

**IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION**

CRIMINAL CASE NO. HAC 025 OF 2010

BETWEEN:

THE STATE

AND:

**1. POH CHIN SHEU
2. RAJNESH PRATAP SINGH
3. ATUNAISA VEITATA**

Counsels: Ms. N. Tikoisuva for the State
: Mr. Naco for 1st and 3rd Accused
: Mr. I. Khan for 2nd Accused

Date of Summing Up: 03rd February 2011

Date of Sentencing: 10th March 2011

SENTENCE

1. The Director of Public Prosecution had preferred the following charges against all three of you.

"POH CHING SHEU (FU JINXU) alias Desmond, RAJNISH PRATAP SINGH s/o Ram Pratap and ATUNAISA VEITATA are charged with the following offence:

FIRST COUNT

Statement of Offence (a)

POSSESSION OF FORGED DOCUMENT: Contrary to section 346 (i) of the Penal Code, Cap 17.

Particulars of Offence (b)

POH CHING SHEU (FU JINXU) alias Desmond, RAJNISH PRATAP SINGH s/o Ram Pratap and ATUNAISA VEITATA between the 9th of January 2008 and 23rd day of January 2008, without lawful authority, or excuse, were in possession of a forged bank note, namely, a Westpac Banking Corporation, Westgate, New Zealand, bank draft numbered Z – 17 – 188 – 592, dated 6th June 2008 of the sum of Fifty million **EUROS** (EUROS 50,000,000), knowing the same to be forged.

SECOND COUNT

Statement of Offence (a)

UTTERING A FALSE DOCUMENT: Contrary to section 343 of the Penal Code, Cap 17.

Particulars of Offence (b)

POH CHING SHEU (FU JINXU) alias Desmond, RAJNISH PRATAP SINGH s/o Ram Pratap and ATUNAISA VEITATA between the 9th of January 2008 and 23rd day of January 2008, at Suva in the Central Division, knowingly and fraudulently uttered a forged Westpac Banking Corporation, Westgate, New Zealand, bank draft numbered Z – 17 – 188 – 592, dated 6th June 2008 of the sum of fifty million **EUROS** (EUROS 50,000,000), having deposited the said bank draft into the account of **FULL CREATION INTERNATIONAL INVESTMENT LIMITED**, account numbered 9617231 at ANZ, Main Branch, Victoria Parade, Suva, knowing the same to be forged and with intend to defraud."

THIRD COUNT

Statement of Offence (a)

DEMANDING PROPERTY ON FORGED DOCUMENT: Contrary to section 345 (a) of the Penal Code, Cap 17.

Particulars of Offence (b)

POH CHING SHEU (FU JINXU) alias Desmond, RAJNISH PRATAP SINGH s/o Ram Pratap and ATUNAISA VEITATA between the 9th of January 2008 and 23rd day of January 2008, at Suva in the Central Division, with intend to defraud, caused or procured to be paid or transferred into the account of **FULL CREATION INTERNATIONAL INVESTMENT LIMITED**, account of fifty million **EUROS** (**EURO** 50,000,000) by virtue of a forged instrument, namely a Westpac Banking Corporation, Westgate, New Zealand, bank draft numbered Z – 17 – 188 – 593, dated 6th June 2008 knowing the same to be forged."

2. After the trial the Assessors had unanimously found the 1st Accused guilty for the 1st and 2nd charges. 2nd and 3rd Accused persons were found guilty to all three charges. The Court after considering the verdict of the assessors and the evidence before the Court convicted the 1st Accused for the 1st and 2nd Counts and acquitted on the 3rd Count and second and third Accused persons on all three counts in the information.
3. Now I proceed to sentence.

- (a) 1st charge was based on section 346 (1) of the Penal Code. It provides a maximum sentence of 7 years imprisonment.
- (b) 2nd charge was based on section 343 of the Penal Code. It provides a maximum sentence of 14 years imprisonment.
- (c) 3rd charge was based on section 345 (a) of the Penal Code. It provides a maximum sentence of 14 years imprisonment.

4. Now I consider the tariff for these offences.

In the case of **Hu Jun Yun v State** [2005] HAA 0024/2005, the Appellant appealed his sentence of 5 years for 11 counts of possession of forged document, 11 counts of uttering of forged document and 11 counts of obtaining money on forged document. The appellant had pleaded guilty to all counts of the offences and none of the \$70,532.43 was recovered. The Learned Judge agreed with the State's position that tariff for these offences range from 18 months imprisonment to 4 years imprisonment with 4 years reserved for the worst type of offending. The Appellant succeeded in his appeal with a reduction of 3 years imprisonment.

5. In **Lauzik Mukesh Chand v State** [1999] FJCA 12; AAU0013/98, in dismissing the appeal, confirmed the sentence of High Court which imposed a sentence of 6 months imprisonment suspended for 1 year for 2 counts of forgery, uttering of a forged document and attempting to obtain a migration visa by virtue of a forged document. The Magistrates Court, on a plea of guilty had exercised powers under section 44 of the Penal Code, Cap 17 and discharged the Appellant. The State appealed and the order of discharge was quashed and a sentence of 6 months imprisonment was imposed suspended for 1 year.

6. In **Vishwajit Prasad v State** [1994] FJCA 19; AAU0023/93, the Court of Appeal quashed the sentence of 4 years imprisonment and imposed a sentence of 2 ½ years imprisonment on 9 counts of forgery, 9 counts of uttering a forged document and 9 counts of obtaining money on forged document.

7. In **State v Chaudhary** [2008] FJHC 22; HAC69/2007, in which the Court considered the above decisions and imposed 3 years imprisonment term for 1 count of Larceny, 8 counts of Forgery, 4 counts of Uttering of Forged Document and 4 counts of Obtaining Goods on Forged Document.

8. In **State v Sintia** (2010) FJHC 480. Justice Goundar had observed that the tariff for obtaining property using forged documents range from 18 months to 5 years imprisonment.

9. In **Etuate Suguturaga** HAC 043 of 2009 Justice Madigan had imposed 5 years imprisonment.

10. Considering the tariff for the first offence I commence your sentence at 2 years imprisonment.

11. For the second Count I commence your sentence at 3 years imprisonment.
12. For the third Count I commence your sentence at 1½ years imprisonment.
13. Now I consider the aggravating factors:
 - (a) The amount of the draft was 50 million Euros which is substantially huge.
 - (b) Attempted to deceive the bank and society.
 - (c) There is no actual remorse.

Considering the above aggravating factors I increase one year on each Count. Now the sentence is as follows:

1st Count – 3 years imprisonment.
2nd Count – 4 years imprisonment.
3rd Count – 2 ½ years imprisonment.

14. Now I consider the mitigating circumstances. For the first accused Poh Chin Sheu:
 - (a) You claim you are 1st offender (There is no record available with the Fiji Authorities)
 - (b) You claim you have medical condition but no medical certificates are submitted.
 - (c) Your family is depending on you.
 - (d) Your period in remand

Considering the above mitigating circumstances I reduce your sentence by 18 months. Now your sentence reads as follows:

1st Count – 1 ½ years imprisonment
2nd Count – 2 ½ years imprisonment

Considering the nature of the offence I direct the sentence to run concurrently.

15. Now I consider the mitigating circumstances of the 2nd accused Rajnesh Pratap Singh.
 - (a) You claim that you have gastric and ulcer and taken medication for deudinol cancer (sic). I presume the word must be Duodenal cancer. But you have not submitted any document or evidence to support your illness.
 - (b) You are a Hindu Priest and you do prayer meetings at two temples.

- (c) Your character certificates issue.
- (d) Your period in remand.

Considering all your mitigating circumstances I reduce one year on each Count. Now your sentence reads as follows:

- 1st Count – 2 years imprisonment
- 2nd Count – 3 years imprisonment
- 3rd Count – 1½ years imprisonment

Considering the nature of the offence I order to run sentence on all three counts concurrently.

16. Now I consider the mitigating circumstances of the 3rd accused Atunaisa Veitata.

- (a) You are a 1st offender
- (b) You are married with 5 children
- (c) You claim you have health problems and submitted medical certificates but both certificates do not support your claim.
- (d) You claim you are involved with church
- (e) Your period in remand.

Considering all mitigating circumstances I reduce one and a half years from your sentence. Now your sentence reads as follows:

- 1st Count – 1½ years imprisonment
- 2nd Count – 2½ years imprisonment
- 3rd Count – 1½ years imprisonment

Considering the nature of the offence I order all these sentence to run concurrently.

17. Now I consider section 18(1) of the Sentencing & Penalties Decree. For the 1st Accused your sentence is 2½ years. I fix 2 years as non parole period.

18. Acting under section 18(1) of the Sentencing & Penalties Decree 2nd Accused your sentence is 3 years. I fix 2½ years as non parole period.

19. For the 3rd Accused your sentence is 2½ years. I act under section 18(1) of the Sentencing & Penalties Decrees I impose 2 years as non parole period.

20. You have 30 days to appeal to Court of Appeal.

**S Thurairaja
Judge**

At Suva

Solicitors

Office of the Director of Public Prosecution for State

Naco Chambers for Accused 1 and 3

Iqbal Khan's Office for Accused 2