

IN THE MAGISTRATE'S COURT  
AT NADI, FIJI

CRIMINAL CASE NO: 93/2014

DPP

vs

PRASHIL PRAKASH

BEFORE: Resident Magistrate Mrs. Chandani Dias

COUNSEL: Mr. Singh for the Prosecution,  
Accused in person

Date of the Sentence: Friday, 11<sup>th</sup> of August 2017

SENTENCE

1. You PRASHIL PRAKASH, were charged for the count of, MONEY LAUNDERING contrary to section 69(3) (b) of the Proceeds of Crimes Act 1997.
2. Particulars of offence, PRASHIL PRAKASH on the 29<sup>th</sup> day of September 2012 at Nadi in the Western Division received money amount to \$350.00 that are the Proceeds of Crimes knowing or ought to have reasonably known that the said \$350.00 is derived directly or indirectly from some form of unlawful activities.
3. You were convicted after the full hearing.
4. Summary of this case is Jovilisi Yaya the victim of this case on the 2<sup>nd</sup> April 2012 on his way to Lautoka tried to withdraw money from his Westpac Bank

account number 9802458001 at Nadi ATM machine and found out that there was no funds in his bank account. He never authorized any person to transfer money from his account to any account. Then he went and reported the matter to the CID office Suva. The Bank confirmed the money was transferred through internet banking to your account 9803089987 on the 29<sup>th</sup> February 2012 and on the same date it was transferred to your sister's account number 9803277517. On the same date the same amount you withdrew from your sister's account at the ATM machine Nadi. Thereafter on the same day you sent that money to a person named Barre Green in United Kingdom through Western Union.

5. I now direct myself to consider appropriate sentences on you upon considering the general principle of sentencing under Section 15 (3) and objective of sentencing under section 4 (1) and 4 (2) of the Sentencing and Penalties Decree.
6. The tariff for the offence -The maximum penalty for this offence is fine of \$120,000.00 and /or a term of imprisonment of 20 years. The tariff for this offence is 5 years to 12 years.

*Justice Wengappuli in State v Singh [2015]FJHC 785;HAC250.2014(19 October 2015) discussed the tariff of this offence and commenced sentence from 6 years and sentence the accused for a 5 years' imprisonment period and 12 months non-parole period. In state v Anand Kumar Prasad and others [2010] FJHC 024of.2011 (19<sup>th</sup> April 2011)Justice Madigan said "There is no real precedent in Fiji for the offence of money laundering an offence which carries a maximum penalty of 20 years. Were 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. Mr O'Keefe had entered a plea of guilty in the Magistrates Court to several counts of forgery and false pretences 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.

The Court of Appeal said this (at paragraph 15):

*"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 or 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 small jurisdictions may be seen as useful and unsuspecting conduits. That is why Parliament imposed the heavy penalties under the Proceeds of Crime Act."*

*"However, where, as here, the court is also sentencing for the associated criminal offences which produced the money to be laundered, it must base its sentence on the relative seriousness of the individual offences."*

*Having passed strong sentences on the first accused for his fraud offences, I will not additionally punish him for the money laundering offences, despite the fact that they are very serious offences indeed. I sentence the first accused to a term of six years for each money laundering offence he has been convicted of.*

7. Upon considering the summary of facts of this crime, and the amount of money involved in this crime which was a lesser amount but it was the only money in victims account according to the victim, and the using of internet banking to commit this crime. You were in a process of legitimating the

illegal money in an indirect way and you shut your eyes to the truth willfully to take the indirect benefit from this crime.

8. In view of above judicial precedents and provisions of the Sentencing and Penalties Decree and careful perusal of the summary of facts and above facts I select 5 years as my starting point.
9. The aggravating factors in this case are,
  - a) the money involved in this case transferred to another country , the crime is across the border,
  - b) you damage the trust of the customers of Westpac bank about e-banking system,
  - c) you used your sister's account to commit this crime without her permission to commit the crime ,
  - d) The involvement of others, and an organized crime with a person in a foreign country.
10. The following facts in your written mitigation I consider in your favor,
  - i. You are married with two daughters eldest is 21 months and youngest is still a baby,
  - ii. You were awarded the highest honors for an academic achievement in both Primary and High School level close to achieve a Degree in Computer Science,
  - iii. Clear records without previous convictions,
  - iv. Cooperated with the police,
  - v. Part time student at USP,
  - vi. Regrets for committing this crime
11. In view of above mention aggravating factors I add 1year to your sentence, and in considering your mitigation I reduce 3 years from your sentence. You are not directly benefited from this crime , you are the first offender you committed this crime with a limited knowledge of the crime and lack of awareness about the seriousness of the crime with considering those facts

and according to the mitigation with having such educational qualifications your career in the future, and also considering the future of your very young children I decided to sentence you for 3 years imprisonment even though the sentence is below the tariff ( Laisiasa Koroivuki v The State) and in view of the section 26(2)(a) of the Sentencing and Penalties Decree 2009 this court has no jurisdiction to suspend a term of imprisonment of less than two years.

12. I decided to impose 12 months of non-parole period under section 18(1) of the Sentencing and Penalties Act.
13. Accordingly, I now sentence you for 3 years imprisonment period for the offences of MONEY LAUNDERING contrary to section 69(3)(b) of Proceeds of Crimes Act 1997 with non-parole period of 12 months.
14. 28 days to appeal.

11/8/2017



  
Chandani Dias

Resident Magistrate, Nadi