

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL APPEAL NO. AAU0013 OF 2003S
(High Court Misc. Action No. 005 of 2003S)

BETWEEN:

PREM CHAND

Applicant

AND:

THE STATE

Respondent

APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION AND SENTENCE

[1] On 30 April 1997 in the Magistrates' Court at Suva the applicant was found guilty of one count of official corruption for which he was sentenced to 4 years imprisonment, one count of forgery for which he was sentenced to 12 months imprisonment cumulative on the sentence of four years, and one count of uttering a forged document for which he was sentenced to 12 months concurrently with the first two sentences, a total of 5 years imprisonment.

[2] The hearing of these charges began on 16 August 1995 when the applicant was represented by counsel. After hearing one prosecution witness it was adjourned until 6 August 1996 for mention. On that day the Magistrate advised the parties that the trial would be completed on 25, 26 and 27 November, 1996 and warned the applicant that if he did not appear he would be deemed to have consented to the trial in his absence in accordance with s 11 (12) of the 1990 Constitution. He was required to surrender his passport on 13 August 1996. On that day he failed to appear and a bench warrant was issued for his arrest.

[3] When he appeared before the court on the warrant on 19 August 1996, the court ordered that he refrain from leaving the country until the end of the trial. When the trial commenced on 25 November 1996, the applicant did not appear, for the good reason that he had absconded to New Zealand. The trial continued in his absence.

[4] The applicant returned from New Zealand on 22 February 2001 when he was extradited from that country to Fiji.

[5] The applicant applied to the High Court for leave to appeal out of time. The application was heard on 6 and 20 June 2001. By a carefully reasoned judgment delivered on 8 November 2001 Byrne J held that the application for leave had no merit and must be dismissed.

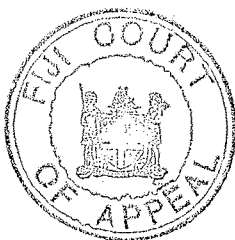
[6] The applicant applied to this court for leave to appeal against the decision of the High Court. That application came before Eichelbaum JA on 22 January 2002. He concluded that there was no underlying substance to indicate any basis for arguing that the High Court judge's exercise of discretion could be upset. Accordingly Eichelbaum JA concluded that the application was frivolous or vexatious within the meaning of s 35 (2) of the Court of Appeal Act. The application was dismissed.

[7] The applicant filed a further application for leave to appeal to the High Court that was dismissed by Singh J on 12th June, 2002. Undeterred, the applicant filed yet a further application for leave to appeal to the High Court. That application was dismissed on 18 February 2003 by Gates J on the grounds that the issues raised in the application had already been dealt with by the High Court.

[8] On 15 March 2003, the applicant, by a letter addressed to the Registrar of this court, again sought leave to appeal against his convictions and sentences in the Magistrates' Court. This application cannot possibly succeed. This court has already dismissed the applicant's application for leave to appeal the refusal of his application for leave to appeal to the High Court. No grounds have been advanced that could justify this court considering the issue yet again.

[9] The application for leave to appeal is vexatious and frivolous and is bound to fail. In accordance with s 35 (2) of the Court of Appeal Act as amended, I dismiss the application for leave to appeal.

Dated at Suva this 20th day of November 2003



A handwritten signature in cursive script, which appears to read "Tompkins".

Tompkins JA