

IN THE HIGH COURT OF FIJI  
AT LABASA  
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS NO: HAM 027 OF 2014

BETWEEN: DEO CHAND

APPLICANT

AND: STATE

RESPONDENT

COUNSEL: Applicant in Person  
Ms. P. Low for the Respondent

Date of Hearing: 23/06/2014

Date of Ruling: 26/06/2014

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**JUDGMENT**

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[01] The Applicant, Deo Chand appearing in person, is seeking Leave to Appeal Out of Time against his sentence in Criminal case No: CF/719/2012. The sentence was imposed on 24<sup>th</sup> April, 2013 by learned Magistrate Labasa.

- [02] The Applicant was charged for one count of Burglary and one count of Theft. He had pleaded guilty to the charges and admitted the summary of facts. He was sentenced to 11 months for Burglary and 9 months for Theft. The learned magistrate ordered the sentence to run concurrent to each other. The magistrate court further ordered that the sentence imposed to run consecutive to the sentence ordered in three other cases. Now he has filed this Application on the ground that the sentence imposed is harsh in comparison to similar cases decided by the court.
- [03] The law with regard to Leave to Appeal out of time is stipulated in section 248 of the Criminal Procedure Decree, 2009. According to the section:

*248(1)-Every appeal shall be in the form of a petition in writing signed by the appellant or the appellant's lawyer, and within 28 days of the decision appealed against-*

- (a) It shall be presented to the Magistrates Court from the decision of which the appeal is lodged;*
  - (b) A copy of the petition shall be filed at the registry of the High Court; and*
  - (c) A copy shall be served on the Director of Public Prosecution or on the Commissioner of the Fiji Independent Commission against Corruption.*
- (2) The Magistrate Court or High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.*
- (3) For the purposes of this section and without prejudice to its generality, "good cause" shall be deemed to include-*
- (a) a case where the appellant's lawyer was not present at the hearing before the Magistrates court, and for that reason requires further time for the preparation of the petition;*
  - (b) any case in which a question of law of unusual difficulty is involved;*
  - (c) a case in which the sanction of the Director of Public Prosecutions or of the Commissioner of the Fiji Independent commission Against Corruption is required by any law;*

*a copy of the record, within reasonable time of applying to the court for these documents.*

- [04] The Applicant had submitted his application dated 31/03/2014 to the Officer-in-Charge, Suva Correctional Centre. The Fiji Correctional Service had forwarded the same to Deputy Registrar, Magistrate Court Labasa on 25/03/2014 and the court had received on 15/04/2014. This Court had received and opened this file on 01/05/2014. All mentioned dates are clearly stamped on the court record.
- [05] It is very clear that the Applicant had filed his application nearly 13 months of his sentence. According to Applicant the circumstances of his incarceration made it impossible for him to access legal advice and he did not have the knowledge to formulate legal grounds for his appeal.
- [06] The Applicant now filed his application through Fiji Correctional Service. He could have done it after passing his sentence by learned Magistrate. But he waited nearly 13 months to file his application. This is a substantial delay and no satisfactory explanation has been offered to explain the substantial delay.
- [07] The proposed appeal grounds submitted by the applicant do not have any merits. The learned magistrate has correctly identified the tariff and passed the sentence after considering aggravating and mitigating circumstances.
- [08] Therefore, considering all I am not allowing the applicant to appeal out of time under section 248 of Criminal Procedure Decree 2009.
- [09] The application Leave to Appeal Out of Time is dismissed.
- [10] The Respondent did not file any submission oral or written in this case.



P Kumararatnam  
**JUDGE**



At Labasa  
26/06/2014