

IN THE HIGH COURT OF FIJ
AT SUVA
CRIMINAL JURISDICTION

Criminal Appeal No. HAC 042 /2009

BETWEEN : **STATE**
Appellant

AND : **1. DEEPAK RAJNEEL KAPOOR and**
2. KRISHNEEL KHANAIYA BHOLA NATH
Respondent

BEFORE : **Mr. Justice P. K. Madigan**

COUNSEL : **Ms N. Tikoisuva for State**
Ms. N. Nawasaitoga (Legal Aid Commission) for first
Accused
2nd Accused in Person

Date of Hearing : **12, 13 & 14 March 2012**

Date of Judgment : **16 March 2012**

Date of Sentencing : **10 April 2012**

SENTENCE

1. The two accused were charged with the following offences:

COUNT ONE

Statement of Offence

LARCENY BY SERVANT: Contrary to Section 274(a) of the Penal Code, Cap 17.

Particulars of Offence

DEEPAK RAJNEEL KAPOOR in between the 7th and 8th day of June 2007 at Suva in the Central Division being an employee of Public Trustee Corporation Limited stole the sum of \$9,063.02 belonging to one **SATISH CHAND LAL**.

COUNT TWO

Statement of Offence

LARCENY BY SERVANT: Contrary to Section 274(a) of the Penal Code, Cap 17.

Particulars of Offence

DEEPAK RAJNEEL KAPOOR in between the 1st and 3rd day of October 2007 at Suva in the Central Division being an employee of Public Trustees Corporation Limited stole the sum of \$28,720.21 belonging to one **ARISHMA SHARMA**.

COUNT THREE

Statement of Offence

LARCENY BY SERVANT: Contrary to section 274(a) of the Penal Code, Cap 17.

Particulars of Offence

DEEPAK RAJNEEL KAPOOR in between the 19th and 31st day of October 2007 at Suva in the Central Division being an employee of Public Trustees Corporation Limited stole the sum of \$14,824.04 belonging to one **SUMEET PRASAD**.

COUNT FOUR

Statement of Offence

LARCENY BY SERVANT: Contrary to section 274(a) of the Penal Code, Cap 17.

Particulars of the Offence

DEEPAK RAJNEEL KAPOOR in between the 1st and 13th day of November 2007 at Suva in the Central Division being an employee of Public Trustees Corporation Limited stole the sum of \$3,338.63 belonging to one **ARISHMA SHARMA**.

COUNT FIVE

Statement of Offence

LARCENY BY SERVANT: Contrary to section 274(a) of the Penal Code, Cap 17.

Particulars of the Offence

DEEPAK RAJNEEL KAPOOR in between the 1st and 13th day of November 2007 at Suva in the Central Division being an employee of Public Trustees Corporation Limited stole the sum of \$32,061.04 belonging to one **ASHMEETA SHARMA**.

COUNT SIX

Statement of Offence

MONEY LAUNDERING: Contrary to section 69(2)-(3)(a)(b) of the Proceeds of Crime Act 27 of 1997.

Particulars of the Offence

DEEPAK RAJNEEL KAPOOR in between the 1st day of June and 13th day of November 2007 at Suva in the Central Division engaged directly in a transaction involving \$88,006.94 that were proceeds of crime knowing or ought to have reasonably to know that the monies were derived directly or indirectly from unlawful activities.

COUNT SEVEN

Statement of Offence

FORGERY: Contrary to Section 335(2) of the Penal Code, Cap 17.

Particulars of the Offence

KRISHNEEL KHANAIYA BHOLA NATH between the 19th and 31st day of October 2007 at Suva in the Central Division, with intent to defraud the Public Trustee Corporation Limited forged the signature of **Sumeet Prasad** on the application form for Moneyzone Account of Colonial Bank.

COUNT EIGHT

Statement of Offence

UTTERING FORGED DOCUMENT: Contrary to Section 343(1) of the Penal Code, Cap 17.

Particulars of the Offence

KRISHNEEL KHANAIYA BHOLA NATH between the 19th and 31st day of October 2007 at Suva in the Central Division, knowingly and fraudulently uttered an application for Moneyzone Account at Colonial National Bank under the name of **Sumeet Prasad** knowing the same to be forged.

COUNT NINE

Statement of Offence

OBTAINING MONEY ON FORGED DOCUMENT: Contrary to Section 345(a) of the Penal Code, Cap 17.

Particulars of the Offence

KRISHNEEL KHANAIYA BHOLA NATH between the 19th and 31st day of October 2007 at Suva in the Central Division obtained \$14,824.04 by virtue of a forged instrument namely a Westpac Banking Corporation cheque numbered 001072 on the account numbered 9801511305 belonging to the Fiji Public Trustee Corporation Limited.

COUNT TEN

Statement of Offence

FORGERY: Contrary to Section 335(2) of the Penal Code, Cap 17.

Particulars of the Offence

KRISHNEEL KHANAIYA BHOLA NATH between the 7th and 8th day of June 2007 at Suva in the Central Division, with intent to defraud the Public Trustees Corporation Limited forged the signature of Satish Chand Lal on the application form for Moneyzone Account of Colonial National Bank.

COUNT ELEVEN

Statement of Offence

UTTERING FORGED DOCUMENT: Contrary to Section 343(1) of the Penal Code, Cap 17.

Particulars of the Offence

KRISHNEEL KHANAIYA BHOLA NATH between the 7th and 8th day of June 2007 at Suva in the Central Division, knowingly and fraudulently uttered an application for Moneyzone Account at Colonial National Bank under the name of Satish Chand Lal knowing the same to be forged.

COUNT TWELVE

Statement of Offence

OBTAINING MONEY ON FORGED DOCUMENT: Contrary to Section 345(a) of the Penal Code, Cap 17.

Particulars of the Offence

KRISHNEEL KHANAIYA BHOLA NATH between the 19th and 31st day of October 2007 at Suva in the Central Division obtained \$9, 063.02 by virtue of a forged instrument namely a Westpac Banking Corporation cheque numbered 000312 on the account numbered 9801511305 belonging to the Fiji Public Trustee Corporation Limited.

COUNT THIRTEEN

Statement of Offence

MONEY LAUNDERING: Contrary to Section 69(2)-(3)(a)(b) of the Proceeds of Crime Act 27 of 1997.

Particulars of Offence

KRISHNEEL KHANAIYA BHOLA NATH between the 1st day of June and 31st day of October 2007 at Suva in the Central Division engaged directly in a transaction involving \$23,887.06 that were proceeds of crime knowing or ought to have reasonably to know that the monies derived or indirectly from unlawful activities.

2. The first accused entered pleas of guilty to the counts he faced (Counts 1 to 6) on the 2nd March 2012 before commencement of trial, while after trial the 2nd accused was convicted of Counts 7,8,10 and 11.
3. After admitting relevant facts, the first accused was found guilty and convicted of Counts One to Six inclusive.

FACTS

4. The first accused at all material times was in the employment of the Fiji Public Trustees Corporation Limited as a legal clerk. Included in his tasks was to look after trust files and to deal with beneficiaries awaiting payment of funds held in trust for them. He fraudulently prepared documents claiming rightful disbursement of trust funds to Satish Chand Lal, Ashmeeta Sharma and Sumeet Prasad. Acting on these false documents, the Public Trustees Office issued cheques to these beneficiaries in the sum of \$9063.02, \$28,720.21 and \$14,824.04 respectively. The first accused forged the signatures of these three beneficiaries in accepting the cheques.
5. At a later stage he again obtained cheques for \$3,338.63 and \$32,061.04 being payments due to Ashmeeta Sharma by once more forging documents authorizing the paying out of the monies and forging the signature of Ashmeeta Sharma.
6. He later by fraudulent means, involving the second accused, banked those funds into accounts to which he has access, and withdraw the money.
7. The second accused (but not the first for some reason) was charged with opening accounts into which these ill gotten gains could be deposited. On instructions from the first accused and in his presence, the second accused forged bank application forms in the names of Sumeet Prasad and Satish Chand Lal and presented these to the Colonial National Bank to open the accounts.
8. By means of this fraudulent activity, the first accused obtained a total of \$88,006.94 which he deposited into his personal accounts. The second accused received a few hundred dollars as a reward from the first accused.

MITIGATION

9. Counsel for the first accused by way of comprehensive written mitigation asks for leniency on behalf of her young client who has a wife and child to support. She submits that the first accused is remorseful and that he has already learned his lesson. He pleaded guilty and cooperated with the Police. She submits that he had no security of tenure at the Public Trustee Office and he was not earning enough to sustain his livelihood.
10. He is 29 years of age, married and had studied automotive engineering at the Fiji National University.
11. The unrepresented second accused showed sincere remorse before the Court. He claimed to have no intention to defraud anybody but was merely assisting his "friend" the first accused when asked to help open accounts. He called his mother and defacto wife as character witnesses in his mitigation who both attested to his generosity and desire to help when called upon.

12. He is 23 years old, living with his girlfriend and her two young children and he takes care of his elderly mother. He claims to have no idea whatsoever that his co-accused had nefarious intentions when opening the bank accounts.

ANALYSIS

13. The first accused is convicted of stealing \$88,000 from three beneficiaries of the Fiji Public Trustee Corporation. Although the summary of facts which he has admitted spell out the fraudulent manner in which he came by those funds, he does not surprisingly face any charges of fraud or forgery: nor does he face any joint charge with the second accused in forging bank application forms to open accounts to deposit the funds (as he should have been). He having pleaded guilty to theft alone for Counts One to Five, he must be sentenced for theft alone and not for fraud or forgery (which are charges he should have faced).
14. The tariff sentence for simple larceny on first conviction is a term of imprisonment of two to nine months (see Jona Saukilagi; HAC 21 of 2004 Shameem, J) however longer sentences have been upheld for larceny of large amounts of money. And as this Court said in Salendra Sen Sinha (HAC 15/2009 L) pre-meditated theft of charges belonging to the Government and representing money destined for worthy recipients interferes with Government to citizen financial transactions which is an aggravating feature.
15. The money laundering offence (Count 6) to which the first accused has pleaded guilty is not strictly money laundering at all, but the accused had admitted facts that aver that he attempted to conceal the proceeds of crime. He will therefore be sentenced accordingly. Money laundering is a very serious offence which should in itself attract stiff sentences of eight to twelve years but when charged with other offences, the sentence for money laundering must be based on the seriousness of the ancillary offences. (O'Keefe (2007) AAU 0029/07).
16. It is ironical that the second accused has been convicted of much more serious charges than the first accused (and charges that the first accused should have had to answer to) when his role in the enterprise is comparatively minor. He was used by the first accused perhaps as an innocent dupe, but more probably as an unsophisticated, unaware follower. Although he must have known that to assume a false identity on banking documents was wrong, I am sure he was not privy to the first accused's grand scheme. Nor is there any evidence before the Court that the second accused received any of the stolen money. The few hundred dollars reward he got was given before the stolen funds were liquidated.
17. The Supreme Court in Vakalalabure (2006) FJSC 8 said this:
- “It is fundamental principle of our criminal law, inherited from England, that a person must not be punished except for offences for which he has been tried and convicted. It is a necessary corollary of this principle that a convicted person must not be sentenced for uncharged offences or matters of aggravation”. (underlining mine)
18. In sentencing the first accused for the larceny offences, I take as a starting point the top end of the tariff band being twelve months imprisonment. I add to that a further twelve months imprisonment for the aggravating feature that the cheques stolen were Government property due to legitimate and needy beneficiaries. From that interim total I deduct eight months for his early plea of guilty meaning that the first accused will serve a term of imprisonment of sixteen months for each of the larceny by servant convictions.

19. For the money laundering offence, I am constrained by the decision of the Court of Appeal in O'Keefe and the sentence I pass is one of sixteen months.
20. The sentences for each of the larceny offences shall run concurrently with each other but the sentence for the money laundering will run twelve months concurrently with the larceny and four months consecutive to the larceny offences.
21. The first accused has a clear record and he is given three months credit to recognize that mitigating feature. The total term of imprisonment for the first accused is seventeen months imprisonment. He will serve a minimum term of two years imprisonment.
22. Although the first accused is a first offender, his actions were a serious breach of trust of his employer – the offences were motivated by greed and were committed to the expense and inconvenience of the rightful beneficiaries of the monies. As a consequence, suspension of the sentence in whole or in part is not appropriate.
23. The second accused stands to be sentenced for two forgery offences and two uttering offences. As the Court said in Anand Kumar Prasad HAC 24/2012L, sentences for forgery should now be between three years and six years, the bottom of the range to be reserved for cases where there is not high financial gain, where the accused is not a professional, where there is no evidence of sophisticated offending with a high degree of planning. This accused fits nearly every one of those criteria and so I take a starting point for each forgery offence of three years. For his youth and clear record, I deduct one year resulting in a term of imprisonment of two years. That will be the term for each of the forgery offences, Count 7 and 10 and the terms will be served concurrently. For each of the uttering offences, I also sentence him to two terms of two years each, to be served concurrently with each other and concurrently to the forgery offences, making a total term of imprisonment of two years.
24. Given that there was no breach of trust in respect of the second accused, and that he gained just token reward money for his efforts, this is a sentence suitable for suspension and I do so suspend it for a period of two years.
25. A suspended term of imprisonment is explained.
26. Before leaving the sentence, the Court wishes to note how unfair the drafting of the information is in this case. The obvious ring leader and driving force behind the scheme was charged with 5 counts of larceny and one of money laundering; while the “innocent dupe” faced far more serious counts of forgery, uttering and money laundering. The State ran the case against the second accused as one of joint enterprise with the first accused, yet the first accused was never charged with those offences. Such disparity in the laying of charges should be avoided in future. The first accused was not charged with forgery or deception offences, which the facts suggest would have been highly apposite.

Paul K. Madigan
JUDGE

At Suva
10th April 2012