

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 with Ms. R. Uce for the State
Ms. J. Naidu for the Accused

Date of hearing: 6th November, 2015
Date of Sentence: 12th November, 2015

SENTENCE

1. Mr. Chris Ronil Singh is charged with Money Laundering contrary to Section 69(2) and (3) (d) of the Proceeds of Crimes Act of 1997 as amended by Section 25 of the Proceeds of Crime (Amendment) Act 2004.
2. He is charged on the basis that between 9th September, 2005 and 29th September, 2005, he 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.
3. Mr. Singh pleaded not guilty to the charge and matter proceeded to trial. On 28th October, 2015 he was convicted after trial. He now comes before this court for conviction.
4. The facts adduced in evidence were that, a cheque drawn by the Fiji Custom and Revenue Authority (FIRCA) as an income tax return is altered fraudulently. For the purpose of depositing that cheque, a bank account is opened under a fake name using a fraudulently obtained learner's permit bearing a photograph of Mr. Singh. Fraudulently altered cheque is

deposited in the bank account opened under the fake name. It is established at the trial, that the owner of the bank account is none other than Mr. Singh.

5. The maximum sentence for money laundering is 20 years imprisonment or fine not exceeding \$ 120,000.00, or both if the offender is a natural person. Prescribed maximum sentence indicates that money laundering is a serious offence.
6. In **O'Keefe v State**[2007] FJCA 34;AAU0029.2007 [25June 2007] the Court of Appeal stated that:

"When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person who is to be sentenced. Money laundering is clearly potentially a very serious offence. It can be, and is, used to disguise the true nature of money derived from criminal activity and so make it available for legitimate use. It is essential for large criminal organizations if they are to be able to maximize the proceeds of their unlawful activities. Of necessity, it is an international problem and undoubtedly smaller jurisdictions may be seen as useful and unsuspecting conduits. That is why Parliament imposed the heavy penalties under the Proceeds of Crime Act".

7. In that case, Appellant Mr. O'Keefe had entered a plea of guilty in the Magistrates Court to several counts of forgery and false pretenses for which he was sentenced to concurrent terms of 2 years and then also one offence of money laundering for which he was sentenced to five years imprisonment. Quashing the sentence of five years imprisonment on Money Laundering, the Court of Appeal substituted a sentence of 3 ½ years' imprisonment. In that case, value of proceeds of crime was \$ 90,930.78 and out of which only \$ 1500. 00 had been recovered.
8. The guideline principles of O'Keele were cited in **State v. Sinha** [2010] FJHC 480 (29 October 2010) where Justice Daniel Goundar picked a starting point of 4 years. In that case, offender had withdrawn \$187,333.57 out of proceeds of crime amounting to \$272,291.57.
9. In **State v Stephen** HAC 088 Of 2010 (12 April 2012) Justice Paul K. Madigan thought it fit to draw some light from sentencing guidelines from Hong Kong jurisdiction where "there are similar legislative provisions against money laundering and where there have been numerous convictions in the past five years". However, maximum penalty for the

offence in Hong Kong is fourteen years imprisonment. The Hong Kong Court of Appeal said in **HKSAR v Javid Kamran** (CACC 400/2004):

"Money laundering is a very serious offence as it is an attempt to legitimize proceeds from criminal activities. Serious criminal offences are very often motivated by financial gains and those who assist criminals in laundering money indirectly encourage them in their criminal activities. Successful deterrents against money laundering could be effective measures against crime".

"It is not feasible to lay down guidelines for sentence of money laundering offences, as there is a very wide range of culpability factors arising include the nature of the offence that generated the laundered money, the extent to which the offence assisted the crime or hindered its detection, the degree of sophistication of the offence and perhaps the accused's participation including the length of time the offence lasted and the benefit he derived from the offence."

10. In The **State v Anand Kumar Prasad & others** HAC 024 of 2010 [April 2011] Justice Paul K. Madigan observed that:

"There was no real precedent in Fiji for the offence of Money Laundering, despite it carrying a maximum penalty of 20 years imprisonment".

His Lordship recommended a tariff between eight and twelve years imprisonment and noted as follows:

*"Given the seriousness in which Parliament regards "Money Laundering" offences in the Proceeds of Crimes Act 1997 by giving it a maximum penalty of 20 years of imprisonment, **money laundering in Fiji should be a sentence between 8 to 12 years imprisonment.** This tariff gives effect to Parliament's intention of treating "money laundering" as a serious offence. A lighter tariff would be counterproductive to Parliaments intention as enshrined on the Proceeds of Crimes Act 1977. Of cause, the final sentence will depend on the aggravating and mitigating factors" (emphasis added)*

In that case, a starting point of eight years was picked for the count of Money Laundering to the tune of \$ 472,466.47.

11. However, in **State v Stephen** (supra) Justice Madigan revisited **O' Keefe v State** (supra) and stated that:

“where the offence to be charged alone, that is without being charged in conjunction with other offences that generate the money sought to be laundered, it is probable that the offence could attract sentences in the range of eight to twelve years”, however this Court is bound by the decision of the Fiji Court of Appeal in O’Keefe v State (2007) AAU 0029.2007”.

In that case the appellant was appealing a sentence passed on him in the magistracy after the High Court had dismissed his appeal.

12. Proceeds of Crimes Act provides for a fine not exceeding \$120, 000.00 **or**, for a term of imprisonment not exceeding twenty years or both. Intention of Parliament is manifestly worded. It is clear that even non- custodial sentence can be imposed in an appropriate case.
13. Having considered relevant law and case authorities, I now proceed to choose the appropriate sentence in the present case.

Mitigating features

14. Mr. Singh is 38 years of age, married and a father of class one student living with his wife, elderly mother and mother-in-law. He is the sole breadwinner of his family earning \$ 150.00 per week as a sub-contractor in a hospital morgue.
15. He is first offender and has hitherto maintained a clear record. Character certificate bears testimony to it.
16. He has cooperated with Police during investigations and not violated any bail conditions including the condition that barred him from having any contact with his mother, who was made a State witness.
17. Mr. Singh is charged for obtaining money from FIRCA cheque in the sum of \$47,734.58. However, early stop payment order prevented him from withdrawing any money from the account. He has not been benefitted from this crime.

Aggravating features


18. To carry out this sophisticated ‘white color’ crime, considerable degree of pre planning and premeditation had been done. To achieve the main target, number of fraudulent activities had taken place. Subtle alternation of the cheque, ostensibly with the participation of FIRCA officers, activities such as obtaining a fraudulent learner’s permit under a fake name, opening a bank account under a fake name are all associated with the main offence although Mr. Singh has not been charged or convicted for them.

19. Money laundering activity has been planned to deny innocent tax payers of their legally entitled tax returns. The sophisticated fraudulent scheme used by the accused was to profit from public money.
20. Court is entitled to look at the degree at which the criminal activity succeeded the potential for further fraud if it had been able to continue and the extent to which the offence assisted the crime or hindered its detection.
21. Defence Counsel is urging for a fine only and/ or imprisonment sentence on parole. However I do not think this is a fit case to act with such leniency given the nature of the offence and the *modus operandi* used to commit the crime. A profound deterrent sentence is warranted to reflect the seriousness of the offence and to be strong warning to would be offenders that the Courts will come down harsh on such offences. Successful deterrents against money laundering could be effective measures against crime
22. Considerable time has elapsed since the date of offending. Offending dates back to 2005. He has been charged in 2011. Conviction entered in 2015. Defence Counsel seeks discount on that account. Given the sophisticated and clandestine nature of the offence, it may not be easy for law enforcement agencies to bring the culprits to book. Any discount on that account is not possible.

Sentence

23. I pick a starting point of four years to reflect the gravity of the offence. I add three years for aggravating features bringing the interim sentence to seven years imprisonment. Considering strong mitigating circumstances submitted I give a discount of three years bringing the final sentence down to four years imprisonment.
24. Having considered his potential for rehabilitation as the first offender and his age, I fix a non-parole period of only one year. Now his final sentence is Four years imprisonment with non-parole period of one year.
25. 30 days to appeal to the Court of Appeal.




Aruna Aluthge
Judge

At Lautoka
12th November, 2015

Counsel:

- **Office of the Director of Public Prosecution for State**
- **Qoro Legal for Accused**