

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 125 OF 2007S

STATE

vs

MONIKA MONITA ARORA

Counsels : **Mr. P. Bulamainavalu and Ms. R. Drau for State**
Mr. D. and P. Sharma for Accused

Hearings : **22nd to 24th, 28th to 30th November and 5th to 7th December, 2011**

Summing Up : **12th December, 2011**

Judgment : **14th December, 2011**

Sentence : **17th February, 2012**

SENTENCE

1. In a judgment delivered on 14th December 2011, the court found Ms. Monika Monita Arora guilty of the following two counts:

FIRST COUNT

Statement of Offence

MONEY LAUNDERING: contrary to sections 69(2)(a) and 3(b) of the Proceeds of Crime Act 1997.

Particulars of Offence

MONIKA MONITA ARORA d/o Bel Bhadar, AND OTHERS between the 9th day of December 2005 to the 11th day of May 2007, at Nabua in the Central Division disposed of cash, being the proceeds of crime, to the

gross sum of \$472,466.47 for her benefit and the benefit of others, which she ought reasonable to know, that such cash was derived indirectly from the falsification of the Vinod Patel Company books of account.

SECOND COUNT
Statement of Offence

CORRUPT PRACTICES: contrary to section 376(b) of the Penal Code Act 17.

Particulars of Offence

MONIKA MONITA ARORA d/o Bel Bhadar, on the 13th day of May 2007 at the Sports City Plaza at Laucala in the Central Division, corruptly offered \$10,000 cash to **NAVIN SEN s/o Ugru Sen** an Accountant of Vinod Patel Company, as an inducement to persuade the said **NAVIN SEN s/o Ugru Sen** to stop all investigations into the cashing of cheques belonging to Vinod Patel Company.

2. The court convicted Ms. Arora on the two counts, and adjourned the matter to 26th January 2012 for her plea in mitigation and sentence hearing. On 26th January 2012, Ms. Arora's counsel presented written and oral plea in mitigation, including their sentence submission. The State also presented their written and oral sentence submission. The court has carefully considered the parties' written and oral submissions.
3. The brief facts of the case were as follows. The accused worked for Vinod Patel Company (Centrepont) from March 1999 to May 2007. She started of a cashier; then became an accounts clerk and later became the Managing Director's secretary. While working for the company, the accused became familiar with the raising of company invoices, payment vouchers, and the preparation of company cheques, for the payment of its bill.
4. From 6th January 2006 to 11th May 2007, the accused encashed approximately 36 Vinod Patel Company cheques, at ANZ Bank Centrepont. She took out a total of \$472,466.47 cash, from the ANZ Bank, as a result of the above cheques. It was later found that the above cheques were forged, and the invoices and payment vouchers, on which the cheques were raised, were falsified. There were strong circumstantial evidence that the accused was involved in the falsifying of the invoices and payment vouchers, including the forged cheques, which she used to obtain the

\$472,466.47 cash. There were also strong circumstantial evidence that she hid these cash from the authorities. She only repaid \$41,272.38 to Vinod Patel Company, leaving \$431,194.09 unrecovered.

5. “Money Laundering” is a very serious offence, and it carries a maximum penalty of 20 years imprisonment, or a fine not exceeding \$120,000, or both. (Section 69(2)(a) of the Proceeds of Crime Act 1997). His Lordship Mr. Justice Paul K. Madigan, in the case of **The State** vs. **Anand Kumar Prasad & Others**, *Criminal Case No. HAC 024 of 2010, High Court, Lautoka*, noted in April 2011 that, “there was no real precedent in Fiji for the offence of money laundering”, despite it carrying a maximum penalty of 20 years imprisonment. His Lordship suggested a tariff between 8 to 12 years imprisonment.
6. Counsel for the State, Mr. P. Bulamainavalu, has assisted the court greatly, by referring to some Australian authorities. However, the case I find helpful, in this case, is **R v Siu** [2007] NSWCCA 259. The maximum penalty for their “money laundering” Criminal Code, in New South Wales, was 20 years imprisonment or a fine not exceeding \$132,000, or both – somewhat equivalent to the maximum penalty applicable in Fiji. In that case, the New South Wales Court of Criminal Appeal said, “... The starting sentence before applying discounts should have been at least 8 years, although we believe a more appropriate starting point was between 9 and 11 years...” In my view, the view of the New South Wales Court of Criminal Appeal somewhat accords with Mr. Justice Paul Madigan’s view of a 8 to 12 years tariff, with a slight difference of 1 year at the lower and upper end of the sentence.
7. Given the seriousness in which Parliament regards “money laundering” offences in the Proceeds of Crime Act 1997, by giving it a maximum penalty of “20 years imprisonment, or a fine not exceeding \$120,000, or both”, and given what is said in paragraphs 5 and 6 hereof, I tend to agree with His Lordship Mr. Justice Paul Madigan that, the tariff for money laundering in Fiji should be a sentence between 8 to 12 years imprisonment. This tariff gives effect to Parliament’s intention of treating “money laundering” as a serious offence. A lighter tariff would be counter-productive to Parliament’s intention as enshrined in the Proceeds of Crime Act 1997. Of course, the final sentence will depend on the aggravating and mitigating factors.

8. The mitigating factors in this case were as follows:
- (i) At the age of 33 years, this is your first offence;
 - (ii) You are married, with a young daughter;
 - (iii) Out of the total \$472,466.47 you took out of ANZ Bank Centrepoint, you have repaid \$41,272.38, leaving a balance of \$431,194.09;
 - (iv) This case has been hanging over your head for the last 4½ years, when you first appeared in the Nasinu Magistrate Court, on 2nd August 2007;
 - (v) You have continued to study, while awaiting the outcome of this case;
 - (vi) You were remanded in custody for approximately 65 days.
9. The aggravating factors were as follows:
- (i) Your offending was a serious breach of trust between an employer and employee. Your employer, Vinod Patel, trusted you, as Secretary to its Managing Director. However, direct and circumstantial evidence showed you were involved in the presenting of forged cheques to ANZ Bank, and getting out \$472,466.47 cash. These cheques were based on falsified company invoices and payment vouchers. You kept the money. You hid it also. You have no intention of telling anyone where you hid the money. You have every intention of profiting from your misdeed, perhaps when you get out of prison. Although ANZ Bank paid out the money you took from Vinod Patel and Company, ANZ Bank will have to recoup that money from somewhere – that is, from the public.
 - (ii) You showed no remorse in this case. To this day, you have not revealed where you hid the money, or how you've used it.
10. On Count No. 1 (Money Laundering), I start with a sentence of 8 years imprisonment. I add 4 years for the aggravating factors, making a sentence of 12 years imprisonment. I deduct 5 years for the mitigating factors, leaving a balance of 7 years imprisonment.
11. On Count No. 2, I sentence the accused to 6 months imprisonment.

12. The sentence in Count No. 1 (7 years) is concurrent to the sentence in Count No. 2 (6 months). Total sentence is 7 years imprisonment. I sentence you to 7 years imprisonment. You are to serve a non-parole period of 6 years imprisonment.

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JUDGE

Solicitors for the State : Office of Director of Public Prosecution, Suva.
Solicitors for Accused : R. Patel Lawyers, Barristers & Solicitors, Suva.