

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

JP APPEAL NO. 16/13

AVITESH PRASAD

v

POLICE

Hearing: 25 July 2013
Counsel: Mr N George for the Appellant
Ms M Henry for the Respondent
Judgment: 25 July 2013

JUDGMENT OF HUGH WILLIAMS J

[1] On 20 and 27 June 2013 Justices of the Peace declined the application by Mr Prasad to be permitted, on conditions, to leave the Cook Islands and travel to Fiji to visit his family for a fortnight.

[2] The application to the Justice of the Peace was made in the context of Mr Prasad facing a consolidated charge of theft as a servant in which it is alleged that between April 2011 and December 2012 he stole \$10,112 from The Aitutaki Lagoon Resort whilst being an employee of that company.

[3] That criminal prosecution is ongoing.

[4] In parallel with that, The Aitutaki Lagoon Resort & Spa Limited has issued civil proceedings against Mr Prasad for claimed breach of his contract of employment with the company and seeking reimbursement of the sums it says he stole from it plus the investigation and other costs which it incurred in endeavouring to ascertain the amount of its loss. The Plaintiff company has obtained a mareva injunction against Mr Prasad's bank account in the sum of \$20,000.

[5] Mr Prasad now appeals to this Court seeking to overthrow the decisions of the Justices of the Peace and obtain permission from this Court to travel to Fiji and return for his family purposes.

[6] Currently his passport is lodged with the Registrar of the Court so were the appeal to be allowed it would have to be on condition of the passport being given back to Mr Prasad and returned on his arrival back in the country.

[7] He is also on bail on the criminal offence and there are sureties to the bail.

[8] He needs to obtain a visa in order to undertake the travel which would obviously be a condition of any grant of the right for him to return to Fiji.

[9] At the present time Mr Prasad does not have bookings for his travel and accordingly there would need to be the customary production of the return air tickets before any permission could be implemented.

[10] Two things however are important in relation to the appeal. The first is that, of course, it is an appeal against an exercise of discretion by the Justices of the Peace and accordingly they must be shown to be wrong or to have acted on a wrong principle.

[11] Secondly and crucially, were Mr Prasad to be permitted to leave the Cook Islands and travel to Fiji and not return - though currently his counsel says he will - there would be no effective way of compelling his return to this country. There is no extradition treaty in force between Fiji and the Cook Islands and although Mr Prasad is prepared to deposit a sum as a bond towards the cost of enforcing his return, the reality is that he is a Fijian national holding a Fijian passport and if he were able to return to Fiji there is just no way in which he could be compelled to leave that country and return to face his obligations in the Cook Islands.

[12] Whilst the amount of the bond might be expended in legal action in Fiji, no judge in Fiji would have the power to order his return.

[13] He wishes to return to Fiji in part, and naturally, to visit his parents after a period of being away from the country and his father exhibits a doctor's certificate dated 11 July 2013 from their doctor testifying to heart disease, the need for by-pass surgery and the like. The certificate and the affidavit say he wishes to return to India

for the couple's required treatment but nowhere in the affidavit or in the certificate does it say when that treatment is to occur.

[14] It is natural enough that Mr Prasad would wish to return to Fiji in order to see his family and other family members but given the indefinite evidence as to the medical treatment which they require and particularly given the inability of the Cook Islands' authorities to compel Mr Prasad's return to the Cook Islands to face at least the criminal charges there is no basis in the Court's view for allowing the appeal. The Justices of the Peace reached what were in the circumstances correct decisions. They have not been shown to be in error. The appeal is accordingly dismissed.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, J