

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

Crim. Misc. Case No: HAM 195/2012

BETWEEN : SHAINAAZ MOHAMMED

APPLICANT

AND : STATE

RESPONDENT

COUNSEL : Mr A Sen for Applicant

Ms J Prasad Respondent

Hearing Date : 19/03/2013

Ruling Date : 13/05/2013

RULING ON STAY

1. The applicant filed Notice of Motion for an order for permanent Stay of the application in Suva Magistrate Court Criminal case No: 380 of 2009. The application is made pursuant to section 215 of Criminal Procedure Decree 2009 and the Inherent Jurisdiction of the High Court.
2. The case against the Applicant was first called in the Magistrate Court on 25th of March 2009. Initially the charge sheet contained 10 counts being 5 counts of Corrupt Practices and 5 counts of Conspiracy to commit Misdemeanour.
3. On 27th January 2012 the State filed amended charges with following offences in the Suva Magistrate Court:

FIRST COUNT

Statement of Offence (a)

CORRUPT PRACTICE: contrary to Section 376(a) of the Penal Code Cap.17.

Particulars of Offence (b)

SHAINAAZ MOHAMMED on the 13th of March, 2009 at Suva in the Central Division being employed as a receptionist with NEW ZEALAND IMMIGRATION SERVICES corruptly attempted to obtain additional \$500.00, the sum exceeding the official fees from SANJAY KUMAR LAKHAN as an inducement or reward in consideration for issuing New Zealand Visitors Visa to the said Sanjay Kumar Lakhan on his Fiji Passport Number 762772, an act related to the affairs of New Zealand Immigration Services.

SECOND COUNT

Statement of Offence (a)

CORRUPT PRACTICE: contrary to Section 376(a) of the Penal Code Cap.17.

Particulars of Offence (b)

SHAINAAZ MOHAMMED on the 13th of March, 2009 at Suva in the Central Division being employed as a receptionist with NEW ZEALAND IMMIGRATION SERVICES corruptly attempted to obtain additional \$500.00, the sum exceeding the official fees from SUDESH KUMAR as an inducement or reward in consideration for issuing New Zealand Visitors Visa to the said SUDESH KUMAR on his Fiji Passport Number 762772, an act related to the affairs of New Zealand Immigration Services.

THIRD COUNT

Statement of Offence (a)

CORRUPT PRACTICE: contrary to Section 376(a) of the Penal Code Cap.17.

Particulars of Offence (b)

SHAINAAZ MOHAMMED on the 13th of March, 2009 at Suva in the Central Division being employed as a receptionist with NEW ZEALAND IMMIGRATION SERVICES corruptly attempted to obtain additional \$500.00, the sum exceeding the official fees from KRISHNAL SINHG as an inducement or reward in consideration for issuing New Zealand Visitors Visa to the said KRISHNAL SINGH on his Fiji Passport Number 762772, an act related to the affairs of New Zealand Immigration Services.

FOURTH COUNT

Statement of Offence (a)

CORRUPT PRACTICE: contrary to Section 376(a) of the Penal Code Cap.17.

Particulars of Offence (b)

SHAINAAZ MOHAMMED on the 13th of March, 2009 at Suva in the Central Division being employed as a receptionist with NEW ZEALAND IMMIGRATION SERVICES corruptly attempted to obtain additional \$500.00, the sum exceeding the official fees from SANJAY KUMAR as an inducement or reward in consideration for issuing New Zealand Visitors Visa to the said SANJAY KUMAR on his Fiji Passport Number 762772, an act related to the affairs of New Zealand Immigration Services.

FIFTH COUNT

Statement of Offence (a)

CONSPIRACY TO COMMIT A MISDEMEANOUR: contrary to Section 386 of the Penal Code Cap.17.

Particulars of Offence (b)

SHAINAAZ MOHAMMED and **ATISH KUMAR** on the 13th of March, 2009 at Suva in the Central Division conspired together to commit a misdemeanour namely, corruptly obtaining money from SANJAY KUMAR LAKHAN, SUDESH KUMAR, SANJAY KUMAR and KRISHNAL SINGH as an inducement or reward for issuing NEW ZEALAND Visitors Visa to said SANJAY KUMAR, SUDESH KUMAR SANJAY KUMAR and KRISHNAL SINGH on their Fiji Passports.

4. On 1st of June 2010, the Applicant filed a notice of motion to have a separate trial from the second accused Atish Kumar. The main ground for the application was firstly that a joint trial would be prejudicial towards her defence and secondly that the charges were defective and bad for duplicity. After hearing both parties submission the learned Magistrate Mr Thusara Rajasinghe in his Ruling dated 21/07/2010 dismissed the application of the Applicant and fixed the case for trial.
5. Though the matter was fixed for trial three times the defence counsel failed to appear on two occasions.
6. On 27th January 2012, the State filed amended charges, the material changes being the conspiracy charges reduced to one count and the withdrawal of one count of corrupt practices.
7. When this matter last fixed for trial on 15th October 2012 before a new Magistrate, counsel for the Applicant brought the same application before new Magistrate as the 1st June 2010 regarding the issue of defective charges.

8. Though the State Counsel vehemently objected for vacation of trial date learned Magistrate vacated the trial date and paved the way to applicant's counsel to file this Stay Application before this court.

JURISDICTION

9. **Justice Goundar** thoroughly canvassed the Inherent Jurisdiction of the High Court in **Balaggan v State** [2012] FJHC 923. He said that:

It must be said that "inherent jurisdiction" falls within that category of legal terms often invoked in court, yet rarely understood in a tangible and well-defined sense. The jurisdiction was originally conferred on the superior courts of the common law in England, which were also courts of record. It's essential function was to provide such courts with an array of powers, independently of statute or other rule of law, necessary to protect their capacity to administer justice and retain their nature as superior courts.

In Fiji, the equivalent of the superior courts of the common law is the High Court. The High Court undoubtedly exercise original jurisdiction. The jurisdiction of the High Court was spelt out in section 120 of the constitution.

Currently, the jurisdiction is provided by section 6(1) of the Administration of Justice Decree 2009:

The High Court has unlimited original jurisdiction to hear and determine any civil or criminal jurisdiction proceedings under any law and such other as is conferred on it under this Decree of or any other law.

Her **Ladyship Shameem J** stated as follows in **State v Naitini** [2001] FJHC 327:

"There is no reason to invoke the inherent jurisdiction of this court, when statutes provide remedies for all the complaints made by affidavit."

In addition to above, Her Ladyship also stated in State v Naitini (supra):

"If the State or the Defence is dissatisfied with [various decisions by the Magistrate], an Appeal can be lodged in the High Court. There is no reason to invoke the inherent jurisdiction of the High Court when the Criminal Procedure Decree provides a remedy for this sort of application"

Her **Ladyship Shameem J** further held that:

"The power must be exercised sparingly"

In **DPP v Hussein** (The Times) June 1 1994, the Divisional Court said that: *"the order is an exceptional one, and should never be made where there other ways of achieving a fair hearing of the case".*

In **State v Jagath Karunaratna** (HAM 111 of 2012) my brother judge **Hon. Justice Temo** held that:

“First of all I would like to mention something about the state’s notice of motion for the stay of the learned Chief Magistrate’s decision of 5th of July, 2012, filed on 9th July 2012. It is trite law that a stay application in a criminal proceeding is an exceptional remedy available to either parties, to prevent abuse of the court’s process. It should be used if other processes or procedure are available to prevent injustice, in the particular circumstances of a case. In this case, orders 1 in the notice of motion and prayer no.10 (1) in the Petition of Appeal were totally unnecessary. The learned Chief Magistrate’s orders on 5th July 2012 were totally adequate to contain the situation pending the appeal in the High Court. In my view, the stay application was unnecessary and inappropriate. I therefore dismiss the state’s application for those orders”.

10. On perusal of the Magistrate Court record it is quite clear that the issues raised in this application had already been dealt by learned Magistrate by his Ruling dated 21st July 2010 nearly 02 years and 10 months ago. The Applicant failed to exercise her statutory right of appeal against the order of learned Magistrate.
11. I conclude that the Application for Stay is an abuse of process as it recanvasses the very same issues which had been already decided by the Magistrate Court. Therefore invoking the inherent jurisdiction of the High Court is totally unnecessary. In my view, the stay application was unnecessary and inappropriate. I therefore, dismiss the Applicant’s application for Permanent Stay on all proceedings in Suva Magistrate Court Criminal case No: 380 of 2009.
12. The State has all the liberty to continue their case filed already against the Applicant in the Suva Magistrate Court.
13. The Applicant has 30 days to appeal.

P Kumararatnam
JUDGE

At Suva
13/05/2013

