

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO.: HAM 02 OF 2014

BETWEEN: **VICKY KRISHNA MUDALIAR** *Appellant*

AND: **STATE** *Respondent*

Counsels : **Appellant in person**
Mr. S. Babitu for the Respondent

Date of Hearing: **26 March 2014**

Date of Judgment: **27 March 2014**

JUDGMENT

1. The appellant was charged before the Nadi Magistrate Court with six counts of Theft contrary to Section 291 (1) of the Crimes Decree No. 44 of 2009.
2. He had pleaded guilty for all six counts and admitted the summary of facts.
3. The summary of facts are as follows:

The appellant was employed as a supervisor at Yees Cold Storage. Amongst other duties, appellant was performing the duties of requesting stocks and money, banking and balancing the till.

The complainant who is the operating manager was informed by the staff that the appellant was stealing cash from the company using the 'return function' in the 'point of sale machine' from the computer system.

Appellant had used this function and made false entries with actual prices of the items also being changed and stole equivalent amounts from the till.

This was detected by the cashiers and supported by CCTV footage. Appellant was arrested and had admitted the offences in the caution interview.

4. Appellant was convicted and sentenced to 24 months imprisonment as the aggregate sentence for all the charges. The learned Magistrate had acted under Section 17 of the Sentencing and Penalties Decree.
5. The learned Magistrate had considered relevant guide line Judgments and selected a correct starting point of 30 months. He had added 18 months for the aggravating factors including clear breach of trust and planned nature of the offending. Six months were deducted from the sentence for the personal circumstances and another 6 months for being 1st offender. For the guilty plea 1/3 of the sentence, that is 12 months were deducted arriving at final sentence of 24 months.
6. Then the learned Magistrate had considered the suspension of the sentence. After careful consideration, a partial suspension of 10 months imprisonment for 2 years was ordered. The appellant had to serve 14 months imprisonment.
7. Acting under Section 49 (1) of the Sentencing and Penalties Decree, appellant was ordered to pay sum of \$9,305.40 as restitution to the complainant. In default of payment, the complainant may enforce this restitution order in accordance to Section 50 (1) of the Sentencing and Penalties Decree.
8. This is an appeal against the sentence filed within time.
9. The grounds of appeal against the sentence are:
 - (i) That the sentence is harsh and excessive.
 - (ii) That the sentence is double jeopardy and if appellant failed to retribute, he will be tried again.
10. Both parties have filed written submissions. At the time of hearing the appellant submitted in writing that he is ready to serve full sentence of 24 months and that he has no means of restitution.
11. This background warrants this Court to exercise its powers in terms of Section 256 (2) (a) of the Criminal Procedure Decree to vary the sentence ordered by the learned Magistrate. The restitution order is set aside. The partial suspension of the sentence is set aside. The appellant to serve 24 months of the sentence from 12.12.2013.
12. Appeal is allowed. Sentence is varied.

Sudharshana De Silva
JUDGE

**At Lautoka
27th March 2014**

**Solicitors : Appellant in Person
Office of the Director of Public Prosecution for Respondent**