

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

CRIM. MISC. CASE NO: HAM016/2009

BETWEEN:

RASHIKA DEVI SINGH

Applicant

AND:

THE STATE

Respondent

Date of Hearing: 3rd April 2009

Date of Ruling: 29th June 2009

Counsel: Mr. M. Raza for Applicant
Mr. U. Ratuveli for State

RULING

- [1] This is an application for a separate trial by the second accused, Rashika Devika Singh. She also applies for her case to be remitted to the Magistrates' Court for trial. The second accused submits that she would be prejudiced by a joint trial because the first accused is charged with a number of fraud related offences which the second accused is not charged with.
- [2] Where the accused persons are charged with the same offence, a separate trial will only be ordered in exceptional circumstances (*R v. Moghal* 65 Cr. App. R.56).

The reason for this was explained by Shameem J in ***State v. Prasad & Ors.*** HAM 127 of 2008:

“Both at common law and under statute, the prosecution is entitled to charge principal offenders and secondary offenders in one charge or information provided there is sufficient evidential and factual nexus in relation to each accused, and provided there is no prejudice to the accused (***DPP v. Merriman*** (1972) 56 Cr. App. R. 766, 796; ***Peni Varawa, Solomoni Lagidamudamu and Others v. State*** [2002] HAA0002/02B; ***Isireli Leweniqila & 5 others v. State*** [2004] HAM031/04S). In ***Shell Fiji Limited, Mobil Oil (Aust) Ltd. v. State*** [2002] HAA001/00L, where the offences alleged to be committed by two oil companies were quite separate and independent of each other, the High Court held (per Gates J) on appeal that separate trials should have been ordered.

However where several accused are charged with a single offence based on the same facts, separate trials are undesirable. The reasons are obvious. Firstly separate trials for multiple accused are expensive and time-consuming. Secondly there is a real danger that different sets of assessors will reach conflicting conclusions on the same evidence leading to inconsistent verdicts. Thirdly there is a risk that different courts will impose inconsistent sentences, once a guilty verdict is recorded. In the interests of justice therefore a joint trial for multiple defendants charged with committing the same offence, is usually preferred.”

[3] In the present case, the objection is not to the joinder of multiple counts but to the joinder of the two accused persons in one information. Section 121 of the Criminal Procedure Code provides for joinder of two or more accused persons in one information. Section 121 states:

“The following persons may be joined in one charge or information and may be tried together, namely –

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;
- (c) persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a series of offences of the same or similar character;
- (d) persons accused of different offences committed in the course of the same transaction."

[4] Joinder of accused persons in one information is permitted where the accused persons are charged with the same offence or where the accused persons are charged with different offences on the basis of the same transactions or facts (*Leweniqila v. State* [2004] HAM031/045).

[5] The information in this case alleges the following offences:

COUNT ONE

Statement of Offence

LARCENY BY SERVANT: Contrary to Section 274(a) & 21(1)(d) of the Penal Code, Cap 17.

Particulars of Offence

RASHIKA DEVI SINGH d/o Shiu Chand Singh and SALENDRA SEN SINHA s/o Jagendra Prasad between the 2nd day of June 2005 and 23rd day of August 2005 at Suva in the Central Division, whilst being a servant to Fiji Islands Revenue & Customs Authority stole a Fiji Islands Revenue & Customs Authority cheque number 133908 amounting to \$1,502.82.

COUNT TWO

Statement of Offence

FORGERY: Contrary to section 335(1)(c) of the Penal Code, Cap 17.

Particulars of Offence

SALENDRA SEN SINHA s/o Jagendra Prasad between the 2nd day of June 2005 and 23rd day of August 2005 at Suva in the Central Division with intent to defraud forged a Fiji Islands Revenue & Customs Authority cheque number 133908 dated 2nd June 2005 purporting to be the cheque addressed to HONEYMOON BEACH RESORT LIMITED.

COUNT THREE

Statement of Offence

UTTERING FORGED DOCUMENT: Contrary to Section 343(1) of the Penal Code, Cap 17.

Particulars of Offence

SALENDRA SEN SINHA s/o Jagendra Prasad on the 23rd day of August 2005 at Suva in the Central Division knowingly and fraudulently uttered Fiji Islands Revenue & Customs Authority cheque number 133908 in the amount of \$178,834.82 at Westpac Bank, Suva, knowing the same to have been forged.

COUNT FOUR

Statement of Offence

OBTAINING MONEY ON FORGED DOCUMENT: Contrary to Section 345(a) of the Penal Code, Cap 17.

Particulars of Offence

SALENDRA SEN SINHA s/o Jagendra Prasad on the 23rd day of August 2005 at Suva in the Central Division obtained \$178,834.82 by virtue of a forged instrument namely, a Fiji Islands Revenue & Customs Authority cheque number 133908 knowing the same to have been forged.

COUNT FIVE

Statement of Offence

FORGERY: Contrary to Section 335(1)(c) of the Penal Code, Cap 17.

Particulars of Offence

SALENDRA SEN SINHA s/o Jagendra Prasad between the 4th day of April, 2005 and 17th day of August, 2005 at Suva in the Central Division with intent to defraud forged a Fiji Islands Revenue and Customs Authority cheque numbered 123082 dated 4th April, 2005 purporting to be the cheque addressed to HONEYMOON BEACH RESORT LIMITED.

COUNT SIX

Statement of Offence

UTTERING A FALSE DOCUMENT: Contrary to Section 343(1) of the Penal Code, Cap 17.

Particulars of Offence

SALENDRA SEN SINHA s/o Jagendra Prasad on the 17th day of August, 2005 at Suva in the Central Division knowingly and fraudulently uttered Fiji Islands Revenue and Custom Authority cheque numbered 123082 in the sum of FJD\$93,384.75 at Westpac Bank, Suva, knowing the same to have been forged.

COUNT SEVEN

Statement of Offence

OBTAINING MONEY ON FORGED DOCUMENTS: Contrary to Section 345(a) of Penal Code, Cap 17.

Particulars of Offence

SALENDRA SEN SINHA s/o Jagendra Prasad on the 17th day of August 2005 at Suva in the Central Division obtained FJD\$93,384.75 by virtue of a forged instrument namely a Fiji Islands Revenue and Customs Authority cheque numbered 123082 knowing the same to have been forged.

COUNT EIGHT

Statement of Offence

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

Particulars of Offence

SALENDRA SEN SINHA s/o Jagendra Prasad on the 17th and 23rd days of August, 2005, at Suva in the Central Division, presented forged Fiji Islands Revenue and Customs Authority cheques numbered 123082 and 133908 at Westpac Bank, Suva, received the sum of FJD\$93,384.75 and FJD\$178,834.82 to the total value of FJD\$272,219.57 that were the proceeds of crime knowing, or ought reasonably to know, that the monies were derived directly or indirectly from unlawful activities, and subsequently converted or transferred the aforesaid money and other property derived directly or indirectly from a serious offence, with the aim of concealing or disguising the illicit origin of that money and other property.

- [6] I note that both accused persons are charged jointly with the same offence in count one only. In counts two, three, four and eight the first accused is charged with different offences but based on the same cheque that formed the basis of

allegation in count one. The joinder of the two accused persons in one information is permitted as far as counts one, two, three, four and eight are concerned. However, the same could not be said about counts five, six and seven. In these counts, only the first accused is charged with different offences and they are not based on the same transactions or facts as per count one in which the second accused is charged. In this regard, the joinder of the two accused persons is not permitted by s.121 of the Criminal Procedure Code. Thus, the second accused is likely to be embarrassed in her defence to be jointly tried with the first accused when there is no nexus between her charge and counts five, six and seven.

- [7] I also bear in mind that a separate trial on one count against the second accused is unlikely to result in an expensive trial or waste of the court time, or lead to inconsistent verdicts.
- [8] For these reasons, I am satisfied that the second accused should be tried separately.
- [9] As regards the application to remit the case to the Magistrates' Court for trial, I refuse that application. The case was transferred to the High Court for trial upon an application from the prosecution under s.220 of the Criminal Procedure Code. When the prosecution elects to try a case in the High Court under s.220 before the calling of any evidence, the Magistrate has no discretion but to transfer the case to the High Court (***Vijay Kumaran v State*** [2006] AAU0070/05 (14 July 2006)). I find the transfer in this case was proper and see no reason to interfere with the right of the prosecution.

[10] I make the following orders:

- i. The second accused to be tried separately in the High Court.
- ii. State to file amended information within twenty-one days.

Daniel Goundar
JUDGE

At Suva
29th June 2009

Solicitors:

Mehboob Raza & Associates for Applicant
Office of the DPP for State