IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

Criminal Appeal No:AAU0152 of 2015
[High Court Case No. HAC28 of 2012]

BETWEEN	**:**	**CHRIS RONIL SINGH**
		Appellant
AND	**:**	**THE STATE**
		Respondent
Coram	**:**	**Hon. Mr. Justice Daniel Goundar**
Counsel	**:**	**Mr. Z. Mohammad for the Appellant** **Mr. S. Vodokisolomone for the State**
Date of Hearing	**:**	**2 November 2016**
Date of Ruling	**:**	**11 November 2016**

RULING

[1] Following a trial in the High Court at Lautoka, the appellant was convicted of money laundering and sentenced to 4 years' imprisonment with a non-parole period of 1 year. This is a timely application for leave to appeal against conviction and sentence pursuant to section 21 (1) of the Court of Appeal Act, Cap. 12. Leave is required on any ground that involves a mixed question of law and fact or fact alone. The test for leave to appeal against conviction is whether the appeal is arguable. Leave is also required to appeal against sentence. The test is whether there is an arguable error in the sentencing discretion.

[2] The charge alleged that the appellant disguised true ownership of money in the sum of $47,734.58 which had been derived directly from a serious offence, knowing or ought reasonably to know that the said sum had been derived directly from some form of unlawful activity. It was alleged that the offence was committed between 9 September 2005 and 29 September 2005 at Lautoka.

[3] The prosecution case against the appellant was based upon circumstantial evidence. The facts were that the Fiji Revenue and Customs Authority (FIRCA) issued a replacement cheque (No. 140459) in the amount of $3,834.96 to a registered taxpayer (Sirin K R Riaz), being payment for a VAT return, after the initial cheque had gone missing and was not received by the taxpayer. Evidence was led that the second cheque also did not reach the taxpayer. Instead, the second cheque was deposited in an account under the name of Mohammed Taslim Khan at Colonial National Bank (now Bank of South Pacific), Lautoka branch, after the payee's name was altered to Mohammed Taslim Khan and the amount was altered to $47,734.58. This bank account was opened on 9 September 2005. The tainted cheque was deposited in this account on 29 September 2005. The deposit slip had the name 'Taslim' written on it. The bank officer who opened the account said the account could not have been opened without the account holder being physically present and the account holder's identity verified. The identity document that was used to open this bank account was a Learner's Driving Permit issued by the Land Transport Authority (LTA).

[4] Evidence was led that LTA had issued two permits under two different names (Mohammad Taslim Khan and Chris Ronil Chand) bearing the photograph of the appellant. An employee of LTA gave evidence that a learner's permit is only issued after the permit holder had undergone a test and the holder's identity verified using documents such as birth certificate or passport. The permit bearing the name Mohammad Taslim Khan with the appellant's photograph was used as the identity verification document to open the bank account at the Colonial National Bank.

[5] The appellant's mother gave evidence for the prosecution. Her evidence was that the appellant had been living with her until he got married. She confirmed that the photograph on the learner's permit was of the appellant but she did not know the permit holder, Mohammad Taslim Khan. She also said that she had received bank statements addressed to Mohammed Taslim Khan in her postal address, which she had return to the Postmaster.

[6] The appellant gave evidence at the trial. He denied obtaining the driving learner's permit under the name of Mohammed Taslim Khan or opening the bank account or depositing the tainted cheque in the account. The essence of his defence was that he was a victim of identity fraud. He said someone had used his photograph to disguise the true identity of the perpetrator. He said he had given his passport and three similar photographs to one Salen, who had promised to arrange a job in New Zealand. Salen disappeared after collecting the documents.

[7] The grounds of appeal are as follows:

1. His Lordship erred in law and in fact by failing to direct the assessors that the handwriting of the Appellant as evidenced by permit No. 82385 and the caution and charge statements and the bail bond and the Passport of the Appellant did not match the writing on Permit No.794920 and the persona account application form opened by Mohammed Taslim Khan; see PE10 and the deposit slip: see PE12.

2. His Lordship erred in law and in fact by failing to direct the assessors that the fact of the Appellant not accessing and/or attempting to access Mohammed Taslim Khan's account between the 29th day of September, 2005 and the 5th day of October, 2005; that is the clear period, is more consistent with the Appellant's claim that did not know anything about Mohammed Taslim Khan's account.

3. His Lordship erred in law and in fact by failing to address the assessors that the State had completely failed to establish how and why and whom cheque No.140459 was released when the said cheque was withheld by FIRCA pending a police fraud investigation.

4. His Lordship erred in law and in fact by failing to address the assessors that there was no evidence to show that the Appellant had received cheque No. 140459 at any time.

5. His Lordship erred in law and in fact by failing to direct the assessors to treat the testimony of Makereta Masi of Land Transport Authority (last witness for the State) with scrutiny namely that her evidence should be weighed against the absence of any direct evidence that it was the Appellant who either filled or preoffered application for Permit NO.794920 (MF1.1) and the best evidence being available namely the actual Land Transport Authority officer who issued Permit No.794920 was not called to give evidence.

6. His Lordship erred in law and in fact by failing to direct the assessors that there was no identification parade to establish that the Appellant was the

person physically present who filled the bank account application form (PE10) in regards to the banker Mohammed Azim's testimony. His testimony essentially being the "man in the photo must be the one who opened the account."

7. His Lordship erred in law and in fact by failing to direct the assessors that there was no evidence to show that it was the Appellant who deposited cheque No.14049 on the 29th day of September, 2005 when the evidence as to the identity of the depositor was available with the said bank.

8. His Lordship erred in law and in fact by failing to address the assessors on the caution interview of the Appellant and the resultant police investigation which showed that the subject case had all the hall marks of the modus operandi of one Shalend Sinha; see: State v Sinha (2010) FJHC 480 (29th October, 2010).

9. That there has been a substantial miscarriage of justice in that the State failed whether intentionally, and/or negligently to put before the Court and/or provide to the Defence with Defence with evidence during the trial and/or before trial of the fact of discovery of the alleged Shalend Sinha having in his possession FIRCA cheques of different people.

10. His Lordship erred in law and in fact in failing to direct the assessors that notwithstanding the photo of the Appellant in Permit No.794920 (MR1.1) if the handwriting script with said permit and the bank application form and the deposit slip did not match admitted handwriting script of the Appellant; the Appellant could not be found guilty under any circumstances.

11. The decision of the Majority of the Assessors was perverse.

12. The Sentence is manifestly harsh and excessive in view of the antecedents of the Appellant and more particularly so when there has been no financial loss.

[8] Although the Notice of Appeal contains numerous grounds of appeal, counsel for the appellant in his written submissions has condensed the arguments in one complaint. The complaint is that there was no direct evidence implicating the appellant to the obtaining of the false identity permit or the bank account under the name of Mohammed Taslim Khan or the depositing of the forged cheque in the bank account. In my judgment, this complaint flies in the face of the strong circumstantial evidence led by the prosecution from which the assessors and the trial judge were entitled to draw an irresistible inference that the appellant was involved in the alleged fraudulent scheme to launder the tainted cheque.

[9] The appellant takes no issue with the direction that the trial judge gave on circumstantial evidence. In fact, the direction on circumstantial evidence in paragraphs [10]-[12] of the summing-up is impeccable. The appellant's defence was fairly put to the assessors in paragraphs [36]-[41] of the summing-up. The majority of the assessors and the trial judge did not believe the appellant. Instead, they accepted the circumstantial evidence to conclude that the appellant was guilty beyond a reasonable doubt. In my judgment, it is not arguable that it was not open on the evidence for the assessors and the trial judge to convict the appellant on circumstantial evidence. For these reasons, the application for leave to appeal against conviction must fail.

[10] I accept that there was no actual financial loss to FIRCA. As soon as FIRCA learnt about the fraudulent scheme, they placed a stop payment and the forged cheque was not honoured by the bank. However, the scheme that was employed to launder the tainted cheque was sophisticated and well planned. It was only because of the quick action by FIRCA to place stop payment that denied the perpetrator from the fruits of his crime. While the head sentence of 4 years' imprisonment fits the crime, the non-parole period of 1 year was made in an error of law. In *Bogidrau v State* [2016] FJSC 5; CAV0031.2015 (21 April 2016), Keith JA said at [6]:

> Section 18(4) of the Sentencing and Penalties Decree provided that the non-parole period had to be at least 6 months less than the head sentence, and a number of authorities have addressed how long the non-parole period should be, subject, of course, to that provision. Two principles can be identified:
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> (i)"[T]he non-parole term should not be so close to the head sentence as to deny or discourage the possibility of rehabilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent": per Calanchini P in *Tora v The State* [2015] FJCA 20 at [2].
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> (ii) "[T]he sentencing Court minded to fix a minimum term of imprisonment should not fix it at or less than two thirds of the primary sentence of the Court. It will be wholly ineffective if a minimum sentence finishes prior to the earliest release date if full remission of one third is earned. Experience shows that one third remission is earned in most cases of those sentenced to imprisonment": **Raogo**, op cit, at [24]. (emphasis added)

[11] I am of the opinion that if the appellant is unsuccessful with his appeal against conviction and sentence, there is a real possibility that the Full Court will enhance his non-parole period in order to comply with the principle that a non-parole period should be more than two thirds of the head sentence. Otherwise, there is no arguable error in the sentencing discretion. So it is in the appellant's interests that leave be refused.

Result

[12] Leave to appeal against conviction and sentence is refused.

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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Fazilat Shah Legal for the Appellant
Office of the Director of Public Prosecutions for the State