

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 137 of 2010

BETWEEN : THE STATE

AND : MAHENDRA PAL CHAUDHRY

BEFORE : HON. MR. JUSTICE PAUL MADIGAN

Counsel : Mr. P. Bodor Q.C. with Mr. M. Hutchings for the
applicant
Mr. C. Grossman S.C, Q.C. with Ms. E. Yang &
Mr. M. Korovou for the State

Date of summing up : 4 April 2014

Date of Judgment : 4 April 2014

JUDGMENT

On an amended information dated 3 October 2013 you are charged with
the following offences:

FIRST COUNT**Statement of Offence**

FAILURE TO SURRENDER FOREIGN CURRENCY: Contrary to Section 4 of the Exchange Control Act, Cap 211 and section 1 of Part II of the Fifth Schedule of the Exchange Control Act, Cap 211.

Particulars of Offence

MAHENDRA PAL CHAUDHRY IN BETWEEN THE 1ST DAY OF November 2000 and the 23rd day of July 2010, at Suva in the Central Division being a resident in Fiji entitled to sell foreign currency but not being an authorised dealer, however being required by law to offer it for sale to an authorised dealer, retained the sum of \$1,500,000.00 (\$1.5 million) Australian Dollars for his own use and benefit, without the consent of the Governor of the Reserve Bank of Fiji.

SECOND COUNT**Statement of Offence**

DEALING IN FOREIGN CURRENCY OTHERWISE THAN WITH AN AUTHORISED DEALER WITHOUT PERMISSION : Contrary to Section 3 of the Exchange Control Act, Cap 211 and section 1 of Part II of the Fifth Schedule of the Exchange Control Act, Cap 211.

Particulars of Offence

MAHENDRA PAL CHAUDHRY in between the 1st day of November 2000 and the 23rd day of July 2010, at Suva in the Central Division being a resident in Fiji but not being an authorised dealer, did lend the sum of \$1,500,000.00 (\$1.5 million) Australian Dollars to persons otherwise than an

authorised dealer, namely the Financial Institutions in Australia and New Zealand as listed in Annexure marked "A", without the permission of the Governor of the Reserve Bank of Fiji.

THIRD COUNT

Statement of Claim

FAILURE TO COLLECT DEBTS : Contrary to Section 26(1)(a) of the Exchange Control Act, Cap 211 and section 1 of Part II of the Fifth Schedule of the Exchange Control Act, Cap 211.

Particulars of Offence

MAHENDRA PAL CHAUDHRY in between the 1st day of November 2000 and 23rd day of July 2010, at Suva in the Central Division being a resident in Fiji having the right to receive a sum of \$1,500,000.00 (\$1.5 million) Australian Dollars from the Financial Institutions in Australia and New Zealand as listed in Annexure marked "A", caused the delay of payment of the said sum, in whole or in part, to himself by authorising the continual re-investment of the said sum together with interest acquired back into the said Financial Institutions without the consent of the Governor of the Reserve Bank of Fiji.

1. In the unanimous opinion of four assessors you have been found guilty of each of these counts.
2. The case against you represented by the three charges is overwhelming. The offences are offences of strict liability and the elements of each offence are before the Court as agreed facts. There

has been no defence evidence that would explain or contradict those inculpatory facts.

3. There is no question that you at all relevant times were resident in Fiji; there is no question that you were in control of approximately AUD 1.5 million in Australia and New Zealand. Having been aware at least as early as October 2009 of the probability of breach of provisions of the Exchange Control Act, you have done nothing to repatriate the funds to an authorised dealer in Fiji.
4. You have invested funds and deposited funds thereby giving loans to financial institutions and despite notice, you have delayed repatriating the funds to Fiji as required by the Act.
5. I find beyond reasonable doubt that you are in breach of the terms of s.4, s.3 and s.26 of the Exchange Control Act, and I find you guilty of each count in the information. You are convicted on each count accordingly.
6. Pending sentence, I make the following order: I order that you do not access any of the funds held abroad either directly or indirectly between now and when sentence is passed.
7. That is the judgment of the Court.



At Suva
4 April 2014

A handwritten signature in black ink, appearing to read "P.K. Madigan". The signature is written in a cursive style with a large, sweeping initial "P".

P.K. Madigan
Judge