

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**MISCELLANEOUS JURISDICTION**

**Criminal Misc. No. HAM 132 of 2018**

**BETWEEN** : **THE STATE**

**APPLICANT**

**A N D** : **DESHWAR KISHORE DUTT**  
**SAVENACA VUNISA**

**RESPONDENTS**

**Counsel** : Ms. S. Kiran for the State.  
: First Respondent in person.  
: Ms.K.Vulimainadave for the Second Respondent.

**Date of Hearing** : 12 October, 2018  
**Date of Judgment** : 17 October, 2018

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**RULING**

**[Application for Restoration of Property]**

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1. The State by Notice of Motion dated 3 August, 2018 seeks the following orders:

*That the assorted jewelries, watches and a bottle of red door perfume as specified in count three of the information be returned to the complainant as per criminal case HAC 13 of 2018.*

2. The State relies on the affidavit of Muni Lachmi Reddy sworn on 1 August, 2018. The first respondent Deshwar Dutt opposes this application. He has filed his affidavit in reply sworn on 28 August, 2018.
3. The second respondent Savenaca Vunisa has no objections to the application. The state counsel and the first respondent made oral submissions during the hearing.

### **BACKGROUND INFORMATION**

4. Both respondents have been charged with another for four counts of aggravated robbery contrary to section 311 (1) (a) and (b) Crimes Act 2009. The application filed by the State relates to count three of the information which mentions:

### **THIRD COUNT**

#### **Statement of Offence**

**AGGRAVATED ROBBERY:** Contrary to section 311 (1) (a) and (b) of the Crimes Act 2009.

#### **Particulars of Offence**

**DESHWAR KISHORE DUTT, SAVENACA VUNISA and another** between the 29<sup>th</sup> day of December, 2017 and 30<sup>th</sup> day of December, 2017 stole about 50 assorted jewelries and watches valued approximately USD\$102,000, \$2000 cash in Fijian and US currencies, ELIZABETH ARDEN RED DOOR perfume valued at USD\$79.00, the properties of **MUNI LAKSHMI REDDY**, all to the total value of approximately FJD\$206,160.00 and at the time of such theft, the said **DESHWAR**

**KISHORE DUTT, SAVENACA VUNISA** and **another** were armed with a kitchen knife, axe and pinch bar and had also applied force on the said **MUNI LAKSHMI REDDY**.

**STATE'S SUBMISSION**

5. State submits the first respondent with others had broken into the house of the complainant and stole items mentioned in the information. After the robbery a complaint was lodged at the Nadi Police Station.
6. The complainant was the owner of the items that was stolen from the house of the complainant. Upon police investigation 40 to 50 pieces of the complainant's assorted jewellery, watches and a bottle of red door perfume were recovered. These items were identified by the complainant as belonging to her.
7. The complainant requires the assorted jewellery, watches except silver and rose gold plated MICHAEL KORS and the bottle of red door perfume for her personal use. The jewellery has sentimental values in particular the gold chain with "tali" that signifies a married woman.
8. The complainant needs those items mentioned in the application, the other items recovered can be kept by the prosecution until the trial is over.

**FIRST RESPONDENT'S SUBMISSION**

9. The first respondent in opposing the application submits that the complainant has not been able to give any description of the jewellery and how she came to positively identify the jewellery. The respondent

further states that the complainant has failed to provide ownership documents.

20. The respondent says he will be prejudiced if the items are released since the only evidence linking him to the alleged crime in question are the recovered items. The respondent poses the question what will happen if the place where the complainant keeps those released items gets burnt or the items are stolen?

### **LAW**

21. Section 155 of the Criminal Procedure Act states:

*Division 5—Dealing with Property*

*Preservation or disposal of property*

*155.—(1) It shall be lawful for any court in any criminal proceedings to make orders for—*

- (a) the preservation or interim custody or detention of any property or thing produced in evidence or as to which questions may arise in the proceedings;*
- (b) the sale, destruction or other disposal of any such property or thing which may be of a perishable nature or liable to deteriorate, or which may be dangerous;*
- (c) the restoration or awarding of possession of any such property or thing to the person appearing to the court to be entitled to possession of it, without prejudice to any civil proceedings which may be taken in relation to it;*
- (d) the payment by any person of the expense incurred in the preservation, custody, detention, sale, destruction or other disposal of any such property or thing, or the proceeds of it;*

- (e) *the application of any such property or thing, or the proceeds of it, towards satisfaction or payment of any costs or compensation which are ordered by the court to be paid by any person, or to the police or any other emergency service as compensation for the services that they have been called upon to perform as a result of the commission of the offence.*
- (2) *Any order made under the provisions of sub-section (1)(d) may be enforced as if the order were the imposition of a fine.*
- (3) *When an order is made under the provisions of this section in a case in which an appeal lies, the order shall not, except when the property is livestock or is liable to deterioration or decay, be carried out until the period allowed for presenting the appeal has passed or, when the appeal is presented within such period, until the appeal has been determined*

### **DETERMINATION**

22. The complainant seeks an order for restoration of properties recovered after an alleged robbery at her house. The complainant has been able to recognize those items recovered as belonging to her. On 31 December, 2017 the complainant has been able to specifically identify the items recovered which is marked as annexure "B" of her affidavit.
23. The first respondent in his opposition does not assert ownership of the items recovered. He states that the items may not be produced in court on the day of the trial. To allay the concerns of the respondent a proper recording can be done and photographs taken of the respective items.

24. Furthermore, this is a 2018 matter a trial date is not anticipated soon since there are issues raised by the first respondent in the substantive matter which needs to be addressed first before a trial date can be assigned.
25. The items which the complainant wants released are her personal items which she wants to use. There is no sense in depriving her of the same.

### **ORDERS**

1. The application for restoration of property is allowed as per count three of the information filed by the office of the Director of Public Prosecutions except silver and rose gold plated MICHAEL KORS watch;
2. A proper record of the items released is to be kept and a photograph of each item released is to be available for trial purposes;
3. A copy to be disclosed to the defence.



**At Lautoka**

17 October, 2018

A handwritten signature in black ink, appearing to read "Sunil Sharma".

**Sunil Sharma**  
**Judge**

### **Solicitors**

**Office of the Director of Public Prosecutions for the Applicant.**

**First Respondent in person.**

**Office of the Legal Aid Commission for the Second Respondent.**