

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 59 of 2020

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS of the Republic of Fiji,
25 Gladstone Road, Suva, for and on behalf of the STATE.

APPLICANT

AND

TALLAT RAHMAN of Mt. Eden Correction Facility, Lauder road,
Mount Eden, Auckland 1150, New Zealand.

FIRST RESPONDENT

AND

JOSHUA RAHMAN of Suva Remand Centre, Suva.

SECOND RESPONDENT

Counsel

:

Ms. Konrote M. for the Applicant

Mr. Nadan A. for the Respondents

Date of Hearing : 27th October 2020

Date of Ruling : 24th November 2020

RULING

[1] The applicant filed this Notice of Motion pursuant to section 19A and section 34 of the Proceeds of Crime Act 1997, seeking a restraining order over the following property:

The sum of FJD \$75,101.99 in the Bank of South Pacific Account No. 81667989 in the name of Tallat Rehman.

[2] The 1st respondent is the father of the 2nd respondent. On 14th February 2019 the Police Officer with a Customs officer searched the house of the respondents at Lot 8 Caubati Road, Velelevu and found two parcels containing Cocaine.

[3] The 1st respondent has been charged in New Zealand with the following offences:

Importing a Class A controlled Drug contrary to section 6(1)(a) & 6(2)(a) of the Misuse of Drugs Act 1975.

Conspiracy to import a Class A controlled Drug contrary to section 6(1)(a) & 6(2A) of the Misuse of Drugs Act 1975.

Participating in an Organised Criminal Group contrary to section 98A of the Crimes Act 1961.

[4] The 2nd respondent was charged with one count of unlawful possession of an illicit drug under section 5 of the Illicit Drugs Control Act 2004.

[5] The 1st respondent was convicted by the District Court of Auckland and sentenced him to 16 years imprisonment.

[6] Section 19A(1) of the Proceeds of Crime Act 1997 provides:

Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under section 19E and 19H

the Director of Public Prosecutions may apply to the court for a restraining order under subsection (2) against the property.

Section 4(1A) –

In this Act, in relation to a serious offence or a foreign offence, “proceeds of crime” means property or benefit that is –

- (a) wholly or partly derived or realised directly or indirectly by any person from the commission of a serious offence or a foreign serious offence;
- (b) wholly or partly derived or realised from a disposal or other dealing with proceeds of a serious offence or a foreign serious offence; or
- (c) wholly or partly acquired proceeds of a serious offence or a foreign serious offence.

- [7] Before granting a restraining order the court must see whether there are reasonable grounds to make such an order. The court cannot based its decision on assumptions.
- [8] The police have raided the 2nd respondent’s residence and found 39.5 Kg of Cocaine and the affidavit in support the office has averred that the investigations revealed that on 05th December 2017, \$176,155.80 had been transferred to the 1st respondent’s A/C No. 81667989, Bank of South Pacific. The bank statements show that that money had come in US Dollars (USD85, 000.00). This will certainly create a doubt in the mind of the court without any explanation as to the purpose of this transfer.
- [9] The question here is whether the restraining order sought by the applicant is in respect of this money or part of it.
- [10] The bank statements relied on by both parties show that when \$118,118.30 was deposited into the 1st respondent’s account on 31st August 2018, there had been only a balance of \$1967.66 in his account. This \$118118.30 was the 1st respondent’s share of his father’s estate which is clearly stated in the bank statement. There had also been few more deposits between 05th December 2017 and 31st August 2018. It is therefore clear that \$75,101.99 is part of the money the 1st respondent received as his share of his father’s estate and not part of the money that was deposited on 05th December 2017.
- [11] In the affidavit in support it is stated that the investigating officers believe that the 1st and 2nd respondents intended to export the drugs seized from their residence in


Caubati to New Zealand for sale and that the \$75,101.99 was obtain from the commission of a serious offence.

[12] There is no doubt that the offence for which the 1st respondent was convicted and sentenced is a serious offence. What the investigating officers believe is not sufficient for the court to arrive at the conclusion that \$75,101.99, sought to be restrained, is part of the money received by the 1st respondent on 05th December 2017.

ORDERS

1. The application for a restraining order is refused.
2. There will be no order for costs.




Lyone Seneviratne

JUDGE

24th November 2020