

**IN THE COURT OF APPEAL, FIJI**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. AAU 0027 of 2011**  
**High Court Criminal Action No. HAC 116 of 2007**

**BETWEEN** : **DHANSUKH LAL BHIKHA**

*Appellant*

**AND** : **THE STATE**

*Respondent*

**Coram** : **Chandra RJA**

**Counsel** : **Ms. S. Vaniqi for the Appellant**  
**Ms. M. Fong for the Respondent**

**Date of Hearing** : **4 April 2013**

**Date of Ruling** : **4 July 2013**

**RULING**

1. The Appellant, (the 2<sup>nd</sup> Accused), was charged on four counts of Official corruption contrary to section 106(b) of the Penal Code while the 1<sup>st</sup> Accused was charged with four counts of official corruption contrary to section 106(a) of the Penal Code.
2. The Appellant was found guilty after a trial before Assessors on three counts while the 1<sup>st</sup> accused was also found guilty of three counts on which he was charged.
3. The Appellant was sentenced to 3 ½, 3 ½, and 4 ½ years for the three counts for which he was found guilty and it was ordered that the sentences would run concurrently. The Appellant was to serve a non-parole period of 3 ½ years.

4. The Appellant in his notice of appeal sought leave to appeal against conviction and sentence on the following grounds:
  1. His Lordship the trial judge erred in failing to direct the assessors that there were two trials and in not giving directions on how the evidence in each trial was to be dealt with.
  2. His Lordship the trial judge failed to give a direction to the assessors to take into account the good character of the Appellant in assessing the evidence.
  3. His Lordship the trial judge failed to consider and to give direction to the assessors concerning the evidence that the nil contribution agricultural scheme had been approved by the ministers in the interim government and that the finance and purchasing procedures of government had been varied.
  4. His Lordship the trial judge failed to consider and give direction to the assessors concerning any interference to be drawn from the failure of the state to call evidence from Appisai Tora, Marieta Rigamoto and Laisenia Qarase.
  5. His Lordship the trial judge failed to give a direction that the mere signing of a cheque is not indicative of guilt.
  6. His Lordship the trial judge failed to give a direction concerning consciousness of guilty acts by the appellant, or if he did, he did so inadequately.

7. His Lordship failed to give a direction on how it could be inferred the cheque for \$225,092.04 was corruptly given and how the appellant was on notice that the advances made by Suncourt (Wholesalers) Limited to Suliasi Sorovokatini were in any way connected to the receipt of the cheque.
8. His Lordship failed to consider or give a direction that the cheque for \$225,092.04 must have been authorized by the Ministry of Finance and that the interim ministers had knowledge of the nil contribution agricultural scheme and that they must have approved the payment of the \$225,092,05 and thus the payment could be said to be corrupt.
9. His Lordship failed to give a direction to the assessors that in considering circumstantial evidence they needed to be satisfied there were no competing alternatives consistent with innocence.
10. His Lordship erred in admitting evidence which was not properly admissible and which was highly prejudicial to the appellant, and further by not giving a direction as to how that evidence was to be treated.
11. His Lordship erred in not stopping the trial and in failing to disqualify himself when upon re-examination for Sereani Bainimarama he allowed evidence to be given that she had been disciplined.
12. His Lordship erred in law in failing to give an adequate direction on the meaning of “corruptly” in section 106(b) of the Penal Code.

13. His Lordship erred in fact about the general manager being answerable to the appellant when the evidence was that he was responsible to the board and all directors.
14. His Lordship erred in fact and law in his judgment in so far as he found the appellant had overall control of the business.
15. His Lordship erred in fact and law in finding both the general manager and financial controller were responsible to the appellant.
16. His Lordship erred in drawing the inference the appellant had knowledge of corrupt behavior because of the position he held.
17. His Lordship erred in fact and law in finding that the appellant had benefitted from the cheque for \$225,092.04
18. His Lordship erred in fact and in law in finding that acts or omissions by Suliasi Sorovakatini in the discharge of his public office in relation to the cheque for \$225,092.04 were the quid pro quo for the benefits alleged to have given to him.
19. His Lordship failed to direct the assessors as to how the involvement of Manoj Kumar Bhika was to be considered in dealing with the evidence in circumstances where the identification of Manoj Kumar Bhika had not been particularized.

20. The sentence imposed is manifestly excessive and failed to properly take into account the age of the appellant, the good character of the appellant, that the appellant had no relevant prior convictions and the absence of financial detriment to the State.
5. In the written submissions filed on behalf of the Appellant emphasis has been placed on grounds, 5,6,8,9,14 - 21 and as regards grounds 2,4,11 and 12 it has been stated that without the court record or transcripts of the trial that the Appellant cannot fully ventilate arguments.
6. The said submissions have dealt with the grounds of appeal on the following basis:
- (a) Suncourt Cheque for Travel - Grounds 5,6 and 17;
  - (b) Government Cheque for Goods Supplied - Grounds 8,9,18 and 19;
  - (c) Role of the Appellant -Grounds 14 – 18, 20 ;
  - (d) Sentence – Ground 21.
7. Since it was stated that in order to ventilate grounds 2,4,11 and 12 the court record or transcripts of the trial were required, those grounds will not be considered at this stage.
8. As regards Grounds 5,6 and 17 it was the submission that the learned trial Judge had misdirected himself on the law and facts regarding the charges in respect of the travel tickets which had been given to the 1<sup>st</sup> accused as a benefit. The ground adduced is that the learned trial Judge had not adequately directed the Assessors that the Appellant had no

dealings with the 1<sup>st</sup> accused , and that it was Manoj Bhikha who had dealings with the 1<sup>st</sup> accused. That the evidence before Court was to the effect that the Appellant had no dealing with the 1<sup>st</sup> accused. Further that the Appellant had been charged because he had signed the cheques that had been used to purchase the travel tickets which were given to the 1<sup>st</sup> accused. That there was evidence that the Appellant used to sign blank cheques.

9. The position of the Appellant as urged in the submissions is that in view of the fact that blank cheques had been signed he had not entertained the required mens rea that was required to establish the charges against him. That the element of “corruption” was not satisfied in such circumstances as it was contended that the person who gives corruptly must be aware that the transaction is a corrupt one.
10. The Appellant’s further contention is that the purpose for which the cheques were going to be used was unknown to the Appellant and that when the impugned cheques had been utilized he had not been in the country.
11. These submissions are highly arguable and it would be best left to the Full Court to be considered.
12. Grounds 8,9,18 and 19 are in respect of the Government Cheque for \$225,092.04 which was given to Suncourt (Wholesalers) Ltd. purportedly for the supply of goods to the Government for which the 1<sup>st</sup> accused received the reward of airline tickets and work done on his home.
13. Regarding these grounds too, the main argument is that the learned trial Judge had misdirected in failing to direct the Assessors in his summing up adequately. It was

submitted that it was in the normal course of business a payment for goods supplied which had the approval of Ministry of Finance, and therefore the Appellant could not be guilty of corruption.

14. The Appellant's further submission was that the main management and daily decisions of the company had been left to the General Manager Manoj Bhika and therefore no liability could be attached to the Appellant.
15. These are matters which are arguable and I would leave these matters too to the Full Court for argument with the availability of the case record.
16. Grounds 14, 15, 16, 17, 18 and 20 relate to the role of Appellant in respect of the conduct of the business of the Company which overlap the grounds and submissions referred to above. Here again the main argument is that the learned trial Judge had not adequately directed the Assessors regarding the role of the Appellant in the business affairs of the Company.
17. It was further contended that the liability should be on the Company as a legal entity and not on the Appellant.
18. These are matters which are arguable and could be best dealt with by the Full Court.
19. Ground 21 is in relation to sentence where it was contended that the positions held by the Appellant in relation to his contributions to the community were treated as aggravated factors and not as mitigating factors and thereby the learned trial Judge had erred in law.

Different views have been expressed in relation to official corruption and would be a matter which can be argued.

20. This is an arguable matter and can be urged before the Full Court.
  
21. The matters urged by the Appellant in this leave to appeal application are overlapping and even the submissions urged in support of them are overlapping. The threshold that has to be met by the Appellant is to satisfy the requirements of Section 21(1)(b) of the Court of Appeal Act (Cap.12). Since the grounds of appeal formulated by the Appellant raise arguable grounds of appeal, leave would be granted to argue those matters before the Full Court.

### **Order of Court**

Application for leave to appeal against conviction and sentence allowed.

Suresh Chandra  
**Resident Justice of Appeal**