

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**

**CRIMINAL JURISDICTION**

**Criminal Case No. HAA 003 of 2009**

**BETWEEN:**

**SARUN CHAND**

***Appellant***

**AND:**

**STATE**

***Respondent***

**Counsel:** Mr. A Sen for the Appellant  
Mr. M Korovou for State

**Date of Hearing:** 11 June 2009

**Date of Judgment:** 12 June 2009

**JUDGMENT**

[1] The appellant was charged in the Magistrates' Court with the following offences:

***First Count***

***Statement of Offence (a)***

**GIVING FALSE INFORMATION TO A PUBLIC SERVANT:**

Contrary to Section 143 (a) of the Penal Code, Cap. 17.

**Particulars of Offence (b)**

SARUN CHAND s/ SURESH CHAND on the 31<sup>st</sup> day of May, 2007 at Labasa in the Northern Division gave PADMA WATI DEO a Justice of Peace the information that his name is NILESH PRASAD s/o HARI PRASAD which he knew to be false, intending thereby to cause PADMA WATI to do anything which the said PADMA WATI ought not to do if the true state of facts respecting which such information given were known to him.

**Second Count****Statement of Offence (a)**

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

**Particulars of Offence (b)**

SARUN CHAND s/o SURESH CHAND on the 31<sup>st</sup> day of May, 2007 at Labasa in the Northern Division with intent to defraud obtained from CHOTE LAL s/o PURAN the sum of \$400.00 in cash by false pretending that he would harvest cane for the said CHOTE LAL s/o PURAN being false in that he converted the said money to his own use and benefit.

- [2] He pleaded not guilty to the charges and on 17 November 2008, the trial commenced. After the complainant had given evidence, the appellant

changed his plea to guilty. The learned Magistrate then adjourned the proceeding to 28 November 2008 to allow time for the appellant to compensate the complainant.

- [3] On 28 November 2008 the appellant informed the Court that he had not repaid any money to the complainant. The appellant was sentenced to 14 months imprisonment. He appeals against conviction and sentence.
- [4] The principal ground of appeal against conviction is that the charge and the facts admitted by the appellant did not disclose an offence known to law. The appellant was unrepresented in the Magistrates' Court.
- [5] It is trite law that an appeal against conviction can be entertained on a plea of guilty if it appears that upon the admitted facts the appellant would not in law have been guilty of the offence charged (***Gyan Deo v R*** (1976) 22 FLR 1). For an unequivocal plea, the offence the accused pleads guilty to, must be one known to law and that the admitted facts substantiate the offence. (***Rakorako v R*** Crim. App. 85/78 per Grant J)
- [6] The offence of false pretence is proved if the accused has knowingly made a false representation to induce the complainant to part with his or her property, with an intention to defraud. The false representation must be of an existing or past fact (s. 308 of the Penal Code). A promise to do something in future is not a false pretence (***Ramesh Chand v State*** [2004] HAA 003/04S).

- [7] In the present case the alleged false pretence contained in the charge was that the appellant "*would harvest cane*" for the complainant. The facts admitted by the appellant were that the appellant approached the complainant for an employment. The complainant agreed to employ the appellant to harvest cane for him. They signed an agreement. When the cane harvest began, the appellant failed to turn up and the complainant learnt he was harvesting cane for another farmer. The appellant was arrested and charged.
- [8] I am of the view that the representation made to the complainant is not a representation of past or existing fact, but a future promise, which in law is not an offence. The facts admitted by the appellant did not disclose any false pretence but purely an agreement to work for the complainant in future.
- [9] The charge of false pretence is defective in substance because it does not disclose an offence known to law. The appellant could not be convicted of an offence that does not exist. If the appellant was represented his counsel would have raised an objection to the charge and would not have allowed him to plead guilty to a defective charge. In that regard, the appellant was prejudiced by lack of legal representation.
- [10] For these reasons, I hold the conviction is unsafe. The conviction is quashed and the sentence is set aside. I make no order for a retrial.
- [11] Appeal allowed.

[Daniel Goundar]  
**Judge**

At Labasa  
12<sup>th</sup> June 2009