

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 195 OF 2012S

STATE

VS

MANOJ KHERA

a.k.a. MANOJ KUMAR

Counsels : Mr. M. Delaney and Mr. A. Paka for State
Mr. A. Naco for Accused
Hearings : 22, 23, 24, 25, 28 and 29 July, 2014
Summing Up : 30 July, 2014
Judgment : 30 July, 2014
Sentence : 3 October, 2014

SENTENCE

1. After a trial lasting 6 days, the accused was found guilty as charged, and convicted, on 30 July 2014, for the following charges:

FIRST COUNT

Statement of Offence

FALSE PRETENCES: *Contrary to section 309 of the Penal Code Cap 17.*

Particulars of Offence

MANOJ KHERA a.k.a MANOJ KUMAR between January and April 2004 by false pretences namely submitting to Fiji Revenue and Customs Authority (FRCA) a VAT Return for the taxable period ending January 2004 which contained false

information, with intent to defraud, obtained from the Fiji Revenue and Customs Authority (FRCA) a cheque number 76611 dated 2nd April 2004 in the sum of F\$9,611.82

SECOND COUNT

Statement of Offence

FALSE PRETENCES: *Contrary to section 309 of the Penal Code Cap 17.*

Particulars of Offence

MANOJ KHERA a.k.a MANOJ KUMAR between February and June 2004 by false pretences namely submitting to Fiji Revenue and Customs Authority (FRCA) a VAT Return for the taxable period ending February 2004 which contained false information, with intent to defraud, obtained from the Fiji Revenue and Customs Authority (FRCA) a cheque number 92516 dated 18 June 2004 in the sum of F\$8,200.00

THIRD COUNT

Statement of Offence

FALSE PRETENCES: *Contrary to section 309 of the Penal Code Cap 17.*

Particulars of Offence

MANOJ KHERA a.k.a MANOJ KUMAR between March and June 2004 by false pretences namely submitting to Fiji Revenue and Customs Authority (FRCA) a VAT Return for the taxable period ending March 2004 which contained false information, with intent to defraud, obtained from the Fiji Revenue and Customs Authority (FRCA) a cheque number 93242 dated 24 June 2004 in the sum of F\$11,800.00.

FOURTH COUNT

Statement of Offence

FALSE PRETENCES: *Contrary to section 309 of the Penal Code Cap 17.*

Particulars of Offence

MANOJ KHERA a.k.a MANOJ KUMAR between April and June 2004 by false pretences namely submitting to Fiji Revenue and Customs Authority (FRCA) a VAT Return for the taxable period ending April 2004 which contained false information, with intent to defraud, obtained from the Fiji Revenue and Customs Authority (FRCA) a cheque number 93243 dated 24 June 2004 in the sum of F\$15,000.00.

FIFTH COUNT

Statement of Offence

MONEY LAUNDERING: *Contrary to section 69 (2) and (3) of the Proceeds of Crime Act 27 of 1997.*

Particulars of Offence

MANOJ KHERA a.k.a MANOJ KUMAR *between the 1st January and 31st July 2004 in Suva in the Central Division, engaged directly or indirectly, in transactions that involved money, that is the proceeds of crime and received and disposed of the sum of F\$44,611.82, knowing or ought reasonably to have known that the said money was derived directly or indirectly from some form of unlawful activity.*

2. The brief facts were as follows. Between 1 January and 31 July 2004, the accused ran a jewellery business, importing and exporting gold, under the trade name of "Shivam Import and Exports". He was registered under the Fiji Revenue and Customs Authority (FRCA) as a VAT collector. As such, he was entitled to claim VAT tax refund, if the VAT he paid on his business purchases were more than the VAT he collected on his sales. He lodged four VAT tax returns at the end of January, February, March and April 2004, claiming VAT tax refunds. In his applications, he declared that the informations he provided in support of his applications, were true and correct. FRCA processed his applications on trust, and paid him \$9,611.82 (January); \$8,200 (February); \$11,800 (March) and \$15,000 (April) in 2004. It came to a total of \$44,611.82.
3. All the above money was paid into his ANZ Bank account in Nausori. It was later found out that the accused provided false informations to obtain the above money. He was thus charged with four counts of obtaining money by false pretences, and convicted of the same, after trial. While the money was in his Bank Account, he laundered the same, by disposing off the same, well knowing it was proceeds of his crimes. He was charged and convicted of the same, after trial.
4. The first four counts are offences of "Obtaining money by false pretences", contrary to section 309 of the Penal Code, Chapter 17. The maximum sentence for each offence is a sentence of 5 years imprisonment. The tariff is a sentence between 18 months to 2 years imprisonment, with 3 years imprisonment reserved for multiple counts of large sums of money: see **Setareki Vakayadra v The State**, Criminal Appeal Case No. HAA 099 of 2002S, **Vinod Prasad v The**

State, Criminal Appeal No. HAA 029 of 2002S, James Shiu Narayan v The State, Criminal Appeal No. 7, 8 and 9 of 1997 – all High Court authorities.

5. The fifth count is the offence of “Money laundering”, contrary to section 69(2) and (3) of the Proceeds of Crime Act 1997. The maximum penalty is a fine not exceeding \$120,000 or a prison term not exceeding 20 years imprisonment, or both. The tariff is a sentence between 5 to 12 years imprisonment: see State v Monika Arora, Criminal Case No. 125 of 2007S, State v Doreen Singh, Criminal Case No. 086 of 2009S, State v Robin Surya Subha Shyam, Criminal Case No. HAC 146 of 2010S, – all High Court authorities. The final sentence will depend on the mitigating and aggravating factors.
6. The aggravating factors in this case were as follows:
 - (i) This case was a deliberate fraud by the accused against the Fiji Revenue and Customs Authority (FRCA). He was warned in the VAT refund application forms not to submit incorrect informations. He deliberately did so, despite the warning.
 - (ii) A total of \$44,611.82 of taxpayer's money was stolen by the accused, as a result of his offendings.
 - (iii) He appeared to show no remorse throughout the trial. I got the impression from him that the system was there to be exploited, if at all possible.
7. The mitigating factors are as follows:
 - (i) Accused is 40 years old, married with two young daughters;
 - (ii) Accused is a first offender;
 - (iii) He had been remanded in custody since 30 July 2014, that is, 2 months 2 days ago;
 - (iv) The charge had been hanging over the accused's head for the last 2 years 5 months.
8. On count no. 1, I start with a sentence of 2 years imprisonment. For the aggravating factors, I add 1 year, making a total of 3 years imprisonment. For the 2 months 2 days remand in custody, I deduct 3 months from the 3 years imprisonment, leaving a balance of 2 years 9 months. For the other mitigating factors, I deduct 9 months, leaving a balance of 2 years imprisonment. On count no. 1, I sentence you to 2 years imprisonment.

9. For counts no. 2, 3 and 4, I repeat the above process and sentence.
10. For count no. 5, I start with a sentence of 5 years. I add 1 year for the aggravating factors, making a total of 6 years imprisonment. For the mitigating factors, I deduct 2 years, leaving a balance of 4 years imprisonment. On count no. 5, I sentence you to 4 years imprisonment.
11. In summary, your sentences are as follows:
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|-------|-------------|---|------------------|---|----------------------|
| (i) | Count No. 1 | : | False Pretence | : | 2 years imprisonment |
| (ii) | Count No. 2 | : | False Pretence | : | 2 years imprisonment |
| (iii) | Count No. 3 | : | False Pretence | : | 2 years imprisonment |
| (iv) | Count No. 4 | : | False Pretence | : | 2 years imprisonment |
| (v) | Count No. 5 | : | Money Laundering | : | 4 years imprisonment |
12. I direct that the sentence in counts no. 1, 2 and 3 be made concurrent to each other, that is, a total sentence of 2 years imprisonment. However, this total 2 years imprisonment be made consecutive to the 2 years imprisonment in count no. 4, taking the total sentence for the "False Pretences Offences" to 4 years imprisonment. The reason for the above is to show public disgust and outrage at the accused's determination to continue to defraud FRCA in count no. 4, despite his earlier "success" in count no. 1, 2 and 3. He had no regrets whatsoever in defrauding the taxpayer, and needed to be taught a lesson to become a more responsible citizen, in dealing with FRCA.
13. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, that is, a total sentence of 4 years imprisonment.
14. For obtaining money from the Fiji Revenue and Customs Authority by false pretences, that is, by filing false VAT tax returns in January, February, March and April 2004 and laundering the same in ANZ Bank Nausori, I sentence you Manoj Khera to 4 years imprisonment. You are to serve a non-parole period of 3 years imprisonment, effective forthwith.

15. This case is a warning to all those who try to defraud the Fiji Revenue and Customs Authority. If you are caught, an immediate prison sentence will be given, as a deterrence to other would-be offenders.
16. Finally, on the State's application for cost in this proceeding, the same is dismissed, as the accused had been given a custodial sentence.




Salesi Temo
JUDGE

Solicitor for the State
Solicitor for the Accused

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Office of the Director of Public Prosecution, Suva.
A. Naco, Naco Chambers, Suva.