

IN THE HIGH COURT OF FIJI
AT SUVA
REVISIONAL JURISDICTION

CRIMINAL REVIEW NO: HAR003 OF 2009

BETWEEN:

SATNAM SINGH

Applicant

AND:

STATE

Respondent

Counsel: Mr. I. Khan for Applicant
Ms A. Tuiketeti for State

Date of Hearing: 18th June 2009

Date of Ruling: 23rd June 2009

RULING

[1] On 15 November 2007, the applicant appeared in person in the Magistrates' Court, on the following charges:

FIRST COUNT

Statement of Offence

SELLING PASSPORT FOR PERSONATION: Contrary to Section 372 of the Penal Code (Cap 17).

Particulars of Offence

SATNAM SINGH s/o MOHKAM SINGH together with another, between January 2006 and June 2006 at Suva in the Central Division sold his passport number 5484300 to NEEL KAMAL s/o HARI CHAND with intent that the said NEEL KAMAL s/o HARI CHAND may represent himself to be RONIL RITESH PRASAD s/o RAMESH PRASAD.

SECOND COUNT

Statement of Offence

PERSONATION OF A PERSON NAMED IN A PASSPORT:

Contrary to Section 371 of the Penal Code (Cap 17).

Particulars of Offence

SATNAM SINGH s/o MOHKAM SINGH together with another, between the 29th day of May 2006 and 23rd day of June 2006 at Suva in the Central Division uttered a passport number 5484300 lawfully issued to RONIL RITESH PRASAD s/o RAMESH PRASAD by falsely representing him to be RONIL RITESH PRASAD s/o RAMESH PRASAD.

- [2] After numerous adjournments he pleaded guilty to the charges. After admitting the facts tendered by the prosecution, the applicant offered written mitigation and character evidence. The learned Magistrate adjourned the case to 27 January 2009 for sentencing.
- [3] On 27 January 2009, the learned Magistrate informed the prosecution to reconsider the charges as the facts did not support them. The prosecution maintained the charges and the facts were not defective.

[4] On 27 February 2009, the learned Magistrate transferred the case to the High Court under section 325 of the Criminal Procedure Code for a review.

[5] Section 325 of the Criminal Procedure Code provides:

“(1) In the case of any proceedings in a magistrates’ court the record of which has been called for or which has been reported for order, or which otherwise comes to its knowledge, the High Court may –

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 319 and 320 and may enhance the sentence;

(b) in the case of, any other order other than an order of acquittal, alter or reverse such order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by a legal practitioner in his own defence.

(3)...

(4)...

(5) Where an appeal lies from any finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

[6] In the present case, the learned Magistrate after recording the conviction realized that the facts did not support the charged offences. Thus, a review is justified. This is because once the conviction is formally recorded; the learned Magistrate is *functus officio* as far as the conviction is concerned.

[7] When an unrepresented accused pleads guilty, the court must ensure that the plea is unequivocal. In **Michael Iro v Reginam** 12 FLR 104, the Court of Appeal said:

“In our view there is a duty cast on the trial judge in cases where the accused person is unrepresented to exercise the greatest vigilance with the object of ensuring that before a plea of guilty is accepted the accused person should fully comprehend exactly what that plea of guilty involves. As was said by Lord Reading CJ in **Rex v. Golathan** [(1915) 84 LKB 7578] ‘It is a well-known principle that a man is not to be taken to have admitted that he has committed an offence unless he pleads guilty in plain, unambiguous terms’.”

[8] Facts are tendered by the prosecution to support the factual basis for the charge. If it appears to the court that the facts do not support the charge, the plea of guilty should be rejected and the case should proceed to trial. In **DPP v Jolame Pita** [1974] 20 FLR 5, Grant Ag. CJ said:

“On a plea of guilty to any offence, the question of what is admitted by an accused should be ascertained with certainty as if facts are put before a court or explanations given which derogate from the plea of guilty or which appear to render equivocal what would otherwise have been an unequivocal plea, then the plea must be changed to one of not guilty and the case set down for hearing.”

[9] I am satisfied that the conviction cannot stand in light of the learned Magistrate’s finding that that the facts did not support the charges. I do not consider it to be appropriate for me to review the correctness of that finding in this proceeding. Since the learned Magistrate had recorded the conviction before releasing the defect in facts, she quite properly transferred the case to the High Court to quash the conviction so that the case could be set for hearing.

[10] For these reasons, in the exercise of the revisionary jurisdiction of this Court, the conviction of the applicant is set aside, and the case is remitted to the Magistrates' Court for trial.

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Daniel Goundar
JUDGE

At Suva
23rd June 2009

Solicitors:

Iqbal Khan & Associates for Accused
Office of the DPP for State