

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

APPEAL CASE NO. HACDA 08 of 2021S

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

vs

PRITAM SINGH

<i>Counsels:</i>	<i>Ms. Pene J.</i>	-	<i>for Applicant</i>
	<i>Mr. Chand N.</i>	-	<i>for Respondent</i>

JUDGMENT

1. In this matter, the Accused (Respondent in this matter) had been charged and tried in the Magistrates Court of Suva under the case number MACD 7 of 2021 for committing an offence under **Section 4(2) (b)** of the **Prevention of Bribery Act 2007**. The particulars of the count charged is as follows:

CHARGE

Statement of Offence

BRIBERY: Contrary to Section 4(2) of the Prevention of Bribery Act No. 12 of 2007.

Particulars of Offence

PRITAM SINGH on the 20th day of March 2016 at Nausori in the Central Division, whilst being employed in the Public Service as a Tax officer at the Fiji Revenue and Customs Authority without lawful authority or reasonable excuse accepted FJD\$1,200.00 cash and FJD\$6,300.00 cheque all to the total value of \$7,500.00 from ALLAN NAVINDRA PRASAD a businessman on account of his performing any act in his capacity as a Tax Officer at Fiji Revenue and Customs Authority.

2. At the trial, Prosecution had called 5 witnesses and marked 9 documents. At the end of the Prosecution case, Defense had been called by the Learned Magistrate and for the Defense the Accused had given evidence subject to cross-examination and two more witnesses had given evidence for the Defense case.
3. Thereafter, on 20th October 2020, the Learned Magistrate had found the Respondent guilty as charged. Subsequently, on 22nd October the Learned Magistrate had imposed a sentence against the Respondent of 21 months imprisonment and suspended that sentence for 3 years.

4. Being aggrieved by this sentence, the Appellant has filled this appeal in this Court on 19th November 2021.

Grounds of Appeal

5. The grounds of appeal of the Appellant are, as follows:

APPELLANT'S GROUND OF APPEAL

- i) Learned Magistrate erred in law and fact by entirely disregarding current Sentencing practice and applicable case authorities.
 - ii) Learned Magistrate erred in law and fact by unduly considering the fact that the Respondent "had no opportunity to enjoy the fruits of his deeds."
 - iii) Learned Magistrate erred in law and fact by failing to consider the Aggravating factors involved.
 - iv) Learned Magistrate erred in law and fact by considering loss of employment, being married with 2 children to look after being sole bread winner, negative effects that a custodial sentence will have on family and being punished on an extra-crucial basis due to negative media attention and deducting 03 months from the main sentence.
 - v) Learned Magistrate erred in law by disregarding the relevant case authorities of Sentencing public officials convicted of corruption in imposing a suspended sentence.
 - vi) Learned Magistrate erred in law and fact by imposing suspended sentence on the Respondent.
 - vii) Learned Magistrate erred in law and fact by considering the Respondent is a first offender who lost his employment and hat there were no lost suffered as the basis to impose a suspended sentence.
 - viii) Learned Magistrate entirely failed to consider and assess correctly the importance of Deterrence.
6. In considering the above grounds of appeal it can be perceived that all these grounds refer to the sentence imposed by the Learned Magistrate against the Respondent and the inadequacy of the said sentence under our law.

The Law

7. The law relating to appeals to High Court is set out in **Section 246** of the **Criminal Procedure Act 2009**. The Section reads:

"246 (1) 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 judgment and sentence....”

8. On hearing such an appeal from the Magistrates Court, the actions the High Court could take are clearly stipulated in **Section 256** of the **Criminal Procedure Act 2009**, as follows.

“256. (2) *The High Court may-*

- (a) confirm, reverse or vary, the decision of the Magistrates Court; or*
- (b) remit the matter with the opinion of the High Court to the Magistrates Court; or*
- (c) order a new trial; or*
- (d) order trial by a court of competent jurisdiction ;
or*
- (e) make such other order in the matter as to it may seem just, and may by such order exercise any power which the Magistrates Court might have exercised; or*
- (f) the High Court may, notwithstanding that it is of an opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.”*

Analysis of Court

9. In this matter, as mentioned above, the main contention of the Appellant is that the Learned Magistrate did not act justly and fairly in exercising his sentencing discretion. Therefore, in making a determination of the justifiability of the sentencing discretion of the Learned Magistrate in this matter, this Court intends to seek guidance from the decision of the **Court of Appeal of Fiji** in the case of *Sharma v State*¹, where referring to the English case of *House v The King His Lordship Justice Calanchini* has pronounced, as below:

“It is well established law that before this Court can disturb the sentence, the appellant must demonstrate that the Court below

¹ [2015] FJCA 178; AAU0048/2011 (3rd December 2015)

*fell into error in exercising its sentencing discretion. If the trial judge acts upon a wrong principles, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some relevant consideration, then the Appellate Court may impose a different sentence. This error may be apparent from the reasons for sentence, or it may be inferred from the length of the sentence itself (**House –v- The King** (1936) 55 CLR 499)."*

10. In this matter, the Learned Magistrate had imposed the sentence of 21 months imprisonment which was suspended for 3 years against the Respondent by acting under **Section 12 (1) (b) (ii) of the Prevention of Bribery Act 2009**. This section reads, as below:

“Penalty for offences

12 (1) Any person guilty of an offence under this Part, other than an offence under section 3, shall be liable-

(b) on summary conviction –

(i) for an offence under section 10, to a fine of \$500,000 and to imprisonment for 3 years; and

*(ii) for any other offences under this Part, to a fine of \$10,000 **and** to*

Imprisonment for 3 years,

And shall be ordered to pay such person or public body and in such manner as the court directs, the amount or value of any advantage received by him or her, or such part thereof as the court may specify.”

11. In viewing the plain text of the **Prevention of Bribery Act 2007**, it is perceptible that under this section the Legislature in its wisdom has expected the sentencing authority to impose a **conjunctive** sentence, i.e., **a prison sentence and a fine**. However, in his sentence in this matter the Learned Magistrate has completely ignored the intention of the Legislature and the provisions of the statute. Therefore, this sentence is erroneous and thus warrants this Court to impose a suitable sentence according to the law of our country.

12. Further, the need to interfere with this sentence by this Court satisfies the pronouncement made by the **Court of Appeal of Fiji** in the case of **Saqinaivalu v State**², where his Lordship Justice Gounder has stated, as below:

*“It is well established that on appeals, sentences are reviewed for errors in the sentencing discretion (**Naisua v The State**, unreported Cr. App. No. CAV0010 of 2013;*

² [2015] FJCA 168; AAU0093/2010 (3rd December 2015)

20 November 2013 at [19]). Errors in the sentencing discretion fall under four broad categories as follows:

- i. *Whether the sentencing judge acted upon a wrong principle;*
- ii. *Whether the sentencing judge allowed extraneous or irrelevant matters to guide or affect him;*
- iii. *Whether the sentencing judge mistook the facts;*
- iv. *Whether the sentencing judge failed to take into account some relevant consideration."*

13. In the present matter, as a starting point for this Court to interfere with this sentence, it is evident that the Learned Magistrate in exercising his sentencing direction has failed to take into consideration the unequivocally stipulated law in the statute to impose a conjunctive sentence against the Respondent.

14. Further, it needs to be highlighted that though the parties have submitted more than 15 case authorities on sentencing for Bribery offences for consideration, none of them are on convictions by the Magistrates Court of Fiji on **Section 4 (2) (b) of the Prevention of Bribery Act of 2007**. They are mainly on convictions by the High Court on **Prevention of Bribery Act 2007** or convictions by the High Court or the Magistrates Court for Bribery offences under the **Crimes Act of 2009**.

15. Further, the sentencing Magistrate has also elaborated in the sentence the difficulties he faced in sentencing in this matter due to the absence of tariff for summary offences under the **Prevention of Bribery Act 2007**, as below:

"12. The offence of Bribery as charged in this matter has a maximum sentence of a fine of \$10,000.00- and 3 years imprisonment. This is established by noting that the entirety of Section 4 of the Prevention of Bribery Act 2007 has not specified the class of offences, that is there is no specification of whether the offences are indictable offences or otherwise. As such as per Section 5 of the Criminal Procedure Act 2009, the charged offence is deemed a summary offence where it falls into the category of a summary conviction under Section (2)(1)(b)(i) of the Prevention of Bribery Act, 2009.

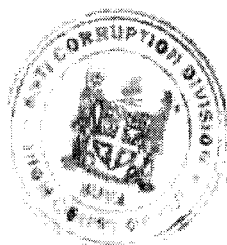
13. As such, it would not be a prudent exercise to consider the sentencing guidelines tariffs which have not been passed for Bribery offences by other Courts as published as they have not taken into consideration the discussion in paragraph 8 above herein."

16. In recognizing the sentiments expressed by the Learned Magistrate, while identifying that the Magistrate had the discretion in identifying the mitigating and aggravating factors particular to this matter, this Court intend to emphasize that the Learned Magistrate was not drawing on a blank canvas in exercising his sentencing discretion in this matter. In this regard, there were existing determinations in our jurisdiction made by the High Court in appeal on the exact section of the **Prevention of Bribery Act 2007** that the Learned Magistrate could have considered.

17. For this end, this Court intends to highlight the decision of the High Court in appeal in the case of *Beranaliva v Fiji Independent Commission against Corruption [2017] FJHC 911*³, where His Lordship Justice Aluthge had affirmed a conviction and the sentence imposed by the Learned Magistrate of Nadi for commission of offences under **Section 4 (2) of the Prevention of Bribery Act of 2007**, where the Learned Magistrate had imposed a sentence of 18 months imprisonment with a fine of \$1,000.00 and in default of fine, an imprisonment of 100 days to be served consecutive to the main sentence.
18. In this matter, in addition to sentiments expressed by the Learned Magistrate in relation to the lack of sentencing tariffs for Bribery offences which are tried summarily in the Magistrates Court, this Court notices the request made by FICAC from this Court to provide guidelines for sentencing to the Magistrates Court. In observing the lacuna in our existing literature for this aspect, this Court considers that this case provides an ideal opportunity to provide the required guidelines in following the applicable law stipulated in **Sentencing and Penalties Act of 2009**.

Determination of Court

19. Therefore, acting under **Section 6 (3) of the Sentencing and Penalties Act of 2009** this Court intends to consider a guideline judgement for summary trials in the Magistrates Court under the **Prevention of Bribery Act 2007**. For this purpose, hereby this Court notifies the Director of Public Prosecutions of Fiji and the Director of the Legal Aid Commission of Fiji to make their submissions in this Court for assisting this Court to identify the most appropriate sentencing guidelines for summary offences under the **Prevention of Bribery Act 2007**.
20. Considering the above analyzed, the sentence imposed by the Learned Magistrate of Suva on 22nd October 2021 in this matter is set aside.
21. Acting under Section 256(2) (a) of the Criminal Procedure Act 2009, this Court will impose an appropriate sentence after pronouncing the proposed guideline judgment.



Hon. Justice Dr. Thushara Kumarage

At Suva
This 20th day of June 2023

cc: - *Fiji Independent Commission Against Corruption, Suva*
- *Capital Legal, Ratu Sukuna Rd, Suva.*

³ [2017] FJHC 911: HAA 30.2017 (1st December 2017)