

IN THE FIJI COURT OF APPEAL

## CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. AAU0001 OF 1997S

(High Court Criminal Miscellaneous Action No. 26 of 1996S)

BETWEEN:RAMESH PATELAPPELLANT

-and-

THE STATERESPONDENT

Mr. H. K. Nagin for the Applicant/Appellant  
 Mr. K. Wilkinson for the Respondent

Date and Place of Hearing : 26 February 1997, Suva  
Date of Delivery of Judgment : 28 February 1997

JUDGMENT OF THE COURT

Mr. Patel applied to this Court for (1) an extension of time to file an appeal against an order made by Townsley J. in the High Court at Suva on 5 December 1996 affecting his bail conditions; and (2) for a stay of that order. The matter has a complicated history generating two separate appeals to this Court.

On 28 October 1996 Mr. Patel pleaded not guilty in the Magistrates' Court at Suva to a count of fraudulent conversion of property brought under s.279(1)(c)(ii) of the Penal Code. The public prosecutor applied for a preliminary enquiry to be held. Mr. Wilkinson told us that this application was made under s.224 of the Criminal Procedure Code and he contended that the Magistrate was thereupon obliged to take depositions and commit the accused to the High Court for trial if they

showed sufficient evidence. Instead, the learned Chief Magistrate ruled that the case be heard in the Magistrates' Court and fixed a hearing date commencing 28 November 1996. He had granted bail with a condition that the accused surrender his passport, which was done.

On 1 November 1996 the State filed in the High Court a notice of appeal against that ruling and followed it up with an application to that Court for a stay of the case in the Magistrates' Court. An order to that effect was made by Townsley J on 27 November 1996 the day before the trial was due to start. When it was called on 28 November the Magistrate (His Worship Mr. Salesi Temo) adjourned it to 3 February for mention only in view of the stay order, and on 29 November he ordered the release of the accused's passport, substituting a cash bond of \$10,000 as a bail condition, which was paid that day.

The State returned immediately to Townsley J. who made an order *ex parte* on 29 November staying the Magistrate's order for the release of the passport and directing its return to the Court and this was done. On 3 December His Lordship heard the accused's application to dissolve that order, but he dismissed it on 5 December, and confirmed his order staying the Magistrate's order to release the passport. The present application for leave to appeal (Criminal Appeal No. 1 of 1997) is against that decision of Townsley J.

An earlier appeal had been filed in this Court on 2 December 1996 (No. 17 of 1996) against the *ex parte* order of Townsley J. made on 27 November 1996 staying the Magistrates' Court hearing. In that proceeding Mr. Patel applied on 5 December to a single judge of this Court for an order returning his passport. On 14 February 1997 Thompson J.A ruled that this Court had no jurisdiction to entertain that application, adding that this did not preclude the applicant from presenting arguments to the full Court to enable it "to decide the question conclusively".

The matter is further complicated by counsels' advice that a further application involving the return of the passport had recently been made to Townsley J. in the light of this Court's judgment in Southwick v State (Criminal Appeal No. 20 of 1996) delivered on 14 February 1997, and his decision on that application is awaited.

We have concluded that leave to appeal out of time should be given, but that in all the circumstances the present position with regard to the passport should be preserved, pending the hearing of the appeal. That "present position" will be the retention of the passport in Court unless and until any order is made in the High Court for its release to the applicant.

Leave to appeal is accordingly granted. It will be heard on 27 May 1997 at 9.30 am, together with Criminal Appeal No.

17 of 1996, including the matters dealt with thereunder by Thompson J.A as a single judge of this Court, if the applicant wishes to have them heard by the Full Court. The appellant will file and serve his submissions by 18 April 1997, and the respondent will file and serve its submissions in reply by 2 May.

The application for stay of Townsley J's order of 5 December is refused, but without prejudice to the ability of the High Court to make any order varying the appellant's bail conditions including those affecting his passport.

*M. Casey*

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Sir Maurice Casey  
Judge of Appeal

*Gordon Ward*

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Mr. Justice Gordon Ward  
Judge of Appeal

*P. Hillyer*

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Mr. Justice Peter Hillyer  
Judge of Appeal