

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

CIVIL ACTION NO: HBM 020 OF 2010

BETWEEN:

**THE DIRECTOR OF PUBLIC PROSECUTIONS
PLAINTIFF**

AND:

**SACHIN DEO
DEFENDANT**

Counsel:

Mr. Toganivalu - For the Plaintiff
In Person - For the Defendant

Date of Hearing: 04.11.2010
Date of Judgment: 01.12.2010

Judgment

The Plaintiff by this application seeks for a civil forfeiture order, over \$46,000.00 against the defendant. This application is made pursuant to Sections 19C – 19E of the Proceeds of Crime (Amendment) Act No 7 of 2005.

The Law

Section 19(C) of the Proceeds of Crime (Amendment) Act No 7 of 2005 provides provision for the Director Public Prosecutions to apply to Court for an order forfeiting to state any of the property that is tainted property.

Tainted property is defined in the Act in Section 3, as property used in, or in connection with, the commission of the offence or, proceeds of the offence.

In terms of Section 19E (1), to make such order of forfeiture, the Court has to be satisfied on a balance of probabilities that the property is tainted property.

Section 19E (2) provides provision, for a person to claim an interest in such property, and on what such person should satisfy Court.

Section 19E (2):

"Where a person claiming an interest in property to which an application relates satisfies the Court that the person –

(a) has an interest in the property;

(b) did not acquire the interest in the property as a result of any serious offence carried out by the person and-

(i) had the interest before any serious offence occurred; or

(ii) acquired the interest for fair value after the serious offence occurred

and did not know or could not reasonably have known at the time of the acquisition that the property was tainted property,

the Court shall order that the interest shall not be affected by the forfeiture order, and the Court shall declare the nature and extent of the interest in question."

In this case in support of the application, plaintiff has filed the affidavit of Detective Sergeant 2419 Simone Ravouvou. In his affidavit he states that on 30th December 2009, based upon information provided to police, a search warrant was executed at the residence of the defendant. During the search police found FJD 46000.00, 1162.7 grams of cannabis sativa and 483.6 grams of cannabis plants.

The trial against the defendant is pending in the High Court. Investigation statements of two officers namely Detective Constable 3109 Sailasa Bolatagici and Superintendent Rajeshni Mala are annexed. Cautioned interview statement of the accused is marked and produced. In his caution interview statement the defendant has already admitted that this amount of \$46,000.00 is from the sale of drugs and that he kept this money for his operation.

At the hearing of this application, the defendant claiming for the money said, that all that money was his mother's savings. He did not call any witnesses or documents for substantiate this position. This money was found in the possession of the defendant, which he admits and claims for such money. Illicit drugs too were found in his possession according to the evidence placed. When I consider the affidavit and the documents filed on behalf of the plaintiff, and the caution interview statement of the defendant, where he admitted that this money was from sale of drugs, I am satisfied on balance of probabilities that this money (FJ\$46000.00) was the proceeds of the sale of illicit drugs and therefore tainted property.

Further I am satisfied that on balance of probabilities that the defendant has failed to satisfy Court any of the requirements mentioned in Section 19E (2) of the Act as mentioned above.

In the above premise I make order that the said amount of \$46000 is forfeited to state, as applied by the plaintiff.

Priyantha Fernando
Judge

At Suva

01 December 2010