, in paragraph 15 the Court held that:

> *"That a prison sentence is normally appropriate where an offender is convicted for serious offences, of that there is no doubt. But the level at which the offence should be placed on the scale of offences in terms of the degree of seriousness must not be ignored. Furthermore, not all candidates who fail the test of monetary penalties, or a Probation or Conditional Discharge Order become automatically candidates for prisons. A custodial sentence used to be once the only option for*

offenders who failed such tests after the Court had ruled out a fine, a Probation or Conditional Discharge Order."

27. I also find it apt to quote paragraph 16 from ***Heerah***, where it was stated that: -

> *"Courts should refrain from imposing custodial sentences as a matter of reflex and indiscriminately in all cases where fines and Probation Orders and Conditional Discharge Orders are not found appropriate. Serious consideration should be given to that intermediate option inasmuch as "the deprivation of liberty through a custodial sentence is the most severe penalty available to the courts and the proper punishment for the most serious crimes:"*

28. In ***Sabapathee v The Director of Public Prosecutions*** **[2014] UKPC 19**, in paragraph 17 it was held that:

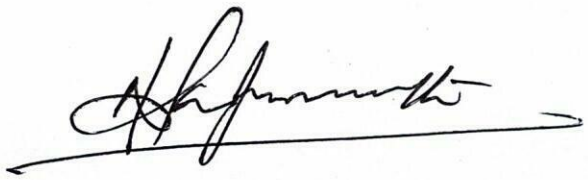
> *". . . sentencing is not a science of mathematical application of any set formula. It is a normative science rather than a physical science which takes into account the circumstances of the offender as well as the offence and the impact of the offence on the community."*

29. Taking into account the nature of the evidence adduced, the facts and circumstances of the case and the principles enunciated in the cases mentioned, a fine will meet the ends of justice.

30. As the Prosecution had informed the Court that it was not seeking a Forfeiture Order, I shall not grant the order.

31. I therefore sentence the Accused to pay a fine of Rs 300, 000.

32. The Accused to pay Rs 500 as costs.



Neeshal K JUGNAUTH
Magistrate
Intermediate Court
(Financial Crimes Division)
18.03.2023