

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 38 OF 2024

BETWEEN: **ZINAZ NEHA BUKSH** **APPELLANT**

A N D: **THE STATE** **RESPONDENT**

Counsel: Mr. J. Cakau for Appellant
 Ms. T. Sharma for Respondent

Date of Hearing: 27th March 2025

Date of Judgment: 11th July 2025

J U D G M E N T

1. The Appellant was charged in the Magistrate’s Court in Suva with twenty-six counts of Obtaining Financial Advantage by Deception, contrary to Section 318 of the Crimes Act. Following the plea of guilty entered by the Appellant, the Learned Magistrate sentenced the Appellant on 30 September 2024 to two years ’imprisonment. Aggrieved by the sentence, the Appellant filed this appeal on the following grounds.

a) **THAT** *the Prosecution failed to raise the laws on “Double Jeopardy” in the instance case where the Appellant was charged for two separate charges arising from the same facts when the matter was heard before two different Learned trial*

Magistrate on the said charges, as such there has been a substantial miscarriage of justice.

b) ***THAT*** *the Appellant's appeal against sentence being manifestly harsh and wrong in principle in all the circumstances of the case.*

c) ***THAT*** *the Appellant had already been convicted to 13 charges of Accepting Payment Without Being Able to Supply as Ordered under Section 88 (1) (b), Section 88 (2) and section 129 (1a) (2) (3) of the Fiji Competition & Consumer Commission Act 2010. Three charges and convictions [Case No. 28/15, Case No. 33/15, Case No. 30/15] was repeated in Criminal Case No. 18 of 2015 with a new charge of Obtaining Financial Advantage by Deception that totaled 11 counts towards the charge.*

2. During the hearing of the appeal, both parties consented to focus on two main grounds, i.e. whether the transactions related to 15 counts out of the 26 counts charged in the Magistrate's Court have already been prosecuted and convicted by the Magistrate's Court in three previous proceedings, and whether the conviction entered by the Learned Magistrate was correct under Section 174 (2) of the Criminal Procedure Act.

3. Section 14 (1) (b) of the Constitution states:

A person shall not be tried for—

(b) an offence in respect of an act or omission for which that person has previously been either acquitted or convicted.

4. The Learned Counsel for the Respondent, in her submissions, conceded that fifteen counts, viz, counts 1 to 4 and counts 8 to 18, have already been prosecuted in the Magistrate's Court under CF28/15, CF30/15, and CF33/15 by the Fijian Competition and Consumer

Commission. The Appellant was subsequently convicted and sentenced by the Learned Magistrate upon entering a plea of guilty in these three cases.

5. Considering the reasons outlined above, it is apparent that the Appellant was charged and prosecuted in this case in contravention of Section 14(1)(b) of the Constitution; hence, the convictions recorded against her in respect of those fifteen counts are legally incorrect and should be set aside.
6. The second issue is whether the conviction entered by the Learned Magistrate was correct under Section 174(2) of the Criminal Procedure Act.
7. Section 174 of the Criminal Procedure Act details the process of recording the Accused's plea in the Magistrate's Court, stating that:
 - i) *The Substance of the charge or complaint shall be stated to the accused person by the court, and the accused shall be asked whether he or she admits or denies the truth of the charge,*
 - ii) *If the accused person admits the truth of the charge, the admission shall be recorded as nearly as possible in the words used by the accused, and the court shall convict the accused and proceed to sentence in accordance with the Sentencing and Penalties Act 2009.*
8. Accordingly, the Court shall first inform the Appellant of the substance of the charge, including the facts relating to all essential elements of the offence, and allow her to state whether she admits or denies the truth of the charge. If the Court is satisfied that the Appellant accepts the truth of the charge, it shall then proceed to convict the Appellant and impose the sentence accordingly.

9. Gates J (as His Lordship then was) in **State v Isaia Saukova (2000) 1 FLR 135** has discussed the duty of the Magistrate in respect of recording the plea of guilt, where His Lordship held that:

"It is essential that a Magistrate be satisfied that an Accused is admitting facts which amount to all of the legal elements that go to prove the charge in question. Where the Accused is represented by counsel, the Magistrates task is easier. Where the Accused is unrepresented a more onerous burden is cast on the court. But the Magistrate should ensure that the Accused is not simply pleading guilty out of a feeling of remorse for being involved in a result as opposed to causing a result."

10. I do not wish to reproduce the entire summary of facts, but only those related to count one, which is apparently repeated in the summary of facts with necessary changes for the other counts.

- a) *On 31/03/14 at Star Agencies office Waimanu road, Suva [B-1] dishonestly obtained \$2,000.00 cash from Pranish Prakash (A-1) 26 yrs, carpenter of Lot 17 stage 1 Pritam Singh road, Makoi for lodgment fees promised him that she was in a position to provide work permit visa to Australia but she failed to do so.*
- b) *(B-1) issued receipt number 0101 to [A-1] for the above payment*

11. Perera J in **Chute v State [2016] FJHC 1114; HAA015.2016 (8 December 2016)** outlined the definition and scope of Section 318 of the Crime Act, where Perera J held that:

27. In order to prove the offence under section 318 of the Crimes Decree, the prosecution should prove the following elements:

- a) *the accused;*

- b) *dishonestly obtained;*
- c) *a financial advantage;*
- d) *by deception.*

28. *Black's law dictionary (6th edition) provides the following definition to the word 'dishonesty:*

"Disposition to lie, cheat, deceive, or de-fraud; untrustworthiness; lack of integrity. Lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

29. *The term 'dishonest' is defined under section 290 and section 348 of the Crimes Decree. Both sections provides the same definition which is in line with the dictum in R v Ghosh [1982] 3 WLR 110. However, section 290 limits the application of the definition provided in the said section to Part 16 of the Crimes Decree and the definition provided under section 348 is only for Division 7 of Part 17. The offence of obtaining financial advantage by deception is listed under Division 2 of Part 17 of the Crimes Decree.*

30. *The definition provided in the Crimes Decree for the term 'dishonest is as follows:*

"... dishonest means –

- (a) dishonest according to the standards of ordinary people; and*
- (b) known by the defendant to be dishonest according to the standards of ordinary people."*

31. *I am of the view that dishonesty under section 318 should also be determined in line with the above definition.*

32. In the case of *Duncan v Independent Commission Against Corruption* [2016] NSWCA 143 (22 June 2016) the court had explained the term 'financial advantage' as follows:

"Financial advantage is not exhaustively defined in the Crimes Act and it is perhaps easier to identify than define. However, it does include retaining a financial advantage: s 192D(1)(c). In Coelho o Durbin (Supreme Court (NSW), Badgery-Parker], 29 March 1993, unrep) Badgery-Parker] described as the essence of the concept of financial advantage that the person alleged to have obtained such an advantage has obtained a benefit which can be valued in terms of money. "[Emphasis added]

33. Section 316 of the Crimes Decree provides a definition for the word 'deception'. However, the said definition does not clearly explain what a 'deception' is. In *Blackstone's Criminal Practice 2007* at page 402 it is stated thus:

"The best-known judicial definition of deception is that of Buckley] in Re London and Globe Finance Corporation Ltd [1903] 1 Ch 728 at p.732:

To deceive isto induce a man to believe that a thing is true which is false. This was quoted with approval in DPP v Ray [1974] AC 370 and is consistent with the normal dictionary meaning of the term,"

34. The following definition is provided for the term 'deception' under section 316 of the Crimes Decree;

"deception" means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes -

(a) a deception as to the intentions of the person using the deception or any other person; and

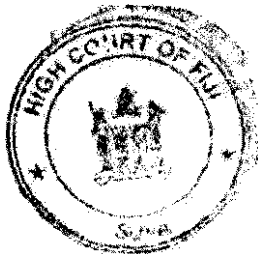
(b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorized to cause it to do.

35. It is necessary for the prosecution to prove that the deception operated in the mind of the person who is alleged to have been deceived. I am of the view that deception under section 318 of the Crimes Decree should be a deception as to existing facts or law and not a deception as to the future. With regard to deception as to the future, Blackstone's Criminal Practice 2007 states thus.

"For a deception to be an offence under the Theft Acts 1968 or 1978, it must be a deception as to existing facts, or as to law. A representation that something will happen in the future will not suffice. It therefore, will not do to argue that, when one person issues a worthless cheque to another, he has deceived the other into thinking that it will be honoured. For similar reasons, if a person falsely promises to perform a service for someone in the future, it cannot be argued that the person to whom the promise was made has been deceived into thinking that the service will be performed. There may indeed have been a criminal deception, but in either case, the deception must be expressed in terms of present fact."

12. It is clear that the Summary of Facts, aside from stating the concluding words, lacks the details explaining how the alleged conduct of the Appellant was dishonest and deceptive. Consequently, I find that the Summary of Facts as outlined has not disclosed the main elements of the offences. Therefore, the Appellant had not admitted the truth of the main elements of the offences as charged. Under such circumstances, the Learned Magistrate had no jurisdiction to enter a conviction against the Appellant pursuant to Section 174 (2) of the Criminal Procedure Act. I therefore find that the plea of guilt entered by the Appellant was not unequivocal. In that context, I find reason to intervene pursuant to Section 256 (2) of the Criminal Procedure Act.

13. This is an allegation involving a breach of trust, and the appeal is allowed based on the legality of the Summary of Facts and the plea entered by the Appellant. Therefore, I do not find that any prejudice would be caused to either the Appellant or the Respondent if this Court orders a re-trial. The Appellant spent nearly six months of her sentence before this Court granted her bail on 27 March 2025, and this period could be taken into consideration if the Magistrate finds her guilty of the offences at the retrial.
14. In conclusion, I make the following orders:
- i) The Appeal is allowed.
 - ii) The conviction is quashed, and the sentence dated 30th of September 2024 is set aside.
 - iii) A re-trial is ordered.
15. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

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Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

11th July 2025

Solicitors.

Vosarogo Lawyers for Appellant.

Office of the Director of Public Prosecutions for the Respondent.