

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0057 OF 2006

BETWEEN: ABHAY KUMAR SINGH Appellant

AND : THE STATE Respondent

Coram: Ward, President
Penlington, JA
McPherson, JA

Hearing: Wednesday 20th June 2007

Counsel: Applicant in person
D Goundar for respondent

Date of Judgment: Monday 25th June 2007

DECISION OF THE COURT

- [1] The appellant was convicted in the Suva High Court on two counts of attempting to pervert the course of justice contrary to section 131 (d) of the Penal Code, Cap 17. The evidence in the trial depended to some extent on covert recordings of conversations by the applicant.

[2] Following a submission, the recordings were found to be admissible and the applicant pleaded guilty but sought leave of the court to appeal that decision. The High Court granted leave but his appeal was dismissed by this Court; see Abhay Kumar Singh v The State [2007] AAU 57/06, 9 March 2007.

[3] He now applies to this Court for leave to appeal to the Supreme Court. His application was initially accompanied by an application that this Court should set aside its own judgment. The latter was not pursued.

[4] Section 122 (2) of the Constitution provides:

“(2) An appeal may not be brought from a final judgment of the Court of Appeal unless:

(a) the Court of Appeal gives leave to appeal on a question certified by it to be of significant public importance; or

(b) the Supreme Court gives special leave to appeal.”

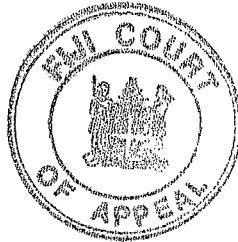
[5] The issue upon which the applicant seeks leave to appeal is the right of State agencies to conduct covert recordings with or without some specific legal authority and their right to use them as evidence in court proceedings.

[6] The question upon which the applicant seeks certification by this Court is as follows:

To what extent is the State permitted or justified in conducting covert surveillance with or without a warrant having regard to Sections 26, 28(1)(e) and 37 of the Constitution of the Republic of the Fiji Islands?

[7] We consider that the question arises from the decision in the applicant's appeal to this Court and raises important matters of interpretation of the provisions of the Bill of Rights in Chapter Four of the Constitution.

[8] We therefore certify that the above question is one of significant public importance.



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Ward, President

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Penlington, JA

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McPherson, JA

Solicitors:

**Appellant in person
Office of the Director of the Public Prosecutions, Suva for the Respondent**