

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO.: HAA 009 OF 2009

BETWEEN:

VASHU DEWAN GOUNDAR s/o Ram Sami Goundar

Appellant

AND:

THE STATE

Respondent

Appearance: Appellant in Person
Mr. L. Sovau for the Respondent

Date of Hearing & Judgment: Friday 5 June 2009

JUDGMENT

- [1] The appellant was convicted on his own plea of guilty to one count of obtaining money by false pretence. He was sentenced to 2 years and 2 months imprisonment.
- [2] The appeal is against sentence on the ground that it is harsh and excessive.

- [3] The facts were that the appellant obtained \$1,600.00 cash from the complainant on the pretext that he was in a position to supply yaqona. After obtaining the money the appellant did not contact the complainant, until they met in Lautoka City when he undertook to return the money. After the second meeting, the appellant evaded the complainant again.
- [4] In mitigation the appellant said he was 41 years old, single and a priest by profession. He had no previous criminal history.
- [5] In his sentencing remarks, the learned Magistrate correctly identified the tariff for the offence of obtaining by false pretence to be between 18 months and 3 years imprisonment (**State v Saukilagi – Cr. Case No. HAC 0021 of 2004S**). The learned Magistrate took 20 months as his starting point and increased the sentence by 18 months for breach of trust and non recovery of the money.
- [6] The learned Magistrate then gave 12 months discount for an early guilty plea and said *“I find no other matter in your personal information that I regard as mitigating factor”*.
- [7] In my view, the learned Magistrate fell in error when he held that there was no other mitigating factor justifying a reduction in sentence.
- [8] The appellant was 41 years old. He had no criminal history and therefore he should have been considered as a person of previous good character deserving further reduction in sentence.

[9] Further, this was not a systematic fraud involving a large sum of money. Albeit the appellant acted dishonestly, this was not a case of gross breach of trust to justify an increase of sentence by 18 months as the Magistrate did.

[10] For these reasons, I find the sentence imposed on the appellant to be harsh and excessive.

[11] The sentence of 2 years and 2 months is set aside and substituted with a term of 12 months imprisonment. Because of the appellant's previous good character and the fact that he had served about 6 months in prison, I suspend the sentence for 2 years.

[12] The appeal against sentence is allowed.

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Daniel Goundar

JUDGE

At Lautoka

5 June 2009