

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 136/2008**

**Between:** STATE

**Complainant**

**And:** NAUSAD ALI

**Accused**

Hearing: 18<sup>th</sup> and 19<sup>th</sup> August 2009

Sentence: 21<sup>st</sup> August, 2009

Counsel: Ms. S. Hamza and Ms. N. Tikoisuva for State

Mr. G.P. Lala for the Accused

**SENTENCE**

1. On the 20<sup>th</sup> August 2009, the panel of three assessors unanimously convicted the accused of the two charges he was facing after a two day trial.

The information read as follows:

**First Count**

**Statement of Offence**

**UNLAWFUL POSSESSION OF ILLICIT DRUG:** Contrary to section 5(a) of Illicit Drugs Control Act No 9 of 2004.

**Particulars of Offence**

NAUSAD ALI s/o WAJAD ALI, on the 24<sup>th</sup> day of March 2008 at Nausori in the Central Division, without lawful authority possessed 1.1 grams of Cannabis, an Illicit Drug.

## Second Count

### Statement of Offence

**OFFICIAL CORRUPTION:** Contrary to section 106(b) of the Penal Code, Cap 17.

### Particulars of Offence

NAUSAD ALI s/o Wajad Ali, on the 24<sup>th</sup> day of March 2008 at Nausori in the Central Division, corruptly offered to give the sum of \$40 to a person employed in the public service, namely PC 4246 Peni Verekauta, on account of acts to be afterwards omitted to be done by him in the discharge of the duties of his office, namely in order that he not institute a prosecution in respect of possession of illicit drugs by NAUSAD ALI

2. The convict had been observed in Nausori town acting suspiciously. On a search by two police constables he was found to have in his pocket 2 sachets of dried leaves which were later analysed to be 1.1gms of cannabis sativa. The convict then offered the searching officer F\$40, saying "please release me - here is \$20 for each of you". He subsequently made a statement under caution in the Nausori Police Station .

3. The accused gave sworn evidence in his defence and called his sister as the sole defence witness. He said that he was in town, and was searched and all that was taken from him was his wallet by one of the officers. That officer took 2 \$20 notes from the wallet and then put them back and returned the wallet. He denied being in possession of any drugs but did say that 2 sachets of a substance were on the floor about a metre away. Nothing more was said about the sachets. He told the Court that he did not relay his version of the incident in the caution interview because he was in a panic and forgot to mention it.

4. His sister said that she was present throughout and had seen one of the officers take the accused's wallet, remove 2 \$20 notes and then put the wallet in his own pocket. She had seen 2 sachets of drugs being picked up by the Police from under a table.

5. It comes as no surprise that the assessors found the accused guilty on both counts after retiring for 10 minutes. I agreed with them and gave judgment convicting him of both charges.

6. In mitigation, Mr G.P. Lala tells me that he is a first offender, that he is the only breadwinner of his family of wife, 3 young children and an elderly mother and that he did not resist arrest. He urges me to suspend any custodial sentence I may pass.

7. Ms Hamza confirms the clear record, but submits that authority dictates a custodial sentence for both offences. She points out that although he did not resist arrest, the arrest is aggravated by the offer of a bribe to the officers. She urges the Court to be cognizant of the gravity of the offence, and as such a non-custodial sentence is unwarranted.

8. In the case of **State vs Seru** [2008] FJHC 151, Goundar J. Refers to a "tariff " of 3 to 9 months for possession of a small amount of drugs for personal use. In that case the convict was in possession of 8.2gms in 16 sachets; a quantity far in excess of the present case. He sentenced Seru to 3 months imprisonment.

9. I find that the amount of drugs seized from this convict is minimal and I find that it was for his own use. It must be remembered that the maximum penalty is life imprisonment, which demonstrates the legislature's disapproval of the offence. In the circumstances I sentence him to 2 months imprisonment on Count one.

10. Count 2 is a much more serious offence. To attempt to bribe a Police Officer is an attack on the very fabric of our society. It is difficult enough for our law enforcement officers to detect, prevent and apprehend criminals, without their will being sapped by offers of money or gifts. The size of the reward offered is irrelevant; it is the fact that it is expected that an officer can

be “bought” that is a particularly abhorrent concept. I have no sympathy for the convict’s family arrangements. If he is to take care of a family of 6 including himself, then he should be thinking of them at the time rather than indulging himself in recreation involving illicit drugs. The officers concerned should be commended for their obvious strength in resisting the offer and quickly realising what was being asked of them. The offence is a felony with a maximum term of 7 years imprisonment . I take as a starting point a term of imprisonment of 12 months and reduce that to 6 months to take into account that he is a first offender of a reasonably young age. I find that it was an aggravating feature to attempt to bribe two Police Officers who were performing their normal enforcement duties and I increase the sentence on that account by three months to arrive at a final term of imprisonment of 9 months.

11. The two sentences are to be served concurrently. I decline to suspend the sentence.

**Paul K Madigan**

Judge

At Suva

21<sup>st</sup> August, 2009