

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 200 of 2010

BETWEEN: **STATE**

A N D: **SYED MOHAMMED RAZA**

Counsel: Ms. N Tikoisuva for State
 Mr. A. Khan for Accused

Date of Sentence: 9th July 2012

SENTENCE

1. Syed Mohammed Raza, you were charged with the offence of "Failure To Report Suspicious Transaction" contrary to section 13(6)(a) to (c) of the Financial Transactions Reporting Act, No. 22 of 2004. Section 13(6) of the Financial Transactions Reporting Act 2004 states:

"A person who conducts 2 or more transactions or electronic funds transfers that are of an amount below the threshold set out in subsection (1) or (2) and having regard to –

(a) the manner and form in which the transactions or transfers were conducted, including, without limitation, all or any of the following –

- (i) the value of the currency involved in each transaction or transfer;*
- (ii) the aggregated value of the currency involved in the transactions or transfers;*
- (iii) the period of time over which the transactions or transfers occurred;*
- (iv) the interval of time between any of the transactions or transfers;*
- (v) the locations at which the transactions or transfers were initiated or conducted; and*

(b) any explanation made by the persons to the manner or form in which the transfers were conducted, where it would be reasonable to conclude that the person conducted the transactions or transfers in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that no report in relation to the transactions or transfers would be made under subsection (1) or (2), commits an offence and is liable on conviction –

(c) for an individual – to a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both.”

2. You were convicted of the charge on your own plea of guilty
3. The summary of facts of the case that was submitted by the prosecution and admitted by you are as follows.
4. You were the owner of a locally registered company namely Galaxy International (Fiji) Limited. The company was an authorized foreign exchange dealer which is licensed and regulated by the Reserve Bank of Fiji.
5. Between 2nd December 2008 and 5th March 2009, you whilst operating the said Galaxy International, without proper documentation approved the lodgment of 15 applications for bank drafts with Colonial National Bank and 13 applications for telegraphic transfers with the said bank.
6. The above 28 transactions were conducted in a suspicious manner and form where it would be reasonable to conclude that you conducted the transactions

and transfers in such manner for the sole purpose of ensuring that no report in relation to the transactions and transfers would be made to the Financial Intelligence Unit.

7. The maximum punishment prescribed for the offence in terms of section 13(6) (c) of the Financial Transactions Reporting Act is a fine not exceeding \$30,000 or to a term of imprisonment not exceeding 5 years or both.
8. I found no sentencing guideline judgments in Fiji in respect of this offence under the Financial Transactions Reporting Act 2004. However, the Counsel for State and Defence were of some assistance to me in submitting few cases from other jurisdictions on money laundering offences.
9. In case of **R v Huang** [2007] NSWCCA 259 (4 September 2007) where the accused pleaded guilty for conducting 335 banking transactions amounting a total of AUD \$3088311.00 contrary to section 31(1) of the Financial Transaction Reports Act 1988 was sentenced to 5 years imprisonment with a non parole period of 2½ years. However the maximum penalty prescribed in the Financial Transaction Reports Act 1988 was 25 years and/or a fine of \$165000.00
10. In case of **R v Hannes** [2002] NZWSC 1182 (13 December 2002) where the accused was found guilty after trial for not reporting suspicious transactions to the amount of AUD\$50,000 was sentenced to 4 months imprisonment. The maximum punishment prescribed in the Financial Transaction Reports Act in Australia for this offence was 5 years imprisonment and/or a fine of \$10,000. The accused was not a first time offender.
11. In **R v Hutton** [2004] NSWCCA 60 (19 March 2004) where the accused pleaded guilty to 21 charges of non reporting transactions amounting to a total of \$2.7 million was sentenced to 3 years and 6 months imprisonment. The maximum punishment for the offence in terms of section 31(1) of the Financial Transaction Reports Act 1988 (C'th) for the said offence was 5 years imprisonment and/or a fine of \$32,000.
12. In case of **Regina v Natasan Narayanan and Singapore Exchange and Finance Pty Ltd** [2002] NSWCCA 200] where the accused was found guilty after trial of 28 charges under section 31(1) of the Financial Transaction Reports Act 1988 (C'th) and one charge under Section 28(1) of the same Act was

sentenced to 10 months imprisonment to be released after serving 6 months upon entering a recognizance to be of good behavior for a period of 6 months.

13. When consider the above series of cases and sentences imposed, I find that the amount involved, the number of transactions, the way the transactions were done and the maximum punishment prescribed has to be considered when sentencing an offender for this offence. However this not an exhaustive list. In this case the total amount involved is Fiji \$360,000 in 28 transactions.
14. The amount above is considerably large in the standards of Fiji. Starting point of the sentence before applying the additions and discounts for aggravating factors and mitigating factors respectively for this offence, I propose to be appropriate between 1-3 years imprisonment.
15. I find that this is a very serious offence. The objective of monitoring these financial transactions is to combat money laundering and tax evasion. Therefore the persons who deal with these transactions, like you in this case, are expected to follow the procedures and the law strictly. You have totally disregarded the procedure set out by the Reserve Bank Fiji to protect the economy of Fiji.
16. I take 18 months imprisonment as the starting point. I have considered the seriousness of the offending when I decided on the starting point. Therefore I find no special aggravating factors other than the large amount and the number of transactions involved. I add further 6 months for aggravating factors and now the interim total is 2 years.
17. For your early guilty plea I deduct another 8 months and now the interim total is 1 year and 4 months.
18. In your mitigation, the counsel submitted that you are a first offender and you were of previous good behavior. That you are married with 2 children. All your personal achievements and that the two daughters are involved in higher studies. Letters of personal reference submitted on behalf of you are also considered.
19. I also consider what is submitted on your income and the expenses and also what you testified in court that you have no means to pay a heavy fine.

20. For the mitigating factors I reduce 10 months and now your sentence is 6 months imprisonment.
21. Considering the circumstances of the case I suspend your sentence of 6 months imprisonment for 2 years. Suspended sentence explained.
22. Your final sentence is 6 months imprisonment suspended for 2 years.
23. You have 30 days to appeal to Fiji Court of Appeal.

Priyantha Fernando
Judge