CN 49/23

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

Police

v/s

Rishiraj COOSSA

SENTENCE

The accused has been prosecuted for the offence of Trafic D'Influence in breach of sections 10(2) & 83 of the Prevention of Corruption Act 2002 (POCA). He pleaded guilty to the Information and was represented by Mr A. Domingue SC, throughout the hearing.

The sentence for the above offence is prescribed under section 10(2) POCA as penal servitude for a term not exceeding 10 years.

CASE FOR THE PROSECUTION

Witness no.1 produced the defence statement of the accused as **Doc A**.

Under cross-examination, he confirmed that the one Police Corporal Sadasiven Caroopen as averred in the Information, has passed away. He stated that the accused denounced the matter involving the late CPL Caroopen, to witness no.2, who was in charge of Rose-Hill Police Station. Late CPL Caroopen was consequently transferred. As part of the enquiry, statements were recorded from witness no.2, who confirmed the allegations of the accused against the late Corporal. No statement was recorded from the latter since he had already passed away. The accused has fully cooperated with the investigators during enquiry.

CASE FOR DEFENCE

Under oath, the accused confirmed that content of his defence statement. At the time of hearing, he was 49 years old. He had been working at the Mauritius Telecom for 24 years as an Inspector for SafeCity cameras. He has under his care, a mother, a disabled sister, his wife, daughter and son. His daughter is 22 years old and is pursuing tertiary education at the University of Mauritius, whom he supports financially. He begged for excuse and leniency.

ASSESSMENT OF THE COURT

Defence counsel submitted in plea-in-mitigation that the accused has pleaded guilty to the charge in a timely fashion. The accused was lured into committing the offence by the late CPL Caroopen. He reported the whole matter. He wanted to be refunded the sum of Rs40,000 that he paid to the said Police Corporal, but failed to do so.

It is considered that the accused has pleaded guilty at the first reasonable opportunity.

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)

The first time, the case was called, the defence moved that all defence statement and statements be type-written since they were not legible. At the next sitting, the accused changed his plea to one of guilty. The full discount for his guilty plea will be therefore afforded to the accused.

The accused has a clean record. Whilst a clean record does not guarantee leniency, it gives an insight into the accused's character and predictive behavioral patterns.

The following extract from **Khoyratty v State 2018 SCJ 382** is of relevance:

First of all, we do not share the point of view of learned Counsel for the appellant, that the sentence meted out is wrong in principle because a clean record does not necessarily mean that a custodial cannot be inflicted. In fact, in Sinon v The Queen [1956 MR 206] the Court laid down the principle that "a heavier or lighter sentence does not depend on whether the convicted person has a bad or clean record but on the merits of the case" and in Joghee M.K. v The State [1997 SCJ 57] the Court held that a clean record and a plea of guilty will not necessarily entitle an accused to be treated with leniency. Furthermore, the Court in The State v Bruls B.T. & Anor [2008 SCJ 78] made it clear that the sentence passed must reflect the seriousness of the offence and in Marie Chantal Anne and Anor v The State [2008 SCJ 45] the Court held that a non-custodial sentence is not necessarily the appropriate measure for all first time offenders. To say more would be superfluous.

The circumstances for the case are such that the other perpetrator involved in the case has passed away. Nevertheless, the accused has decided to plead guilty. It appears through the evidence on record that the accused was given a way out of his road traffic offence by the Police Corporal. Although he may not have been the mastermind of the operation, he did go along with it. However, the fact that he has pleaded guilty and reported the matter the police, shows his remorse and repentance. The sum of money involved, whilst not insignificant, is at the lower end of the scale. A corruption offence is a serious one. On the other hand, the accused has shown that he has a family under his care, including a disabled sister. His strong family ties and the fact that he voluntarily reported the matter create the circumstances to lower the seriousness of the offence to a level which requires the court to use its discretion to go below the threshold prescribed by the law.

For the above reasons, I find it appropriate to apply **section 151 of the Criminal Procedure Act** and I therefore sentence the accused to undergo 3 months imprisonment.

I also bear in mind the case of **Heerah v State 2012 SCJ 71** which provides the backdrop where the decision between imprisonment and alternative means of reform can be considered. The following extracts are of relevance:

'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...

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:"

CONCLUSION

The accused is given the opportunity to reform himself through means other than incarceration due to the circumstances of this case. 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.

Accused is to pay costs of **Rs500**.

P K Rangasamy
Magistrate of the Intermediate Court
12.04.24