

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 118 OF 2014

STATE

V

PREETIKA ANUWESH LATA

Counsel: Mr. Alvin Singh for State
Mr. Ronil Kumar for Accused

Date of Judgment : 22nd November, 2017
Date of Sentence : 7th December, 2017

SENTENCE

1. Preetika Anuwesh Lata, you were charged with following counts.

FIRST COUNT

Statement of Offence

RECEIVING: Contrary to Section 306 (1) of the Crimes Decree, No. 44 of 2009.

Particulars of Offence

PREETIKA ANUWESH LATA between the 14th day of February 2013 and 14th day of May 2014, at Lautoka in the Western Division, dishonestly received \$285,680.96, knowing or believing the property to be stolen.

SECOND COUNT

Statement of Offence

MONEY LAUNDERING: Contrary to Section 69 (3) (b) of the Proceeds of Crime Act of 1997.

Particulars of Offence

PREETIKA ANUWESH LATA between the 14th day of February 2013 and 14th day of May 2014, at Lautoka in the Western Division, received money to a total value of \$285,680.96, and she knew or ought to have known the money being proceed of crime were derived directly or indirectly from some form of unlawful activity.

2. After a fully defended trial, assessors unanimously found you guilty on both counts. The Court accepted the opinion of assessors and, on 22nd November, 2017, you were convicted accordingly. Having being convicted on each count you now come before this Court for sentence.
3. Your husband Sudhanshu Sharma joined the Fiji Sugar Corporation (FSC) in 2011 and was in-charge of payroll of roughly around 2,000 employees and non-staff members of FSC. In 2012, new payroll processing software was implemented. Your husband was the officer responsible for processing and consolidating the payroll and generating bank files for all employees of the FSC.
4. As the payroll officer, your husband fraudulently transferred FSC funds to his and your accounts without the knowledge of the FSC.
5. You were never employed by FSC nor were part of non-staff payroll and therefore not entitled to receive any payment from the FSC. You knew very well that you were not entitled to receive any payment from the FSC. Still you kept on receiving proceeds of crime into your bank accounts and withdrew and used them for your family expenses.
6. You opened a new bank account with Westpac Bank to facilitate your husband to transfer proceeds of crime to that account.
7. At the financial year end reconciliation, it was revealed that FSC funds had been misappropriated. Before police investigation began, your husband suddenly resigned from FSC and fled the country for the USA. The internal audit revealed that FSC money to the total value of \$285,680.96 had been transferred to your two bank accounts. After this revelation, you admitted that your two bank accounts had received proceeds of crime but denied any knowledge about illegal money deposited in your bank accounts.
8. When police investigations began, you returned a sum of \$ 169,640/- and agreed that the money in your two bank accounts except wages remitted from your employer belongs to the FSC.

9. The maximum sentence for Receiving is 10 years' imprisonment. The tariff for this offence appears to be a sentence between 12 months and 4 years imprisonment.
10. In *State v Usumaki* [2015] FJHC 259; HAC338.2012S (20 April 2015) Temo J stated the following at paragraph 6:

Count No. 2, 3, 4 and 5, which is "receiving stolen property", contrary to section 306(1) of the Crimes Decree 2009, is also viewed seriously by the law makers of this country. It carries a maximum sentence of 10 years imprisonment. For a similar offence in the repealed Penal Code, I said the following in State v Josua Raitamata, Criminal Case No. HAC 012A of 2010S: "...The offence of "receiving stolen property", is also a serious offence and carries a maximum penalty of 14 years imprisonment. (Section 313(1)(a) of the Penal Code). The tariff for this offence appears to be a sentence between 12 months to 4 years imprisonment: Tukai Taura v State [2003] HAA 103 and 104 of 2002; Ilaitia Tuwera Turaga v The State [2002] HAA 082/02S; Jesoni Tabakau v State [2003] HAA 19/03S and R v Webbe [2002] 1 Cr. App. R. 22. The sentence will depend on the aggravating and mitigating factors..." The above tariff is also applicable to "receiving stolen property" under section 306 (1) of the Crimes Decree 2009.

11. The maximum sentence for Money Laundering is 20 years' imprisonment or fine not exceeding \$ 120,000.00, or both if the offender is a natural person. Prescribed maximum sentence indicates that money laundering is a serious offence.
12. In *State v Stephen* HAC 088 Of 2010 (12 April 2012) Madigan J drew some light from sentencing guidelines from Hong Kong jurisdiction and cited Hong Kong Court of Appeal decision of HKSAR v Javid Kamran (CACC 400/2004) where it was observed:

"Money laundering is a very serious offence as it is an attempt to legitimize proceeds from criminal activities. Serious criminal offences are very often motivated by financial gains and those who assist criminals in laundering money indirectly encourage them in their criminal activities. Successful deterrents against money laundering could be effective measures against crime".

"It is not feasible to lay down guidelines for sentence of money laundering offences, as there is a very wide range of culpability factors arising include the nature of the offence that generated the laundered money, the extent to which the offence assisted the crime or hindered its detection, the degree of

sophistication of the offence and perhaps the accused's participation including the length of time the offence lasted and the benefit he derived from the offence."

13. In O'Keefe v State [2007] FJCA 34; AAU0029.2007 [25 June 2007] the Court of Appeal stated that:

"When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person who is to be sentenced. Money laundering is clearly potentially a very serious offence. It can be, and is, used to disguise the true nature of money derived from criminal activity and so make it available for legitimate use. It is essential for large criminal organizations if they are to be able to maximize the proceeds of their unlawful activities. Of necessity, it is an international problem and undoubtedly smaller jurisdictions may be seen as useful and unsuspecting conduits. That is why Parliament imposed the heavy penalties under the Proceeds of Crime Act".

14. In O'Keefe (*supra*), appellant had entered a plea of guilty in the Magistrates Court to several counts of forgery and false pretenses for which he was sentenced to concurrent terms of 2 years and then also one offence of money laundering for which he was sentenced to five years' imprisonment. Quashing the sentence of five years' imprisonment on Money Laundering, the Court of Appeal substituted a sentence of 3 ½ years' imprisonment. In that case, value of proceeds of crime was \$ 90,930.78 and out of which only \$ 1500.00 had been recovered.

15. At paragraph 16, the Court said:

"However, where, as here, the court is also sentencing for the associated criminal offences which produced the money to be laundered, it must base its sentence on the relative seriousness of the individual offences."

16. The guideline principles of O'Keefe were cited in State v. Sinha [2010] FJHC 480 (29 October 2010) where Goundar J picked a starting point of 4 years. In that case, offender had withdrawn \$187,333.57 out of proceeds of crime amounting to \$272,291.57. Having given a discount of 2 years for the period the accused was in remand, the court imposed a sentence of 4 years' imprisonment with a non-parole period of 18 months.
17. In State v Stephen (*supra*) the accused was sentenced to 7 years' imprisonment to be served concurrently for 2 counts of Money Laundering.

Madigan J having cited two case authorities from Hong Kong jurisdiction 'reluctantly' preferred guidelines articulated in O'Keefe v State (*supra*) and stated that:

"It was said by the HK Court of Appeal in Xu Xia-Li (CACC 395/2003):

"By the nature of the offence itself, in our judgment, the nature of the indictable offence from which the money was derived should be of no particular significance in sentencing, save that if the defendant knew that the money was derived from very serious crimes, it would be an aggravating feature to be taken into account in sentencing".

This must be correct: the offence is money laundering and not being a party to a crime and the amount of money laundered is of paramount importance over and above the nature of the crime generating the funds laundered.

This principle of money laundering standing apart from the crimes producing the monies unfortunately does not sit squarely with the decision of the Fiji Court of Appeal in O'Keefe AAU 0029 [2007] where the Court decided that sentences for money laundering if charged in conjunction with the generating offence(s) must be subordinate to those ancillary criminal offences. In light of authority from other jurisdictions that the generating crimes are irrelevant to the crime of money laundering, then it may be time now for the Court of Appeal to revisit its decision in O'Keefe.

This view is reinforced by the provisions of Section 69(4) of the Proceeds of Crime Act, which was enacted by an amendment to the principal Act in 2004 and which may not have been brought to the attention of the Fiji Court of Appeal in 2007. Section 69(4) reads:

"The offence of money laundering is not predicated on proof of the commission of a serious offence or foreign serious offence."

..."where the offence to be charged alone, that is without being charged in conjunction with other offences that generate the money sought to be laundered, it is probable that the offence could attract sentences in the range of eight to twelve years", however this Court is bound by the decision of the Fiji Court of Appeal in O'Keefe v State (2007) AAU 0029.2007".

18. Having considered the relevant law and case authorities, I now proceed to choose the appropriate sentence in your case.
19. You were charged with Money Laundering in conjunction with another offence namely Receiving. However, you were not charged with or

responsible for the offence that generated money to be laundered allegedly committed by your husband. That will not make the offence you have committed less culpable. It is now well established that the nature of the offence from which the money was derived should be of no particular significance in sentencing for Money Laundering.

20. The more serious offence you are convicted of being Money Laundering, I consider the 2nd count as the head count and craft the sentence accordingly.
21. In selecting the starting point for Money Laundering count, I look at objective seriousness of the offence and consider culpability factors and harm caused by the offending. The amount of money laundered is considerably high. You laundered a sum of \$ 285,680.96. The extent of contribution to commit the offence and hinder its detection on your part is considerable. I also considered the degree of sophistication of the offence, your participation, including the length of time the offence lasted, and the benefit you derived from the offence (You admitted that you are still using the car bought by your husband from laundered money).
22. The source of money is from the FSC, a government entity. The monies belonged to the cane farmers of Fiji. The sugar cane industry has no doubt suffered a severe setback due to the fraudulent activity committed by you in collusion with your husband who was a payroll officer at FSC.
23. Having considered the objective seriousness of the offence, I select a starting point of 4 years' imprisonment.

Aggravating features

24. To carry out this sophisticated 'white color' crime, considerable degree of pre planning was involved. A new bank account was opened to receive proceeds of crime. Visas had been arranged by you and your husband apparently to flee the country either to Australia or USA. Your husband secretly fled to the USA and you deliberately suppressed this information from the authorities. Money laundering activity was planned to steal from a public enterprise so as to affect the poor sugar cane farmers. The sophisticated fraudulent scheme was to profit from public money.

Mitigating features

25. You are 33 years old first offender. You have maintained a clear record at your work place as a receptionist and front office manager. However, your clear record is of little mitigating value when it comes to sentencing for Money Laundering because criminals will inevitably search out and use

people of good character to launder their ill-gotten funds in the hope that such agents will be beyond suspicion. [See: Stephen (supra)]

26. You returned a sum of \$ 169,640.00 only when police investigations started. After learning about the fraud, Westpac and BSP banks froze your accounts on court orders. You finally agreed that money in your two bank accounts belongs to the FSC and be returned to the rightful owner. Restoration of money however is not an indication genuine remorse. Lack of genuine remorse demonstrated by you during trial and your insistence that you are still innocent took away the benefit you would otherwise have received for a clear record. Although I do not consider the recovery of money as a genuine indication of remorse, I consider the recovery as a mitigation factor.
27. I do concede that you are not the master brain of the sophisticated crime which generated illegal money. You did not hold any position at FSC. It is your husband who planned and executed the criminal enterprise that generated illicit money. However, your conduct and evidence produced at the trial proved that you had played a greater role in assisting the commission and also preventing the detection of the crime committed by your husband. You failed to satisfy this court that you were simply duped or under influence of your husband.
28. The obvious mastermind and driving force behind the scheme has fled the country and therefore was never charged with any offence; However, this is not a case where an "innocent dupe" being sentenced for a crime committed by her husband. You are being punished for the offence you have committed. A profound deterrent sentence is warranted to reflect the seriousness of the offences and to be a strong warning to like-minded persons that the courts will come down hard for such offences.
29. Having considered above mentioned aggravating features I add 3 years and deduct 2 years for mitigating circumstances bringing the sentence to one of 5 years' imprisonment for Money Laundering count.
30. For the 1st count of Receiving, I select a starting point of 2 years' imprisonment. I add 1 year for aggravating features and deduct 1 year for mitigating circumstances. Your sentence for Receiving count is 2 years' imprisonment.
31. Your Counsel has urged for a fine only and/ or suspended sentence. However, I do not think this is a fit case to act with such leniency given the nature of the offence and the *modus operandi* used to commit the crime. A profound deterrent sentence is warranted to reflect the seriousness of the

offence and to give a strong warning to would be offenders that the courts will come down harsh on such offences. I also bear in mind that a harsher punishment could be a successful deterrent and effective measure in combating money laundering. Therefore, an immediate custodial sentence is warranted in this case.

32. Your Counsel has cited the sentence passed by this Court in State v Singh [2015] FJHC 865; HAC28.2012 (12 November 2015) where I had sentenced a Money Laundering convict to 4 years' imprisonment with a non-parole period of one year. The leniency in relation to the non-parole period was afforded to account for special circumstances of that case. In that case, the accused was charged for obtaining money from FIRCA cheque in the sum of \$ 47,734.58. However, early stop payment order prevented him from withdrawing any money from the account. An attempt to defraud tax payer's money was thwarted. Accused had not benefitted from the crime. That case had come up for sentence nearly 10 years after the offence hence the factual scenario is considerably different from this case.
33. Your sentence should reflect the seriousness of the offence and be fitting to the facts of this case. Having considered your potential for rehabilitation as the first offender and your age, I fix a non-parole period at 2 years.
34. After learning about the fraud, two banks, Westpac and BSP froze your accounts. The money remains in those bank accounts (except your wages) can now be restored to FSC.
35. Having considered the application of the Prosecution, I order that the money which had been remitted from the Fiji Sugar Corporation, and still kept in your two bank accounts, namely, Westpac Banking Corporation account 9804224278 and Bank of South Pacific account 6788823 to be restored to the rightful owners, the Fiji Sugar Corporation.

35. Summary

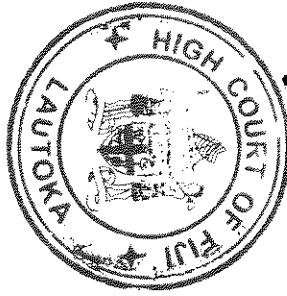
Now your final sentence for you is as follows:

For 1st Count (Receiving) - 2 years' imprisonment

For 2nd Count (Money Laundering) - 5 years' imprisonment

You are to serve both sentences concurrently. You are eligible for parole after serving 2 years in prison.

36. 30 days to appeal to the Court of Appeal.



Aruna Aluthge
Judge

At Lautoka
7th December, 2017

Counsel:

- Office of the Director of Public Prosecution for State
- Iqbal Khan Associates for Accused