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IN THE FIJI COURT OF APPEAL
CRIMINAL APPEAL NO. 76 OF 1987

Between:

PARWATI PRASAD — Appellant

- and -

THE STATE — Respondent

The Appellant In Person
Ms. A. Prasad for the Respondent

Date of Hearing: 5th July 1988

Delivery of Judgment: 25th August 1988

JUDGMENT OF THE COURT

This is an appeal against sentence only. The Appellant on her own plea of guilty was convicted at Lautoka on 15th September 1987 by Dyke J. on 7 counts of larceny by servant and 7 counts of forgery on the cheques she had stolen from her employers. She was sentenced to 2 years imprisonment on each count but the sentences were ordered to run concurrently.

At the material time the Appellant was employed by the Lautoka City Council as a Registry Clerk. Her duties included mailing of cheques already made out

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in favour of creditors of Lautoka City Council. Between June and September 1986 she stole 7 such cheques, altered payee's name and increased the amount written on each of them. The forged cheques were then paid into 3 fictitious accounts opened by another girl (the second accused in the Court below). Neither the Appellant nor the second accused received any monies from the accounts. A third person appears to have benefitted from withdrawals made from these accounts. However some creditors were actually paid their dues before these accounts were frozen. Over $18,000 remaind in the 3 fictitious accounts and these were ordered by the Court to be returned to the Lautoka City Council.

The Appellant, a first offender, is a married woman aged about 28 years. Whilst the charges were still pending she gave birth to her first child through caesarian section. At the time of sentence her child was 2½ months old and was still weaning.

The learned trial judge rightly took a serious view of the offences since a large sum was involved, the fraud was a calculated one and represented a serious breach of trust. He therefore did not call for a Welfare Report as requested by the Appellant's Counsel since he saw no alternative to imprisonment.

At the hearing of this appeal the Appellant was not represented. Although initial grounds of appeal against sentence were filed by her Counsel she relied primarily on written submissions she had sent to the Court a few days before the hearing. In it she spoke about her remorse and the anguish she had undergone as a result of being separated from her infant child. She emphasised that she had not gained anything from her wrong-doing. She also spoke about her good prison

record and how she had changed for the better. She sought the Court's mercy and asked to be released so that she could be united with her child and give it the love and care it needs.

The question of sentence is essentially a matter for the trial Court and an Appellate Court would not normally interfere with the trial Court's sentence unless it is wrong in principle or manifestly excessive. However we are of the view that there are at least two considerations which are significant to any appellate review of the sentence imposed on the Appellant.

First, the Appellant's plea of guilty does not appear to have been given sufficient weight. Because of her guilty plea the Court was spared a lengthy and expensive trial of the case. In fact the Appellant had admitted her crime to the police when questioned and also co-operated with them.

Second, the fact that the Appellant was a mother of a 2½ month old child who was still weaning and who was delivered through caesarian birth ought to have been taken into account as having some mitigating effect at any rate on compassionate grounds. In his highly respected work "Principles of Sentencing" (2nd Edition) D.A. Thomas at page 212 states:-

> "A second exception to the second principle that family considerations do not have mitigating effect in the case of an offender who is the mother of young children."

There can be no doubt that the impact of an immediate prison sentence on the Appellant resulting in the separation of her infant child from her for 2 years must have been traumatic. We are satisfied that her remorse is genuine and we accept that her

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prison record has been good. The continued separation of the child from her would do little to lighten the Appellant's anguish which she had suffered during the past one year. In R. v. Thomas [1983] Crim. L.R. 493 the English Court of Appeal whilst holding that a sentence of 9 months imprisonment was neither wrong in principle nor excessive in length, reduced the sentence so as to allow the appellant's immediate release. This it did because of the impact of the original sentence on her and also as an act of mercy. In Atunaisa v. Reginam, Criminal Appeal No. 35 of 1987, the Fiji Court of Appeal in reducing the appellant's sentence observed:-

> "It must be remembered that courts are courts of mercy as well as of justice."

Allowing for one-third remission the Appellant still has a little under 5 months to serve. We think she has been punished enough for her part in this crime.

Accordingly having regard to all the circumstances we are satisfied that the Appellant ought not to remain much longer in prison. The sentence passed on the Appellant is therefore set aside and in lieu thereof we substitute a sentence which would allow her to be released today.

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President, Fiji Court of Appeal

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Justice of Appeal

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Justice of Appeal