

THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 250 OF 2014

STATE

VS

MUKESHWAR NARAYAN SINGH

Counsel : Ms J Prasad & Ms M Konrote for the Statet
Mr J Reddy for the Accused

Date of Hearing : 9th May – 25th May 2016

Summing Up : 30th May 2016

Judgment : 1st June 2016

JUDGMENT

- [1] The Accused, **Mukeshwar Narayan Singh** is charged by the DPP on the following count:

THIRD COUNT

Statement of Offence

Money Laundering: Contrary to Section 69(2)(a) and (3)(a) of the Proceeds of Crime Act 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree No. 61 of 2012.

Particulars of Offence

Mukeshwar Narayan Singh with another between 1st day of May 2005 and the 30th day in November 2009, at Suva in the Central Division, engaged directly or indirectly in transactions involving \$102,843.50, that were the proceeds of crime knowing or ought to have reasonably known that the money is derived from some form of unlawful activity.

- [2] He pleaded not guilty to the charge and during a somewhat protracted trial the prosecution called 13 witnesses while the accused opted to exercise his right to silence.
- [3] At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused guilty to the count of Money Laundering.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] The prosecution case is inclusive of several official witnesses attached to FRCA, other Government Agencies and also the Investigating Officer. In addition they called several lay witnesses with whom the accused had some acquaintance. The caution interview statement of the accused was also marked by the prosecution as an exhibit.
- [6] The case presented by the prosecution is certain unknown person or persons have secured TINs on non-existing persons by tendering names of the persons known to the accused, and also by inserting wrong dates of birth and fathers names of these individuals. These individuals are then declared non-existent by the Registrar General of Births and Deaths. These items of wrong information were then inserted in the Fiji Integrated Tax System, which in turn automatically created a TIN number on that non-existing person.
- [7] These 27 non-existing individuals belonged to the category of salary and wage earners and were required to file in their tax returns annually. Some person or persons then lodged annual tax returns in relation to these non-existing persons with the employer certificate that certain amount of monies were deducted from the salaries of these tax payers. The FRCA staff handles these tax returns from the time of its lodgement and up to the point where the PAYE tax refund cheques are generated by the FITS, upon approval by an assessor. No outsider can have access to FITS.
- [8] All these cheques concerning tax refunds were posted to P.O. Box 1671 Nabua and the keys to this particular post box was collected from the Post Office by the

accused. He has given this postal address to LTA and also received his wife's examination results through it.

- [9] The witnesses called by the prosecution have given consistent evidence and spoke of probable sequence of events. None of them had any animosity towards the accused and had no probable reason to falsely implicate the accused. The assessors have accepted their evidence as truthful and reliable and this Court is also of the same view.
- [10] In order to prove the count of Money Laundering, the prosecution must prove beyond a reasonable doubt that;
- a. *the accused, engaged directly or indirectly in transactions involving \$102,843.50;*
 - b. *that were proceeds of crime;*
 - c. *knowing or ought to have known that the money is derived from some form of unlawful activity.*
- [11] The first element is whether the accused, engaged directly or indirectly in transactions involving \$102,843.50. The accused admits having encashed 51 cheques amounting to \$91,292.00 as his thumb print was identified on the reverse of these cheques. However under interview, when shown all these cheques, the accused admitted having encashed them either by making an endorsement of his name or placing driver licence number or placing thumb print. This Court finds that the prosecution has proved the first element beyond a reasonable doubt.
- [12] The second element is whether the money received by the accused after encashing these cheques are proceeds of crime. The phrase "*proceeds of crime*" has a definitive legal meaning. What is understood by law in relation to proceeds of crime is whether the cash received by the accused after encashment of cheques are totally or partly due to commission of a "*serious crime*".
- [13] An offence is considered as "*serious*" one when its prescribed punishment is death or imprisonment for a period over one year.
- [14] When the prosecution case is considered in its totality it is clear that these refund cheques were made to generate by some members of FRCA staff who have been already dealt with for their illegal actions. FRCA never received PAYE deductions from these 27 fictitious tax payers, but refunded over \$100,000 as refunds and the Government lost substantial amount of its revenue
- [15] The third element has two alternative components and the prosecution is needed to prove only one. In the first limb of this element, what is required to prove by the

prosecution is that the accused had actual knowledge that the money is derived from some form of unlawful activity. Actual knowledge could also be imputed if the accused had wilfully shut his eyes to the obvious or wilfully and recklessly failed to make such inquiries as an honest and reasonable man.

- [16] The prosecution led evidence that these cheques were encashed by the accused, these cheques were drawn in the names of people known to the accused, the accused admitted giving these names and details of their identities to Sakiusa Vakarewa. The accused voluntarily gave his bank account and ATM card to Sakiusa Vakarewa, knowingly Sakiusa did not want to use his bank account. The accused knew that Sakiusa Vakarewa is employed at FRCA and during the relevant period was employed as his driver. Keys to P.O. Box. 1671 Nabua were collected by the accused from the Post Office on the instructions of Sakiusa Vakarewa. The bank details of the accused, his wife and brother are in the FRCA system, the accused used his friend Vimal Prakash Sundar to encash a cheque and got him to write a false address on the reverse of the cheque. In this instance the accused knew well in advance that there will be a cheque in Sundar's name. The accused lied to Sundar that he did not have a bank account even though he had been operating one since 2004. The accused was encashing cheques drawn in the names of others and lied to them to secure their details of identity. After some time Sakiusa Vakarewa allowed the accused to run the taxi without any payment and instructed that he could keep all the earnings.
- [17] The accused, through the investigating officer elicited his answers given at the caution interview. The accused denied any knowledge of these false tax returns, all the money received from encashing cheques were either given to Sakiusa or Robin. The accused maintains that Sakiusa already pleaded guilty to the charge, and he had absolutely no knowledge that the cheques presented to Real Me Dressing by him originated from an unlawful activity.
- [18] The denial of knowledge of any unlawful activity when the accused encashed these cheques could not be accepted due to its inherent improbability. The accused stated that he had supplied information of these persons who could be "trusted" to the 1st accused Sakiusa to facilitate a project initiated by FRCA on "Indian people". This was never disclosed to any of his acquaintances and he had given different false reasons most of them when their personal details were obtained. Over a period of 4 1/2 years, the accused had encashed 56 such cheques. The assessors obviously have rejected the explanation offered by the accused to the Police. The prosecution maintained that Sakiusa and Robin were the internal party while the accused remained the external party to this fraud.
- [19] When these circumstances are considered the only rational conclusion to be drawn is that the accused had knowledge that these cheques were generated as a result of

unlawful activity. This satisfies the third element requirement of the accused had wilfully shut his eyes to the obvious or wilfully and recklessly failing to make such inquiries as an honest and reasonable man. The prosecution therefore has proved the third element.

- [20] In my view, the assessor's opinion was not perverse. It was open for them to reach such conclusion on the available evidence. I concur with the opinion of the assessors.
- [21] Considering the nature of all the evidence before the Court, it is my considered opinion that the prosecution has proved its case beyond a reasonable doubt by adducing truthful and reliable evidence, satisfying all elements of the offence with which the accused is charged.
- [22] In the circumstances, I convict the accused, **Mukeshwar Narayan Singh** to the count of Money Laundering as charged.
- [23] This is the Judgment of the Court.



Achala Wengappuli
JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Suva
Solicitor for the Accused : Jiten Reddy Lawyers

