

IN THE HIGH COURT OF FIJI
AT LABASA

CRIMINAL JURISDICTION

Criminal Case No: HAA 004 of 2000

BETWEEN:

SAVENACA LABAVUKA

Appellant

AND:

**FIJI INDEPENDENT COMMISSION
AGAINST CORRUPTION**

Respondent

Mr. A Sen for the Appellant

Mr. P Madigan for the Respondent

Date of Hearing: 11 June 2009

Date of Judgment: 12 June 2009

JUDGMENT

[1] The appellant was convicted on his own pleas of guilty to six counts of larceny by servant and sentenced to 18 months imprisonment on each count, to be served concurrently.

- [2] He appeals against sentence saying it was harsh and excessive for a first time offender who has pleaded guilty and has shown remorse.
- [3] The facts were that between March and July 2005, the appellant was employed as a clerk by the Wainikoro Fisheries Co-operative. The Co-operative was in a business of buying and supplying fish. The appellant handled cash transactions and did the banking. Over a period of three months, the appellant stole a total sum of \$3,040.50. To conceal the theft he made false entries in the accounts of his employer.
- [4] In his sentencing remarks the learned Magistrate adopted the guidelines stated in **Barrick** {1985} 91 Cr. App 78; **Panniker v State** Cr. App. No. 28 of 2000; **Prasad v State** Cr. App. No. 23 of 1993 and **State v Roberts** [2004] FJHC 54, in relation to the fraud offences.
- [5] The learned Magistrate noted that the amount involved was small but the appellant committed a systematic fraud in breach of trust shortly after being employed. He considered the mitigating factors to be the appellant's early pleas of guilty, remorse, previous good character, age and family circumstances. The learned Magistrate noted that no restitution has been made to the complainant and that the offer to compensate was bit too late to justify any discount in sentence.
- [6] The learned Magistrate picked 2 years as his starting point and after adjusting for the mitigating and aggravating factors arrived at a term of 18 months imprisonment on each count, to be served concurrently. The

learned Magistrate did not find any special circumstances to suspend the sentence.

[7] Having considered the detailed sentencing remarks of the learned Magistrate I am satisfied that no error of fact or law has been shown in the sentence imposed on the appellant. The term of 18 months imprisonment was properly arrived at by considering all the relevant factors that ought to have been considered in law. The sentence is neither wrong in principle nor manifestly excessive.

[8] The appeal against sentence is dismissed.

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[Daniel Goundar]

JUDGE

At Labasa

12th June 2009