

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL MISCELLANEOUS NO. HAM 054 OF 2009S**

**MONIKA MONITA ARORA**

**VS**

**THE STATE**

**Counsels** : Mr. D. Sharma and Mr. P. Sharma for the Accused  
Mr. A. Rayawa and Ms. A. Lomani for the State

**Hearings** : 22<sup>nd</sup>, 25<sup>th</sup>, 26<sup>th</sup> February, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and  
12<sup>th</sup> March 2010

**Ruling** : 19<sup>h</sup> March 2010

**RULING ON STAY APPLICATION**

1. On 24<sup>th</sup> August, 2007, the applicant (accused) first appeared in court on the following charge, in criminal case No. HAC 125 of 2007S:

**Statement of Offence**

**FALSE PRETENCE**: contrary to section 309(a) of the Penal Code, Cap 17.

**Particulars of Offence**

**MONIKA MONITA ARORA d/o Bel Bhadur**, between the 9<sup>th</sup> day of December, 2005 and the 10<sup>th</sup> day of May, 2007 at Nasinu in the Central Division by false pretence, namely that she was entitled to cash cheques

drawn on the bank account of **VINOD PATEL & COMPANY LIMITED** knowing that she was not so entitled with intent to defraud obtained from Australia and New Zealand Banking Group Limited \$472,466.47 for her use or the use of another.

2. In the presence of her counsel, the accused pleaded not guilty to the charge. The case then went through 16 adjournments to sort out pre-trial matters. On 6<sup>th</sup> August 2009, the accused filed a notice of motion, seeking a permanent stay on the above proceeding on the grounds "*that it would be an abuse of process for this prosecution to continue*". She filed an affidavit in support, in which she included, three submissions filed on 3<sup>rd</sup> April, 7<sup>th</sup> April and 25<sup>th</sup> June 2009.
3. The State responded with five affidavits filed on 21<sup>st</sup> September 2009. The five affidavits were from Mr. Kumar Shankar, Mr. Veeral Patel, Mr. Navin Sen, Mr. Vijendra Singh and Mr. Hemendra Kumar Nagin. On 13<sup>th</sup> November, 2009, the accused responded with five affidavits in reply to the above five affidavits. On 22<sup>nd</sup> February 2010, the State filed its second submission.
4. On 22<sup>nd</sup> February, 2010, Mr. Kumar Shankar was cross-examined by defence counsels on his affidavit, and then re-examined by State counsel. On 25<sup>th</sup> February, 2010, Mr. Navin Sen was cross-examined by defence counsel on his affidavit, and then re-examined by State counsel. On 26<sup>th</sup> February and 2<sup>nd</sup> March 2010, Mr. Hemendra Nagin was cross-examined by defence counsel on his affidavit, and then re-examined by State counsel.

5. On 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> March 2010, the accused was cross-examined by State counsel on her affidavits, and then re-examined by defence counsel. On 12<sup>th</sup> March, 2010, Mr. Hemendra Nagin was recalled as a witness, and cross-examined and re-examined on the issue of whether or not the recording he made on 17<sup>th</sup> May 2007 was tampered with. This recording contained the accused's alleged confession. It was heard in Court, and tendered as Respondent's Exhibit No.1. The accused, while being cross-examined by State Counsel, made an allegation that the recording of the 17<sup>th</sup> May 2007 meeting was tampered with. Both parties then concluded with their written and verbal submissions on 12<sup>th</sup> March 2010.
6. While making their closing submissions, the court invited the parties to make submission on an alternative matter, that is, if the court found the application for a stay was not made out, can it treat this application as "a trial within a trial?" The applicant responded, by submitting it wanted "all matters to be stayed". Failing that, it asked that all alleged confessions obtained from the accused before the matter was referred to the police, be declared inadmissible evidence. The State asked that a ruling on the stay application be made first. It submitted that if a stay application is not granted, the court could treat the proceeding as "a trial within a trial", on the alleged confession obtained at the 17<sup>th</sup> May 2007 meeting, on the evidence already adduced in this proceeding.
7. The court has carefully read and considered the parties' witnesses' affidavits, and the evidence given when they were cross-examined and re-examined in court. It has also carefully considered the parties' written

and verbal submissions. It has read and noted the binding authorities of ***The State v Sat Narayan Pal***, Criminal Case No. HAC 002 of 2004, High Court, Suva, per His Lordship Justice Gates (as he then was), which was confirmed and upheld by the Court of Appeal, on an appeal by the State, in ***The State v Sat Narayan Pal***, Criminal Appeal No. AAU 0036 of 2006. The applicant principally relied on the above authorities, to advance her stay application, and this case will be decided on whether or not the principles mentioned in the above authorities, assist the applicant, given the facts disclosed in this proceeding.

8. In support of her application, the applicant quoted extensively from the ruling of His Lordship Justice Gates in ***The State v Sat Narayan Pal*** (supra). That ruling is binding on this court, and whatever the applicant quoted from that case, is accepted by this court. In paragraph 29 of her 3<sup>rd</sup> April 2009 submission, the applicant said, "...The primary focus of the Court in an application for a permanent stay based on the principles in *The State v Sat Narayan Pal*, is to scrutinize the conduct of third parties who were non-State agents involved in investigations, the evidence procured from which investigations are then relied upon by the State to prove criminal charges...". The court agreed with this comment, and it intends to do the same in this case.
9. In paragraph 33 of her 3<sup>rd</sup> April 2009 submission, the applicant listed 4 grounds in support of her stay application. She said "...The conduct which constitutes abuse of process in this matter, and are under scrutiny are as follows:

- (i) *That Mrs. Arora was lured improperly;*
- (ii) *That the investigations were not conducted in good faith;*
- (iii) *Mrs. Arora's constitutional rights were breached; and*
- (iv) *The State's intention to rely on and utilize the evidence procured through the rogue conduct of the non-State agents ..."*

I will deal with ground 9(iii) first, and ground 9(i), 9(ii) and 9(iv) thereafter.

10. **Ground 9(iii): Mrs. Arora's constitutional rights were breached:**

The applicant said, "... *The audio recording of 17 and 25 May 2007 amounted to a breach of Mrs. Arora's constitutional rights; i.e of personal privacy in breach of section 37(1) of the Constitution (Amendment) Act 1997...*" Her submission was filed on 3<sup>rd</sup> April 2009. As it is now a matter of public record, the President and Commander in Chief of the Republic of the Fiji Military Force abrogated the Fiji Constitution Amendment Act 1997 on 10<sup>th</sup> April 2009. Although the applicant filed her notice of motion on 6<sup>th</sup> August 2009, with her affidavit in support, incorporating her 3<sup>rd</sup> April 2009 submission, as a matter of law, her stay application on this ground cannot succeed. The Fiji Constitution Amendment Act 1997 has been abrogated on 10<sup>th</sup> April 2009, and as a result, she can derive no benefit therefrom.

11. **Ground 9(i): That Mrs. Arora was lured improperly:**

The issue of "*whether or not the accused was lured improperly?*" was considered in **The State v Sat Narayan Pal** (High Court, *supra*). In that case, the State was seeking to adduce evidence of a conversation

recorded on video tape. Mr. A. Punja had a wireless transmitter secretly attached to him. He, the accused and another were discussing the possibility of Blue Gas being prosecuted for selling underweight gas cylinders, and what the accused could do about it, to assist Blue Gas. Mr. Punja was Blue Gas Managing Director, while the accused worked for the Department of Fair Trading, as an Inspector and investigator. The discussion was held in a small restaurant known as Curry House. Previously, the accused had interviewed Mr. Punja on the case, and had asked for \$168,000 to make their problem "go away". The meeting was arranged by Mr. Punja, to record the accused's corrupt demands, and his promise to throw away the Department's file, if given \$168,000. Mr. Punja did in fact recorded the accused making his corrupt request and what he would do in return. This was recorded on video tape, and the State intended to use this evidence in the prosecution of the accused.

12. In a "trial within a trial", Mr. Raza, on behalf of the accused, challenged the admissibility of the video tape recording first, on the grounds of entrapment, that is, the accused was lured improperly to commit an offence. Mr. Raza said, *"the statements made by the accused were brought about by inducements, coaxing and entrapment. He says the crime would not have been committed without the accused having being lured into it"*: **The State v Sat Narayan Pal** (para 2, High Court, supra). In dealing with Mr. Raza's first challenge, His Lordship Justice Gates posed the question: was the Accused lured improperly? From paragraph 6 to paragraph 18, Justice Gates discussed the facts of the case, as it related to the issue of entrapment. In paragraph 19, His Lordship said, *"...In the evidence given this far, there is no suggestion*

*of the accused being lured into a situation unwillingly, of a trap being set up for an unwary innocent...The suggestion and hints were all instigated and made, from the uncontradicted evidence at this stage, by the Accused...": The State v Sat Narayan Pal (High Court, supra).*

13. From paragraphs 20 to 23, His Lordship further discussed the facts, as it related to the issue of entrapment. From paragraphs 24 to 26, His Lordship discussed the law concerning entrapment. In paragraph 26, His Lordship concluded by saying, "... I find the accused therefore was not lured into a trap or pulled away from a straight path..." :The State v Sat Narayan Pal, (High Court, supra).
14. It could be seen from the above that the question "was the accused lured improperly?" was posed in relation to the issue of whether or not there was entrapment? In other words, was the accused lured improperly to commit an offence? In this case, the applicant has misapplied the principle emanating from The State v Sat Narayan Pal (High Court, supra), when the question "was the accused lured improperly?" posed. The question really was: was the accused lured improperly into committing an offence? It was not: was the accused lured improperly into making a confession? For these reasons, the applicant's stay application cannot succeed on this ground.
15. Ground 9(ii): That the investigation was not conducted in good faith.  
In his second challenge to the State's intention to adduce evidence of the conversation between Mr. A. Punja and the accused, recorded on a

video tape, in *The State v Sat Narayan Pal* (High Court, *supra*), Mr. Raza said, "...it is said the persons, who were purporting to act to expose corruption who were not police officers or official investigators, had acted in bad faith. Their motives were not to intercept crime and to bring criminal to justice. They acted only to protect themselves and their company from prosecution and especially from harmful public exposure for bad trade practices. They sought to deflect attention from themselves and instead to place the accused under the spotlight. Their bad faith disqualified them as private individuals from testifying on matters concerning which they may themselves have committed offences ..." [paragraph 2]

16. His Lordship Justice Gates, then posed the question: Was the investigation conducted in good faith? At paragraph 27, His Lordship said, "...I have already found that these private individuals, at least Punja and Lee, were acting on reasonable suspicion that the Accused appeared to be proceeding along a path of criminal activity. There is a further ingredient to be considered however, and that is whether they were acting in the course of a bona fide inquiry..."
17. At paragraph 28, His Lordship said, "...If the inquiry is one carried out in good faith for proper purpose, the courts may overlook the partial involvement of investigators in the crime. An obvious example would be where the police may act to save lives, mitigate consequences, and the like: *Birtles* (*supra*) where Parker LCJ said at p.472:



*Before leaving this case, the Court would like to say a word about the use which as the cases coming before the Court reveal, is being made of informers. The Court of course recognises that, disagreeable as it may seem to some people, the police must be able in certain cases to make use of informers, and further and this is really a corollary – that within certain limits such informers should be protected. At the same time, unless the use made of informers is kept within strict limits, grave injustice may result...”*

18. At paragraph 29, His Lordship said, “...In *Edward McCann* [1971] Cr App. R. 359 at p.363-4 Roskill L.J. observed:

*This Court, whilst ever keen to ensure that the liberties of individuals are not adversely affected, should be very slow to criticise those who have to take difficult decisions under pressure of events, when those decisions are taken in complete good faith...”*

19. At paragraph 31, His Lordship summarized Mr. Raza’s position, “...Mr. Raza submits that Punja and Lee acted out of self-interest and to protect Blue Gas. They were not concerned to intercept crime or to bring a criminal to justice. Upper most in their intentions and actions were the need to stifle any information getting to the public that Blue Gas had been selling gas cylinders which were underfilled. The Accused himself had reported to them that their rivals wanted exposure of this conduct and official condemnation of misleading conduct and poor trade practices. Blue Gas had been pretending to sell cheaper gas, which in reality was not true because the bottles were not fully filled. Their rivals were not concerned about the likely prosecution, only the revelation to the public...”

20. Paragraph 32 to paragraph 37, His Lordship discussed the facts of the case. Blue Gas had been the subject of an investigation by the Department of Fair Trading, for selling underfilled gas cylinders to the public. The accused was investigating Blue Gas, on behalf of the Department. Blue Gas employees have been interviewed by the accused between 12<sup>th</sup> to 19<sup>th</sup> November 2002. On 19<sup>th</sup> November 2002, Mr. A. Punja, Managing Director of Blue Gas admitted under caution, that Blue Gas was selling under filled gas cylinders to the public. He knew the accused wanted \$168,000 from Blue Gas in order "to close the file", and drop the prosecution against Blue Gas. He did not refer the matter to police. He made plans to "expose the accused for corruption". On the evening of 19<sup>th</sup> November 2002, Mr. Broadbridge from Fiji TV was invited to a cocktail at Mr. Hari Punja's house. Mr. Hari Punja is Mr. A. Punja's father. Mr. Hari Punja owned 300,000 shares of Fiji TV and was also on the Board of Directors. Mr. A. Punja told Mr. Broadbridge, at the cocktail, what the accused was intending to do. Mr. Broadbridge was interested in the story. He showed an eagerness to assist the Punja family.
21. Mr. Broadbridge provided the camcorder. A meeting was arranged with the accused at the Curry House Restaurant. Mr. A. Punja was secretly fitted with a wireless transmitter. He and another met the accused at the Curry House. From a premises in Cumming Street, the DV Camcorder was aimed at the Curry House Restaurant. The conversation between Mr. A. Punja and the accused was recorded in the video tape. Later on Mr. Broadbridge ran a TV story on Mr. A. Punja's conversation with the accused in the Curry House. The TV later showed the arrest of the

accused from his home. Mr. Broadbridge ran the story in follow-ups for 3 days. Mr. A. Punja was interviewed on TV, and he said he only wanted "to expose corruption". However, Mr. Punja did not inform Mr. Broadbridge from the outset that Blue Gas was under investigation by the accused, on behalf of the Department of Fair Trading, for selling underfilled gas cylinders to the public. This was not mentioned in the TV coverage.

22. At paragraph 38, His Lordship commented, *"...At the end of the day the tables were indeed turned on the Accused. His caution interview of the Managing Director for Blue Gas in which full and clear admissions of the underfilling of the gas cylinders had been made, never resulted in any further action against Blue Gas. There was no prosecution of Blue Gas, nor was a letter of warning issued even. Ajai Punja was not even sure what happened to the underweight cylinders..."*
23. At paragraph 39, His Lordship said, *"...In the opening remarks of his speech in Looseley, Lord Nicholls of Birkenhead said [para 1]:  
"every court has an inherent power and duty to prevent abuse of its process. This is a fundamental principle of the rule of law. By recourse to this principle courts ensure that executive agents of the State do not misuse the coercive, law enforcement functions of the courts and thereby oppress citizens of the State..."*
24. At paragraph 41, His Lordship said, *"...In spite of improper motives on the part of the persons gathering evidence here and what might be*

*regarded as a manipulation of the process for their own ends, a fair trial of the charges against the Accused could still take place. However that is not the sole consideration. The courts "cannot contemplate for a moment the transference to the executive of the responsibility for seeing that the process of the law is not abused. Connelly v Director of Public Prosecutions (1964) 48 Cr. App. R. 183, at p.268. The judiciary should accept a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behavior that threatens either basic human rights or the rule of law: per Lord Nicholls (Loosely supra para 13)..."*

25. Then, in paragraph 44, His Lordship said, "...In *Ridgeway* [1994-95] 184 CLR 19 at p.74 Gaudron J said of entrapment and abuse of process:

"The inherent (200) powers of superior courts to prevent an abuse of process exist to protect the courts and their proceedings, and to maintain public confidence in the administration of justice (201). And the maintenance of public confidence in that regard depends on ensuring that judicial proceedings serve the ends of justice, not injustice (202)..."

26. His Lordship concluded at paragraph 45 by saying, "...In considering the overall circumstances in which the conversation was approached and recorded, I find that there has been a lack of bona fides amounting to an abuse of process. Had there been good faith, an absence of conflict of interest, and no manipulation of the process, I might have found otherwise for the fruit of the recording may well have established guilt. But the court cannot stand by and lend credence to such unjust

*manoeuvres which undermine the credibility of a judicial system: Reg v Horseferry Rd Ct.ex p. Bennett [1994] 1 AC 42; R v Shaheed [2002] 2 NZLR 377..."His Lordship then granted permanent stay to the proceeding.*

27. The question to be asked in this case is: Does the fact situation in this case fit in with the fact situation in **The State v Sat Narayan Pal's** case (High Court, *supra*). Alternatively, was the fact situation in **The State v Sat Narayan Pal's** case (High Court, *supra*) similar to the fact situation in this case. In my view, it must be mentioned at the outset that, the fact situation in this case does not fit in with the fact situation in **The State v Sat Narayan Pal's** case. For a start, Vinod Patel & Company Limited was not being investigated by any State Department concerning any criminal matter. None of its employees have being caution interviewed on any pending criminal matter, involving the company. Even the applicant, in her evidence in court said, she was not aware of any investigation by any government Department, on Vinod Patel and Company Ltd on any matter. Contrast this with Blue Gas being investigated by the Department of Fair Trading on selling underfilled gas cylinders to the public. Also note that Mr. A. Punja had been caution interviewed in the matter, and he admitted that Blue Gas was selling underfilled gas cylinders to the public.
28. Furthermore, in **The State v Sat Narayan Pal,** the recorded conversation was between Mr. A. Punja (Blue Gas) and the accused (Department of Fair Trading). It was between two separate legal

entities. The subject matter under discussion was the accused attempting to obtain a bribe from Mr. A. Punja to close its file, and stop prosecuting Blue Gas, for selling underfilled gas cylinders to members of the public. In this case, the recorded conversations involved an internal company matter, involving the company and a staff (the accused), who was suspected of stealing thousands and thousands of dollars from the company. The company was trying to ascertain from the accused, the total amount of money she had allegedly stolen, and whether or not others were involved. The company was also trying to ascertain from the accused, where she had kept the huge amount of money allegedly stolen. In a sense, it was an employer – employee matter.

29. In an employer – employee contract of employment, the employee owes a duty to be truthful to his or her employer. This is especially so, when the employee is entrusted with the employer's money. In this case, the applicant, as an employee, was trusted by her employer. She was the secretary to the Managing Director of Vinod Patel and Company Ltd. According to Kumar Shankar, the company earns about \$80 million annually. When it was alleged that the applicant had stolen approximately \$325,000 on 17<sup>th</sup> May 2007, in my view, it was totally in order for the company to carry out its internal investigation, even without notifying the police. It was essential for a company of Vinod Patel's size, to get its basic facts together, before it reported the matter to police. For example, how much money was involved? Who was involved? How did they operate? Where was the loophole in the

company's financial system? Can it be closed? Where is the stolen money? Can it be recovered?

30. In attempting to answer the above questions, Vinod Patel Company Ltd, through its staff, organized four meetings:
- (i) on 12<sup>th</sup> May 2007, at the company's premise at Centrepoint between Kumar Shankar, Navin Sen and the applicant;
  - (ii) on 14<sup>th</sup> May 2007, at the company's premise at Centrepoint between Kumar Shankar, Jayanti Patel, Mohammed Haroon, Navin Sen, Hemendra Nagin and the Applicant's husband;
  - (iii) on 15<sup>th</sup> May 2007, at the company's premise at Centrepoint, between Kumar Shankar, J. Patel, Haroon, Sen, Nagin and the Applicant's husband;
  - (iv) on 17<sup>th</sup> May 2007, at Sherani & Co, between Mr. Nagin, J. Patel, Kumar and the applicant and her husband.

In my view, after carefully considering all the evidence, Vinod Patel Company Ltd, through its staff, were acting in the course of a bona fide inquiry, when participating in the above meetings. Approximately \$472,466.47 had being stolen from them, allegedly by the applicant. In my view, after considering all the evidence, the above meetings and inquiries were carried out in good faith and for a proper purpose. For these reasons, the applicant's stay application cannot succeed on this ground.

31. **Ground 9(iv): The State's intention to rely on and utilize the evidence procured through the rogue conduct of the non-State agents.**

Given the court's finding in paragraph 30 hereof, that the actions of

Vinod Patel Company's staff during its inquiries cannot be classified as "rogue conduct by non-State agents", because they were acting in good faith, the applicant's stay application, it seems, cannot succeed on this ground also.

32. In conclusion, the principles in *The State v Sat Narayan Pal's* case (High Court, supra), does not apply in this case. The non-State agents in this case, while conducting inquiries on company matters, were acting in good faith, while in *The State v Sat Narayan Pal* (supra), the non-State agents, when conducting their inquiries, were not acting in good faith. For these reasons, the applicant's application for a stay is not granted. The application is accordingly dismissed.
33. Can the court, in the alternative, treat this proceeding as "a trial within a trial?" In paragraph 6 hereof, the parties answered positively. The defence asked that "all alleged confessions obtained from the accused before the matter was referred to the police, be declared inadmissible evidence". The State, on the other hand, intends to use any confession that has been declared admissible evidence. This was especially so with the alleged confession made on the 17<sup>th</sup> May 2007 meeting. The court has therefore decided to treat this application, in the alternative, as a trial within a trial.
34. In this case, there were three instances in which the accused was alleged to have made confessions, to staff employed by Vinod Patel and Company Ltd:



- (i) Saturday 12<sup>th</sup> May 2007, at the company's premises at Centrepoint, between Kumar Shankar and the accused. Mr. Shankar was checking the Company Bank Statements, and noticed a suspicious transaction involving cheque No. 37010, payable to Carpenters Shipping, which was cashed on 11<sup>th</sup> May 2007. According to Mr. Shankar, the accused voluntarily confessed to him that she cashed the cheque for \$15,172.38. He said, he didn't force or threaten the accused to confess. The accused, in her evidence, appeared to deny Mr. Shankar's statement.
- (ii) Sunday 13<sup>th</sup> May 2007, at Raiwaqa Sports City Complex, between Navin Sen [Head of Department of Accounts Payable, Vinod Patel], and the accused. According to Mr. Sen, the accused called him on the company mobile phone at 10.30am to meet at Raiwaqa Sports Complex. They met at about 11.25am, and according to Mr. Sen, the accused voluntarily confessed to him that she cashed Vinod Patels Cheque No.37010 for \$15,172.38. She also told him that, she had also cashed similar cheques , and asked for Mr. Sen to "help her out of the situation". Mr. Sen said, the accused offered her \$10,000 cash. Mr. Sen did not take the money, as it was unethical. Mr. Sen said, no force or threat was made on the accused to confess. The accused on the other hand, denied the above allegations.
- iii) Thursday 17<sup>th</sup> May 2007, at Sherani & Company's office between Mr. Hemendra Nagin [Vinod Patel's lawyer], Mr. Jayanti Patel

[Director], Kumar Shankar [Company Secretary] and the accused and her husband. This meeting was secretly recorded by Mr. Nagin, and the language used during the meeting was mainly in Hindi. It was transcribed and translated into English by Mr. Nagin. The recording was played in court, in the presence of our court interpreter. The court has carefully read the English transcript of the meeting, and has also heard the recording. During the meeting, the accused allegedly made confessions.

35. "...The test for the admissibility of statements made by the accused to persons in authority, is whether they were voluntary, obtained without oppression or unfairness and breaches of any constitutional rights. The burden of proving voluntariness, fairness, lack of oppression and observance of constitutional rights rests on the prosecution, and all matters must be proved beyond reasonable doubt. Evidence of assault, which is accepted by the court, is sufficient to raise a reasonable doubt as to voluntariness. Evidence of long hours of questioning without adequate breaks, prolonged detention without charge, and deprivation of sleep, or water would constitute oppressive conduct...": per Her Ladyship Madam Justice N. Shameem, ***State v Mohammed Harun Khan***, *Criminal Case No. HAC 009 of 2004, High Court, Suva*. The above quotation must be read in the light of the abrogation of the Fiji Constitution Amendment Act 1997, on 10<sup>th</sup> April 2009, by the President and Commander in Chief of the Republic of the Fiji Military Forces.
36. A lot of evidences were tendered by both sides in this proceeding, both in affidavit form, and by cross-examination and re-examination in court.

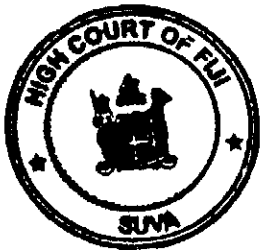
On the first verbal confession that was made by the accused to Mr. Kumar Shankar, at the company's premise at Centrepont, on Saturday 12<sup>th</sup> May 2007, I find it was voluntarily given by the accused to Mr. Kumar Shankar. In my view, after assessing all the evidence, the accused's verbal confession to Mr. Kumar Shankar, was given voluntarily and out of her free will. This is so despite the accused's denial. It is admissible evidence. Its acceptance or otherwise, will be a matter for the assessors, to decide.

37. As to the second verbal confession by the accused to Mr. Navin Sen, at Raiwaqa Sports City Complex, on Sunday 13<sup>th</sup> May 2007, I find it was voluntarily given by the accused to Mr. Navin Sen. In my view, after assessing all the evidence, the accused's verbal confession to Mr. Navin Sen, was given voluntarily and out of her own free will. This is so despite the accused's denial. It is admissible evidence. Like the previous verbal confession, its acceptance or otherwise, will be a matter for the assessors to decide.

38. As for the alleged confession made by the accused, on 17<sup>th</sup> May 2007, at Sherani & Company's office, I reach a different conclusion. The Vinod Patel Company, through their staff and solicitors, is in a position of authority vis-à-vis their employee, the accused, at the time. It was therefore essential for Vinod Patel's staff, including its lawyers, to comply with the standard rule of the admissibility of statements given by an accused person to a person in authority, as highlighted in **State v Mohammed Harun Khan** (*supra*). In this case, after first reading the transcript, I reached the impression that the accused's confession was

given voluntarily, that is, out of her own free will, during the 17<sup>th</sup> May 2007 meeting. However, when the CD recording was played out in court, I reached a different conclusion. Although I don't understand the Hindi language, the accused's tone of voice showed she was under extreme pressure. Obviously, she was pressured by the company's officials to the extent she wanted to die. Assessing the transcript and the recording, the accused was not given breaks, or asked to have a cup a tea, or got to the toilet, or have a smoke – as is standard in any police interview. All I could hear was the continuous wailing of the accused. In my view, after assessing all the evidence, I find that the accused involuntarily gave her confession, at the 17<sup>th</sup> May 2007 meeting. In other words, her confession, at the meeting, was given without her own free will. I therefore declare her admissions at the 17<sup>th</sup> May 2007 meeting inadmissible evidence.

39. In summary, the stay application is dismissed. The oral admissions made by the accused to Mr. Kumar Shankar, on 12<sup>th</sup> May 2007, and to Mr. Navin Sen, on 13<sup>th</sup> May 2007 are admissible evidence, and their acceptance or otherwise, will be a matter for the assessors to decide. The admissions the accused made on 17<sup>th</sup> May 2007 are inadmissible evidence.



AT SUVA  
19<sup>th</sup> March 2010

**Salesi Temo**  
**Acting Judge**