

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

APPEAL CASE NO. HACDA 08 of 2021S

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

vs

PRITAM SINGH

Counsels: *Ms. Pene J.* - *for Applicant*
 Mr. Chand N. - *for Respondent*

Date of Judgment: 31.01.24

JUDGMENT

1. In this matter, the Accused (Respondent in this matter) had been charged and tried in the Magistrates Court of Suva under the case number MACD 7 of 2021 for committing an offence under **Section 4(2) (b)** of the **Prevention of Bribery Act 2007**. The particulars of the count charged is as follows:

CHARGE

Statement of Offence

BRIBERY: Contrary to Section 4(2) of the Prevention of Bribery Act No. 12 of 2007.

Particulars of Offence

PRITAM SINGH on the 20th day of March 2016 at Nausori in the Central Division, whilst being employed in the Public Service as a Tax officer at the Fiji Revenue and Customs Authority without lawful authority or reasonable excuse accepted FJD\$7,500.00 of cash and FJD 6,300.00 of cheque all to the total value of \$7,500.00 from ALLAN NAVINDRA PRASAD a businessman on account of his performing any act in his capacity as a Tax Officer at Fiji Revenue and Customs Authority.

2. At the trial, Prosecution had called 5 witnesses and marked 9 documents. At the end of the Prosecution case, Defense had been called by the Learned Magistrate and for the Defense the Accused had given evidence subject to cross-examination and two more witnesses had given evidence for the Defense case.
3. Thereafter, on 20th October 2020, the Learned Magistrate had found the Respondent guilty as charged. Subsequently, on 22nd October the Learned Magistrate had imposed a sentence against the Respondent of 21 months imprisonment and suspended that sentence for 3 years. Being aggrieved by this sentence, the Appellant has filled this appeal in this Court on 19th November 2021.
4. In the Judgement pronounced by this Court on 20th June 2023, this Court identified that Learned Magistrate acting under **Section 12 (1) (b) (ii) of the Prevention of Bribery Act 2009** had only imposed 21 months imprisonment which was suspended for 3 years against the Respondent. However, in viewing the plain text of **Section 12 (1) (b) (ii) of the Prevention of Bribery Act 2007**, it is perceptible that under this section the Legislature in its wisdom has expected the sentencing authority to impose a **conjunctive** sentence, i.e., **a prison sentence and a fine**. Therefore, the Learned Magistrate had completely ignored the intention of the Legislature and the provisions of the statute in the sentence imposed by him. As a result, in the judgement of this Court dated 20th of June 2023 this Court found the sentence imposed by the Learned Magistrate to be erroneous and set aside that sentence and indicated that this Court will impose a suitable sentence according to the law of our country.
5. However, in grappling to identify a suitable sentence, this Court recognized the sentiments expressed by the Learned Magistrate in relation to the lack of sentencing tariffs for Bribery offences which are tried summarily in the Magistrates Court. Further, this Court took notice of the request made by FICAC from this Court to provide guidelines for sentencing to the Magistrates Court in sentencing offenders for Bribery offences consequent to summary trials. In observing the lacuna in our existing literature for this aspect, this Court considered that this case provides an ideal opportunity to provide the required guidelines in following the applicable law stipulated in **Sentencing and Penalties Act of 2009**.
6. Therefore, in identifying the provisions relating to guideline judgments in the **Sentencing and Penalties Act 2009**, namely **Section 6, 7 and 8**, it is clear that a High Court is empowered to give a guideline judgment upon hearing an appeal from a sentence given by a Magistrate, like in this matter. Thereafter, all the Magistrates hearing similar cases are expected to take notice of the guideline judgement pronounced by this Court. Further, as directed by the statute, before pronouncing the

guideline judgment, this Court directed the Director of Public Prosecutions, Fiji Independent Commission against Corruption, the Legal Aid Commission and the aggrieved party to tender their submissions for this Court to consider before pronouncing the guideline judgement, which direction the parties have heeded to. Having considered the submissions of the above-mentioned parties, this Court will deliver the guideline judgement, as below.

Guideline Judgement for Sentencing accused after conviction for Summary Offences under the Prevention of Bribery Act No. 12 of 2007.

7. For the purposes of assisting this Court in crafting this judgement, the Director of Public Prosecutions, the Fiji Independent Commission against Corruption (FICAC), the Legal Aid Commission and the Respondent in this matter have made submissions to this Court. While appreciating their endeavors, this Court has to emphasize that it is not intending to stipulate their individual submissions in this Judgement, but their pertinent argument have been taken into consideration.

Analysis of Court

8. **Section 4(1) (a), (b), (c), (d) and (e) of the Sentencing and Penalties Act of 2009** set out the only purpose of sentencing as punishment, protection of community, deterrence and denouncement of the offence, rehabilitation of offenders and to signify that the Courts and the community denounces the commission of such offence. Thus, most weight is given to punitive aspect and, if a sentencing regime is far too lenient or too harsh it will not serve the purpose of sentencing.
9. The methodology commonly followed by most judges in Fiji involves a more structured approach incorporating a two-tiered process, as succinctly described in **Naikelekelevesi v State [2008] FJCA 11; AAU0061.2007 (27 June 2008)**. The two-tier process involves a sentencing judge setting an appropriate sentence commensurate with the objective severity of the offence and then making allowances up and down, in light of relevant aggravating and mitigating factor in the circumstances.
10. The Supreme Court of Fiji in the case of **The State v EPARAMA TAWAKE [2019]**¹ introduced the methodology of identifying a sentencing range and a starting point within that range based on the level of harm suffered due to the offending and the relevant aggravated form of the offence and then adjusting the starting point upwards and downwards for aggravating and mitigating circumstances.
11. However, it needs to be highlighted that in Fiji, according to **Section 4(2)(b) of the Sentencing and Penalties Act of 2009**, sentencing

¹ CAV 0025 of 2019 [Court of Appeal No. AAU 0013 of 2017]

Court must have regard to *inter alia* any applicable guideline judgments. Nevertheless, the sentencing judges in Fiji are not compelled by law to follow sentencing guidelines but is obliged to have regard to them.

Punishment for Bribery offences under the Prevention of Bribery Act No. 12 of 2007.

12. Section 12 of the **Prevention of Bribery Act No. 12 of 2007** stipulates penalties for Bribery offences, as below:

“12. (1) Any person guilty of an offence under this Part; other than an offence under section 3, shall be liable:-

*(a) **on conviction on indictment-***

(i) for an offence under section 10, to a fine of \$100000 and to imprisonment for 10 years;

(ii) for an offence under section 5 or 6, to a fine of \$500000 and to imprisonment for 10 years; and

(iii) for any other offence under this Part, to a fine of \$800000 and to imprisonment for 7 years; and

*(b) **on summary conviction-***

(i) for an offence under section 10, to a fine of \$500000 and to imprisonment for 3 years; and

(ii) for any other offence under this Part, to a fine of \$100000 and to imprisonment for 3 years,

And shall be ordered to pay to such persons or public body and in such manner as the court directs, the amount or value of any advantage received by him; or such part hereof as the court may specify.

(2) Any person guilty of an offence under section 3 shall be liable on conviction to a fine of \$100000 and to imprisonment for 1 year; and shall be ordered to pay to the Government in such manner as the court directs the amount or value of the

- advantage received by him or such part thereof as the court may specify.*
- (3) *in addition to any penalty imposed under subsection (1), the court may order a person convicted of an offence under section 10(1) (b) to pay to the Government*
(a) a sum not exceeding the amount of the pecuniary resources; or
(b) a sum not exceeding the value of the property;
the acquisition of which by him was not explained to the satisfaction of the court
- (4) *An order under subsection (3) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction.”*

13. As can be noticed from above, the penalties provided by the statute for conviction on indictment under **Section 12 (1) (a)** of the **Prevention of Bribery Act No. 12 of 2007** (Act) differs from what is provided under **Section 12 (1) (b)** for conviction on summary offences in the Act. Further, though there is sentencing tariff promulgated by judicial decisions in Fiji for convictions under Section 12 (1) (a) for convictions on indictment, there is no tariff promulgated under Section 12 (1) (b) for summary offences tried in the Magistrates Court.

Existing tariff for convictions on Indictment for Bribery

14. In the case of *FICAC v Mohamed [2015]*², **Justice Midigan**, in considering the U. K. Sentencing Council guidelines and recommendations on bribery sentences had classified bribery related offences into two categories, as below:

“The U.K. Sentencing Council has set out useful considerations on bribery sentences and based on their recommendations, this Court would now set the following parameters for sentencing of bribery under the Crimes Decree, 2009.

- *In cases of high culpability (Category 1) sentences of between 5 and 8 years should be passed. An offender considered to be highly culpable would be one who:*
 - *Plays a leading role where there is group activity.*
 - *Involves others through pressure or influence.*
 - *Abuses a position of significant power or trust.*

² [2015] FJHC 479 (24 June 2015).

- *The intended corruption is of a senior Government Official performing a public function.*
- *There is sophistication of the offence or substantial planning over a period of time.*
- *Is motivated by the expectation of substantial financial commercial or political gain.*
- *Lesser offending (Category 2) would apply to an offender:*
 - *Is involved through coercion, intimidation or exploitation.*
 - *Is not motivated by personal gain.*
 - *Plays a peripheral roll.*
 - *Is opportunistic, with a "one-off" offence with little or no planning.*
 - *Has limited awareness or understanding of the extent of the corrupt activity.*

Sentences for Category 2 offending should be within the range of 18 months to 4 years.”

15. In addition, in the case of ***FICAC v Rohinesh Ranjan Prasad [2018]***³, **Justice Aluthge** had further updated the above tariff, as below:

*“Having considered the case authorities discussed above, I identify the tariff for the offence of Bribery under Section 12(1) (a) (iii) of the Prevention of Bribery Promulgation (Act) as follows:
for category A, 3-5 years imprisonment,
for category B, 2-4 years imprisonment and
for category C, 12 months - 03 years imprisonment*

- *It would be in exceptional circumstances that sentences could be suspended and probably never for breach of trust and Category A cases.”*

16. The characteristics of a case that would qualify it to be under a particular category out of the above 3 categories identified in the above pronouncement are, as follows:

“Category A – High culpability

- *A leading role where offending is part of a group activity.*
- *Involvement of others through pressure, influence*
- *Abuse of position of significant power or trust or responsibility*

³ [2018] FJSC 480 (1st June 2018).

- *Intended corruption (directly or indirectly) of a senior official performing a public function.*
- *Intended corruption (directly or indirectly) of a law enforcement officer.*
- *Sophisticated nature of offence/significant planning*
- *Offending conducted over sustained period of time.*
- *Motivated by expectation of substantial financial, commercial or political gain.*

Category B – Medium culpability

- *All other cases where characteristics for categories A or C are not present.*
- *A significant role where offending is part of a group activity.*

Category C – Lesser culpability

- *Involved through coercion, intimidation or exploitation.*
 - *Not motivated by personal gain*
 - *Peripheral role in organised activity*
 - *Opportunistic ‘one-off’ offence; very little or no planning*
 - *Limited awareness or understanding of extent of corrupt”.*

Proposed Tariff on summary conviction for Bribery under Prevention of Bribery Act No. 12 of 2007

17. In considering the above detailed updated tariff regime available for conviction on indictment for Bribery offences, this Court perceives that the maximum sentence applicable for offence on indictment is 10 years imprisonment, whereas, for conviction on summary trials in the Magistrate Court, the maximum sentence is 3 years imprisonment.
18. Therefore, in identifying a suitable tariff regime for summary offences, this Court perceives that two categories of culpability is more than sufficient. As a result, in identifying the suitable regime for summary offences, this Court intend to utilize the two categories pronounced by **Justice Midigan** in the case of *FICAC v Mohomed [2015]*⁴, and modify the sentence to suit Summary Offences, as below:

- *In cases of high culpability (Category 1) **sentences between 18 months and 3 years imprisonment** should be passed. An offender*

⁴ Supra, note 2.

considered to be culpable to fall into this category would be one who:

- *Plays a leading role where there is group activity.*
 - *Involves others through pressure or influence.*
 - *Abuses a position of significant power or trust.*
 - *The intended corruption is of a senior Government Official performing a public function.*
 - *There is sophistication of the offence or substantial planning over a period of time.*
 - *Is motivated by the expectation of substantial financial commercial or political gain.*
- *Lesser offending **(Category 2) sentences between 06 months and 2 years imprisonment** should be passed. This would apply to an offender:*
- *Is involved through coercion, intimidation or exploitation.*
 - *Is not motivated by personal gain.*
 - *Plays a peripheral roll.*
 - *Is opportunistic, with a "one-off" offence with little or no planning.*
 - *Has limited awareness or understanding of the extent of the corrupt activity.*
- Only in exceptional circumstances such sentences imposed should be suspended and scarcely in cases where an element of breach of trust is involved.

19. In identifying the above recommendation of non-suspension of sentences for offences of bribery under **Prevention of Bribery Act No. 12 of 2007**, this Court took guidance from the pronouncement by **Lord Chief Justice of the United Kingdom, Justice Farquharson** in the **House of Lord** case of *John Barrick [1985]*⁵ in relation to level of sentence to be imposed in breach of trust cases, as below:

“In general, a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves, the Court should nevertheless pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. The

⁵ [1985] Crim.A.R. 78

sum involved is obviously not the only factor to be considered, that it may in many cases provide a useful guide.”

20. In considering the serious harm caused by bribery offences to the system of administration of the country and the confidence of general public to that system, this Court would venture to recommend that only in exceptional circumstances such sentences imposed should be suspended and scarcely in cases where an element of breach of trust is involved.

21. In identifying a suitable starting point, this Court would like to take guidance from the pronouncement made by **Justice Gounder** in the case of *Laisiasa Koroivuki v State [2013]*⁶, as below:

22.

“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this stage. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”

23. For this sentencing regime for summary convictions, proposed starting points of the sentences are:

Category 1: 18 months imprisonment.

Category 2: 6 months imprisonment

Summary of the guideline judgement proposed for summary offences under the Prevention of Bribery Act No. 12 of 2007

24. Consequent to the above analysis and discussion, below sentencing regime is proposed for convictions under the **Prevention of Bribery Act No. 12 of 2007** on summary conviction:

High culpability (category 1)	Starting pint: 18 months imprisonment Sentencing range: 18 months to 3 years imprisonment
Lesser culpability (category 2)	Starting pint: 06 months imprisonment Sentencing range: 06 months to 2 years imprisonment

⁶ [2013] FJCA15 (5th March 2013).

- Only in exceptional circumstances such sentences imposed should be suspended and scarcely in cases where an element of breach of trust is involved.

Sentence for the current matter

25. In the current case, the Accused was employed as a Tax Officer in the Fiji Revenue and Customs Service, and he had portrayed to the complainant that he could reduce his tax liability and in return obtained a bribe of FJ\$7500.00. Therefore, it is the contention of the Prosecution that as a public officer the Respondent had abused his position as a public officer. I consider this offence coming within category I. Therefore, as a starting point of your sentence, I select 18 months imprisonment.
26. In aggravation, FICAC informs Court that there is a grave breach of trust in this matter, since the FRCS relies heavily on its employees in the conduct of operations and as a Tax Officer of the service, the Respondent had breached this trust by accepting bribe from a customer to perform his official function. In considering this factor, I increase your sentence by 06 months.
27. Though the counsel for the Respondent had failed to submit the Respondent's family circumstances in mitigation in his submission to this Court, I refer to the factors considered by the Learned Magistrate in passing his sentence. In this regard, this Court give due cognizance to the fact that you were a father of two children, sole bread winner of the family and you had no previous convictions. Considering these factors, I reduce your sentence by 1 year.
28. Considering the above analysis and in considering that this offence had taken place in 2016 and a considerable time has lapsed since then, **PRITAM SINGH**, I sentence you to 1 year imprisonment and a fine of FJ\$5000, and in default of payment of the fine to hundred (100) days' imprisonment to be served consecutive to the main sentence.
29. You have thirty (30) days to appeal to the Court of Appeal of Fiji.



A handwritten signature in blue ink, appearing to read 'Thushara Kumarage', written over a dotted line.

Hon. Justice Dr. Thushara Kumarage

At Suva
This 31st day of January 2024

cc: -Fiji Independent Commission Against Corruption, Suva
-R. Patel Lawyers.