

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

CRIMINAL APPEAL NO: AAU0158 of 2015
[High Court Case No: HAM 124 of 2015)

BETWEEN : RAVINDRA LAL *Appellant*

AND : THE STATE *Respondent*

Coram : Hon. Mr. Justice Daniel Goundar

Counsel : Appellant in person
Ms P Madanavosa for the Respondent

Date of Hearing : 10 March 2017

Date of Ruling : 17 March 2017

RULING

[1] This is an appeal against a judgment of the High Court in its appellate jurisdiction. On 17 November 2015, the High Court partially allowed the appellant's appeal against sentence by reducing the term of imprisonment from 3 years' imprisonment to 2 years, 8 months for offences of theft, forgery and obtaining property by deception. On 14 December 2015, the appellant filed this appeal. The appeal is timely.

[2] The appellant's right of appeal is governed by section 22(1) of the Court of Appeal Act, Cap. 12. Under section 22(1), the right of appeal is limited to a question of law alone. The issue is whether the appellant has a right of appeal. Section 35(2) of the Court of Appeal Act Cap. 12 gives a single judge power to dismiss an appeal that is bound to fail because there is no right of appeal.

[3] The appellant was charged with the following offences:

Count 1 – Theft contrary to section 291 of the Crimes Decree 2009.

Count 2 – Forgery contrary to section 156(10) of the Crimes Decree 2009.

Count 3 – Obtaining Property by Deception contrary to section 317(1) of the Crimes Decree 2009.

[4] When the appellant was arraigned on these charges in the Magistrates' Court, he waived his right to counsel and pleaded guilty to the charges. He was sentenced to a total term of 3 years' imprisonment with a non-parole period of 2 years. Briefly, the facts were that the appellant stole two cheque leaves from his employer, forged his employer's signature and used the cheques to obtain pine posts valued at \$435.00 from a hardware company. Under caution, he admitted the offences.

[5] The appellant appealed against his sentence to the High Court on the following grounds:

- (i) He was entitled to 1/3 discount for his guilty plea.
- (ii) His previous good character and restitution was not considered.
- (iii) Rehabilitation was not considered.
- (iv) Sentence was harsh and excessive.

[6] It was not in dispute that the appellant had entered early guilty pleas. The learned magistrate gave the appellant 1/4 reduction in sentence for his early guilty pleas. The learned High Court judge took the view that the appellant should have been accorded 1/3 reduction for his early guilty pleas. For that reason the sentence was reduced from 3 years' imprisonment to 2 years, 8 months' imprisonment.

[7] The appellant apparently was not a person with previous good character. His previous convictions were for similar dishonesty offences. The appellant claimed that he was a businessman and his contributions to the community should have been regarded as a mitigating factor. The learned magistrate rejected this claim. The learned judge agreed, saying being a businessman was not a mitigating factor. The learned judge concluded

that the learned magistrate had given the appellant's expression of remorse, payment of partial restitution and willingness to pay full restitution due weight as mitigating factors. Apart from the discount given for the guilty pleas, the learned judge did not find any other error in the exercise of the sentencing discretion. The appeal was dismissed on the other three grounds.

[8] The appellant has elected to represent himself. As to be expected from an unrepresented litigant, the grounds of appeal are not properly particularised. The grounds in summary are:

- (i) Restitution dilemma,
- (ii) Relevant mitigating factors,
- (iii) Rehabilitation denied,
- (iv) Harsh and excessive sentence.

[9] At the hearing, the appellant was explained that his right of appeal to this Court was restricted to a question of law alone. Apart from repeating the submissions which he had advanced in the High Court, the appellant contended that he had paid full restitution and the learned magistrate and the learned judge were wrong to conclude that he had only paid partial restitution. Counsel for the State has brought to the attention of this Court written confirmation from the complainant that the appellant had not paid any restitution. The question whether the appellant paid full, partial or any restitution is a question of fact only.

[10] I am satisfied that the sentence imposed on the appellant was within the jurisdiction of the learned magistrate and within the appellate jurisdiction of the learned judge. The sentence is a lawful sentence and no error of law alone has been shown in the passing of the sentence.

[11] For these reasons, I am satisfied that this appeal is bound to fail because the appellant has no right of appeal.

Result

[12] Appeal dismissed under section 35(2) of the Court of Appeal Act, Cap 12.



.....
Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Appellant in person
Office of the Director of Public Prosecutions for the State