

IN THE SUPREME COURT OF FIJI
[CRIMINAL APPELLATE JURISDICTION]

Criminal Petition No. CAV 0036 of 2015
(Court of Appeal No. AAU 023/2011)

BETWEEN : SENIVALATI RATUBALAVU

PETITIONER

AND : THE STATE

RESPONDENT

CORAM : Hon. Chief Justice Anthony Gates, President of the Supreme Court
Hon. Mr. Justice Sathya Hettige, Justice of the Supreme Court
Hon. Mr. Justice Aluwihare Buwanake, Justice of the Supreme Court

COUNSEL : Petitioner in Person
Mr. M. D. Korovou for the Respondent

Date of Hearing : 7 April 2016

Date of Judgment : 21 April 2016

JUDGMENT OF THE COURT

Gates, P

I have read the judgment of Aluwihare J. I agree with it and with the reasons for the grant of leave to withdraw. Measures will be taken to ensure that only authoritative clarification on a sentencing order is to be issued by the High Court by the Deputy Registrar after referral to the judge in question.

Hettige, J

I agree with the conclusion of the judgment of Aluwihare J.

Aluwihare, J

1. The petitioner has filed an undated petition (received by this Court on 29 September 2015) seeking special leave and has further moved this court to invoke section 14 of the Supreme Court Act and to grant the relief sought by the petitioner.
2. The petitioner had filed this petition thirty three months after the order of the Court of Appeal.
3. At the outset, it must be stated that the petitioner is not impugning the decision of the Court of Appeal dated 3 December 2012, but seeks intervention of the Supreme Court, in his own words “to interpret and verify the judgment of the Court of Appeal”.
4. The gravamen of the petitioner’s complaint is that he is made to serve a prison term longer than what was imposed on him by the court, by the prison authorities.
5. The petitioner had categorically stated that he is not contesting the head sentence, but only seeking a clarification, of the term of imprisonment he is required to serve, in a manner it would be understood by the prison authorities.
6. I do not wish to delve into the facts of the case of which the petitioner was convicted and sentenced, as the petitioner had not challenged either the conviction or the sentence imposed.
7. The background to the case, albeit brief is as follows:

- (a) The petitioner was charged with one count of unlawful use of a motor vehicle and three counts of robbery with violence, contrary to sections 292 and 293 (1) (b) respectively, of the Penal Code.
- (b) According to the facts of this case, on 14th August 2008, the petitioner along with another had taken a vehicle belonging to one Shalini Herseman. They had driven off in the stolen vehicle and en route had committed three robberies.
- (c) They had initially robbed \$4000 from two individuals, and then had robbed an attendant of a Palas service station and finally ended up robbing a Total service station.

8. The petitioner having pleaded guilty to all four counts was sentenced to 12 years imprisonment to be served concurrently with a sentence he was already serving at the time.
9. The petitioner appealed against the sentence imposed by the magistrate to the High Court of Lautoka on a number of issues.
10. The High Court, having considered the appeal, by its order dated 22nd February 2011 held that the Magistrate, at the point of time the sentence was imposed, lacked jurisdiction to impose a sentence of more than 10 years and for that reason the sentence imposed on the petitioner was ultra vires.
11. The High Court further held that the petitioner was not given credit for the time he had spent in remand nor had he been afforded sufficient discount for his guilty plea.
12. The High Court having considered the grounds of appeal urged by the petitioner had made order imposing a six year term of imprisonment and paragraph 21 of the judgment, which is the final paragraph, reads thus:-

“The appellant will serve a term of six years dating from 21 December 2009, and he will not be eligible for parole until he has served five years of that term.”

13. The petitioner, subsequent to the decision of the High Court, appealed against the non-parole period fixed by the High Court to the Court of Appeal, on the basis that the non-parole period was fixed under the new law namely the Sentencing and Penalties Decree No. 42 of 2009.
14. The Court of Appeal by its order dated 3rd December 2012 dismissed the appeal for the reasons set out therein. I do not wish to delve into the said decision of the Court of Appeal due to the reason that, to decide the instant application, the reasoning has no bearing whatsoever.
15. Going by the High Court order referred to above, which in my view, is clear as clear can be, the petitioner ought to have been released from the prison on the 20th of December 2015.
16. I see no ambiguity in the High Court order as to the implementation of the same and even if the petitioner was not granted any credit either by way of remissions or parole, the petitioner should have been released on the date referred to in the preceding paragraph.
17. During these proceedings, however, the petitioner intimated to court that he was released from the prison only on the 26th of March 2016. Although it was not possible to verify the veracity of this fact in the midst of the proceedings, I am of the view that, it is a travesty of justice, if the petitioner was made to serve a term of imprisonment over and above the term prescribed by the court.
18. In the course of the hearing of this application, the learned counsel for the respondent furnished a copy of a letter addressed to the Director of Public Prosecutions by the Assistant Superintendent of Corrections of Minimum Correction Centre Suva, dated 30th March 2016. This court ordered that the same be filed of record.

19. According to the said letter, the Petitioner had been released from the Naboro Corrections Centre on the 05th March 2016 and not on the 26th March, as asserted by the petitioner.
20. According to the letter that was referred to, the Corrections Services had sought a clarification from the High Court of Lautoka to ascertain whether the sentence imposed on the petitioner was, one of a concurrent or a consecutive term of imprisonment.
21. The Corrections Services, states, in their letter to the DPP, that they were informed by an Assistant Court Officer attached to the Lautoka High Court by a letter dated 20th May 2015, that the petitioner has to serve a total term of imprisonment of 9 years and 10 months.
22. When one considers the order made by the High Court, this court cannot fathom as to how the Assistant Court Officer came to the conclusion that the petitioner has to serve a prison term of 9 years and 10 months. This court certainly cannot condone the manner in which the clarification was provided by the High Court of Lautoka, in response to the query by the Corrections Services.
23. This court strongly is of the view that, when faced with an ambiguity as to the term of imprisonment a prisoner is required to serve, clarification should be sought from the court or the judge that imposed the sentence.
24. The petitioner, however, intimated to court that he does not wish to pursue the instant application and sought leave from this court to have the application withdrawn.
25. The request for withdrawal is allowed and the application is pro-forma dismissed.

.....
Hon. Chief Justice Anthony Gates
President of the Supreme Court



.....
Hon. Mr. Justice Sathya Hettige
Justice of the Supreme Court

.....
Hon. Mr. Justice Buwaneka Aluwihare
Justice of the Supreme Court