

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE: HAA 14 OF 2014**

**BETWEEN** : ARTI ASHNA DEVI

**APPELLANT**

**AND** : THE STATE

**RESPONDENT**

**Counsel** : Mr. Nazeem Sahu Khan for the Appellant  
Ms. L. Latu for the Respondent

**Date of Ruling** : 4th of January, 2017

**RULING**

1. I hereby deliver the reasons for my orders made on the 25th of November 2016, for revision of the two orders made by the learned Magistrate of Lautoka in the Criminal Action No 103 of 2011.
2. The Appellant was charged in the Magistrates court for one count of Falsification of a Document, contrary to Section 160 (1) (a), (b) (i) and (c) (i) of the Crimes Decree and one count of Obtaining Property by Deception, contrary to Section 317 (1) of the Crimes Decree. The learned Magistrate in his judgment dated 29th of August 2016 found the Appellant guilty for the two counts as charged and convicted her accordingly. The learned Magistrate had then given fourteen days

to the Appellant to file her submissions in mitigation and had adjourned the matter for mention till 26th of September 2016. The learned counsel for the Appellant has made an application on the 26th of September 2016 to defer the sentence until a decision be given by the High Court in respect of the Petition of Appeal filed by the Appellant against the above conviction. The learned Magistrate has granted an order accordingly and released the Appellant on bail.

3. The court decided to review the correctness of the order of the learned Magistrate in deferring the sentence and granting the Appellant bail. I accordingly invited the learned counsel for the Appellant and the Respondent to make submissions on the correctness of the said orders, which they filed accordingly.
4. Section 246 (1) of the Criminal Procedure Decree allows an accused to appeal to the High Court against the Judgment, Sentence or Order of the Magistrates Court. Section 246 (1) of the Criminal Procedure Decree states that;

*“Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgement and sentence”.*

5. In this case, the Appellant has chosen to appeal against the Judgment of the Magistrates Court. Having done that, the Appellant has made an application before the Magistrate Court to defer the sentence, pending the final

determination of the appeal against the Judgment, which was allowed by the learned Magistrate.

6. The learned Counsel for the Appellant submitted that under Section 253 (1) and (2) of the Criminal Procedure Decree, the learned Magistrate has the jurisdiction to suspend the pronouncement of the sentence and release the accused on bail, if he informs the court about his intention of presenting a petition of appeal.
7. Section 253 (1) and (2) states that;
  - i) *Where a convicted person presents or indicates an intention of presenting a petition of appeal, the High Court or the court which convicted the person, may release the person on bail, with or without sureties.*
  - ii) *If the person is not released on bail, the High Court or the court convicting the person, shall at the request of the person, order that the execution of the sentence or order against which the appeal is pending be suspended pending the determination of the appeal.*
8. Section 253(2) deals with the suspension of the execution of the sentence against which the appeal is pending. However, in this case, the learned Magistrate has deferred the pronouncement of the sentence. Moreover, the Appellant has appealed only against the Judgment. Therefore, it is my view that Section 253 (2) of the Criminal Procedure Decree has not given the learned Magistrate any jurisdiction to defer the pronouncement of the sentence pending the final determination of the appeal against the judgment.

9. Section 183 of the Criminal Procedure Decree has stipulated the procedure that needs to be applied at the conclusion of the hearing in the Magistrates court, where it states that;

*“The court having heard both the prosecutor and the accused person and their witnesses and evidence, shall either –*

*c) find the accused guilty and pass sentence or make an order according to law; or*

*d) acquit the accused; or*

*e) make an order under the provisions of Part IX of the Sentencing and Penalties Decree 2009.*

10. Accordingly, the Magistrate is required to pronounce the sentence or make an order according to law if he finds the accused guilty at the conclusion of the hearing.
11. In the absence of any provisions conferring the Magistrate any jurisdiction to defer the pronouncement of the sentence pending the final determination of the appeal against the Judgment, I find the order of the learned Magistrate to defer the sentence is founded on wrong principle of law. I accordingly reverse the order of the learned Magistrate dated 26th of September 2016.
12. I now turn onto the issue of bail.
13. The learned counsel for the Appellant submitted that Section 253 (1) of the Criminal Procedure Decree allows the Magistrate to grant bail to the convicted

person if he informs the court about his intention of appeal against the conviction. The learned counsel further urged that the provisions of Bail Act have no application in such a situation.

14. Section 3 (2) (d) of the Criminal Procedure Decree states that;

*“The provisions of this Decree shall be subordinate to, and shall be read and applied subject to any provisions of another Act making specific provision in relation to*

*f. bail for accused and convicted persons;*

15. Accordingly, the court is required to apply Section 253 (1) subject to the provisions of the Bail Act in granting bail to the convicted person, who has filed a petition of appeal against the said conviction.

16. Section 3 (4) (b) of the Bail Act states that the presumption in favour of bail is being displaced for a convicted person who has appealed against the said conviction. Section 17 (3) of the Bail Act has stipulated the main factors that is required to take into consideration in granting bail for a convicted person, where it states that;

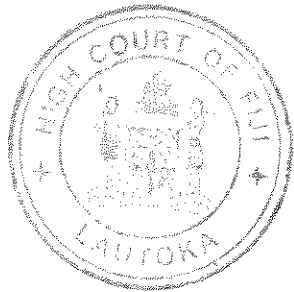
*“When a court is considering the granting of bail to a person who has appealed against conviction or sentence the court must take into account-*

*g) The likelihood of success in the appeal;*

*h) The likely time before the appeal hearing;*

*i) The proportion of the original sentence which will have been served by the applicant when the appeal is heard".*

17. It appears that the learned Magistrate has not considered any of the provisions in the Bail Act in granting the Appellant bail on the 26th of September 2016. Therefore, it is my view that the order of releasing the Appellant on bail is wrong in principle. I accordingly reverse the said order of the learned Magistrate pursuant to Section 262 (1) (b) of the Criminal Procedure Decree.



A handwritten signature in black ink, appearing to be "R. D. R. Thushara Rajasinghe". The signature is stylized and written in a cursive-like manner.

**R. D. R. Thushara Rajasinghe**

**Judge**

**At Lautoka**

**4th of January, 2017**

**Solicitors : Nazeem Lawyers**

**Office of the Director of Public Prosecutions**