

NOUSHEEN MEZBEEN HUSSAIN also known as Nousheen Mezbeen Ali, between the 1st day of January, 2012 and the 31st day of May, 2012, at Suva, in the Central Division dishonestly appropriated \$15,362.78 belonging to Art and Soul Limited with the intention of permanently depriving the said Art and Soul Limited of the said amount.

Second Count
Statement of Offence

OBTAINING PROPERTY BY DECEPTION: Contrary to section 317 of the Crimes Decree No. 44 of 2009.

Particulars of Office

NOUSHEEN MEZBEEN HUSSAIN also known as Nousheen Mezbeen Ali, between the 8th day of February, 2012 and the 2nd day of March, 2012, at Suva, in the Central Division dishonestly obtained \$1,772.10 from Fiji Revenue and Customs Authority with the intention of permanently depriving Fiji Revenue and Customs Authority of the said amount.

Third Count
Statement of Offence

MONEY LAUNDERING: Contrary to section 69(2)(a) and (3)(b) of the Proceeds of Crime Act 1997.

Particulars of Office

NOUSHEEN MEZBEEN HUSSAIN also known as Nousheen Mezbeen Ali, between the 1st day of January, 2012 and the 31st day of May, 2012, at Suva, in the Central Division used a total of \$17,134.88, that are the proceeds of crime, knowing or ought reasonably to have known that the \$17,134.88 is derived or realized directly or indirectly from some form of unlawful activity.

2. The assessors unanimously found the accused guilty on each count as charged.
3. I direct myself in accordance with my own Summing-Up and review evidence led in the trial. Having concurred with the opinion of assessors, I pronounce my judgment as follows.
4. The Prosecution called 7 witnesses and tendered 14 documents. At the end of Prosecution's case, the Court put the accused to her defence when it found that there was a case for the accused to answer on each count. Whereupon, the Defence called the accused and one witness and tendered 10 documents.
5. There is no dispute that a total sum of \$15,362.78 was received by the accused into her ANZ (salaries) bank account from the complainant Art & Soul Limited. This admission is reflected in the agreed facts 12-35. Prosecution tendered PE 12 which is the schedule of 23 transactions to reflect those transactions. The first transaction is a deposit of a cheque (PE7) and the rest are internet banking wire transfers carried out from 10 February 2012 to 31 May 2012.
6. The Prosecution says that all of those transactions were unauthorised and the accused as the accounts person of the complainant dishonestly misappropriated the funds of the complainant thus committing a theft. The second count concerns a claim by the accused of a tax refund from FRCA on the strength of alleged false and fraudulent documents. The Money Laundering count is based on accused's alleged act of using the money derived from the commission of the first two offences in such a way as to conceal the true origin of the proceeds of crime.
7. With regard to the 1st transaction in PE 12, the Prosecution contended that the cheque for 5000/-(PE7) was unauthorised in that, when the signature to it was obtained, Felicia, a director at Art & Soul, was misled by the accused in to believing that the payee of the cheque was 'Quality Print'. Felicia, Shiri Ram (the complainant) and Prasad from 'Quality Print' testified in this regard. Felicia, having recognised her signature in PE 7, said that the cheque was blank when it was brought by Nousheen in a rush for her signature. She checked the cheque butt to verify the payee before putting her signature. She thought it could have been an urgent payment for 'Quality Print'. She crossed the cheque as a precautionary measure and signed. She did not know that the cheque money was going to Nousheen. If she did, she

would not have signed without consulting Shiri. Having looked at her passport, Felicia confirmed that she was not in Fiji on 10 February 2011 to sign this cheque.

8. Felicia is a credible and reasonable witness. Even the Defence Counsel in his closing concedes this fact. Felicia described Shiri as a 'horrible husband'. Although she is the ex-wife of Shiri, she did not appear biased. Evidence of Felicia was confirmed by Shiri who said that he did not authorise this cheques(P7). The accused admitted that the check butt or counter-foil was shown to her at the police interview and it had the narration -'Quality Print'. Prasad confirmed that PE-7 was not a payment for 'Quality Print'. He said that the cheque number on the receipt (PE6) they issued to Art & Soul had subsequently been changed. It could reasonably be inferred that Nousheen who is deemed to have the custody of it had changed the cheque number on the receipt to match the cheque she misappropriated.
9. The accused maintained that Felicia was fully aware in whose name the cheque was to be payable and for what purpose it was drawn. The purported reason advanced by Nousheen why this cheque was drawn in her favour is unacceptable. Christina denied having received any payment from Nousheen for the so called custody arrangement or any legal fees. It is reasonable for the assessors to accept the version of the Prosecution in this regard.
10. The rest of the transactions are internet bank wire transfers. As per the Art & Soul bank statement (PE1), impugned internet transfers carry various narrations or labels like 'PAY-ROLL', 'FEL-IB', 'BSPL POL', 'INTEREST' and most of them appear to be those of payroll transfers. The Prosecution says that those transactions were unauthorised and the narrations given to them were misleading.
11. In this regard, Shiri Ram and Sydel Whippy testified for Prosecution. It is not disputed that Nousheen was a long time trusted accounts person for Shiri at Art & Soul. Nousheen admits that she had been given the user ID and the password to access the internet banking platform of the company and that she was the one who was handling all the business transactions including payroll and other payments like utility bill payments.
12. Shiri said that in the year 2012, Nousheen was on a \$12,000.00 annual salary and was entitled to a fortnightly salary of \$ 424.61. According to Art & Soul bank statement (PE1), Nousheen's salary had been fluctuating and most of the time the amount exceeds the \$

424.61 mark. Shiri confirmed that he had never increased Nousheen's salary in 2012 and anything transferred to Nousheen's bank account in excess of the stipulated salary is unauthorised. He denies that payment vouchers were prepared for every online payment and that the excel spreadsheets in printed form were brought to him by Nousheen for his approval before salary payments were made. He denies seeing a document like page 5 of DE.1 (a purported salary breakdown of the Art & Soul staff) and having approved such a document on a fortnightly basis before being sent to the ANZ bank.

13. Shiri has stated in his statement to police that after Nousheen had left the company, she had disposed off all the supporting documents, vouchers and financial records and deleted all the soft copies. In his testimony however Shiri admitted that his statement to police is not correct as the soft copies of missing documents were recently recovered from a discarded computer. He said that he made such a statement to police because in the circumstances he had genuinely believed that Nousheen had destroyed all the documents. Shiri has given a reasonable explanation for the inconsistency.
14. Shiri does not deny that he had advised the Courts Company that Lakalaka was an employee of his company although she was not. Shiri's explanation is that, in order to help Lakalaka to buy a washing machine on a hire purchase scheme, he had to give such an advice. Even Nousheen admits that Lakalaka was on the payroll of Art & Soul. In the circumstances, merely because of this representation Shiri had made to the Courts Company, I do not think he would make himself a liar.
15. Shiri said that although he had the user ID and the password, he mostly logged in to the online platform to check the balances and all other company transactions were done by Nousheen. Given the misleading narrations like 'PAYROLL', 'FEL-IB', 'BSPL POL', 'INTEREST' that had been used to cover up the illegitimate transactions, it is possible, on a superficial perusal, for Shiri to overlook the unauthorised payments on the internet bank platform even if he had scrolled through it.
16. In the circumstances, it is possible for the assessors to believe that Nousheen, as a trusted accounts person having had the full freedom and access to internet banking, by exploiting the trusted position she was placed in and Shiri's admitted weaknesses in accounting and women, had misappropriated the company money.

17. The accused says that all the transactions were done with the full knowledge and approval of the complainant. She alleges that the supporting documents like vouchers and excel spreadsheets which would have supported her case have been suppressed by Shiri.
18. Evidence of Shiri is that not all the payments done online were supported by vouchers or spreadsheets. Sydel confirmed that there were no paper documents for any salary for Art and Soul in April 2012 and the salaries were paid online. Shiri frankly revealed that some material was recently found from a discarded computer. He did not say that the hard copies of vouchers or spreadsheets were recovered. Therefore, he has not completely retracted his previous statement that 'supporting documents, vouchers and financial statements had been disposed off by Nousheen'. It has to be accepted that without producing the hardcopies of vouchers and spreadsheets in the printed form, the accused would not be able to show to this court that Shiri had given a written approval to those transactions. Therefore, there is no basis for the allegation that Shiri had suppressed those documents.
19. Furthermore, according to Sydel, some suspicious transactions had been drawn to Nousheen's attention whereupon both of them on Shiri's instructions had gone to the ANZ bank to check on the questionable 'double payments'. This evidence was not challenged. The bank had taken a few days to come up with their finding while Nousheen was still working for the company. During this period, she must have had access to company documents that would potentially support her case. Nousheen in particular said that for the sake of accountability for money, she maintained records of payments done to Christina and Lakalaka and all the deposit slips were compiled. When the bank investigation was underway, she, as a prudent accounts person, could have realised that those documents were important to support her defence that she was distributing company money to Christina and Lakalaka on Shiri's instructions. She could have obtained the copies of those documents and kept them for herself. She has not produced any such document. In the circumstances, it is open for the assessors to accept the evidence of Shiri that the impugned transactions were carried out without his knowledge or approval.
20. Nousheen tendered an internet banking receipt generated from ANZ internet bank platform (DE-5) to show that the name of the person who carries out the transaction should always appear on the receipt. She argues that if she had done a particular internet transaction, her

name should appear on the receipt. It is not plausible that the bank had issued two usernames to a particular customer when the user ID and the Password are not supposed to be shared. It was never suggested to Shiri that Nousheen had also been issued a different user name in her name by the bank.

21. The accused maintained that Shiri having spent lavishly on her two girlfriends, is now putting the blame on her for missing money. Her evidence is that the fluctuations and excesses in payroll payments had been due to instructions she had received from Shiri to do various payments mostly of which in favour of Shiri's two girlfriends, Christina and Lakalaka. Nousheen also said that she was given even paid leave and the company vehicle to do shopping and dispatch groceries to these two ladies.
22. Shiri denied that he had given such instructions. Although the assessors did not have the opportunity to hear Lakalaka, Christina was in Court to tell her story. She said she never received payments from Nousheen other than what was owed to her for the hard work done for the company. She denied receiving groceries from Nousheen. She however admitted that Nousheen used to visit her with Rani in the company of the housemaid Kinisimere.
23. Kinisimere who was called to support Nousheen's version is not a reliable witness. It is unbelievable as she said that Christina was waiting home every Friday to receive groceries from them. Kinisimere had left Shiri's place because it's against her belief what was happening in that house. However she had served there for nearly two years. She had come there to look after Rani who was born out of Shiri's wedlock. She should have realised much earlier that it was not a good place for her to work.
24. Christina proved herself to be a financially independent lady. Even Nousheen admitted that Christina was drawing a salary of around \$ 800.00 - \$ 900 fortnightly when she was working for Art & Soul. It is unbelievable that Christina, such a busy person she was, was waiting home on every Friday to receive groceries from Nousheen.
25. Nousheen tendered certain deposit slips pertaining to salary payments done during her stay away from the company on maternity leave. Her evidence is that Shiri had approved all those payments even at times when she was not involved in the payroll system. Shiri's evidence is that Nousheen came to the office even during her maternity leave period to help

prepare the cheques. Although Nousheen denied coming to the office during that period, she admitted that she prepared pre-prepared cheques before she left on maternity leave. According to her own evidence she had not neglected her duty to provide for Christina and Lakalaka on Shiri's behalf even during her maternity leave period. Therefore it is possible that the payroll system was under Nousheen's control even during her maternity leave period.

26. Nousheen's evidence that extra money coming to her bank account from Art & Soul under the narration 'Payroll' was to be distributed among Christina and Lakalaka is unbelievable. There is no logic as to why Shiri should instruct Nousheen to transfer money to her account when it was possible to transfer money direct to the bank accounts of Christina and Lakalaka.
27. I observed the demeanour of the witnesses. Witnesses for Prosecution were straightforward and not evasive. They proved themselves to be honest and reliable. On the other hand, it appeared that the accused gave long and well prepared answers at times even going far beyond from what was expected of her by the question posed. Her demeanour is not consistent with honesty. It is open for the assessors to reject her evidence and accept the version of events of the Prosecution.
28. I now turn to the elements of the offences.

1st Count- Theft

29. In relation to the first count, the Prosecution must prove that the accused had dishonestly appropriated a sum of \$15,362.78 belonging to the complainant with the intention of permanently depriving the complainant of the said money.
30. It is not disputed that deposit of the cheque (PE7) and 22 wire transfers were done by the accused and as a result of which the accused received a sum of \$15,362.78 into her bank account. The Prosecution proved that those appropriations were unauthorised and therefore dishonest. The accused made a confession to Shiri and Sydel that she was stealing money from the company. Nousheen's subsequent conduct of restitution of \$10,000.00 is consistent with that of a thief. Nousheen's explanation that she was giving a loan to Shiri for him to dissolve the marriage is not convincing. The Prosecution proved that the accused dishonest-

ly appropriated a sum of \$15,362.78 belonging to the complainant with the intention of permanently depriving the complainant of the said money.

2nd Count-Obtaining Property by Deception

31. "Deception" means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law. To deceive is ...to induce a man to believe that a thing is true which is false.
32. The accused admits that she lodged PE10 (Form S – FRCA Return for Salary and Wages Earners) and the attached document PE11 (Pay as you earn (PAYE) Employee Certificate [agreed facts number 8] with FRCA. Shiri testified that the accused was on a \$10,000 annual salary scale and was not liable to pay taxes in 2011. He denies signing PE11 and stated that the company stamp was always in the possession of the accused.
33. PW 5- Fereti of FRCA said that relying on the documents lodged, the application was processed and FRCA had refunded the deducted tax of \$1772.10. He said that the refunded money belonged to FRCA. There is no dispute that the accused received into her bank account a sum of \$1772.10 from FRCA as a tax refund. The Prosecution proved that the accused was not entitled to a tax refund in 2011. She lodged fraudulent and misleading documents with FRCA (PE10 and PE11) and as a result of the misrepresentations she made to FRCA, she was refunded. The accused is guilty on the 2nd count.

3rd Count - Money Laundering

34. To prove the offence of Money Laundering count in this case, The Prosecution must prove that the accused used property that is proceeds of crime and she knew, or ought reasonably to know that the money she was using was derived from some form of unlawful activity.
35. There is no dispute that Nousheen received a total sum of 17,134.88 from Art & Soul and FRCA into her bank account. Prosecution proved that the money was generated from two serious predicate offences, namely, Theft and Obtaining Property by Deception thus the money forms proceeds of crime. Since the accused is the one who committed the predicate offences, she was fully aware that the money was derived from some form of illegal activity.

She used the financial system which is a bank to transfer the illicit money from one account to another and for that purpose she used various misleading narration like 'PAYROLL', 'FEL-IB', 'BSPL POL', 'INTEREST' to disguise the true origin of illicit money. As soon as the monies hit her (salaries) bank account she either withdrew or transferred part of that money to a 'hidden' savings account to disguise the true origin of the proceeds of crime. Prosecution tendered the bank statements PE 3 and PE3 (A) to show as to how the transfers and withdrawals were done by the accused. According to those statements, from 13 February 2012 to 31 May 2012, a total sum of 20268.64 had been withdrawn. Making withdrawals and transfers from a bank account which is tainted with illegality, she was using the illicit money in such a manner so as to disguise the true source of income and to make the money look legitimate and clean. The very purpose of money laundering is to conceal the provenance of illegally acquired wealth. All the elements of Money Laundering as charged are fulfilled.

36. Prosecution proved all the three counts beyond reasonable doubt. I accept the unanimous opinion of the assessors. The accused is convicted on each count accordingly.
37. That is the judgment of this court.



Aruna Aluthge
Judge

At Suva

05 December 2019

Solicitors: Director of Public Prosecution for State
Toganivalu Legal for Accused