

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLATE JURISDICTION**  
**CRIMINAL MISCELLANEOUS CASE NO.: HAM 412 OF 2013**

**BETWEEN:** RAKESH KUMAR

*Appellant*

**AND:** STATE

*Respondent*

**Counsels :** Appellant in person  
Mr. Alvin Singh for the Respondent

**Date of Hearing :** 31 January 2014

**Date of Judgment :** 7 February 2014

## **JUDGMENT**

1. The appellant was charged before the Ba Magistrate under one count of Obtaining Property by Deception under Section 309 (a) of the Penal Code, Cap 17.
2. The appellant pleaded guilty and was convicted and sentenced for 18 months imprisonment with 12 months non-parole period on 4<sup>th</sup> September 2013 with effect from 10<sup>th</sup> April 2013.
3. The facts of the case are the appellant obtained \$1,451.00 worth recharge cards and a mobile phone valued at \$49.00 by giving cheque which is found to be forged one.
4. This appeal was filed on 27<sup>th</sup> September 2013 within time.
5. The grounds of appeal are :
  - (i) That the learned Magistrate failed to allow adequate discount on the guilty plea.
  - (ii) That the learned Magistrate failed to allow adequate discount for personal circumstances.

6. The learned Magistrate had selected a starting point of 18 months following the tariff judgments **Arun v State** [2009] FJHC 231; HAA052.2008, HAA053.2008, HAA054.2008, HAA055.2008 (23 October 2009) **Mohamed Rizwan v State** [2006] HAA 25-34.2006S (3 November 2006) **Vinod Prasad v State** [2008] HAA012.2008S (18 April 2008) **State v Bole** HAC 38.2005 (4 October 2005).
7. Six months were added for the aggravating factor that this is a well planned offence. A period of 6 months was deducted for the mitigating factors including guilty plea, personal circumstances and \$900.00 restitution. The final sentence was 18 months.
8. The learned Magistrate had followed relevant tariff judgments and arrived at a correct starting point. The period added for the aggravating and period could also be justified in the circumstances.
9. However, learned Magistrate fell into error when he deducted 6 months for all the mitigation.
10. In **Basa v State** [2006] FJCA 23; AAU 0024.2005 (24 March 2006) the Court of Appeal held that:

*“The appellant suggests that the reference to the fact the plea of guilty was entered late means he was not given full credit for it. Whenever an accused person admits his guilt by pleading guilty, the court will give some credit for that as a clear demonstration of remorse. However, the amount that will be given is not fixed and will depend on the offence charged and the circumstances of each case. The maximum credit is likely to be given for offences such as rape and personal violence because it saves the victim having to relive the trauma in the witness box. At the other end of the scale, little or no credit may be given if the evidence is so overwhelming that the accused has no real option but to admit it. Where, as here, the accused has admitted the offence and the receipt of his share of the money, the delay in pleading guilty must reduce the value of the plea considerably.”*
11. At was held in **Naikelekelevesi v State** [2008] FJCA 11; AAU 0061.2007 (27 June 2008) that *“Where there is a guilty plea, this should be discounted for separately from the mitigating factor in a case.”*
12. The learned Magistrate had erred by not awarding the appellant separate deduction for his guilty plea. There is merit in this ground and it succeeds.

## **Conclusion**

13. This background warrants this Court to exercise its powers in terms of Section 256 (3) of the Criminal Procedure Decree to quash the sentence passed by the Magistrate and pass other sentence which reflects the gravity of the offence within the acceptable range of tariff.
14. Accordingly, I take a starting point of 18 months and add 6 months for the aggravating factor. I deduct 4 months for the mitigating factors of personal circumstances (sole bread winner of three daughters and elderly mother) and the restitution. Further 5 months to be deducted for the Guilty plea. Final sentence is 15 months.
15. Appellant was in remand since 5.3.2013.
16. Suspension of your sentence is not appropriate as you have 10 previous convictions with 3 are valid and of similar nature.
17. You are sentenced to 15 months imprisonment with effect from 5.3.2013.
18. Appeal is allowed. Sentence is varied.

Sudharshana De Silva  
**JUDGE**

**At Lautoka**  
**07<sup>th</sup> February, 2014**

**Solicitors : Appellant in Person**  
**Office of the Director of Public Prosecutions for Respondent**