

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 the State
Mr. A. Naco for Accused
Hearings : 22, 23, 24, 25, 28 and 29 July, 2014
Summing Up : 30 July, 2014

SUMMING UP

A. ROLE OF JUDGE AND ASSESSORS

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of fact.
2. State and Defence Counsels have made submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you are not bound

by what they said. It is you who are the representatives of the community at this trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.

3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

B. THE BURDEN AND STANDARD OF PROOF

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victim. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

C. THE INFORMATION

7. You have a copy of the information with you. I will now read the same to you:
"... [read from the information]...."

D. THE MAIN ISSUES

8. In this case, as assessors and judges of fact, each of you will have to answer the following questions:

- (i) On count no. 1, did the accused, between January and April 2004, at Suva in the Central Division, by false pretences (i.e submitting to Fiji Revenue and Customs Authority [FRCA] a VAT Return for the taxable period ending January 2004 which contained false information), and with intent to defraud, obtained from FRCA, a cheque worth \$9,611.82, for his own use?
- (ii) On count no. 2, did the accused, between February and June 2004, at Suva in the Central Division, by false pretences (ie. submitting to Fiji Revenue and Customs Authority [FRCA] a VAT return for the taxable period ending February 2004 which contained false information), and with intent to defraud, obtained from FRCA, a cheque worth \$8,200, for his own use?
- (iii) On count no. 3, did the accused, between March and June 2004, at Suva in the Central Division, by false pretences (ie. submitting to Fiji Revenue and Custom Authority [FRCA] a VAT return for the taxable period ending March 2004 which contained false information), and with intent to defraud, obtained from FRCA, a cheque worth \$11,800, for his own use?
- (iv) On count no. 4, did the accused, between April and June 2004, at Suva in the Central Division, by false pretences (ie. submitting to Fiji Revenue and Customs Authority [FRCA] a VAT return for the taxable period ending April 2004 which contained false information), and with intent to defraud, obtained from FRCA, a cheque worth \$15,000, for his own use?
- (v) On count no. 5, did the accused, between 1 January and 31 July 2004, at Suva in the Central Division, launder \$44,611.82, that is, proceeds of crime, by receiving and disposing off the same, knowing or ought reasonably to have known that, the same was derived directly or indirectly from some form of unlawful activity?

E. THE OFFENCES AND THEIR ELEMENTS

- 9. Counts No. 1, 2, 3 and 4 involved the offence of "False Pretences", contrary to section 309 of the Penal Code, Chapter 17. For the accused to be found guilty, the prosecution must prove beyond reasonable doubt, the following elements:
 - (i) the accused
 - (ii) by any false pretence
 - (iii) with intent to defraud
 - (iv) obtains

- (v) from any other person
- (vi) any money
- (vii) for the use of himself

10. The phrase “false pretence” means “to make a representation of an existing fact which is false”. In other words, you are telling others, or representing to others that, a certain fact existed, when in fact it does not exist. It is the act of behaving in a particular way, in order to make other people believe something that is not true. For example, in the context of this case, submitting a VAT return claim to Fiji Revenue and Custom Authority (FRCA), stating that you bought \$30,000 worth of jewels from “Lords Jewellers” in January 2004, when in fact, you did not do the same, is “false pretence”. In other words, “false pretence”, is lying about the existence of a certain fact.
11. The “false pretence” must be accompanied by an “intent to defraud” the person you are dealing with. “To defraud” means “to get money illegally from a person or organization by tricking them”. In other words, when committing the “false pretence”, you must have in your mind the intention to get money illegally from the person or organization by tricking them. In the context of this case, when you made your VAT return claim to FRCA, by falsely stating that you bought \$30,000 worth of jewels from “Lord’s Jewellers” in January 2004, your intention was to trick them into giving money to you, which you are not legally entitled to.
12. The offence is completed when, by “any false pretence”, “with intent to defraud”, the accused obtains money from another person, to use on himself. The prosecution must prove beyond reasonable doubt that, by any “false pretence”, “with an intent to defraud, the accused obtained money from the complainant, to use on himself. In the context of this case, the prosecution must prove that, through any “false pretence”, “with an intent to defraud”, the accused obtained money from FRCA to spend on himself.
13. Count No. 5 involved the offence of “money laundering”. For the accused to be found guilty of the offence, the prosecution must prove beyond reasonable doubt, the following elements:
 - (i) the accused
 - (ii) engages

- (iii) directly or indirectly
- (iv) in a transaction
- (v) that involves money
- (vi) that is, proceeds of crime, or
- (vii) receives and disposes of
- (viii) any money
- (ix) and the accused
- (x) knows or ought reasonably to know
- (xi) that the money
- (xii) is derived
- (xiii) directly or indirectly
- (xiv) from some form of unlawful activity.

14. In order to understand the terms used in describing the elements of “money laundering” as described above, you must consider them within the context of this case. Here, we are dealing with an accused, who at all material times, was a jeweller, operating under the name of “Shivam Import and Exports” in 2004. He was a sole trader at the time, and registered for VAT tax purposes with FRCA. As such, he was a VAT tax collector for government, and was entitled to claim VAT tax refunds if he paid out more VAT for purchases, than he collected in terms of sales.
15. The phrase “engages directly or indirectly in a transaction that involves money” meant the accused must be involved in an activity that concerns money. The accused’s involvement can either be directly or indirectly. The money involved in the activity or transaction must be proceeds of crime. It therefore follows that the activity or transaction the accused directly or indirectly involved himself in must be a crime, or alternatively, an unlawful activity. The word “engages” could also mean “receiving and disposing of any money”. It must also be proven by the prosecution beyond reasonable doubt that the accused knew, or ought reasonably to have known that, the money, involved in the activity or transaction, was derived directly or indirectly from some form of unlawful activity.

16. In the context of this case, if the accused files for a VAT refund from FRCA by submitting false information and misrepresenting the facts (activity/transaction), and receives and disposes of the VAT refund (money/proceeds of crime), and he knew, or ought reasonably to have known that, the VAT refunds were derived directly or indirectly from some form of unlawful activity (eg. false pretence, fraud etc), he is then liable for money laundering. Money laundering is basically dealing with tainted money, which are proceeds of crime, and he knew or ought to have reasonably known that the money was derived from some form of unlawful activity.
17. Remember, there are five counts in the information. You must consider them separately, in the light of the whole evidence, presented during the trial.

F. PROSECUTION'S CASE

18. The prosecution's case were as follows. Between 1 January and 31 July 2004, the accused was a businessman dealing as a sole trader, in jewellery retail, under the trade name of "Shivam Import and Export". The business had a Tax Identification Number (TIN) of 11-24276-0-5, and was registered under the VAT tax regime. As such, the accused's business became a VAT tax collector for the government (ie. FRCA), and in addition, had the right to claim VAT tax refund, if the VAT he paid on his business purchase were more than the VAT he collected on his sales.
19. According to the prosecution, the accused lodged four VAT tax returns at the end of January, February, March and April 2004, claiming VAT tax refunds. The VAT returns were identified as follows: Prosecution Exhibit No. 1 [January 2004]; Prosecution Exhibit No. 7 [February 2004]; Prosecution Exhibit 13 [March 2004] and Prosecution Exhibit No. 19 [April 2004]. In the VAT returns, the applicant, in this case, the accused, declared that the information he provided in support of the returns were true and correct. In each of the VAT returns, a schedule of input tax credits claimed, were attached and submitted to FRCA. The schedules were identified as follows: Prosecution Exhibit No. 2 [January 2004]; Prosecution Exhibit No. 8 [February 2004]; Prosecution Exhibit No. 14 [March 2004] and Prosecution Exhibit No. 20 [April 2004].
20. According to the prosecution, the accused submitted false information in the schedules of input tax credit he attached to his four VAT tax returns for the month of January, February, March and April

2004. He claimed that he had purchased some goods and services from some suppliers in the relevant months, when in fact, he had not done so. FRCA processed the accused's four VAT returns on the basis of trust, and advanced the following to the accused, as VAT tax refunds: \$9,611.82 [January 2004 claim]; \$8,200 [February 2004 claim]; \$11,800 [March 2004 claim] and \$15,000 [April 2004 claim]. All these money were deposited in the accused's personal account at ANZ Bank, Nausori, Account No. 5636155.

21. According to the prosecution, the accused made the following large withdrawals from the above account, using his international ATM Card No. 600998981000027, on 6 May 2004 (\$9,000); 25 June 2004 (\$2,000); 5 July 2004 (\$16,000) and 8 July 2004 (\$15,000). He closed the account in 2005.
22. According to the prosecution, the accused, by false pretence and with intend to defraud, submitted false VAT returns to FRCA for the taxable period of January, February, March and April 2004, and obtained the money mentioned in Counts No. 1, 2, 3 and 4, and used the same for his benefit. Furthermore, at the material time, he laundered money by engaging directly or indirectly in transactions that involved the money mentioned in Counts No. 1 to 4, which are proceeds of crime, and he received and disposed off the same, well knowing or ought to have reasonably known, that the same was derived directly or indirectly from some form of unlawful activity ie. false pretence and fraud. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged, on all counts. That was the case for the prosecution.

G. THE ACCUSED'S CASE:

23. On 22 July 2014, the first day of the trial proper, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to all the counts. In other words, he denied the allegations against him. When a prima facie case was found against him, at the end of the prosecution's case, he choose to remain silent, choose to open his defence through his counsel, and choose to call 3 witnesses, in his defence. What he did was within his rights.
24. As I have said before, the burden to prove the accused's guilt beyond reasonable doubt, stays with the prosecution from the start to the end of the trial. There is no burden on the accused to prove

his innocence. In fact, there is no burden on him to prove anything at all. Therefore, nothing negative whatsoever should be imputed to him for choosing to exercise his right to remain silent.

25. However, all is not lost for you, as assessors and judges of fact. In fact, the accused had already revealed his defence, when he was cautioned interviewed by police on 2, 3, 5 and 10 April 2012, at CID Headquarters in Suva. He was asked a total of 309 questions and he gave 309 answers. The accused's police caution interview statements was tendered in evidence as Prosecution Exhibit No. 62. You must read it carefully, and understand the same. However, disregard Questions and Answers 283 to 289, as they are irrelevant to this proceeding.
26. The admissibility of the accused's caution interview statements was not challenged by the defence, in a "trial within a trial", thus you can treat the statements as been given voluntarily by the accused to the police. On the VAT Returns submitted to FRCA for the tax period ending on January 2004 [Prosecution Exhibit No. 1 – Count No. 1]; February 2004 [Prosecution Exhibit No. 7 – Count No. 2]; March 2004 [Prosecution Exhibit No. 13 – Count No. 3] and April 2004 [Prosecution Exhibit No. 19 – Count No. 4], the accused did not dispute that the form was from his business "Shivam Imports and Exports". As to the "schedule of input tax credits claim" attached to the above VAT Returns, the accused appeared not to dispute that the same were from his business "Shivam Imports and Exports". As to the fact that some of the suppliers mentioned in the "schedules of input tax credit claim" saying that, they have not dealt with "Shivam Imports and Export" as claimed, the accused appeared not to dispute the same.
27. As to FRCA processing the above VAT Returns, and depositing the following FRCA ANZ cheques into his personal bank account; ie \$9,611.82 [Count No. 1]; \$8,200 [Count No. 2]; \$11,800 [Count No. 3] and \$15,000 [Count No. 4], the accused appeared not to dispute the same. As to the above money been taken out of his personal bank account, via the use of his international ATM card, he appeared not to dispute the same. His sole defence was that he did not fill in the above VAT Returns, nor did he fill in the attached schedules of input tax credits claim. He said, he did not know that the above FRCA ANZ cheques were deposited into his personal bank account. He said, in his caution statements that, he did not know how the above money was taken out of his account.

28. He said, in his police statement that, all the above problems may have been caused by his cousin Jitendra Pala, who was working for him, as his accountant, at the material time. He said, his personal bank account was under the control of Mr. Pala. He said, he reported Mr. Pala to Immigration Department, because he appeared to be operating a rival jewellery business to him. He was deported to India in 2004. The accused appeared to be saying that Mr. Jitendra Pala was the one who should be charged for the present charges, instead of him, because he knew nothing about the above transactions. Note that he didn't report Mr. Pala to the police for investigation in 2004. Because of the above, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged on all counts. That was the case for the defence.

H. ANALYSIS OF THE EVIDENCE:

(i) Agreed Facts:

29. The parties have submitted two Agreed Facts on 5 July 2013 and 28 July 2014. A copy is with you. You must treat those facts as established facts, and accept the same in your deliberation.

(ii) Undisputed Facts:

30. After listening to and carefully considering the parties' witnesses' sworn evidence, including the defence's line of cross-examination and the accused's police caution interview statements [Prosecution Exhibit No. 62], it appeared that the following facts were not disputed by the parties:

- (i) That the accused's firm, operating under the name "Shivam Import and Exports", submitted the following "VAT Return", with the following "schedule of input tax credits claimed for the taxable period ending January, February, March and April 2004:

Prosecution Exhibit 1 : Vat Return January 2004 [Count No. 1]

Prosecution Exhibit 2 : Schedules January 2004 [Count No. 1]

Prosecution Exhibit 7 : VAT Return February 2004 [Count No. 2]

Prosecution Exhibit 8 : Schedules February 2004 [Count No. 2]

Prosecution Exhibit 13: VAT Return March 2004 [Count No. 3]

Prosecution Exhibit 14: Schedules March 2004 [Count No. 3]

Prosecution Exhibit 19: VAT Return April 2004 [Count No. 4]

Prosecution Exhibit 20: Schedules April 2004 [Count No. 4]

- (ii) That the "Schedules of Input Tax Credits Claimed in the VAT Return" [ie. Prosecution Exhibit No. 2, 8, 14 and 20] contained some false information in that, some suppliers eg. PW2 of Raniga Jewellers Ltd; PW3 of Telecom Fiji; PW4 of One Flight Travel Centre; PW5 of Fiji Electricity Authority; PW7 of Control Meat Company Ltd and PW8 of Lords Jewellery] said, they did not deal with "Shivam Import and Export", as claimed in the schedules;
- (iii) That in each VAT Return submitted to FRCA, it was mandatory for the applicant to state that, the information supplied in the VAT Return and the Schedules were true, complete and correct;
- (iv) That FRCA processed the above VAT Returns on trust, in that, it expects all applicants to provide true and correct informations to support their applications, failing which, FRCA was empowered by law to impose penalty tax;
- (v) FRCA processed the above VAT Returns, and paid out the following FRCA ANZ Cheques as VAT refunds, to the accused's personal ANZ Bank Access Account No. 5636155 at the Nausori ANZ Bank, in the following way:
- | | | | | | |
|----------------------------|---|--------|---|-------------|-------------------------|
| Prosecution Exhibit No. 5 | : | Cheque | : | \$9,611.82 | (20.4.04 – Count No. 1) |
| Prosecution Exhibit No. 11 | : | Cheque | : | \$8,200.00 | (22.6.04 – Count No. 2) |
| Prosecution Exhibit No. 17 | : | Cheque | : | \$11,800.00 | (2.7.04 – Count No. 3) |
| Prosecution Exhibit No. 23 | : | Cheque | : | \$15,000.00 | (5.7.04 – Count No. 4) |
- (vi) The accused, in his police caution interview statement, admitted the above ANZ Access Account No. 5636155 was his personal ANZ bank account, and he opened it in 2003 and closed the same in 2005 (see Questions and Answers 100, 101, 102 and 103 of Prosecution Exhibit No. 62);
- (vii) The accused does not dispute the contents of his ANZ Access Account No. 5636155 "Interim Statement of Account", as contained in Prosecution Exhibit No. 72, 73 and 74;

(viii) The accused's "Interim Statement of Account" mentioned above, tracks the deposit of the FRCA Cheques mentioned in (v) above, and also showed how large fund withdrawals on 6 May, 25 June, 5 July and 8 July 2004 were made from the account.

31. Because the above facts appeared not to be disputed by the parties, you may take it that the prosecution had proven the above facts beyond reasonable doubt, and you may treat it as established facts. It is a matter entirely for you.

(iii) The Accused's Case:

32. In his police caution interview statements (Prosecution Exhibit No. 62), the accused did not seriously challenged nor disputed the abovementioned undisputed facts. His defence were as follows. He said, he did not fill in, nor file the VAT Returns and the Schedules attached thereto. He said, he knew nothing of the matter. Consequently, he appeared to say, he was not guilty of the charges.
33. Furthermore, the accused appeared to cast the blame on his present problems on his cousin, Jitendra Pala, who was at the material time, working as his accountant. He appeared to say that, may be, Jitendra Pala filled in and submitted the false VAT Return and Schedules. In 2004, he said he complained to the Immigration Department about Pala competing with him, and as a result, Pala was deported from the country in 2004. He was sent back to India. Note he did not complain to the police about Pala allegedly taking money from his account, as he alleged.
34. Nevertheless, the accused, in his police caution interview statements said, he entrusted his ANZ account to his accountant, and it appeared, he had the liberty to deposit and withdraw cash from the same, as and when he pleases. Whether or not to accept the accused's defence, as contained in his police caution interview statements, is entirely a matter for you.

(iv) The State's Case Against the Accused:

35. The State's case against the accused was based largely on the documents submitted by their witnesses (ie. PW1 to PW9). The documents were tendered as Prosecution Exhibit No. 1 to 76. A list of the exhibits and the originals will be given to you to assist in your deliberation. However, to

make your task simple and manageable, please concentrate on the documents I had referred to in the "Undisputed Facts" heading in paragraphs 30 and 31 hereof. These documentary evidence are primary evidence. They speak as to the matters contained in those documents.

36. The State also relied on what is often called "circumstantial evidence". That simply means that the prosecution is relying upon evidence of various circumstances relating to the crime and the defendant which they say when taken together will lead to the sure conclusion that it was the defendant who committed the crime. It is not necessary for the evidence to provide an answer to all the questions raised in a case. You may think it would be an unusual case indeed in which a jury can say "We now know everything there is to know about this case". But the evidence must lead you to the sure conclusion that the charge which the defendant faces is proved against him. Circumstantial evidence can be powerful evidence, but it is important that you examine it with care, and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt. Furthermore, before convicting on circumstantial evidence you should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution case. Finally, you should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere speculation. Speculating in a case amounts to no more than guessing, or making up theories without good evidence to support them, and neither the prosecution, the defence nor you should do that.
37. In this case, in his police caution interview statements, the accused did not deny nor disputed the fact that, the relevant VAT Returns and the schedules attached thereto, were submitted by his firm "Shivam Import and Exports", at the material times. He also did not deny nor disputed the fact that the VAT Returns and Schedules attached thereto, contained some false informations. He did not deny, nor disputed the fact that, it was mandatory for an applicant to submit true, correct and complete financial informations, in his VAT Returns application. The accused did not deny, nor dispute the fact that, FRCA processed the VAT Return application on trust and has the power to impose penalty tax on those that submitted false informations. The accused did not deny, nor dispute the fact that, FRCA approved his VAT return application, and deposited 4 FRCA ANZ Cheques in his personal ANZ Bank Access Account No. 5636155, at Nausori, totaling \$44,611.82.

The accused did not dispute, nor deny the fact that \$42,000 was withdrawn from his account between 6 May and 8 July 2004, via the use of his international ATM card, and the account was closed in 2005.

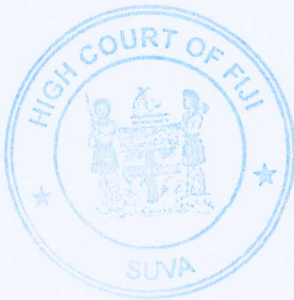
38. Mr. Nilesch Prasad (PW9), Manager, Operational Risk and Compliance at ANZ Bank, Suva, gave evidence. He said, ANZ Bank Access Account No. 5636155, Nausori, was, according to their records, the accused's personal account. According to ANZ records, the only authorized signature was the accused's. No one else was authorized to access the account but the accused. The accused was given his PIN number, which was private to him. No one else was given the PIN number. According to the accused's account records (Prosecution Exhibit No. 72, 73 and 74), the large withdrawal of \$42,000 mentioned in paragraph 37 above, was accessed via the accused's international ATM pin number. This PIN number was private to the accused. According to PW9, the above withdrawals were done at the ANZ Bank, Nausori, with the aid of the accused international PIN number. Before the cash were released, the accused's authorized signature must be confirmed by the bank teller. In this case, the cash were released, suggesting that the teller confirmed the authorized signature of the accused. The accused admitted in his police statements that he closed the account in 2005. What does the circumstantial evidence suggest to you? Was it the accused, who committed the charges laid against him? Your answer to this question is entirely a matter for you.

I. **SUMMARY**

39. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.
40. Your possible opinions are as follows:

(i)	Count No. 1	:	False Pretences	:	Guilty or Not Guilty
(ii)	Count No. 2	:	False Pretences	:	Guilty or Not Guilty
(iii)	Count No. 3	:	False Pretences	:	Guilty or Not Guilty
(iv)	Count No. 4	:	False Pretences	:	Guilty or Not Guilty
(v)	Count No. 5	:	Money Laundering	:	Guilty or Not Guilty

41. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive your decisions.



Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva**
Solicitor for the Accused : **A. Naco, Naco Chambers, Suva.**