

MUNESH CHAND v STATE (AAU0049 of 2011)

COURT OF APPEAL — CRIMINAL JURISDICTION

5 MARSHALL JA

13, 13 February 2012

10 **Criminal Law — sentencing — leave to appeal against sentence — chances of success — systematic computer thefts — position of trust — premeditation — previous conviction — guilty plea — abuse of process — deterrent sentence — Court of Appeal Act s 35(2).**

15 While employed as a payroll clerk, the appellant stole \$60,000 by siphoning off payments owed to employees into his own account. He had a previous conviction for robbery with violence. The appellant pleaded guilty on three counts after contesting the case. The appellant was sentenced to a total of four years' imprisonment with a non-parole period of 3 years and ordered to pay \$34,267.76 to the Company.

Held –

20 (1) This case is much more serious than the case of *State v Akanisi Panapasa*. The theft by means of computer fraud was more sophisticated, the appellant had a prior conviction, and the amount stolen by the appellant was greater over a shorter period. Further, there is the premeditation involved in obtaining a job and then almost immediately designing and operating a sophisticated series of thefts via an altered computer disc.

25 *The State v Akanisi Panapasa* Crim Cas No HAC 034 of 2009, considered.

(2) This application has no chance of success and is an abuse of process. Positions of trust being abused in this way call for a deterrent sentence. If this appeal came before the Full Court it would consider increasing the sentence.

30 Application for leave to appeal against sentence dismissed, and appeal dismissed.

K Shah for the Appellant.

N Tikoisuva for the Respondent.

35 [1] **Marshall JA.** Munesh Chand was aged 25 or 26 when he obtained a job with Fiji Ships and Heavy Industries Limited, which is a government owned corporation in early 2009. The job was as payroll clerk. He was paid about \$11,000 - \$12,000 per year and was below the tax threshold. Munesh Chand was entrusted with preparing a payment disc for use by Westpac Bank in making fortnightly payments to all the workers and staff members. Having calculated
40 what each worker was correctly owed on a master disc which remained with the company, the payments were revised downwards by small amounts in the disc sent to and used by Westpac to effect the payments to the workers. The difference was siphoned off into an account which Munesh Chand held with ANZ. The period of offending was between 15th April 2009 and 4th November 2009.

45 [2] In 2004 Munesh Chand had, in a tertiary education institution in Suva, the Fiji Institute of Technology, obtained a Diploma in Business Studies. No doubt this qualification and his substantial knowledge of information technology qualified him for a senior position of trust at Fiji Ships and Heavy Industries Limited. I am told he was in a division headed by the group accountant. But
50 although he was almost a new employee he was at the apex of the payroll system. The accountant had many important functions; he was not to blame for

employing Munesh Chand given his qualifications and was not expected to check the workings or the disc on each pay day.

[3] Munesh Chand married on 3rd April 2010 and has one child.

5 [4] The amount involved in this systematic and sophisticated computer theft was admitted to be \$60,000. In effect the books balanced because the company disc showed the company owing the correct total to the employees. The stealing was from the employees who got less than the company held disc showed. The difference being paid out to Munesh Chand meant that the books balanced and
10 the systematic thefts were not uncovered for many months.

[5] Mr Krishen Shah for the applicant has urged every argument available to him. But his submissions tended to be unacceptable when analysed. I mention two points. Firstly there were three specimen charges to which Munesh Chand pleaded guilty after contesting the case until the prosecution closed its case. But
15 where the admitted total is \$60,000 the almost \$5,000 mentioned in the three charges is irrelevant. It is the \$60,000 which Justice Thurairaja was dealing with and also what I am dealing with on this leave application. Secondly Mr Shah did not reveal that Munesh Chand had been convicted on 18th December 2007 for robbery with violence at Nasinu Magistrates Court for which he was sentenced
20 to 6 months imprisonment suspended for 12 months. Miss Tikoisuva for the State pointed this out to me in her submission.

[6] In view of the commencement of what was a sophisticated computer fraud as well as larceny by a servant, two months after commencing employment, the realistic inference is that obtaining this position of trust and using his skills to defraud and steal from his fellow employees was premeditated. It seems Munesh Chand had not learned any lessons for his previous convictions. Mr Krishen Shah's suggestion that this present sentence should have been suspended is
25 verging upon the totally irrational.

[7] The matter came before the High Court at Suva before Justice Thurairaja and assessors on 14th March 2011. After the prosecution evidence had been lead and cross-examined, Munesh Chand pleaded '*guilty*' to three counts. He agreed the figure of \$60,000 as the true amount of his thefts. Justice Thurairaja sentenced Munesh Chand to 4 years imprisonment concurrent on each count giving a total
35 sentence of 4 years. He fixed the period for non-eligibility at 3 years. He also ordered that the Company should be paid \$34,267.76 from Munesh Chand's account at ANZ in Suva.

[8] I have been greatly assisted in considering this application for leave to appeal against sentence by Mr Justice Goundar's sentencing judgment of 3rd
40 November 2011 in **The State v. Akanisi Panapasa** Criminal Case No HAC 034 of 2009. In that case Ms Akanisi Panapasa had joined Budget Rent A Car on leaving secondary education and had worked her way up to branch manager after some fourteen years. She then stole \$48,874.10 over the next two and a half years. She had no previous convictions. Justice Goundar sentenced her to 4 years
45 imprisonment in totality and ordered that she serve 3 years imprisonment before being eligible for parole.

[9] In my view this case is much more serious than the facts disclosed by the case of **Akanisi Panapasa**. The theft by means of computer fraud is more sophisticated. Mrs Panapasa had no previous conviction for which a suspended
50 sentence had been handed down. The amount stolen by Munesh Chand was greater in total over a considerable shorter period than in the **Panapasa** case.

[10] Finally there is the premeditation involved in obtaining a job and then almost immediately designing and operating a sophisticated series of thefts via an altered computer disc. 11. I conclude that this application has no chance of success and is an abuse of process. Positions of trust being abused in this way call
5 for a deterrent sentence. If this appeal come before the Full Court it would consider increasing sentence. I propose in my orders to refuse the application for leave to appeal against sentence and to order that the appeal of Munesh Chand be dismissed under the powers in section 35(2) of the Court of Appeal Act.

[12] I am aware of the hardship to this young man's wife and child who will
10 suffer for the next two years but that consideration carries no weight when all the factors in this offending are considered.

ORDERS

[13] I order as follows

- 15 (1) That the application for leave to appeal against sentence of Munesh Chand be dismissed.
(2) That the appeal of Munesh Chand be finally dismissed under section 35(2) of the Court of Appeal Act because it has no chance of success and is therefore an abuse of process and vexatious.
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Application and appeal dismissed.

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