

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 28 OF 2012**

**STATE**

**-v-**

**CHRIS RONIL SINGH**

**Counsel:**                      **Mr. S. Babitu for the State**  
                                      **Ms. J. Naidu for the Accused**

**Date of Hearing:**            **21<sup>st</sup> October, 2015**  
**Ruling**                        **21<sup>st</sup> October, 2015**

**RULING**

01. After the close of the case for the Prosecution, Counsel for the Defence submits that there is no case for the accused to answer.
02. An application of no case to answer is governed by section 231(1) of the Criminal Procedure Decree which provides as follows:

*“When the evidence of the witnesses for the prosecution has been concluded, and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person (or any one of several accused) committed the offence.*

03. The Accused is charged with the following Count:

***Statement of Offence***

**MONEY LAUNDERING:** Contrary to Section 69 (2) and (3) (d) of the Proceeds of Crime Act of 1997 as amended by Section 25 of the Proceeds of Crime (Amendment) Act of 2004.



### **Particulars of Offence**

**CHRIS RONIL SINGH** between the 09<sup>th</sup> day of September 2005 and the 29<sup>th</sup> day of September 2005 at Lautoka in the Western Division disguise true ownership of money in the sum of \$47,734.58 which had been derived directly from a serious offence, knowing or ought reasonably to know that the said sum had been derived or realized directly or indirectly from some form of unlawful activity.

04. The test is whether there is some evidence on each elements of the offence. The evidence must be relevant and admissible.

*In **Kalisogo v R Criminal Appeal** No: 52 of 1984, the Court of Appeal took the view that if there is some direct or circumstantial evidence on the charged offence, the Judge cannot say there is no evidence on the proper construction of section 293(1) (Under old Law). This view was later confirmed by the Court of Appeal in **State v Mosese Tuisawau** Cr. App. 14/90.*

05. Madam Shameem J in **State v Woo Chin Chae** [2000] HAC 023/99S stated:

*"In order to come to the conclusion that there was evidence direct or circumstantial, and irrespective of its weight, credibility or its tenuous nature it must be shown that the evidence in question is relevant, admissible and is in totality inculpatory of the accused. That means that the evidence in its totality must at least touch on all the essential ingredients of the offence"*

06. In **State v George Shiu Raj & Shashi Shalendra Pal** [2006] AAU0081/05 Court of Appeal confirmed that the correct approach under 293(1) is to ask whether there is some relevant and admissible evidence on each element of the charged offence, and not whether the evidence is inherently vague or incredible.

07. In **State v. Tuivodo** HAC 54 of 2014 (12<sup>th</sup> June, 2015) it was stated as follows:

*"The phrase "no evidence" has been interpreted to mean that there is no evidence on an essential element of the charged offence [**Sisa Kalisogo v State** Cri. Appl. No.52of 1984]. If there is some evidence on the essential elements of the charged offence, the application for a no case to answer cannot succeed. The credibility, reliability and weight are matters for the assessors and not for the trial judge to consider at a no case to answer stage".*



08. In order to prove the offence of Money Laundering, the Prosecution has to prove following elements beyond reasonable doubt:

- I. The Accused,
- II. Engaged directly or indirectly in a transaction involving money or other property, that is a proceed of crime, or
- III. Received, possessed, concealed, used, disposed of or brought into Fiji any money or other property that are proceeds of crime, or
- IV. Concealed or disguised the true nature, origin, location, disposition, movement or ownership of the money or other property derived directly or indirectly from a serious offence or a foreign serious offence,
- V. With knowledge that the money or property was derived from some form of unlawful activity.

09. According to the Information, Prosecution is running this case on the basis that the Accused, Mr. Singh, had disguised true ownership of money in the sum of \$ 47,734.58 which had been derived directly from a serious offence, knowing or ought reasonably to be knowing that the said sum had been derived or realized directly or indirectly from some form of unlawful activity. So, Prosecution, in this case, must prove that:

- I. Accused, Mr. Singh,
- II. Disguised true ownership of money in the sum of \$ 47734.58,
- III. Which had been derived directly from a serious offence,
- IV. Knowing or ought reasonably to be knowing that the said sum had been derived or realized directly or indirectly from some form of unlawful activity.

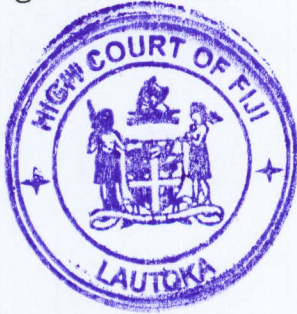
10. Prosecution relies on direct, circumstantial and documentary evidence to prove the charge.

11. Prosecution has adduced some evidence to substantiate the fact that the bank account into which the impugned cheque (bearing No. 140459 dated 23/09/05 in the sum of \$47734.58) had been deposited has been opened using a learner's license containing the photograph of the Accused. Mother of the Accused, Amara Wati Prasad confirmed that the extract obtained from the Land Transport Authority (LTA) referring to said learner's license (MFI.1) contains the photograph of her son Ronil Singh. Defence Counsel has cross-examined the witness Amara Wati on the basis that the extract of the LTA contained the photograph of the Accused.



12. Banker, Mohammed Azim said that, before opening the bank account, in order to satisfy himself about the identity of the prospective customer, he had matched the learner's license (both photograph and the signature) with the person who was physically present at the counter.
13. By perusing the records kept in her office, Ms. Makereta of the LTA confirmed that the MFI.1 did contain a similar photo to one that had been used to obtain the Accused's driver's license. She also emphasized that physical presence of the applicant is essentially required to obtain a learner's license.
14. I am satisfied that some evidence is available to suggest that the Accused was physically present at the bank to open the bank account. Therefore there is some evidence on the first limb of the offence. Although no direct evidence has been adduced to show that the Accused himself deposited the impugned cheque in the account, this being a case substantially based upon circumstantial evidence, the assessors must be given the opportunity to piece together the evidence to draw inferences from all the evidence led in the trial and form their own opinions on the facts as to whether or not the Accused had in fact possessed the requisite mental element of the offence.
15. By calling the officers of Fiji Revenue and Customs Authority (FIRCA), Prosecution has adduced some evidence to show that true ownership of money in the sum of \$ 47734.58 has been disguised. It was shown that Mohammed Taslim Khan into whose bank account the cheque bearing No. 140459 had been deposited was not the true beneficiary of the tax refund.
16. Evidence was also adduced through the same officers to establish the fact that the said amount of money is the subject matter of a serious offence, namely Forgery. Officers from FIRCA confirmed that payee's name, nature and the amount of the cheque bearing No. 140459 had been altered.
17. The offence of Money Laundering is not predicated on proof of the commission of a serious offence. In order to find the accused guilty it is not necessary to prove that the Accused himself had committed the forgery.
18. If it is established that the account had been opened by the Accused disguising himself as Mohammed Taslim Khan, it is open for the assessors to draw certain inferences as to the knowledge possessed by Accused at the time of opening the account into which the impugned cheque had later been deposited.
19. I am therefore of the view that there is some evidence on each element of the offence. I hold that the Accused has a case to answer.

20. Application of the Defence is dismissed. I proceed to give the accused his rights in defence.



  
**Aruna Aluthge**  
**JUDGE**

**AT LAUTOKA**  
**21st October 2015**

**Solicitors:**            **Office of the Director of Public Prosecution for State**  
                              **Ms. J Naidu for Accused**