

IN THE HIGH COURT OF FIJI
HELD AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAA 012 of 2009

Between: SUDESH PRAVIN SINGH
(f/n Gulab Singh)

Appellant

And: THE STATE

Respondent

Hearing date: 10 September 2009

Judgment date: 15 September 2009

(handed down)

Mr A. Kohli for the Appellant

Mr. M. Korovou for the State

JUDGMENT

1. The appellant was convicted of obtaining money by false pretences contrary to s.309(a) of the Penal code, Cap 17 on the 2nd February 2009 and was sentenced to 18 months imprisonment. He appealed to this Court against sentence.

2. At a call over of this appeal in chambers on the 8th September 2009, I indicated to counsel for the appellant that while I was not sympathetic to an appeal against sentence, I would entertain an appeal against conviction and I gave leave to appeal out of time on that date.

3. At the hearing on the 10 September 2009 I allowed the appeal and quashed the conviction. I stated that I would later give reasons in writing. These are indeed those reasons.

4. The particulars of the charge read,

“Sudesh Pravin Singh between the 1st day of August 2005 and 31st day of August 2005 at Labasa in the Northern Division with intent of (*sic*) defraud obtained \$4,400.00 in monies from Ravenish Lal (f/n Rajendra Lal) pretending that he would provide a taxi permit for the said Ravenish Lal (f/n Rajendra Lal) such representation being false in that he converted the said money to his own use and benefit.”

After conviction, the appellant was sentenced to 18 months imprisonment which is the lower end of the accepted tariff for this offence. (see **State v Jona Saukilagi** [2005] FJHC 13 per Shameem J).

5. It has been well established in Fiji that a representation as to a future promise can not be a false pretence. In **Ramesh Chand v State** [2004] FJHC 71 Shameem J said

“A future promise (I will get a visa for you if you give me \$4000) is not a false pretence. A false pretence is a representation of an existing fact which is false”.

In saying this she relied on the English authority of **R v Dent** (1955) 2 All ER 806.

6. In the case of **State v Brijan Singh** [2007] FJCA 46 the Court said at para 58 :

“As the Judge pointed out, the law of false pretences has for a very long time excluded representations of future fact and the law has, in many jurisdictions, been modified to try and encompass such conduct. Unfortunately, Fiji has not done so, as the wording of s.308 shows.”

7. The facts of the instant case were thus:

The appellant approached the “victim” and offered to sell him a taxi permit for \$2,800 and gave him some phone numbers. The next day he received a call and was told to give the money to the appellant at a supermarket car park. He did this but was asked for more and more money which he paid the appellant. No permit was forthcoming and the “victim” reported to the Police 11 months later.

8. The facts are therefore ambiguous. If the appellant did indeed have the permit available but did not “deliver”, then the offence is made out because it is a representation as to an existing fact. However if the appellant is promising to obtain one in the future then there is no offence known to Fiji law. Counsel for the appellant submitted that the time period of 11 months suggests that the licence was not immediately available and therefore the promise is a future promise.

9. Counsel for the State quite properly conceded that there was no evidence to suggest that it was a representation for the present and therefore with understandable reluctance conceded the appeal.

10. Given that concession and in deference to the principle of favouring the appellant in a case of doubt, I allow the appeal and quash the conviction and direct the prisoner to be released forthwith.

Paul K. Madigan

Judge

Dated at Labasa.

15 September, 2009