

IN THE HIGH COURT OF FIJI

AT SUVA

[APPELLATE JURISDICTION]

CRIMINAL APPEAL NO. HAA 21 OF 2017

IN THE MATTER of an Appeal from the decision of the Resident Magistrate Suva Magistrate's Court in Criminal Case No. 391 of 2015.

BETWEEN : MANJEET SINGH

APPELLANT

AND : STATE

RESPONDENT

Counsel : Mr. A. K. Singh for the Appellant  
Ms. J. Prasad for the Respondent

Dates of Hearing : 9 November 2017, 17 January 2018 and 13 March 2018

Judgment : 26 July 2018

### JUDGMENT

[1] This is an Appeal made by the Appellant against his conviction and sentence imposed by the Magistrate's Court of Suva.

- [2] When this matter was first called in the Magistrate's Court of Suva, on 20 February 2015, the Appellant, together with one Rajneel Chaudary (Appellant in Criminal Appeal No. HAA 20 of 2017), were charged with the following offences:

**FIRST COUNT**

*(Representative)*

***Statement of Offence (a)***

**MONEY LAUNDERING**: Contrary to Section 69(2) (a) – 3(a)-(b) of the Proceeds of Crime Act 27/1997 and Section 25(a) of the Proceeds of Crime (Amendment Act) 7/2005.

***Particulars of Offence (b)***

**RAJNEEL VISHAL CHAUDARY**, between the 5<sup>th</sup> day of December 2013 and the 15<sup>th</sup> of December 2013, at Suva, in the Central Division, engaged indirectly in transactions that involved money, transferred, received and used the total sum of FJD\$4,500.00, from Bank of the South Pacific account number 7378383 belonging to **Sat Narayan**, into account number 7020429, knowingly or ought reasonably to know, that the money was derived, directly or indirectly, from some form of unlawful activity.

**SECOND COUNT**

*(Representative)*

***Statement of Offence (a)***

**MONEY LAUNDERING**: Contrary to Section 69(2) (a) – 3(a)-(b) of the Proceeds of Crime Act 27/1997 and Section 25(a) of the Proceeds of Crime (Amendment Act) 7/2005.

***Particulars of Offence (b)***

**MANJEET SINGH**, between the 5<sup>th</sup> day of December 2013 and the 16<sup>th</sup> of December 2013, at Suva, in the Central Division, engaged indirectly in

transactions that involved money, transferred, received and used the total sum of FJD\$14,102.51, from Bank of the South Pacific account number 7378383 belonging to **Sat Narayan**, into account number 7020429, knowingly or ought reasonably to know, that the money was derived, directly or indirectly, from some form of unlawful activity.

**THIRD COUNT**

*(Representative)*

***Statement of Offence (a)***

**MONEY LAUNDERING**: Contrary to Section 69(2) (a) – 3(a)-(b) of the Proceeds of Crime Act 27/1997 and Section 25(a) of the Proceeds of Crime (Amendment Act) 7/2005.

***Particulars of Offence (b)***

**RAJNEEL VISHAL CHAUDARY** and **MANJEET SINGH**, between the 5<sup>th</sup> day of December 2013 and the 15<sup>th</sup> of December 2013, at Suva, in the Central Division, engaged indirectly in transactions that involved money, transferred, received and used the total sum of FJD\$6,000.00, from Bank of the South Pacific account number 7378383 belonging to **Sat Narayan**, into account number 9694919, knowing or ought reasonably to know, that the money was derived, directly or indirectly from some form or unlawful activity.

**FOURTH COUNT**

*(Representative)*

***Statement of Offence (a)***

**MONEY LAUNDERING**: Contrary to Section 69(2) (a) – 3(a)-(b) of the Proceeds of Crime Act 27/1997 and Section 25(a) of the Proceeds of Crime (Amendment Act) 7/2005.

*Particulars of Offence (b)*

**RAJNEEL VISHAL CHAUDARY** and **MANJEET SINGH**, between the 5<sup>th</sup> day of December 2013 and the 16<sup>th</sup> of December 2013, at Suva, in the Central Division, engaged indirectly in transactions that involved money, transferred, received and used the total sum of FJD\$4,400.00, from Bank of the South Pacific account number 6005468 belonging to **Deo Chand**, into account number 9694919, knowing or ought reasonably to know, that the money was derived, directly or indirectly from some form or unlawful activity.

- [3] The Appellant pleaded not guilty to counts 2, 3 and 4, when he took his plea on 20 February 2015.
- [4] Since the prosecution was relying on the admissibility of the caution interview statement made by the Appellant, the Appellant was granted time to file his voir dire grounds.
- [5] Thereafter, a voir dire hearing in respect of the Appellant and the 1<sup>st</sup> accused, Rajneel Chaudary, was held, commencing on 13 June 2016. The proceedings of the said voir dire hearing is found at pages 17-86 of the Magistrate's Court Record.
- [6] The Learned Magistrate made his voir dire ruling, on 13 October 2016, finding that the State has proved beyond reasonable doubt that the Appellant and the 1<sup>st</sup> accused, Rajneel Chaudary, have made their caution interview statements voluntarily and were not subjected to oppression. Accordingly, he made order that the said caution interview statements are admissible in evidence.
- [7] Thereafter, the matter was fixed for trial from 6-8 March 2017.
- [8] When this matter was called on 6 March 2017, the 1<sup>st</sup> accused, Rajneel Chaudary, had informed Court that he wishes to plead guilty to the charges. The Court record (at page 88) bears testimony to the fact that, on the said day, both the Appellant and the 1<sup>st</sup> accused were duly represented by Counsel.

- [9] Accordingly, the 1<sup>st</sup> accused had pleaded guilty to counts 1, 3 and 4. Later that day, the Summary of Facts had been filed by the State. However, there is nothing on record to indicate as to whether the Learned Magistrate had convicted the 1<sup>st</sup> accused on the same day.
- [10] The trial in respect of the Appellant, had proceeded on 7 March 2017 (Vide pages 89-106 of the Magistrate's Court Record).
- [11] On 8 March 2017, the prosecution made an application to file an Amended Charge Sheet (Vide page 106 of the Magistrate's Court Record). Pursuant to the Learned Magistrate permitting this application, the State filed an Amended Charge Sheet, in respect of both the Appellant and the 1<sup>st</sup> accused, bearing the following charges:

#### **COUNT 1**

##### ***Statement of Offence***

**MONEY LAUNDERING**: Contrary to Section 69(2) (a) and 3(a)-(b) of the Proceeds of Crime Act 27/1997 and Section 25(a) of the Proceeds of Crime (Amendment Act) 7/2005.

##### ***Particulars of Offence***

**RAJNEEL VISHAL CHAUDARY**, between the 5<sup>th</sup> day of December 2013 and the 15<sup>th</sup> of December 2013, at Suva, in the Central Division, engaged indirectly in transactions that involved money, transferred, received and used the total sum of FJD\$4,500.00, from Bank of the South Pacific account number 7378383 belonging to **Sat Narayan**, into account number 7020429, knowingly or ought reasonably to know, that the money was derived, directly or indirectly, from some form of unlawful activity.

#### **COUNT 2**

##### ***Statement of Offence***

**MONEY LAUNDERING**: Contrary to Section 69(2) (a) and 3(a) of the Proceeds of Crime Act 1997.

***Particulars of Offence***

**MANJEET SINGH**, between the 5<sup>th</sup> day of December 2013 and the 16<sup>th</sup> of December 2013, at Suva, in the Central Division, engaged indirectly in transactions that involved money, to the sum of FJD\$14,102.51, from Bank of the South Pacific account number 7378383 belonging to **Sat Narayan**, into account number 6145496, knowingly or ought reasonably to know, that the money was derived, directly or indirectly, from some form of unlawful activity.

**COUNT 3**

***Statement of Offence***

**MONEY LAUNDERING**: Contrary to Section 69(2) (a) and 3(a) of the Proceeds of Crime Act 1997.

***Particulars of Offence***

**RAJNEEL VISHAL CHAUDARY** and **MANJEET SINGH**, between the 5<sup>th</sup> day of December 2013 and the 16<sup>th</sup> of December 2013, at Suva, in the Central Division, engaged indirectly in transactions that involved money, to the total sum of FJD\$6,000.00, from Bank of the South Pacific account number 7378383 belonging to **Sat Narayan**, into account number 9694919, knowing or ought reasonably to know, that the money was derived, directly or indirectly from some form or unlawful activity.

**COUNT 4**

***Statement of Offence***

**MONEY LAUNDERING**: Contrary to Section 69(2) (a) and 3(a) of the Proceeds of Crime Act 1997.

***Particulars of Offence***

**RAJNEEL VISHAL CHAUDARY** and **MANJEET SINGH**, between the 19<sup>th</sup> day of December 2013 and the 21<sup>st</sup> day of December 2013, at Suva, in the Central Division, engaged indirectly in transactions that involved money to the total

sum of FJD\$4,400.00, from Bank of the South Pacific account number 6005468 belonging to **Deo Chand**, into account number 9694919, knowing or ought reasonably to know, that the money was derived, directly or indirectly from some form or unlawful activity.

[12] On a close scrutiny of the Amended Charge Sheet it is revealed that all four charges have been amended compared to the charges that were found in the original Charge Sheet filed in Court, on 20 February 2015. All four charges in the original Charge Sheet were based on the premise that they were 'representative' counts. However, it is clear that the Amended Charge Sheet no longer refers to 'representative' counts.

[13] It is noted from the case record that at the time the State moved to file the said Amended Charge Sheet, the Counsel for the Appellant had objected to the application. However, the Learned Magistrate has recorded as follows:

*"The State is entitled to amend the charge until they close their case. Only issue is if the defence is prejudiced by this amendment. As agreed by the defence, the amendment will change their defence version. Also if they want the witnesses can be recalled again and they can be subject to cross-examination also. Hence, under Section 182(1) the amendment is allowed."*

[14] Pursuant to the Learned Magistrate permitting the amendment the Appellant had taken his plea once again. The Appellant had pleaded not guilty (to counts 2, 3 and 4).

[15] Thereafter, it is recorded that the Appellant does not wish to recall the witnesses again. Accordingly, the prosecution closed its case. The Learned Magistrate had then called for the defence and given the Appellant his rights. The Appellant had opted to remain silent.

[16] On 30 March 2017, the Learned Magistrate had pronounced his Judgment (Vide pages 110-118 of the Magistrate's Court Record), finding the Appellant guilty of all three counts. Accordingly, the Appellant had been convicted of the said three counts.

[17] On the 6 April 2017, the Learned Magistrate passed sentence on the Appellant. For the reasons stated therein, the Appellant was sentenced to 9 years imprisonment with a non-parole period of 7 years.



- [18] Aggrieved by this Order the Appellant filed a Petition of Appeal against his conviction and sentence.
- [19] On 10 May 2017, this Court granted the Appellant leave to file Amended Grounds of Appeal.

**Amended Grounds of Appeal**

[20] The Amended Grounds of Appeal filed by the Appellant is as follows:

1. That the learned Trial Magistrate has erred in law and facts when he allowed prosecution to adduced the caution interview that was unfairly obtained in that:
  - (a) Appellant was held in custody more than 48 hours.
  - (b) His father was not allowed to be present at the interview.
  - (c) That the Caution Statement was never read back to the Appellant.
  - (d) Appellant did not accept the answers that was written and as such he refused to sign the interview.
  - (e) That the Appellant was cross-examined in his caution interview rather than taking his statement.

As a result, there had been a miscarriage of justice.

2. That the charges against the Appellant is bad and duplicity and or was inconsistent with evidence before the Learned Trial Magistrate (MCA 5-7).
3. That the Trial Magistrate erred in law and facts in that he failed to:
  - (a) Consider that Rajneel Vishal Chaudary pleaded guilty on count 1, 3 and 4 of the charges where he accepted transferring the funds to various accounts being the funds of PW2 and PW3.



- (b) That PW2 accepted his funds being the sun of \$12,300.00 was taken out of his account and in Count 1 it was \$4500.00, Count 3 was \$6000.00, being the total sum of \$10,500.00.
- (c) The Charges against the Appellants had funds that were more than \$12,300.00.
- (d) Evidence of PW4 and PW5 who stated that one of the Banks staffs had given bank account and details to Rajneel Vishal Chaudhary.

As a result, there had been a miscarriage of justice.

- 4. That the Trial Magistrate erred in law and facts when he failed to consider that the procedure and system of internet transfer was not proved and or ownership of the two mobile phones or IP addresses were established through which funds were transferred.
- 5. That the Trial Magistrate erred in law and facts when he failed to properly evaluate all the evidence against the Appellant as far as all three charges were concerned.
- 6. That the Trial Magistrate erred in law and facts when he accepted the Facebook entry without proper procedures and or that were reproduced or taped by Police Officers as evidence of Appellant's knowledge of the offence.
- 7. That the Trial Magistrate erred in law and facts when he failed to put the election to the Appellant.
- 8. That there had been a miscarriage of justice when the Prosecuting Officer failed to produce a vital witness who gave account details of the PW2 and PW3 to Rajneel Vishal Chaudhary who pleaded guilty of the offence.
- 9. That the Learned Trial Magistrate erred in law regarding the principal of sentencing or that the sentence had been excessive.

- [21] From the above it is clear that 8 Grounds of Appeal are against the conviction; and the final Ground of Appeal is against the sentence.
- [22] During the hearing of this matter both parties filed written submissions, and also referred to case authorities, which I have had the benefit of perusing.
- [23] During the hearing the Counsel for the Appellant informed Court that the Appellant will not be pursuing Ground 7 in the Grounds of Appeal.

### The Law and Analysis

- [24] Section 246 of the Criminal Procedure Act No. 43 of 2009 ("Criminal Procedure Act") deals with Appeals to the High Court (from the Magistrate's Courts). The Section is reproduced below:

*"(1) Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgement and sentence.*

*(2) No appeal shall lie against an order of acquittal except by, or with the sanction in writing of the Director of Public Prosecutions or of the Commissioner of the Independent Commission Against Corruption.*

*(3) Where any sentence is passed or order made by a Magistrates Court in respect of any person who is not represented by a lawyer, the person shall be informed by the magistrate of the right of appeal at the time when sentence is passed, or the order is made.*

*(4) An appeal to the High Court may be on a matter of fact as well as on a matter of law.*

*(5) The Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public*

*prosecutor, other than a criminal cause or matter instituted and conducted by the Fiji Independent Commission Against Corruption.*

*(6) Without limiting the categories of sentence or order which may be appealed against, an appeal may be brought under this section in respect of any sentence or order of a magistrate's court, including an order for compensation, restitution, forfeiture, disqualification, costs, binding over or other sentencing option or order under the Sentencing and Penalties Decree 2009.*

*(7) An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case, but no right of appeal shall lie until the Magistrates Court has finally determined the guilt of the accused person, unless a right to appeal against any order made prior to such a finding is provided for by any law.*

[25] Section 247 of the Criminal Procedure Act stipulates that *"No appeal shall be allowed in the case of an accused person who has pleaded guilty, and who has been convicted on such plea by a Magistrates Court, except as to the extent, appropriateness or legality of the sentence."*

[26] Section 256 of the Criminal Procedure Act refers to the powers of the High Court during the hearing of an Appeal. Section 256 (2) and (3) provides:

*"(2) The High Court may —*

*(a) confirm, reverse or vary the decision of the Magistrates Court; or*

*(b) remit the matter with the opinion of the High Court to the Magistrates Court;*

*or*

*(c) order a new trial; or*

*(d) order trial by a court of competent jurisdiction; or*

*(e) make such other order in the matter as to it may seem just, and may by such order exercise any power which the Magistrates Court might have exercised; or*

*(f) the High Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.*

*(3) At the hearing of an appeal whether against conviction or against sentence, the High Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the Magistrates Court and pass such other sentence warranted in law (whether more or less severe) in substitution for the sentence as it thinks ought to have been passed."*

[27] In this case the three charges against the Appellant is for the offence of Money Laundering, contrary to Section 69 of the Proceeds of Crime Act No. 27 of 1997 (Proceeds of Crime Act). The said Section has been subsequently amended by virtue of the Proceeds of Crime (Amendment Act) No. 7 of 2005.

[28] Section 69 of the Proceeds of Crime Act, as amended, reads as follows:

69. Money laundering

*(1) In this section:*

*"transaction" includes the receiving, or making, of a gift.*

***(2) A person who after the commencement of this Act, engages in money laundering commits an offence and is liable on conviction, to:***

***(a) if the offender is a natural person - a fine not exceeding \$120,000 or imprisonment for a term not exceeding 20 years, or both; or***

***(b) if the offender is a body corporate - a fine not exceeding \$600,000.***

***(3) A person shall be taken to engage in money laundering if, and only if:***

***(a) the person engages, directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime, or***

***(b) the person receives, possesses, conceals, uses, disposes of or brings into Fiji any money or other property that are proceeds of crime, or,***

***(c) the person converts or transfers money or other property derived directly or indirectly from a serious offence or a foreign serious offence, with the aim of concealing or disguising the illicit origin of that money or other property, or of aiding***

*any person involved in the commission of the offence to evade the legal consequences thereof; or*

*(d) the person conceals or disguises the true nature, origin, location, disposition, movement or ownership of the money or other property derived directly or indirectly from a serious offence or a foreign serious offence; or*

*(e) the person renders assistance to a person falling within paragraph (a), (b), (c), or (d),*

*and the person knows, or ought reasonably to know, that the money or other property is derived or realized, directly or indirectly, from some form of unlawful activity.*

*(4) The offence of money laundering is not predicated on proof of the commission of a serious offence or foreign serious offence.*

*[Emphasis is mine].*

[29] The term "Proceeds of Crime" has been defined to mean:

*(a) proceeds of a serious offence; or*

*(b) any property that is derived or realized, directly or indirectly, by any person from acts or omissions that occurred outside Fiji and would, if the acts or omissions had occurred in Fiji, have constituted a serious offence.*

[30] The Proceeds of Crime Act specifies that a "serious offence" means an offence of which the maximum penalty prescribed by law is death, or imprisonment for not less than 12 months.

[31] In the instant case, it is clear that the charges filed against the Appellant, prior to the amending of the Charge Sheet, were three charges contrary to Section 69(2) (a) and 3(a)-(b) of the Proceeds of Crime Act, as amended.

[32] However, on 8 March 2017, when the prosecution filed the Amended Charge Sheet, the charges against the Appellant were amended to read as three charges contrary to Section 69(2) (a) and 3(a) of the Proceeds of Crime Act, as amended. There was no longer a reference made to Section 3(b) of the Proceeds of Crime Act.

- [33] However, in his Judgment, the Learned Trial Magistrate, has proceeded on the premise that the Appellant stood charged for three counts of Money Laundering contrary to Section 69(2) (a) and 3(a)-(b) of the Proceeds of Crime Act. No reference has been made by the Learned Magistrate to the Amended Charge Sheet, which was filed on 8 March 2017.
- [34] Even while sentencing the Appellant, the Learned Trial Magistrate has acted on the same premise. He states that the Appellant stands convicted for three counts of Money Laundering contrary to Section 69(2) (a) and 3(a)-(b) of the Proceeds of Crime Act. Again he makes no reference to the Amended Charge Sheet or to the amended charges therein, which only makes reference to three counts of Money Laundering contrary to Section 69(2) (a) and 3(a) of the Proceeds of Crime Act, as amended.
- [35] Although, this issue has not been taken up as a specific Ground of Appeal by the Appellant, during the hearing of this matter, the Learned Counsel for the Appellant made extensive submissions on this issue.
- [36] It is my view that this is a fundamental issue. Although not specifically taken up as a Ground of Appeal, it is my opinion that the Appellant is entitled to take up this matter, as it goes to the crux of the case.
- [37] Prior to the Amended Charge Sheet being filed the prosecution were at liberty to prove that the Appellant engaged, directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime **OR** that the Appellant received, possessed, concealed, used, disposed of or brought into Fiji any money or other property that are proceeds of crime. However, in terms of the Amended Charge Sheet the prosecution were bound to establish beyond reasonable doubt that the Appellant engaged, directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime.
- [38] For the reasons stated above, it is my considered opinion that the Learned Magistrate has erred in law when he found the Appellant guilty and convicted him to charges that were no longer applicable. The Learned Magistrate has erred in law by not considering



the charges in the Amended Charge Sheet that was filed by the prosecution, on 8 March 2017, and to which the Appellant pleaded not guilty on the same day. For the same reasons, I am of the opinion that the Learned Magistrate has erred in law in sentencing the Appellant of charges that were no longer applicable. As a result, I find that substantial miscarriage of justice has been caused to the Appellant.

[39] In the circumstances, I set aside the conviction and the sentence imposed by the Learned Magistrate Magistrate's Court of Suva. In terms of Section 256 (2) (c) of the Criminal Procedure Act, I order a new trial to be held against the Appellant in the Magistrate's Court of Suva.

[40] Since I have decided to set aside the conviction and sentence for the reasons stated above, I find it inexpedient to deal with the other grounds of appeal against conviction and sentence.

[41] I find that prior to his conviction and sentence the Appellant had been on bail granted by the Magistrate's Court of Suva. Since I have decided to set aside the conviction and sentence and order a re-trial in this case, the Appellant will be granted bail as per the conditions stipulated below.

### Conclusion

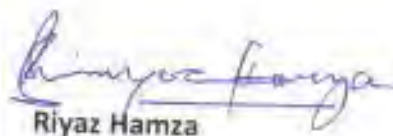
[42] In light of the above, the final orders of this Court are as follows:

1. The conviction and sentence imposed by the Learned Magistrate Magistrate's Court of Suva is set aside.
2. A new trial is ordered against the Appellant in the Magistrate's Court of Suva.
3. The Appellant is granted bail on the following conditions:
  - a) *The Appellant must enter into a bail bond of \$1000 at the Registry of this Court.*
  - b) *The Appellant is to produce two Sureties acceptable to Court who should enter into a surety bond of \$1000.00 each.*



- c) *The Appellant shall reside at his parent's home at Airport Road, Labasa, until the final determination of this case.*
  - d) *The Appellant shall not change his place of residence without prior approval of this Court.*
  - e) *The Appellant shall not in any manner interfere with the witnesses for the prosecution and must not have any form of contact or communication with them.*
  - f) *The Appellant should report to the Labasa Police Station on every 2<sup>nd</sup> and 4<sup>th</sup> Saturday of the month, between 8.00 a.m. and 6.00 p.m., commencing on Saturday the 28 July 2018.*
  - g) *The Appellant to surrender his travel documents (if not already done so), to the Registry of this Court.*
  - h) *The Appellant shall not apply for any new travel documents.*
4. The Magistrate's Court of Suva, is at liberty to vary any of the bail conditions if it deems appropriate.
  5. The Appellant is to appear before the Chief Magistrate, Magistrate's Court of Suva, on Friday 17 August 2018, at 9.30 a.m.



  
Riyaz Hamza

**JUDGE**

**HIGH COURT OF FIJI**

**At Suva**

**This 26<sup>th</sup> Day of July 2018**

**Solicitors for the Appellant :  
Solicitors for the Respondent:**

**Messrs A.K. Singh Lawyers, Nausori.  
Office of the Director of Public Prosecutions, Suva.**