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'To No One Will We Sell, To No One Deny or Delay Right or Justice'

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Snapshot of 2016 for the ODPP

Dear Readers,

The year 2016 has, for the Office of the Director of Public Prosecutions (ODPP), been brimming with riveting activities and events, which has once again reiterated the values and hard work of our law officers as well as our support staffs. In that regard, we cannot, but bring to you a review of our achievements for the year, which have no doubt enhanced our prosecutorial toolkit.

On 4th of April 2016, the ODPP launched its second edition of the Mauritius Criminal Law Review (MCLR), an invaluable compendium of legal articles and case summaries. The official launch was made by Mrs Aruna Narain, Honourable Judge of the Supreme Court, also member of the Editorial Board, and the Director of Public Prosecutions, Mr Satyajit Boolell, SC at the Rajsoomer Lallah Lecture Hall in the Office of the Director of Public Prosecutions. In the same breath, Mrs Sarah Whitehouse, QC, from 6 KBW College Hill, LONDON, was invited to give the 3rd Rajsoomer Lallah Annual Memorial Lecture, entitled the 'Secret Courts'. On the other hand, in its usual endeavour to equip its law officers with what is required to perform their job efficiently, the ODPP also organised an advocacy training in April 2016, carried out by Mrs Sarah Whitehouse QC. On another note, our office welcomed the visit of Geoffrey Rivlin, QC in order to work on the draft Police and Criminal Evidence (PACE) Bill. Our opinion was duly sought and provided on this matter inasmuch as the Bill would undoubtedly have an impact on our job as prosecutors.

The ODPP takes pride in ensuring that law enforcement officers, prosecutors as well as our elders are kept abreast with the relevant legislations applicable to them. In that respect, the office organised training sessions regularly in 2016. In April this year, a 3-day training course took place for the students of the University of 3rd Age Mauritius on the legal issues faced by them as well as their rights as elderly persons, as set out in the Protection of Elderly Protection Act 2005. The course saw the attendance of some 80 participants.

Trainings were also carried out by our law officers on 'Prosecuting domestic violence cases', following the amendments to the Protection from Domestic Violence Act ('PDVA'). The trainings were delivered to police officers both in Mauritius and in Rodrigues. Furthermore, the ODPP carried out training courses on 'Combatting human trafficking' in collaboration with the United Nations Office on Drugs and Crime (UNODC) and the International Organization for Migrants (IOM). The Labour Unit of the ODPP, on the other hand, embarked on two intensive

training sessions with prosecutors and enquiring officers from the Ministry of Health and Quality of Life.

The ODPP has always encouraged its officers to embark on courses with a view to enhance their skills and efficiency as well as for their personal development. One of our law officers was awarded the US Humphrey Fellowship Award, which is a highly competitive fellowship destined to mid-career professionals to enrich Fellows' professional skills and knowledge. In the same bid, the ODPP welcomed back the two law officers who were awarded the Commonwealth Chevening Scholarship to pursue their LLM in London. We also cannot be oblivious of the new appointments which took place at the ODPP in 2016 whereby law officers were promoted to the rank of Deputy DPP, Acting Senior Assistant DPP, Acting Assistant DPP, Principal State Counsel and Senior State Counsel.

Finally, we are pleased to have the 65th edition of our monthly newsletter issued this month, which epitomizes more than five years of dedication to bring to our readers a regular glimpse of events taking place at the ODPP and to keep them updated with recent judgments delivered by the Supreme Court.

We wish our readers a happy new year 2017 and thank them for their continuous support.

Anusha Rawoah,
State Counsel

L'Evènement

Jacques Vergès, célèbre avocat et écrivain français, disait à ceux qui voulaient l'entendre que « *L'amour véritable de la profession d'avocat ne figure dans aucun code, mais il a sa place dans le cœur d'avocats honnêtes, intègres et incorruptibles … L'avocat doit, chaque jour, se poser en gardien du droit et en garant des libertés des justiciables* ».

Ainsi l'histoire a souvent été témoin des actes surhumains de ces hommes et femmes appartenant à la profession d'avocat qui se sont érigés comme une forteresse face à l'arbitraire, la dictature, l'injustice et autres délinquances du pouvoir abusif des autorités.

A titres d'exemples :

- Amnesty International est née de l'indignation et du courage d'un avocat britannique nommé Peter Benenson dans le but de faire libérer deux étudiants portugais emprisonnés dans une affaire politique.

- Nelson Mandela qui a sacrifié une grande partie de sa vie en prison afin que son pays soit libéré d'une force oppressive émanant des autorités publiques.

- Lénine Vladimir Oulianov, fondateur du parti bolchevik, qui a défendu courageusement la cause de la classe ouvrière en Russie.

- Mahatma Gandhi avocat du Middle Temple qui a milité inlassablement, par une résistance passive et non-violente, contre l'autorité britannique jugée oppressive et dominante.

Et comment oublier Abraham Lincoln qui a œuvré pour l'émancipation des esclaves et la démocratie aux Etats Unies.

Dans cette relationnelle qui existe entre l'ordre des avocats, le pouvoir exécutif et les droits de la personne, l'histoire témoigne que la force du droit doit toujours vaincre par le biais d'une garantie de la protection de la « Loi des lois » qu'est la Constitution.

Suite aux récents événements qui ont suscité l'attention de nous tous, les avocats et avoués à travers leurs associations respectives sont montés au créneau pour défendre précisément la constitution de notre République. En se faisant, ils ont renoué confiance avec nos valeurs constitutionnelles, la séparation des pouvoirs, l'état de droit et l'indépendance de nos institutions.

Ce sont ces mêmes valeurs qui ont été exprimées par la société civile dès l'annonce de l'amendement constitutionnel. Leur démarche salutaire et celle des membres de la profession légale méritent d'être applaudies et retenues comme événement de l'année.

Je vous souhaite, à tous et à toutes, une bonne et heureuse année 2017.

Satyajit Boolell, SC

Director of Public Prosecutions

Trafficking in Persons Course
ILEA, Gaborone, Botswana

An intensive two-weeks' training on trafficking in persons was held at the International Law Enforcement Academy (ILEA) from 28th November to 9th December 2016 in Gaborone, Botswana.

The course was held with the cooperation of the International Office for Migration and it was delivered by Mr Paul Holmes, world renowned expert on human trafficking. Participants from Malawi, Botswana, Zambia, Mauritius and Namibia were in attendance.

Most of them were prosecutors and investigators on trafficking in persons cases. Sergeant Rashid Bhugaloo and Sergeant Louis Esplacatou from the Central Criminal Investigation Division, Mr Salim Curmoula and Mrs Deepa Ramnarain from the Ministry of Labour, Industrial Relations and Employment and myself from the Office of the Director of Public Prosecutions represented Mauritius.

The first week of the training focused on the international law concept of trafficking in persons, the current global situation, the identification of victims, risk assessment and victims as witnesses. It also laid emphasis on the distinction to be made between trafficking in persons cases and smuggling ones. It covered the reactive investigation technique which means that cases are built upon a complaint statement made by a victim.

The second week addressed the pro-active investigation technique which is based on intelligence gathering and surveillance based inquiry. The topics covered were evidential corroboration, victim-witness management, intelligence gathering and development, planning and implementation, arrest of suspects, preparation and briefing, suspect interviews, judicial and operational co-operation as well as the victim-witness support measures.

The purpose of the training was to develop our knowledge and technical skills on TIP cases as well as to improve our capacity to provide access to justice for victims and reduce impunity for traffickers.

I would like to express my sincere thanks to Mr Paul Holmes for sharing his knowledge and experience with us. Mr Holmes is a retired New Scotland Yard criminal investigator. Since 2003 or so, his focus has been on training law enforcement, and speaking or writing about effective law enforcement responses to cases of trafficking. His approach is both human rights centered, and victim-centered.

He has helped to write and published a variety of manuals and articles describing best practices for law enforcement, including an article written with fellow TIP Hero Anne Gallagher. He has worked with the UN, the IOM, the OSCE, INTERPOL and others.

He has also held advisory roles to a variety of organizations, and currently holds one with the UNODC Expert Group on the Palermo Protocol. In 2013, he was given a Hero Acting to End Modern Slavery Award for his efforts to combat human trafficking.

ILEA is a US-funded program with in-kind contributions via the Government of Botswana Partnership. One of its main objectives is to provide quality training and institution-building assistance to combat transnational crimes such as narcotics trafficking, migrant smuggling, trafficking in persons and financial crimes.

Zaynah Essop
State Counsel

Restorative Justice in criminal matters

1598, the Dutch first visited our island. 1638, the island was duly colonised by the Dutch, our dodo then became extinct and the main material, the ebony tree, was being exported. 1710, the Dutch abandoned the island due mainly to the harsh climate and cyclones. The French colonised the island as from 1715. They brought their religion, custom, slaves and laws. Mauritius, Ile-de-France back then, therefore adopted an inquisitorial criminal system. In December 1810, the British captured the island and after signing the Act of Capitulation, allowed the French inhabitants of the colony not only to stay on the island or leave as free men but also to keep their customs, religion, property and laws. However, the British parted from the French inquisitorial criminal system and adopted an adversarial criminal system with a Prosecutor instead of a "juge d'instruction" and the "procureur general".

An adversarial system is a legal system used mostly in the common law jurisdictions where two advocates/barristers represent their parties' positions before an impartial person or group of people, usually a judge sitting with or without a jury or a magistrate, who attempt to determine the truth of the case. It can be basically explained as two parties engaging into a fight. On the other hand, an inquisitorial system, mostly used in some civil law systems, as in France, is where a judge or group of judges investigates the case.

The United Nations Office on Drug and Crimes' (UNODC) Handbook on Restorative Justice Programmes defines restorative justice as "*a way of responding to criminal behaviour by balancing the needs of the community, the victims and the offenders. It is an evolving concept that has given rise to different interpretation in different countries, one around which there is not always a perfect consensus. Also, because of the difficulties in precisely translating the concept into different languages, a variety of terminologies are often used.*" Actually, several interpretations of Restorative Justice can be found in the Handbook and elsewhere. However, a basic definition is still found in the UNODC's handbook as "*a process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.*"

In Mauritius, our adversarial system is also a retributive system. An offence is a crime against the state, therefore a violation of a law. As the criminal justice system "controls crime", an offender is accountable to the state and therefore takes punishment as per law. It must be pointed out that the community is abstractly represented by The State. In this particular system, punishment through laws acts as a deterrence for future offenders and also re-offenders having as purpose to change the behaviour of the said offender. In a retributive system, focus is laid

upon the individuality of the act. Hence, a crime being an act done by an individual carries individual responsibility. It must be pointed out that close attention is made to the past of the offender where relevant previous offences are taken into consideration during sentencing procedures.

On the other hand, in a restorative criminal justice system, a crime is an act against another person and the community as such that crime control lies primarily in the community. As compared to a retributive system, in a restorative system a crime carries both individual and social dimensions of responsibility. It is still an individual act but carries a larger responsibility especially towards the community. The community is placed at the centre of this criminal system as punishment alone is not effective in changing the behaviour of an offender and is therefore disruptive to community harmony and good relationships. The community must act as a facilitator into rehabilitating the offender, and focus is laid upon dialogue and negotiation where the future of the offender is primordial to the good functioning of the community.

The United Nations Office on Drug and Crimes' Resolution adopted by the Economic and Social Council on 26 July 2016 recommends the adoption of a restorative justice in criminal matters. Australia is a good example of a "mix" criminal system, well parts of Australia. I will focus mainly on the state of Victoria for this part. In the state of Victoria, much emphasis is laid upon the rehabilitation of an offender. Despite being an adversarial/retributive system, weight is placed on the chances of the offender to re-integrate the community. Minor offences including drug consumption, offence against the person, non-fatal offences and drink driving offences are given special consideration by the Magistrate Court on sentencing if the offenders show a good prospect of not only not re-offending but also to come back into society and be accepted again. In such process, no penal servitude is given for those minor offences. The offender has to show that after committing the offence he not only showed remorse for his act against society but undertook steps to resolve his problems. This includes voluntary community service at places like the Red Cross; voluntary follow up at a psychiatrist and voluntarily going at a rehabilitation centre. All this is done whilst awaiting trial. It has to be pointed out that this would happen to only minor offences and it is still at the discretion of the Magistrate to consider whether to convict the offender or to order him to continue his "treatment".

When minor offences are concerned, adopting a restorative system is recommended. However, in a country like Mauritius where the mentality is totally different as the one in Australia, this can result into abuses and a total failure of the system. A restorative system tends to take the judicial functions of Judges and Magistrates to put it into the hands of the community. The Restorative process praises negotiation and dialogue to resolve issues. Would the community accept dialogue with a person dealing synthetic drugs that is killing many youngsters?

Negotiations with a paedophile? Negotiations with a driver who committed homicide by imprudence? Let us not forget that there are family members of the victim in the community.

The United Nations Office on Drug and Crimes' (UNODC) Handbook on Restorative Justice Programmes state that in a restorative system, offenders are provided with an opportunity to:

- Acknowledge responsibility for the offence and understand the effects of the offence on the victim,
- Express emotions (even remorse) about the offence,
- Receive support to repair harm caused to the victim or oneself and family,
- Make amends or restitution/reparation,
- Apologize to victims,
- Restore their relationship with the victim, when appropriate,
- Reach closure.

How many offenders state in court that they will not re-offend but still do it again? All of the above are already available to offenders during sentencing in courts. However, the offenders are not asked to make amends or restitution to the victim/community. By offering to make amends an offender is trying to sway the court from its normal sentencing practices. It is a form of removing the judicial powers of the Court and putting it in the hands of the offender and the community. It is true that penal servitude does not always act as a deterrence and people still offend and re-offend. The restorative process recommends victim-offender mediation at every stage of the criminal process prior to sentencing. Which means that this can happen before a charge is put, after the closure of the enquiry of the police and even in court.

To summarise, Mauritius stands to gain from assistance from UNODC and other UN bodies on the use of restorative justice processes, and one area which could be identified for this purpose would be juvenile justice. This could very well lead to a reduction in the number of young offenders who come in contact with the court system, thus guaranteeing less stigma and greater chances of rehabilitation.

Benjamin Mathieu Marie Joseph,
Pupil

SUMMARY OF SUPREME COURT JUDGMENTS: November 2016

DINMAHOMED T B V THE STATE 2016 SCJ 444

By Hon. P. Fekna, Judge and Hon. A. D. Narain, Judge

Assault – calling of witnesses – sworn evidence and its weight

This is an appeal against conviction. The Appellant was charged under two counts of the Information for assault in breach of **Section 230 (1)** of the **Criminal Code**, namely:

(a) Count I for having wilfully and unlawfully inflicted wounds and blows upon the person of one Twaha Mohamedally, witness No.3 and

(b) Count II for having wilfully and unlawfully inflicted blows upon the person of one Sheema Ahmad Bawamia, witness No.4.

She was found guilty on both counts and was sentenced to pay a fine of Rs 1500 on each count and Rs 100 as costs.

The evidence adduced before the trial court was to the effect that the Appellant and witnesses Nos. 3 and 4 (who are husband and wife) are neighbours. There was some bad blood between them and the bones of contention concerned a mango tree which is found on the land of witnesses Nos.3 and 4 but whose branches extend onto the land of the Appellant.

The Appellant was picking up the mangoes and was in the process of throwing them in the yard of witness No.3 when she saw him. She ran towards him and assaulted him all over his face and upper body. At the same time when witness No.4 came, she was assaulted by the Appellant.

The appeal was dismissed because of the following reasons:

(a) the Learned Magistrate did not err when she stated that the sworn evidence of witnesses Nos.3 and 4 carry the same weight as that of the sworn evidence of the Appellant. She thereafter analysed the evidence before coming to the conclusion that she preferred the version of the prosecution witnesses rather than that of the Appellant.

(b) The prosecution did not err when they failed to call other persons as witnesses to support the versions of Witnesses Nos. 3 and 4. The Appellate Court stated that the defence was left with the option of calling those persons as its witnesses if the defence was of the view that those persons had something useful to add to their case. However, the defence chose not to call them and hence could not say that they have been prejudiced by the fact that the prosecution did not call those persons as witnesses.

ELLAHEEBUKSH V THE STATE 2016 SCJ 442

By Hon D. Chan Kan Cheong, Judge and Hon. N.F. Oh San-Bellepeau Judge

Larceny by more than 2- sentence –manifestly harsh and excessive

The appellant was prosecuted jointly with three other co-accused before the Intermediate Court, where he pleaded guilty to count 2 of an information for the offence of larceny committed by two individuals, in breach of **sections 301(1) and 305(1)(b)** of the **Criminal Code.**

He was sentenced to 3 years' penal servitude imposed under Count 2 and he appealed against the sentence in as much as it was manifestly harsh and excessive and that the Learned Magistrate failed to consider that a fine would have met the ends of justice.

With regard to Count 2, the Learned Magistrate stated that the Appellant had been the mastermind behind a well-planned premeditated larceny and had influenced others to participate in the crime. The Appellant had even made duplicate keys to the office of the supermarket where he held a position of trust in order to enter same and steal a considerable sum of money from a safe during the night.

The Appellate Court was of the view that the sentence was harsh and excessive because of the following reasons:

(a) the Appellant was of a very young age at the time of the commission of the offence,

(b) he had a clean record,

(c) he gave a timely plea of guilty after cooperating with the police and making a clean breast of the offences committed by him in his statements to the police,

(d) part of the sum stolen was returned, and

(e) that "when passing sentence and considering what is a suitable deterrent, a Court must take care not to inflict such a penalty as might lead an unfortunate lapse in a young man to become the start of a career of crime as a result of his future prospects being severely jeopardized by the consequential loss of character which a sentence

of imprisonment inevitably entails" – **Dina v R [1965 MR 148]**

EMAMALLY M R V THE STATE 2016 SCJ 33

By Hon O. B. Madhub, Judge

Bail Conditions - Surety – Probation Reports – Risk of Absconding and Risk of Interfering with Witnesses.

This is a bail application and the Applicant was charged for having criminally and willfully killed one Choomka, in breach of **Sections 215 and 223(2)** of the **Criminal Code.**

The applicant inflicted wounds to the victim with a chopper, in a public place, i.e. along Edgar Laurent Street, Plaine Verte, near a kindergarten. The request for assistance was received by the Police at around 5.30 pm. As per the police enquiry, there are three material witnesses who have implicated the applicant with this crime and they all live near the applicant's residence and it also appears that they know the applicant very well.

The police objected to the motion for bail on two grounds, namely

(a) the risks of absconding, given the seriousness of the charge and the "strong" nature of the evidence against him, and

(b) risk of interfering with witnesses, given that most probably they were known to each other, in view of the nature of their work as hawkers and refuse collectors and they all lived very close (within walking distance) to each other.

On the ground of risks of absconding, the Court took note of the fact that the applicant was charged with a serious offence, which carries a heavy penalty. The three witnesses who implicated the applicant showed that there were cogent evidence against the Applicant.

As far as the risks of interfering with witnesses was concerned, it was not disputed that the wife and the daughter of the applicant lived close to the prosecution witnesses and, the applicant place of business was in the vicinity where the other witnesses worked and stayed. The strong community ties, together with the fact that the applicant could come across with some of the prosecution witnesses and, or interfering with them, tantamount to a real risk.

The Court also stated that even if the Applicant was to be relocated, the court could not be totally oblivious to the specificities of Mauritius and went on to cite the case of **DPP v Marthe 2013 SCJ 386a**, in which it was held that given the relative size and rather developed transport and communication infrastructure, any person could travel easily and quickly from one spot to another.

In relation to the ground of absconding, the Court was of the view that the imposition of stringent conditions would be sufficient to minimise the risks of absconding to an acceptable level. However, in relation to the second ground, the Court was of the view that there was not enough evidence before it and requested for a probation report on the applicant and the surety.

Following the reports, the Court found out that they were not unfavourable to the Applicant and therefore, after due consideration, held that should the trial of the accused not be scheduled to start during 2016 by the end of next term, the applicant was to be released on bail.

LAURE M.A.M V THE STATE 2016 SCJ 449

By Hon. P. Fekna, Judge and Hon. A. D. Narain, Judge

Embezzlement – Document Not Shown to Accused

This is an appeal from the judgment of the learned Magistrate of the District Court of Black River convicting the appellant of the offence of embezzlement in breach of **section 333(1)** of the **Criminal Code** and sentencing her to pay a fine of Rs 9,000 and Rs 100 as costs.

The appellant had in the year 2010 rented a house in Bambous from one Charles Guness ("the landlord") but was later ordered to vacate the said house by 31 December 2013.

Following several unsuccessful attempts by the landlord to obtain the keys of the house from the appellant, the landlord went to the house in the presence of a police officer on 20 January 2014 and found, in the absence of the appellant but in presence of her mother, that various items which appeared on an inventory list were missing from the house.

The matter was reported to the police and the appellant was charged with embezzlement, to the prejudice of the landlord.

The Appeal succeeded because the inventory list which was allegedly stolen was not signed nor initialed by the parties, nor was it shown to the accused at enquiry stage nor produced by the Prosecution during trial. Hence it was unsafe for the learned Magistrate to rely on such a document.

MOHES L V THE STATE 2016 SCJ 493

By Hon. A. Hamuth, Judge and Hon. N. F. Oh San-Bellepeau, Judge

Community Service Order – Sentence Harsh and Excessive

This is an appeal from the judgment of the District Magistrate of Pamplemousses convicting the appellant of the offence of embezzlement by a person in receipt of wages in breach of **section 333 (1) and (2)** of the **Criminal Code** and sentencing him to undergo three weeks' imprisonment and to pay Rs 200 as costs.

At the hearing of the appeal his counsel stated that the appellant was dropping his appeal against conviction, and maintaining his appeal against sentence only, the latter being based on the ground that it is manifestly harsh and excessive, and disproportionate.

The appellant had been convicted of embezzling the sum of Rs 150,000 to the prejudice of his employer. He was, at the time of the offence in August 2010, aged 23. He had one conviction in September 2014, therefore subsequent to the present offence, for the non-cognate offence of breach of condition of release in that he failed to report to the police as per his condition of release.

The case was remitted back to the lower court for the purposes of sentencing because the learned Magistrate failed to consider the appropriateness of suspending the sentence of imprisonment and considering a community service order.

YAHIA YOUSOUF NAZROO V THE STATE 2016 SCJ 480

By Hon. D. Chan Kan Cheong, Judge and Hon. P. Fekna, Judge

Road Traffic Act – Enactment – No force of Law – Madantory Requirements of the Law

This is an appeal against the conviction of the appellant for driving at a speed in excess of the prescribed maximum speed limit in breach of **sections 124(1)(4)(a)** and **188A** of the **Road Traffic Act** coupled with **regulation 3** and the **First Schedule** of the **Road Traffic (Speed) Regulations 2011 (Government Notice No. 25 of 2011)** before the District Court of Pamplemousses.

Grounds 1 and 2 read as follows:

"1. The conviction cannot stand inasmuch as there is no finding in respect of the legality and validity of the speed limit sign of 60 km/hr, which was made a live issue by the appellant during the trial.

2. The conviction cannot stand inasmuch as the learned Magistrate has failed to address his mind to the evidence on record to the effect that the change of speed limit for the zone was neither gazetted nor published in any newspaper to notify the public of such change."

The case for the prosecution was that the appellant was caught driving his private car on the New Trunk Road, Bois Marchand, at a speed of 75 km/hr instead of 60 km/hr which was the maximum speed limit at that spot and at that time. There were temporary traffic signs on both sides of the road to indicate the speed limit of 60 km/hr.

The Court held that the offence of speeding under **Section 124(4)** could be committed only if the maximum speed limit on a road was prescribed. Furthermore, a specified speed limit on a specified road had to be notified in the Gazette by the Minister responsible for land transport and road traffic.

The Court went on to look into the definition of the following words as defined in the **Interpretation and General Clauses Act**:

(a) "prescribed" meaning "prescribed in an enactment" and

(b) "enactment" is defined as including "any Act, regulation, rule, Proclamation, Order, or revised edition in force in Mauritius"

The Court then noted that **Section 12** of the **IGCA** provides that the Gazette shall be the sole official publication of all enactments in Mauritius and that every subsidiary enactment shall be published in a legal supplement to the Gazette.

In relation to the present case, the Court held that **Section 124** of the Act as it stood at the material time, the maximum speed of 60 km/h on the New Trunk Road, Bois Marchand in relation to motor cars, had to be prescribed, i.e. enacted by means of appropriate regulations and notified and published in the Gazette to acquire force of law.

However, no regulations were enacted and published in the Gazette to give effect to the speed limit of 60 km/hr. The Appellate Court therefore held that the mandatory requirements of the law had not been complied with.

The law was subsequently amended and the legislator took remedial measures but the appellant's conviction cannot be allowed to stand in view of the state of the law at the material time. The maximum speed limit of 60 km/hr had no force of law at the

time for failing to comply with the mandatory requirements of the law.

The appeal was allowed and conviction and sentence were quashed.

NILMONY D V THE STATE 2016 SCJ 489

By Hon. A.Hamuth, Judge and Hon. A.D.Narain, Judge

Breach of Protection Order – Sentence

This is an appeal against a sentence passed against the appellant by the District Court of Pamplemousses. The appellant, then accused, had pleaded not guilty to a charge of breach of protection order in breach of **sections 3, 3A and 10** of the **Protection from Domestic Violence Act.** He was convicted and sentenced to three months' imprisonment and ordered to pay Rs 100 as costs. He appealed against such sentence on the ground that it was manifestly harsh and excessive.

The Learned Magistrate accepted the complainant's version that the Appellant, her husband, had assaulted her, in breach of a then valid protection order issued by the District Court of Pamplemousses. The Appellant had slapped and punched her on her right shoulder, pulled her hair and her face with his hands. The complainant was not injured but it was painful.

Before passing the sentence, the Learned Magistrate took into consideration all the circumstances of the case, the apology made by the Accused, his previous convictions within the preceding ten years which demonstrated a propensity for violence.

The Appellate Court endorsed the view in the case of **Henrico v The State 2012 SCJ 216** which stated the following:

"Protection orders are issued for the protection of victims of domestic violence. They are not lightly issued by the court and they are equally not meant to be treated with levity by the offending spouse/partner. It should be only in exceptional cases that courts will sentence an offender otherwise than with the severity such an offence deserves."

Based on the above, and the circumstances of the offence, the Court held that the custodial sentence was clearly justified. The sentence of 3 months' imprisonment cannot be said to be harsh and excessive.

The appeal was dismissed.

"Today's patience can transform yesterday's discouragements into tomorrow's discoveries. Today's purposes can turn yesterday's defeats into tomorrow's determination." – **William Arthur Ward**

Highlights of year 2016

Launching of MCLR 2014-2015

Training on Prosecuting Domestic Violence Cases

Visit of Mr Geoffrey Rivlin, QC

Lecture on "Secret Courts" & Advocacy Training by Sarah Whitehouse, QC

Training to the students of the University of 3rd Age Mauritius

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The Office of the Director of Public Prosecutions wishes you a Happy New Year 2017.