

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL MISCELLANEOUS NO. HAM 054 OF 2009S

MONIKA MONITA ARORA

VS

THE STATE

Counsels : Mr. D. Sharma and Mr. P. Sharma for the Accused
Mr. A. Rayawa and Ms. A. Lomani for the State


Hearings : 22nd, 25th, 26th February, 2nd, 3rd and 4th March 2010

Ruling : 8th March 2010

RULING

1. This is an application by Ms. Monika Monita Arora for an order *“that the charge laid against her in Criminal Case No. HAC 125 of 2007 be permanently stayed upon the grounds that it would be an abuse of process for the prosecution to continue”*. She filed an affidavit in support on 6th August 2009, and in paragraphs 6 and 7 thereof, she relied also on the three submissions filed by her counsel on 3rd April, 7th April and 25th June 2009.

2. The State responded with five affidavits from Mr. Kumar Shankar, Navin Sen, Veeral Patel, Vijendra Singh and Mr. Hemendra Kumar Nagin, filed on 21st September 2009. On 13th November 2009, Mrs. Arora replied with five affidavits in reply to the above affidavits. On 22nd February, 2010, Mr. Kumar Shankar was cross-examined by Mrs. Arora's counsel, and re-examined by the State. On 25th February, 2010, Navin Sen was cross-examined by defence counsels and re-examined by the State. On 26th February and 2nd March 2010, Mr. Hemendra Nagin was cross-examined by defence counsel, and re-examined by the State. At the end of Mr. Nagin's evidence, the applicant closed her case.

3. On 2nd, 3rd and 4th March 2010, the State cross-examined Mrs. Arora on her affidavits. While being cross-examined on the transcript of the 17th May 2007 meeting in Sherani & Company's boardroom, she alleged that the transcript was not complete. She said, the transcript was tampered with. The transcript was part of her evidence, that ^{is} ~~its~~, it was annexure "H" in her 3rd April 2009 submission, which she included in her 6th August 2009 affidavit in support, see paragraphs 6 and 7 thereof. 

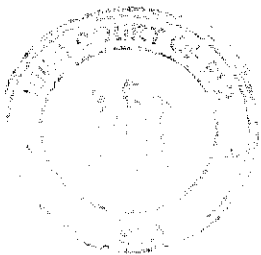
4. The State then applied to have the digital recording of the 17th May 2007 meeting tendered, through Mrs. Arora, as evidence in this matter. They are of the view that tendering the same would disprove Mrs. Arora's view that the transcript was tampered with. When Mr. Nagin was giving evidence, the State wanted to tender the digital recording as part of its evidence. However, the court rejected that since, the transcript of the meeting was already in Mrs. Arora's affidavit. However, Mrs. Arora has now given evidence, while being cross-examined, that

the transcript was tampered with. When Mr. Nagin was giving evidence on the digital recording of the 17th May 2007 meeting, he said, he downloaded the recording into his computer. Later his secretary transcribed the recording of the same. It was not put directly to him that he and his secretary tampered with the recording and transcribing of the records of the 17th May 2007 meeting. Mrs. Arora's evidence that the transcript was tampered with, indirectly cast a slur on Mr. Nagin's conduct in recording and having the same transcribed.

5. This stay application is really about the conduct of Mr. Nagin, when he recorded the contents of the meeting on 17th May 2007, which contained Mrs. Arora's alleged confession. Mrs. Arora, by saying that, the transcript was tampered with, is really attacking Mr. Nagin's character not only as a witness, but also as a professional legal practitioner. It is therefore essential in the interest of justice to recall Mr. Nagin, to give evidence, on whether or not, he tampered with the recording and transcribing of the record of the 17th May 2007 meeting: see Archibold, *"Pleading, Evidence and Practice in Criminal Cases,"* 42ed., Sweet and Maxwell, page 464, paragraph 4 – 383. I will also allow the State to tender the digital recording, not through Mrs. Arora, but through Mr. Nagin, when he is recalled as a witness.
6. The objection by Mrs. Arora's solicitors is overruled. If anything, if Mrs. Arora's allegation that the recording and transcribing of the 17th May 2007 meeting was tampered with, as shown and proven by the yet to be tendered digital recording, that would be a strong factor in either

granting a stay or ruling the 17th May 2007 meeting transcript inadmissible.

7. In any event, in *The State v Sat Narayan Pal*, Criminal Case No. HAC 002 of 2004, the authority the applicant is relying on for a stay, His Lordship Justice A Gates (as he then was) listened to the secret tape recording Mr. Ajai Punja and the accused, before deciding on the matter. His Lordship said, "...paragraph 20. Listening to the tone of the speakers on the tape, and reading the transcript, which could still be read another way, one could reach a conclusion that the accused was confidently in control of the conversation. He made the running..." If His Lordship listened to the secret tape recording in the *State v Sat Narayan Pal's* case, to decide on the stay application in that case, I see no logical reason why I should not do the same in this case.
8. The State will continue to cross-examine Mrs. Arora on her affidavits, after which Mr. Nagin will be recalled as a witness, wherein he will be confronted directly with Mrs. Arora's evidence that the recording of the 17th May was tampered with. The State will be allowed to tender the digital recording through Mr. Nagin, not through Mrs. Arora. I order so accordingly.



AT Suva
8th February 2010

A handwritten signature in black ink, appearing to be "Salesi Temo".

Salesi Temo
ACTING JUDGE