

**IN THE MAGISTRATES' COURT OF FIJI**

**AT SUVA**

Criminal Case : 391/2015

**STATE**

**V**

**RAJNEEL CHAUDARY**

Counsel : Ms.J.Prasad and Ms.L.Bogitini for the State  
Mr.A.Reddy for the Accused

Date of Sentence : 17<sup>th</sup> of March 2017

**SENTENCE**

1. **RAJNEEL CHAUDARY**, you were charged in this Court with 3 counts of Money Laundering contrary to section 69(2) and (3) (b) of the Proceeds of Crime (Amendment) Act No 07 of 2005.
2. You initially pleaded not guilty and hence this matter proceeded for the hearing. A voir-dire was conducted to decide about the admissibility of your caution statement and after hearing of both parties, I decided that the statement can be led in the trial proper.
3. When this was called for trial proper, through the counsel you informed this court that you wanted to change your plea.
4. Thereafter you pleaded guilty for all the counts against you and admitted the following summary of facts presented by the State:

**Admitted Facts – Rajneel Chaudary**

The following facts are agreed by Defendant 1 under the provisions of Section 124 and Section 135 of Criminal Procedure Decree No. 42 of 2009.

1. Rajneel Chaudary, the first defendant, was a University of the South Pacific (USP) in 2013 during the period of the offending.
2. The First Defendant had a Bank of South Pacific (BSP) account number 7020429 in 2013.\

3. The First Defendant became acquainted with the Accomplice during high school and the two were friends.
4. The First Defendant was also acquainted with Arti Singh in 2013. Arti Singh had a bank account number 9694919 with BSP.
5. Arti Singh provided her bank details to First Defendant after she was asked to assist him with the transfer of his school fees. Arti Singh was asked by First Defendant to leave her ATM card with USP so that he could use the account to receive and withdraw monies for his school fees. Arti Singh also provided her ATM PIN number to First Defendant. Arti Singh left her ATM card with USP front desk for it to be picked by the Accomplice.
6. The Accomplice picked up the ATM card of Arti Singh from USP front desk. The Accomplice was also given the PIN number for the ATM card by the First Defendant.
7. In September 2013, the Accomplice was residing with Sat Narayan in a one bedroom house.
8. Sat Narayan kept his personal belonging which included his bank account details in the one bedroom flat he shared with the Accomplice.
9. Sat Narayan had account number 7378383 with BSP during the time of the offending.
10. Without the knowledge of Sat Narayan, he was registered for internet banking access for the above mentioned bank account of BSP.
11. Sat Narayan discovered that all his monies into his account had been withdrawn after he sought to withdraw monies to pay city rates. Upon enquiry he was informed that all his monies had been withdrawn through the internet banking platform.
12. The table below shows the unauthorized withdrawals through internet banking from Sat Narayan's bank account number 7378383:

Date	Amount	Account transferred to	Holder of account money transferred to
5/12/13	\$1000.00	9694919	Arti Darshana Reddy
5/12/13	\$1000.00	7020429	Rajneel V. Chaudary

6/12/13	\$1000.00	7020429	Rajneel V. Chaudary
6/12/13	\$1000.00	9694919	Arti Darshana Reddy
7/12/13	\$500.00	7020429	Rajneel V. Chaudary
7/12/13	\$1000.00	9694919	Arti Darshana Reddy
14/12/13	\$1000.00	9694919	Arti Darshana Reddy
14/12/13	\$1000.00	7020429	Rajneel V. Chaudary
14/12/13	\$1000.00	9694919	Arti Darshana Reddy
16/12/13	\$1000.00	9694919	Arti Darshana Reddy

#### COUNT 1

13. Between 5<sup>th</sup> December 2013 to 15<sup>th</sup> December 2013, First Defendant's bank account number 7020429 received a total of \$4500.00 from Sat Narayan's bank account. The said sum of \$4500.00 were obtained through unauthorized withdrawals fraudulently done through the internet banking platform. At the time of receiving the monies, the First Defendant was aware that he was not entitled to receive the said \$4500.00 into his account and the money was not legitimately obtained. The First Defendant was therefore aware that the \$4500.00 was from an unlawful activity.

#### COUNT 3

14. Between 5<sup>th</sup> December 2013 to 15<sup>th</sup> December 2013, Arti Singh's bank account number 969919 received a total of \$6000.00 from Sat Narayan's bank account. The said sum of

\$6000.00 were unauthorized withdrawals fraudulently done by the internet banking platform. At the time of the withdrawal's Arti Singh had been asked by First Defendant to give her ATM card to the First Defendant. The First Defendant asked his accomplice to pick up the said ATM Card and also provided the PIN number so that the accomplice could withdraw from the account. The Accomplice between 5<sup>th</sup> December 2013 to 19 December 2013 withdrew the \$6000.00 transferred into Arti Singh's account. The said sum money was then used up.

15. At that time of receipt of the monies into Arti Singh's account and the subsequent withdrawals, the First Defendant was aware that he was not entitled to receive the said \$6000.00 and the money was not legitimately obtained. The First Defendant were therefore aware that the \$6000.00 was from an unlawful activity.

**COUNT 4**

16. The First Defendant was acquainted with Deo Chand in 2013. The First Defendant and his family were intending to buy Deo Chand's land. Deo Chand had also lent \$500.00 to the First Defendant and his elder brother. To repay the loan the First Defendant asked for Deo Chand's account number in order to deposit the money into Deo Chand's bank account. Deo Chand informed the First Defendant that his bank account number was 6005468 with BSP. The First Defendant thereby obtained the bank details to Deo Chand.
17. The First Defendant then registered for internet banking with BSP by pretending to be Deo Chand.
18. Between 19<sup>th</sup> December 2013 to 21 December 2013 Deo Chand's bank account number 6005468 with BSP had unauthorized transfer made from it through the internet banking platform.
19. The table below shows the unauthorized withdrawals through internet banking platform from Deo Chand's bank account number 6005468:

Date	Amount	Account transferred to	Holder of account money transferred to
19/12/13	\$10.00	9694919	Arti Darshana

			Singh
19/12/13	\$4000.00	9694919	Arti Darshana Singh
21/12/13	\$430.00	9694919	Arti Darshana Singh

20. At the time of withdrawal's Arti Singh had been asked by Rajneel Singh to give her ATM card to the said First Defendant. First Defendant asked the Accomplice to pick up the said ATM card. The Accomplice was also given the PIN Number for the account to allow the Accomplice to withdraw the monies transferred into Arti Singhi's bank account. The Accomplice between 19<sup>th</sup> December 2013 to 21<sup>st</sup> December 2013 withdrew the \$4,440.00 transferred into Arti Singh's account. The said sum of money was then used up.
21. At the time of receipt of the monies into Arti Singh's account and the subsequent withdrawals, the First Defendant was aware that he was not entitled to the receive the said \$4,400.00 and the money was not legitimately obtained. The First Defendant was therefore aware that the \$4,400.00 was from an unlawful activity.
22. The First Defendant was caution interviewed and the same was ruled admissible by this Court. The Defendant made confessions and his interview is annexed hereto.
5. I am satisfied that your plea was made on your own free will after fully understanding the legal consequences and therefore convict you for these 3 counts.
6. The maximum penalty for Money Laundering is 20 years imprisonment or a fine of \$120,000 or both.
7. In State v Singh [2015] FJHC 785; HAC250.2014 (19 October 2015) his Lordship Justice Wengappuli said :
- "The maximum penalty for money laundering is a fine of \$ 120,000 and /or a term of imprisonment of 20 years. In State v Robin Shyam[2013] FJHC529 and State v Stephens [2012] FJHC 1010 the tariff for offence of money laundering was accepted as range of imprisonment between 5 years and 12 years."

8. In Laisiasa Koroivuki v the State ( Criminal Appeal AAU 0018 of 2010)the Fiji Court of Appeal discussed the guiding principles for determining the starting point in sentencing and observed :
- "In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".
9. Therefore considering the objective seriousness, I select 07 years as the starting point for each count.
10. In UK Sentencing Guidelines of 2014 for Fraud, Bribery and Money Laundering Offences the following are identified as aggravating factors :
- a. Attempts to conceal/dispose of evidence;
  - b. Established evidence of community/wider impact;
  - c. Failure to comply with current court orders;
  - d. Offence committed on licence;
  - e. Offences taken into consideration;
  - f. Failure to respond to warnings about behavior;
  - g. Offences committed across borders;
  - h. Blame wrongly placed on others;
  - i. Damage to third party for example loss of employment to legitimate employees.
11. When sentencing a court in Fiji can consider the above factors and any other grounds that would aggravate the offence.
12. Based on the admitted facts, I consider following as aggravating factors in this case:
- a. You planned these offences through electronic fraud. This was well planned by you and used your friend account to conceal your activities. ;

- b. You used your friend, Arti Dharshana Reddy's account for some of these transactions. She trusted you and gave her ATM card and access to her account which you used for this criminal enterprise. By doing these you breached her trust.
13. For these aggravating factors I add 05 years to reach 12 years imprisonment.
14. Again I turn in to the UK Sentencing Guidelines of 2014 for Fraud, Bribery and Money Laundering Offences which categorized various mitigating factors and they are :
- a. No previous convictions ;
  - b. no relevant/recent convictions;
  - c. Remorse;
  - d. Little or no prospect of success;
  - e. Good character and/or exemplary conduct;
  - f. Serious medical conditions requiring urgent, intensive or long-term treatment;
  - g. Age and/or lack of maturity where it affects the responsibility of the offender;
  - h. Lapse of time since apprehension where this does not arise from the conduct of the offender;
  - i. Mental disorder or learning disability;
  - j. Sole or primary carer for dependent relatives;
  - k. Offender co-operated with investigation, made early admissions and/or voluntarily reported offending.
15. In mitigation the learned defence counsel submitted the following mitigating factors:
- a. 27 years old;
  - b. First offender;
  - c. Sole bread winner of the family;
  - d. Made some restitution;
  - e. Co-operated with the police;
  - f. Saved the court time and resources by pleading guilty early;
  - g. Sincerely remorseful and seeking forgiveness.
16. From these mitigating factors, I do not think you can be given credit for co-operating with the police. You were disputing about the confession and this court even had to

- conduct a voir-dire hearing for that. As for saving the court time and resources that would be considered separately. For other mitigating factors I deduct 03 years to reach 09 years imprisonment.
17. It has been a practice by a sentencing court to consider guilty plea separately and give an appropriate discount (**Naikelekevesi v The State** Criminal Appeal No AAU 0061 of 2007).
  18. Further in UK Guilty Plea guidelines of 2007 it has been held that when an accused pleaded guilty at the first available opportunity the reduction is 1/3 and after a trial date is set 1/4 recommended. But when an accused pleaded guilty at the door of the court or after the trial has started he maybe entitle for only 1/10 discount.
  19. But in **Posate Rainima v The State** , Criminal Appeal No AAU 0022 of 2012 his Lordship Justice Madigan said a plea during trial after an accused has heard unshakeable evidence of a victim/complainant or after an inculpatory caution interview has been admitted into evidence is not deserving of any discount whatsoever.
  20. In this case you pleaded guilty only on the day of the trial proper. The prosecution was ready with the witnesses as well as this court. Even though according to **Posate Rainima v The State**( supra) you do not deserve any discount, considering saving time of this court even on the last minute ,I am prepared to give some credit for you. Hence I deduct 01 year to reach 08 years imprisonment. Considering totality principle these are order to be served concurrent.
  21. During the hearing it was shown that this was the first internet bank fraud in this country. You used internet banking to transfer funds from various BSP accounts to your account and also to your friend account without the consent of lawful account holders. Wider implications of your offending to the society cannot be ignored by this court. This has not only compromised the security of banks but also the confidence of the general public to the financial institutions. Even though the victims were restituted by the bank, it has to suffer substantial loss because of your action. Being a USP student who is completing the Bachelor of Commerce you had a bright future, but it appears that you used your knowledge to this criminal enterprise. Hence the sentence passed on this case

would need to reflect the disapproval of your behavior as well as to deter people from committing these offences in future.

22. **RAJNEEL CHAUDARY**, for these 3 counts of Money Laundering contrary to section 69(2) and (3) (b) of the Proceeds of Crime (Amendment) Act No 07 of 2005, I sentenced you to 08 years imprisonment with a non-parole period of 06 years.

23. 28 days to appeal.



  
Shageeth Somaratne

Resident Magistrate