

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No: HAC046 of 2008

STATE

v.

SALENDRA SEN SINHA

Hearing: 4 – 18, 28 October 2010

Sentence: 29 October 2010

Counsel: Ms A. Tuiketeti & Ms A. Lomani
Mr. H.A. Shah for Accused

SENTENCE

- [1] Salendra Sen Sinha, you stand convicted of 2 counts of causing payment of money by virtue of forged instrument and 1 count of money laundering after a trial.
- [2] The maximum sentence for causing payment of money by virtue of forged instrument is 14 years imprisonment. The maximum sentence for money laundering is 20 years imprisonment. These statutory maximum terms indicate to the courts, how serious Parliament considers these offences to be.
- [3] The tariff for obtaining property using forged document range from 18 months to 5 years imprisonment, with suspended sentences reserved for cases where there has been full restitution as indication of remorse. In a recent case of ***Etuate***

Suguturaga HAC043 of 2009L, Madigan J sentenced the offender to a term of 5 years imprisonment for obtaining six brush cutters by virtue of a forged cheque. His Lordship at paragraph 9 said:

“Obtaining goods on a forged instrument must stand outside the forgery and the uttering even though it is an offence part and parcel with the forgery. To defraud a commercial enterprise by way of a false document is very serious, especially in the present fragile economic climate. The sanctity of day-to-day commercial transactions must be protected.”

- [4] I endorse the views of Madigan J to be applicable in this case.
- [5] The facts indicate that you were part of a scheme with others to defraud the Fiji Islands Revenue and Customs Authority (FIRCA).
- [6] You obtained substantial amount of money on the pretext of legitimate VAT refunds from FIRCA. You established a shelf company called Honeymoon Beach Resort Limited as part of your scheme. You opened a cheque account at Westpac under the Company's name. Your offending shows a high degree of planning and sophistication. You involved others, including the employees of FIRCA, to assist you to perpetrate the fraud and to obtain funds that belonged to the taxpayers. You managed to obtain two forged cheques of FIRCA.
- [7] You then cashed the cheques and deposited the funds into your Westpac account. One forged cheque was in an amount of \$178,834.82 and the second forged cheque was in amount of \$93,384.75. You obtained a total sum of \$272,219.57. After depositing the funds into your account you started withdrawing money by writing cash cheques. Over a short period of time, you withdrew and used \$187,333.57. The money laundering charge is based on the withdrawal transactions you made from your Westpac account.
- [8] Counsel for the State submits that I should treat the money laundering charge as a separate offence from the obtaining money on forged instrument charges for the purpose of sentencing. Your counsel objects to this course because all three charges are founded on the same facts.

[9] In dealing with an appeal against sentence in a money laundering case of **Timothy Aaron O'Keefe v. The State AAU0029 of 2007**, the Court of Appeal at paragraph 15 said:

"When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person who is to be sentenced. Money laundering is clearly potentially a very serious offence. It can be, and is, used to disguise the true nature of money derived from criminal activity and so make it available for legitimate use. It is essential for large criminal organizations if they are to be able to maximize the proceeds of their unlawful activities. Of necessity, it is an international problem and undoubtedly smaller jurisdictions may be seen as useful and unsuspecting conduits. That is why Parliament imposed the heavy penalties under the Proceeds of Crime Act."

[10] At paragraph 16 the Court said:

"However, where, as here, the court is also sentencing for the associated criminal offences which produced the money to be laundered, it must base its sentence on the relative seriousness of the individual offences."

[11] The principles in **O'Keefe** apply to your case. I sentence you on the seriousness of the individual offences which are substantially based on the same facts.

[12] Given the scale of the fraud, I take as my starting point 4 years imprisonment. Aggravating factors are the planning behind the fraud, the large sum of money defrauded and the non-recovery of a substantial amount of money. I increase your sentence to 6 years imprisonment.

[13] You are 34 years old. You were married but now separated. You have a 3½ years old daughter. Currently, your mother-in-law is looking after your daughter and she is finding it difficult to financially support her.

[14] The case took more than two years to be heard. Although you had absconded for a short period, you are not responsible for the entire length of delay. After

learning about the fraud, Westpac froze your account. A sum of \$85,000 remains in that account, which now can be restored to FIRCA.

- [15] There is no other compelling mitigating factor. You are not a young and a first time offender.
- [16] You have a long list of previous convictions and therefore you are not entitled for any discount for previous good character.
- [17] To reflect the delay and what was said about you in mitigation by your counsel, I reduce your sentence to 5 years imprisonment.
- [18] You have been in custody on remand for a period of 2 years, 1 month and 9 days as of today. With some adjustments for remission, I reduce your sentence to 2 years imprisonment.
- [19] I sentence you to concurrent terms of 2 years imprisonment on each count with a non-parole period of 18 months. There is no question of suspending your sentence. You have not expressed any remorse.
- [20] I order that the sum of \$85,000.00 in your Wespac account is to be restored to the Fiji Islands Revenue and Customs Authority.

Daniel Goundar
JUDGE

At Suva
29 October 2010

Solicitors:

Office of the Director of Public Prosecutions for State
Office of Messrs. Haroon Ali Shah for Accused