

IN THE HIGH COURT OF FIJI
AT LABASA

CRIMINAL JURISDICTION

Criminal Appeal No: 006 of 2009

BETWEEN:

ILAITIA MATALOMANI

Appellant

AND:

STATE

Respondent

Counsel: Appellant in Person
Mr. M. Korovou for State

Date of Hearing: 11 June 2009

Date of Judgment: 12 June 2009

JUDGMENT

[1] The appellant was convicted of the following offences on his pleas of guilty:

First Count

Statement of Offence (a)

OBTAINING MONEY BY FALSE PRETENCE: Contrary to Section 309 [a] of the Penal Code, Cap. 17.

Particulars of Offence (b)

ILAITIA MATALOMANI on 31st day of December 2008 at Labasa in the Northern Division with intent to defraud, obtained \$100.00 cash from Lily Masiwa by falsely pretending her that he is a Principal Pharmacist at Labasa Hospital and will return the said money later.

Second Count

Statement of Offence (a)

OBTAINING MONEY BY FALSE PRETENCE: Contrary to Section 309 [a] of the Penal Code, Cap. 17.

Particulars of Offence (b)

ILAITIA MATALOMANI on 2nd day of January 2009 at Labasa in the Northern Division with intent to defraud, obtained \$150.00 cash from Lily Masiwa by falsely pretending her that he is a Principal Pharmacist at Labasa Hospital and will return the said money later.

Third Count

Statement of Offence (c)

OBTAINING MONEY BY FALSE PRETENCE: Contrary to Section 309 [a] of the Penal Code, Cap. 17.

Particulars of Offence (b)

ILAITIA MATALOMANI on 5th day of January 2009 at Labasa in the Northern Division with intent to defraud, obtained \$200.00 cash from Lily Masiwa by falsely pretending her that he is a Principal Pharmacist at Labasa Hospital and will return the said money later.

Fourth Count

Statement of Offence (d)

OBTAINING MONEY BY FALSE PRETENCE: Contrary to Section 309 [a] of the Penal Code, Cap. 17.

Particulars of Offence (b)

ILAITIA MATALOMANI on 7th day of January 2009 at Labasa in the Northern Division with intent to defraud, obtained \$80.00 cash from Lily Masisiwa by falsely pretending her that he is a Principal Pharmacist at Labasa Hospital and will return the said money later.

- [2] On each count, he was sentenced to 18 months imprisonment, to be served concurrently. He appeals against sentence saying it is harsh and excessive.
- [3] In mitigation, the appellant said he was 24 years old, single and remorseful. He had no criminal history.
- [4] The tariff for the offence of false pretence range from 18 months imprisonment to 3 years imprisonment (***State v Saukilagi*** HAC 21/045).
- [5] The learned Magistrate picked 2 years as his starting point and increased it by 6 months to reflect the aggravating factors. The sentence was then reduced by 12 months to reflect the mitigating factors. The final sentence was 18 months imprisonment.
- [6] Albeit the term of 2 years is within the tariff for this offence, the learned Magistrate erred in picking 2 years as a starting point for an offence involving relatively small amount of money. The total amount of money involved was

\$530.00. The lower range of the tariff was a more appropriate starting point for the offence in this case.

[7] The early guilty pleas, remorse, age of the appellant and his previous good character were the mitigating factors.

[8] The aggravating factors were the persistent nature of the offence and the lack of restitution.

[9] I consider 18 months imprisonment as an appropriate starting point and an addition of 6 months to reflect the aggravating factors.

[10] From the term of 2 years, substantial reduction is justified to reflect the compelling mitigating factors. A term of 9 months imprisonment on each count is a just and fair term.

[11] For these reasons, a term of 9 months imprisonment is substituted on each count, to be served concurrently. There are no special circumstances to suspend the sentence.

The appeal is allowed.

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[Daniel Goundar]
JUDGE

At Labasa
12th June 2009