

IN THE SUPREME COURT OF FIJI
APPELLATE CRIMINAL JURISDICTION

CRIMINAL PETITION NO. CAV0008 OF 2011

BETWEEN : 1. MOHAMMED YUNUS
2. MOHAMMED SHAHEIAD KHAN

Petitioners

AND : THE STATE

Respondent

Coram : The Hon. Justice Priyantha Fernando, Acting President
of the Supreme Court
The Hon. Justice Sathyaa Hettige, Justice of the Supreme Court
The Hon. Justice Almeida Guneratne, Justice of the Supreme Court

Counsel : Mr. M. Yunus for the Petitioners
Ms. S. Puamau for the Respondent

Date of Hearing: 9 June 2016

Date of Judgment: 17 June 2016

JUDGMENT

Fernando AP

A Brief Narration of the Background to the Present Application

[1] Following a trial in the High Court at Lautoka, the Petitioners were convicted of murder and were sentenced to imprisonment for life with a minimum term of 17 years to be served. They were sentenced by the High Court on 20/02/2004.

- [2] The applications by the petitioners to the Court of Appeal against the said conviction and sentence were refused by a single judge on 24/06/2005. On a renewed application to the Court of Appeal pursuant to section 25 (3) of the Court of Appeal Act (Cap 12), the Court of Appeal while refusing leave to appeal, proceeded to enhance the minimum sentence to be served from 17 years to 18 years.
- [3] The respondent then applied for special leave to appeal to the Supreme Court against the said judgment of the Court of Appeal.
- [4] The Supreme Court granted special leave to appeal only on the appeal against sentence and in Appeal restored the 17 years minimum period that had been imposed by the High Court.
- [5] The present application which purports to be a special leave to appeal application originally sought leave on 3 grounds. While the 1st ground was withdrawn by a letter dated 2nd June, 2016, at the hearing before us, counsel for the Petitioners informed court that they were not pursuing the 3rd ground as well. The remaining ground relates to the conviction.

What is not permitted to be done directly cannot be done indirectly

- [6] This court in the aforesaid special leave to appeal application had granted leave only on the appeal on sentence and in Appeal had restored the period of 17 years imposed by the High Court. Thus, the matter had been finally decided by this court by its judgment dated 24/04/2013. Therefore there is absolutely no basis on which the petitioners could seek special leave to appeal from this court against the conviction. The Petitioners had expended the reliefs that were available to them under Section 98 (4) of the Constitution of Fiji read with Section 7 (2) of the Supreme Court Act of 1998.
- [7] When this matter was taken up before this court on 09/06/2016, both, counsel for the State and the Petitioners conceded that there is no legal basis to seek special leave to appeal against the conviction, revisiting the whole matter once again.

- [8] It is a well-established principle of law that what is not permitted to be done directly cannot be done indirectly.
- [9] Consequently, I cannot see what relevance Rule 6 of the Supreme Court Rules or Section 7 (1) (c) of the Supreme Court Act could have in regard to the Petitioners lament because the Supreme Court by its Judgment dated 24th April, 2013 had expended its Jurisdiction on the matter whether under Section 7 (1) (b) or 7 (1) (c) of the Act.

Was Any Alternative Remedy Still Available to the Petitioners?

- [10] The only remedy (if any) available to the Petitioners would have been to invoke the jurisdiction of this court under Section 98 (7) of the Constitution, which in any event, they have not done. This was also conceded by Counsel for the Petitioners. No request was made to this Court either, to treat the present application as one under Section 98 (7) of the Constitution, whether this Court would have been inclined to do so or not being also rendered a non-issue.

Conclusion

- [11] For the aforesaid reasons this application is dismissed.

Hettige J

- [12] I agree with the reasons and conclusion reached by His Lordship Fernando, ACJ.

Guneratne J

- [13] I also concur with the reasons and conclusion arrived by His Lordship Fernando, ACJ.

Orders of Court:

1. *The application which purports to be for Special Leave to Appeal is refused and dismissed.*
2. *The Registrar of the Court is directed to take all necessary and consequential steps.*



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Hon. Justice Priyantha Fernando
Acting President of the Supreme Court



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Hon. Justice Sathya Hettige
Justice of the Supreme Court



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Hon. Justice Almeida Guneratne
Justice of the Supreme Court