

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 196 of 2018

STATE

vs.

- 1. LOIZOS PETRIDIS**
- 2. CLEANTHIS PETRIDIS**

Counsel: Ms. J. Prasad with Mr. S. Shah for the State
Mr. F. Vosarogo for both Accused 1 and 2

Date of Ruling: 05th September 2019

RULING
[On the Jurisdiction of the Court]

1. The two accused persons were initially charged in the Magistrate's Court with 293 counts of Money Laundering, contrary to Section 69 (2) (a) and 3 (a) of the Proceeds of Crimes Act 1997 and Attempt to Obtain Property by Deception contrary to Sections 44 and 317 of the Crimes Act. The prosecution then made an application pursuant to Section 188 (2) of the Criminal Procedure Act to transfer the case to the High Court, on the ground that the Money Laundering is a serious offence which carries a maximum penalty of 20 years imprisonment. The learned Magistrate in his ruling dated 7th of May 2018, transferred the matter to the High Court pursuant to Sections 188 and 191 of the Criminal Procedure Act.
2. The prosecution filed an information in the High Court on the 21st of May 2018 with one count of Money Laundering, contrary to Section 69 (2) (a) and (3) (a) of the Proceeds of

Crimes Act 1997, one count of Attempt to Obtain Property by Deception, contrary to Sections 44 and 317 of the Crimes Act and one count of Possession of Property Suspected of being Proceeds of Crime, contrary to Section 70 (1) of the Proceeds of Crimes Act 1997. According to the first count, the allegation of Money Laundering was involved with \$95,000. The information was amended on the 18th of January 2019, in order to provide more particulars of the offences. On the 27th of June 2019, the Prosecution filed another amended information. According to the amended information dated 27th of June 2019, the two accused were charged with two counts of Money Laundering, one count of Attempt to Obtain Property by Deception, and one count of Possession of Property Suspected of being Proceeds of Crime. The learned Counsel for the prosecution informed the Court that the two counts of Money Laundering was involved with over 290 transactions of ATM withdrawals. The matter was then set down for hearing from 2nd of September 2019 to 30th September 2019.

3. On the 2nd of September 2019, the prosecution made another amendment to the information, by reducing two counts of Money Laundering into one count of Money Laundering. According to the amended information dated 2nd of September 2019, the two accused were charged with one count of Money Laundering involved with \$12,500, contrary to Section 69 (2) (a) and (3) (a) of the Proceeds of Crimes Act 1997, one count of Attempt to Obtain Property by Deception, contrary to Sections 44 and 317 of the Crimes Act and one count of Possession of Property Suspected of Being Proceeds of Crime, contrary to Section 70 (1) of the Proceeds of Crimes Act 1997. The alleged amount of the money involved in the first count was reduced to \$12, 500 from \$34,890. The learned counsel for the prosecution then informed the Court that this alleged count of Money Laundering involves with only 62 transactions and not over 290 transaction as it was initially alleged.
4. The prosecution on the 4th of September 2019, made another application to amend the information, which was subsequently granted. According to the amended information filed on the 4th of September 2019, the two accused are now being charged with one count of Obtaining Property by Deception, contrary to Section 317 of the Crimes Act, one count of Attempt to Obtain Property by Deception, contrary to Sections 44 and 317 of the Crimes Act and one count of Possession of Property Suspected of being Proceeds of Crime, contrary to Section 70 (1) of the Proceeds of Crimes Act 1997.

5. Having filed the said amended information, the learned Counsel for the prosecution submitted that all three counts are summary offences as defined under the Sections 4 and 5 of the Criminal Procedure Act, hence, the jurisdiction to hear this matter is now with the Magistrate's Court. Moreover the learned Counsel for the prosecution submitted that the order made by the learned Magistrate on the 7th May 2018, transferring the original 293 charges of Money Laundering and attempt to Obtain Property by Deception is no longer valid as the nature of the main offence of Money Laundering has now changed to the offence of Obtaining Property by Deception.
6. The learned Counsel for the prosecution further submitted that reasons for making the application in the Magistrate's Court under Section 188 (2) of the Criminal Procedure Act, were the seriousness of the offence of Money Laundering, the amount involved in it, the number of transactions involved in it and the possible sentence which might exceeds the sentencing jurisdiction of the learned Magistrate. However, the three offences in the amended information dated 4th of September 2019, specially the first count of Obtaining Property by Deception carries only a maximum penalty of 10 years imprisonment and involved with \$12,500 only. Hence, that matter can be properly heard in the Magistrate's Court.
7. The learned Counsel for the defence concurred with the application of the learned Counsel for the prosecution, stating that the defence is not objecting to this application.
8. Section 4 (1) of the Criminal Procedure Act has defined the jurisdiction of the High Court and the Magistrate's Court in respect of the offences under the Crimes Act. Section 4 (1) states that:

Subject to the other provisions of this Decree—

- (a) *any indictable offence under the Crimes Decree 2009 shall be tried by the High Court;*

- (b) *any indictable offence triable summarily under the Crimes Decree 2009 shall be tried by the High Court or a Magistrates Court, at the election of the accused person; and*
- (c) *any summary offence shall be tried by a Magistrates Court.*
9. According to Section 4 (1) of the Criminal Procedure Act, the nature of the offence determines the jurisdiction of the Court. If it is an indictable offence, it shall be tried by the High Court. If it is a summary offence, it shall be tried by the Magistrate's Court. **(State v Prasad [2019] FJCA 18; AAU123.2014 (7 March 2019).**
10. The jurisdictions of the Court for the offences that have been created under other laws have been stipulated under Section 5 of the Criminal Procedure Act, which states that:
- i) *Any offence under any law other than the Crimes Decree 2009 shall be tried by the court that is vested by that law with jurisdiction to hear the matter.*
- ii) *When no court is prescribed in any law creating an offence and such offence is not stated to be an indictable offence or summary offence, it may be tried in the Magistrates Court in accordance with any limitations placed on the jurisdiction of classes of magistrate prescribed in any law dealing with the administration and jurisdiction of the Magistrates Courts.*
11. The first and the second offence as charged under counts one and two of the amended information dated 4th of September 2019 are summary offences, hence, the jurisdiction to try those offences is vested with the Magistrate's Court pursuant to Section 4 (1) (c) of the Criminal Procedure Act.
12. The Proceeds of Crimes Act 1997 has not specifically prescribed any Court, hence, the jurisdiction to try any offence under the Proceeds of Crimes Act 1997 is primarily vested with the Magistrate's Court pursuant to Section 5 (2) of the Criminal Procedure Act.

13. Accordingly, the High Court has no jurisdiction to hear these three offences as charged in the amended information dated 4th of September 2019.
14. The High Court acquires the jurisdiction to hear a summary offence, if such a case is transferred to the High Court pursuant to Section 188 of the Criminal Procedure Act. Section 188 of the Act states that:
 - i) *If before or during the course of a trial before a Magistrates Court it appears to the magistrate that the case is one which ought to be tried by the High Court the magistrate may transfer the case to the High Court under Division 3 of this Part.*
 - ii) *Before the calling of evidence at trial, an application may be made by a public prosecutor or police prosecutor that the case is one which should be tried by the High Court, and upon such an application the magistrate shall —*
 - a) *hear and consider the reasons for the application;*
 - b) *hear and consider any submissions made on behalf of the accused person as to the most appropriate court to hear and determine the charges; and*
 - c) *otherwise determine matters relevant to the grounds for the application – and may continue to hear the case (unless the charges are of a nature that may be tried only by the High Court) or transfer the case to the High Court under Division 3 of this Part.*
15. According to the Section 188 of the Criminal Procedure Act, the High Court has no jurisdiction to determine whether a summary offence is one which ought to be tried in the High Court. Only the Magistrate's Court has such jurisdiction to determine whether a summary offence is a case which ought to be tried in the High Court pursuant to Section 188 (1) and (2) of the Criminal Procedure Act.

16. The initial 293 charges of Money Laundering and Attempt to Obtain Property by Deception were transferred to the High Court pursuant to Section 188 (2) of the Criminal Procedure Act. The learned Counsel for the prosecution submitted that the order of the learned Magistrate dated 7th May 2018 is based upon the application made by the prosecution that the offence of Money Laundering is a serious offence, which carries a maximum sentence of 20 years imprisonment and also involved with large amount of transactions. However, the amended information dated 4th of September 2019, has replaced the offence of Money Laundering with an offence of Obtaining Property by Deception, which involves with \$12, 500 and carries a maximum penalty of ten years imprisonment, which is within the sentencing jurisdiction of the Magistrate's Court. The learned Counsel for the prosecution states that the nature of the offence that was considered in the ruling of learned Magistrate dated 7th May 2018 has now been changed by the amended information dated 4th of September 2019. Hence, this Court has no jurisdiction to hear the offences as charged in the amended information dated 4th of September 2019.
17. I concur with the above submissions of the learned Counsel for the prosecution that this Court has no jurisdiction to hear this amended information dated 4th of September 2019 pursuant to Sections 4 (1) and 5 of the Criminal Procedure Act. I accordingly, transfer this matter to the Magistrate's Court in Suva to hear the matter pursuant to Sections 4 (1) and 5 of the Criminal Procedure Act.
18. The learned Counsel for the prosecution further made an application for an order, directing the Magistrate's Court to have a speedy and expedient trial for this matter. As I discussed above, this Court has no jurisdiction to make such an order.




R.D.R.T. Rajasinghe
Judge

At Suva
05th September 2019

Solicitors
Office of the Director of Public Prosecutions for the State.
Vosarogo Lawyers for both Accused 1 and 2.