

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

CRIMINAL APPEAL NO. AAU 0041 OF 2018
(High Court Action No: HAA 125 of 2017)

BETWEEN : AVIYASHNI VANDHANA NAIDU *Appellant*

AND : THE STATE *Respondent*

Coram : Chandra, RJA

Counsel : Mr M Fesaitu for the Appellant
Mr S Babitu for the Respondent

Date of Hearing : 26 July, 2019

Date of Ruling : 22 August, 2019

RULING

[1] The Appellant was charged for Obtaining Financial Advantage by Deception contrary to section 318 of the Crimes Act, 2009 in the Magistrate's Court.

- [2] The Appellant was convicted after trial and sentenced to 2 years and 10 months imprisonment.
- [3] The Appellant appealed against conviction and sentence to the High Court and the High Court dismissed the Appellant's appeal against conviction and sentence.
- [4] The Appellant filed an appeal against the judgment of the High Court to the Court of Appeal and also made an application for bail pending appeal.
- [5] The grounds of appeal are:

"The Learned Appellate Judge erred in law, stating in paragraph 10 'I do not find any requirement for the learned Magistrate to corroborate the evidence given by the complainant from other independent evidence in respect of the source of fund' when in fact the Magistrate had to independently assess the totality of the evidence, before coming to a decision whether to convict the Appellant or not.

The learned Appellate judge erred in law, in not considering the starting point of 4 years selected by the Magistrate, would have subsumed the aggravating factors."

- [6] The Appellant had represented to the complainant that she was working with the UNDP and had offered her a job to work in New Zealand. The Appellant had got the complainant to pay a total sum of \$12,000 to her on the basis that the money had been required to get a bond, a visa and a work permit. When the complainant found that the Appellant was not working for UNDP, she had asked for the return of the money which the Appellant did not and the complainant had made a complaint to the Police.
- [7] At the Magistrate's Court the Complainant had given evidence and related as to how she had found the money to be given to the Appellant. The Appellant giving evidence had denied the allegation.
- [8] An appeal lies to the Court of Appeal against a decision of the High Court sitting in appeal only on a question of law. S.22(1) of the Court of Appeal Act 1949.
- [9] The ground advanced against conviction in the judgment of the High court is based on questions of fact and law and not on a pure question of law.

- [10] On the ground of appeal against sentence, the Appellant has failed to point out any errors in the sentence which was affirmed by the High Court sitting in appeal.
- [11] Since the Appellant has failed to establish that there is question of law in her application for leave to the Court of Appeal, this Court lacks jurisdiction to grant leave.
- [12] Regarding the application for bail pending appeal the Appellant has filed an affidavit setting out about her medical condition that she is not getting proper treatment while being incarcerated.
- [13] In an application for bail pending appeal, for bail to be granted, there should be a likelihood of success of the grounds of appeal advanced on behalf of an appellant. There should also be exceptional circumstances for the grant of bail. **Ratu Jope Seniloli and Others v The State** (unreported criminal appeal No.41 of 2004 delivered on 23 August 2004).
- [14] In the present case as stated above, since the grounds of appeal are not questions of law, there is a lack of jurisdiction to consider the application for bail pending appeal and therefore the application for bail pending appeal would fail.

Orders of Court:

- (1) Application of leave to appeal against conviction and sentence is refused.*
- (2) Application for bail pending appeal is refused.*




Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL