

IN THE RESIDENT MAGISTRATE'S COURT
WESTERN DIVISION AT NADI

CRIMINAL CASE: 93/2014

DPP

Vs.

PRASHIL PRAKASH

BEFORE : Resident Magistrate, Mrs Chandani Dias
DATE : Wednesday, 12th July 2017
COUNSEL : Mr Singh for the Prosecution
Accused in person

JUDGEMENT

1. This case was filed against the above named Accused on 28/3/2014.
2. Statement of offence- MONEY LAUNDERING contrary to section 69(3)(b) of the Proceeds of Crime Act 1997 .
3. Particulars of first offence
PRASHIL PRAKASH on the 28th day of September 2012 at Nadi in the Western Division received money amounting to \$980.00 that are the Proceeds of Crime knowing or ought to have reasonably known that the said \$980.00 is derived directly or indirectly from some form of unlawful activities.
4. Particulars of second offence
PRASHIL PRAKASH on the 29th day of September 2012 at Nadi in the Western Division received money amounting to \$350.00 that are the Proceeds of Crime knowing or ought to have reasonably known that the said \$350.00 is derived directly or indirectly from some form of unlawful activities.

5. The charge was read over to the accused person and he pleaded not guilty to the charge and this case was fixed for hearing. On the hearing date prosecution called 4 witnesses and tendered 6 documents marked as exhibit 1 to 6 to prove their case. At the conclusion of prosecution case the decided to call defence but the accused preferred remain silent. Later accused filed a written submission with bundle of documents which include evidence. By way of a written submission accused cannot tender documents and give evidence which is unfair to the prosecution. Therefore I refused to consider those documents and the evidence given in the written submission.

The Law

6. Section 69(3)(b) of the Proceeds of Crime Act 1997 as follows:

A person shall be taken to engage in money laundering if, and only if -

- (a) the person engages, directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime; or
- (b) **the person receives, possesses, conceal, uses, disposes of or brings into Fiji any money or other property that are proceeds of crime;**
or
- (c) the person converts or transfers money to other property derived directly or indirectly from a serious offence or a foreign serious offence, with the aim of concealing or disguising the illicit origin of that money or other property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof;
or
- (d) the person conceals or disguises 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; or
- (e) the person renders assistance to a person falling within paragraph (a), (b), (c), or (d),

and the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

(1A) In this Act, in relation to a serious offence or a foreign offence, “proceeds of crime” means property or benefit that is -

- (a) wholly or partly derived or realised directly or indirectly by any person from the commission of **a serious offence or a foreign serious offence;**

- (b) wholly or partly derived or realised from a disposal or other dealing with proceeds of a serious offence or a foreign serious offence; or
- (c) wholly or partly acquired proceeds of a serious offence or a foreign serious offence,

and includes, on a proportional basis, property into which any property derived or realised directly from the serious offence or foreign serious offence is later converted, transformed in intermingled, and any income, capital or other economic gains derived or realised from the property at any time after the offence.

7. According to the above section the prosecution has to prove the following elements beyond reasonable doubt to find the accused guilty to the above mention offence.
 - I. The accused,
 - II. **the person receives, possesses, conceal, uses, disposes of or brings into Fiji any money or other property that are proceeds of crime,**
 - III. **the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.**

The Burden Of Proof

It is clear that prosecution has to prove their case beyond reasonable doubt.

In State vs Seniloli (224) FJHC 48; HACoo28.2003S (5 August 2004) Her Ladyship Justice Nazhat Shameem told to assessors (summing up);

“The standard of proof in a criminal case is one of proof beyond reasonable doubt. This means that you must be satisfied so that you feel sure of the guilt of the accused persons before you express an opinion that they are guilty. If you have any reasonable doubt as to whether the accused person committed the offence charged against each of them on the information then it is your duty to express an opinion that the accused’s are not guilty It is only if you are satisfied so that you feel sure of their guilt that you must express an opinion that they are guilty One of the defence counsel asked you if you had the slightest doubt about the accused s guilt. That is not the correct test. The correct test is whether you have any reasonable doubt about the guilt of the accused.

Analysis of Evidence

8. Identification of the accused person. He was identified by his sister the person who had used her account. She handed over her Westpac bank account with the ATM card and the PIN number to the accused person Prashil Prakash.
9. According to the first witness Jovilisi Yaya on the 2nd April 2012 on his way to Lautoka he tried to withdraw money from his Westpac bank account at Nadi ATM machine and he found out that there was no funds in his account and he was sure about his balance and he then informed the bank and reported the matter to the CID office Suva. He never authorised any person to transfer his money to Prashil's Account .But money was transferred to this account. He never knew this accused person. The bank confirmed the internet transaction. On the same date \$350.00 was transferred to Accused's sister's account. According to the exhibit 5 accused sent \$350.00 on the same date through Western Union to England. Without authorization using someone's internet banking service and transferring money to another account is an offence of theft in a simple way which carries the maximum penalty for 10 years imprisonment.
10. In the Proceeds of Crimes Act serious offence means an offence of which the maximum penalty prescribed by law is death or imprisonment for not less than 6 months or a fine of not less than \$500.00
11. Then after transferring the money to his account he then transferred the money to his sister's account and withdrawn it on the same date and had sent that money to Barry Green in England through Western Union. The second prosecution witness confirmed the transaction done by his brother and the investigation officer confirmed the money transferred through Western union by this accused and it was confirmed by the exhibit 5. These evidence prove that accused received and possessed and disposed the cash which was illegally transferred to his account.
12. The next element is the knowledge of the accused person. **According to the section the mental element in this case is the Knowledge but it has a wide definition "the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity". Therefore the prosecution only has to prove one of the followings;**
 - I. the person knows or,
 - II. Ought reasonably to know.

13. I now draw my attention to the decision Jonney Albert Stephen v The State by the Court of Appeal in regarding to the knowledge *“In section 69 of the Proceeds of crimes Act Knowledge is stratified into two categories. The section goes as follows, ‘and the person knows or ought reasonably to know that the money or other property is derives or realised, directly or indirectly, from some form of unlawful activity “Two matters for me to focus under this section.*

1. *The accused either should know that the money or other property comes from some form of an unlawful activity or*
2. *He ought to have reasonable knowledge that the property or money comes from an unlawful activity.*

According to this decision it is enough to prove his reasonable knowledge of unlawful activity. As explained in the above mention case “the dictum of Lord Bridge in Westminster City Council v Carayal Grange Ltd ‘It is always open to the tribunal of facts ... to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not wish to have his suspicious confirmed”

14. In Jonney Albert Stephen v The State Court of appeal Fiji further explained about the knowledge and how to prove the knowledge “. In certain jurisdictions, in order to prove knowledge, the prosecution must prove knowledge on the part of the offender by taking into account all the material circumstances of the offence. For example, on a charge of “knowingly having in his possession an explosive substance, the State must prove that the accused knew both that he had it in his possession and that it was an explosive substance v. Hallan [1957] 1 Q.B. 569.41 Cr. Appl R. 111, C.C.A. Wilfully Shutting one’s eye to the Truth .There is some authority for the view that in the criminal law “knowledge” includes wilfully shutting one’s eyes to the truth. Warner v. Metropolitan Police (1969) 2 AC 256 at 279 HC.

The most important matter in determining whether a person had the requisite knowledge is to carefully examine the relevant evidence and to draw an inference based on that exercise.

15. In this present case He used his sister’s account for transfer money; on the 29th February 2012 \$350.00 was transferred from Jovilisi Yaya’s account to the accused’s account through internet banking. Same amount on the same date transferred to accused’s sisters second witness’s account. From that account on the same date it was withdrawn by the accused .All the transaction done in the same date 29th February 2012.the withdrawal and the last two transactions done by the accused person and he was the one

who had his account details and his sisters account details and ATM cards with PIN number. To transfer on the same date and disposed on the same date to two accounts he has some kind of knowledge about the money transferred to his account from Jovilisi's account. In the caution interview of the accused person he remained silent to all the questions and he tendered the caution interview as defence exhibit 1. Prosecution tendered the bundle of emails which was uplifted from the accused person. There were two complainants in this case but prosecution called only one as a witness. According to the exhibits I noticed two transactions in the same way. According to the emails tendered as exhibits accused worked with another person who was in England which cannot locate by the prosecution investigation officer unfortunately. There were series of transactions on those emails. Accused person has knowledge of all these transaction which is confirmed by his replies. Accused person could not easily wash his hands by giving all the emails to the CID for investigations. Because he should have a sense of knowledge about transferring money from various accounts to his account including this victim's account, he should have a sense of knowledge why those people cannot deposit or sent that money directly to his employed company for their service without using his account. When he employed by the Barry Green as per the emails he should know where he employed and what was the business and why those people paying money to him and what are the services or goods provided by them for those payments. He could not keep his eyes shutting to the truth to take the commission and the payment and to earn easily. This circumstantial evidence is enough to prove beyond reasonable doubt the knowledge accused ought to have under section 69(3).

16. There is no reason to refuse the prosecution evidence .The prosecution has proved all the elements of the second count beyond reasonable doubt. There is no evidence regarding the first count.
17. Accordingly, I find that the accused person guilty to the second count of MONEY LAUNDERING contrary to section 69(3) (b) of the Proceeds of Crime Act 1997. Accordingly I convict her for the same and acquit and discharge from the first count.

12/7/2017



Chandani Dias
Resident Magistrate Nadi