

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBM 110 of 2021

The Director of Public Prosecutions

Applicant

v

Ravindra Singh

Respondent

Counsel: Ms M. Konrote for the applicant
Mr Devanesh Sharma for the Respondent

Date of hearing: 4th February, 2022

Date of Judgment: 17th January, 2023

Judgment

1. The applicant, in his originating summons seeks a civil forfeiture order over vehicle registration number EH 672, Nissan Pathfinder and \$19,000.00 cash currently held in the Nadi Police Station exhibit room safe. The application is made under sections 19C to 19E of the Proceeds of Crime Act, (POCA).

The affidavits in support

2. The Principal Scientific Officer (Chemistry) of Fiji Police Force in her affidavit in support states that on 10th November, 2018, the Fiji Police Force Chemistry Laboratory received 5 samples of white powder like substance taken by the Nadi Police Station from vehicle bearing registration Nos. HB 33 and EH 672. All samples were collectively packed in a re-sealable container. The samples were analysed and were found positive for cocaine.

3. Cpl. Kiniviliae Bulisere in his affidavits in support states that the Police received information that the respondent was selling methamphetamine and cocaine from his residence in Lot 9, Hibiscus Drive, Martintar, Nadi. On 9th November, 2018, Police Officers accompanied by a Custom Officer with his narcotic detector dog, K-9 Blake conducted a search of his residence and vehicles. The Police searched the areas indicated by K-9 Blake and uncovered a cushion case wrapped in a black plastic containing white powder in a black Isuzu D-Max and a parcel from EH 672 Nissan Pathfinder parked across the road from his residence. The results of tests revealed that the parcels contained cocaine weighing 982.6 grams. Cocaine is an illicit drug under the Illicit Drugs Control Act. The respondent was interviewed under caution. He admitted that the drugs were found in the two vehicles. He was charged with one count of unlawful possession of illicit drugs under section 5(a) of the Illicit Drugs Control Act.
4. The affidavit continues to state that it was established that at the time of the search that the two vehicles were registered to the respondent. He sold vehicle registration No. HB 733 on 29th March, 2021. EH 672 is still registered under the respondent and his company, ECO Oil Energy Beyond Oil. He is involved in the business of selling and purchasing illicit drugs namely cocaine. EH. 672 is used by the respondent to transport illicit drugs namely cocaine and commit the offence of selling/being in possession of illicit drugs. \$19,000.00 was obtained from the commission of a serious offence.
5. The respondent, in his affidavit in opposition states that the search warrant is illegal, as it failed to specify the property the Police had reasonable grounds to suspect were used for the commission of an offence. He had \$23,000.00 and not \$19,000.00. The monies were to pay his lawyers fee, house rent, wages for his workers and his savings. The money was earnings from his business, Eco Oil Energy and sales of machineries. He denies that the drugs belonged to him. The search was only for his property and did not extend to the location where EH 672 was parked.

6. The applicant's reply states that the search warrant was shown and the reason for the search was explained to the respondent. The warrant clearly specifies that the property of respondent was to be searched. The Police received information that vehicle EH 672 was used by the respondent to store drugs and therefore is tainted property. The vehicles are owned by the respondent and under his effective control. Only \$19,500.00 was seized during the search. The Police believe that the monies seized (\$19,000.00) were from the sale/purchase of illicit drugs namely cocaine and therefore tainted property. The account statement annexed by the respondent does not support any large withdrawals of monies. In any event, it is an overdraft account. The respondent was present when the drugs were found in the vehicles. The respondent is involved in the business of selling and purchasing illicit drugs namely cocaine. Vehicles EH 672 and HB 733 were used by the respondent to transport/store illicit drugs.

The determination

7. On 9th November, 2018, I granted an interim restraining order ex parte over vehicle registration number EH 672, Nissan Pathfinder and \$19,000.00 cash held in the Nadi Police Station until this determination.
8. Section 19 C of the POCA provides that the Director of Public Prosecutions may apply for a non-conviction based forfeiture order of "*tainted property*".
9. Section 19E(1) states that Court may order property to be forfeited "*if satisfied on a balance of probabilities that the property is tainted property*". (emphasis added)
10. The question is whether vehicle registration number EH 672, Nissan Pathfinder and \$19,000.00 cash are "*tainted property*".
11. Section 3 states "*tainted property in relation to a serious offence ...means-*
 - a) *property used in, or in connection with, the commission of the offence;*
 - b) *property intended to be used in, or in connection with, the commission of the offence;*
 - c) *proceeds of crime;*" (as defined in section 4(1A))
(emphasis added)

“ serious offence” means “an offence of which the maximum penalty prescribed by law is death, or imprisonment for not less than 6 months or a fine of not less than \$500”.

12. The applicant was charged with one count of unlawful possession of an illicit drug under section 5 of the Illicit Drugs Control Act, which falls within a “ *serious offence*”, as it carries a maximum penalty of a fine not exceeding \$ 1 million or imprisonment for life or both.
13. The drugs were admittedly found in vehicles belonging to the respondent. The vehicles were in his possession and under his effective control.
14. I am satisfied on a balance of probability that vehicle registration number EH 672, Nissan Pathfinder is “*property used in, or in connection with, the commission of the offence*” and therefore tainted property.
15. The next item in respect of which the applicant seeks a forfeiture order is the sum of \$19,000.00 cash seized.
16. The question is whether the monies are “*proceeds of crime*”.
17. Section 4(1A) defines “ *“proceeds of crime”* to mean “*property or benefit that is –*
 - a) *wholly or partly derived or realised directly or indirectly by any person from the commission of a serious offence or a foreign serious offence;*
 - b) *wholly or partly derived or realised from a disposal or other dealing with proceeds of a serious offence or foreign serious offence; or*
 - c) *wholly or partly acquired proceeds of a serious offence or a foreign serious offence, (emphasis added)*

and includes, on a proportional basis, property into which any property derived or realised directly from the serious offenceis later converted, transformed or intermingled, and any income, capital or other economic gains derived or realised from the property at any time after the offence”.

18. The respondent has not provided any evidence to establish that the monies were to “ *pay (his) lawyers fee, house rent wages for .. workers and savings... earnings from business... sale of machineries*”, as contended.
19. I note that the statements of the respondent’s Bank account depict an overdraft account and do not reflect withdrawals for \$19,000.00.
20. Lecamwasam, JA in *Singh v Director of Public Prosecutions* [2022] FJCA 45; ABU0084.2018 (27 May 2022) stated :

Section 72 of the Proceeds of Crime Act requires only proof on a balance of probabilities to decide any question of fact by the court. Hence, sufficient evidence of the commission of a serious or foreign serious offence and a reasonable suspicion that the property or benefit is derived or acquired through such criminal activity is sufficient for such to be earmarked proceeds of crime.(emphasis added)

21. In my judgment, the applicant has established on a balance of probability that \$19000.00 retained is proceeds of crime.
22. I need hardly deal with the contention in the submissions filed on behalf of the respondent that he has not been charged with an offence relating to the items sought to be forfeited in the light of section 19E(1).
23. In an application for a non-conviction based forfeiture order “*it is not necessary to obtain a conviction or even to charge for an offence...It may also be applied ... after discharge or acquittal...(as it) is an action against the property and not the person*” as Amaratunga J stated in *DPP v Prasad*, [2019] FJHC 155; HB 44.2018(1 March,2019) .

24. Finally, it is contended that the search warrant is illegal, as it did not specify the property which the Police suspected was used for the commission of the offence.
25. The applicant submits that the warrant extended to goods in the apparent control of the respondent. The vehicles were searched, as there was reasonable suspicion the vehicles were used to transport/store drugs.
26. The search warrant states that “ *there is reasonable ground for suspecting that certain property, namely (a) Ravindra Singh in respect of which an offence has been committed (or which is necessary to the conduct of an investigation into an offence) is in certain (b) lot 9, Hibiscus Drive... You are hereby authorized... to enter the said (b) lot 9... search for the property above mentioned ... or any other thing which there is reasonable cause to suspect ... or unlawfully obtained be found, to seize it....*”
27. In my view, the search warrant is couched in wide terms.
28. Moreover, section 30 A of the POCA, as referred to in the submissions filed on behalf of the respondent provides that “*In the course of a search under a warrant a police officer may seize ..any property... or any thing that (he).. believes, on reasonable ground to be tainted property.. in relation to any serious offence (and) .. is necessary ..in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or any other offence*”. (emphasis added)
29. Section 22 of the Illicit Drugs Control Act empowers a Police Officer to search and seize any goods without a warrant as stated by the Court of Appeal in *Director of Prosecution v Vitukawalu*, [2018] FJCA 121; ABU90.2016 (6 August, 2018).
30. I grant a civil forfeiture order over vehicle registration number EH 672, Nissan Pathfinder and \$19,000.00 cash currently held in the Nadi Police Station .

31. *Orders*

- a) The application for a civil forfeiture order over vehicle registration number EH 672, Nissan Pathfinder and \$19,000.00 cash currently held in the Nadi Police Station is allowed.
- b) I make no order as to costs

A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE
17th January, 2023

