

PREM CHAND v STATE

COURT OF APPEAL — APPELLATE JURISDICTION

5 EICHELBAUM JA

22 January 2001

[2002] FJCA 27

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Practice and procedure — applications — application for leave out of time — validity of convictions and sentence imposed despite accused's absence — appeal 3 years out of time — Court of Appeal Act s 35(2) — Penal Code (Cap 17) ss 106(a), 336(3)(c), 343(1).

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The Magistrate Court found the applicant guilty on one count each of Official Corruption, Forgery and Uttering a forged document and was sentenced to 5 years imprisonment. Trial proceeded even without the applicant. The High Court affirmed the convictions and sentence. The applicant appealed and attacked the convictions and sentence imposed.

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Held — Applicant gave no explanation for the gross delay following the completion of the proceedings in the Magistrates Court. The Constitution itself allowed a trial to proceed in the accused's absence.

Application dismissed.

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No case referred to.

Application for appeal and for leave to appeal

Eichelbaum JA. In the Magistrate's Court the applicant faced one count of Official corruption contrary to s 106(a) of the Penal Code Cap 17, one count of
30 Forgery contrary to s 336(3)(c) and one count of Uttering a forged document contrary to s 343(1).

The applicant was present on the first day of trial, but by the time the hearing resumed, he had absconded to New Zealand. Under the provision of the Constitution the trial was completed in this absence. The magistrate found the
35 Applicant guilty on all counts (the date of the judgment was 30 April 1997) and sentenced him to 5 years in imprisonment.

On 6th July 2000 the applicant filed an application to the High Court for leave to appeal out of time. Early in 2001 the applicant was extradited from New Zealand.

40 The affidavit and the petition in support of the application for leave contained a number of grounds. There was a challenge to the jurisdiction of the court on two of the counts. The applicant complained that the trial proceeded in his absence but accepted that his absence was his own choice. He pointed to a number of alleged deficiencies in the evidence, and denied committing the
45 offences. He submitted there was no or no sufficient proof of the offences.

The reserved judgment of the High Court dealt carefully with the provisions of the Constitution allowing a trial to proceed in the accused's absence. The gist of the reasons for disallowing the application for leave to appeal out of time appears to have been that no explanation was offered for the gross delay following the
50 completion of the proceedings in the Magistrates Court. It will be noted that the application for leave was filed while the applicant was still absent from Fiji.

Certainly the written argument on behalf of the state opposing the application was on the lines that no grounds had been shown for leave to be granted nor any reasonable prospects of success.

5 Following the delivery of the High Court judgment on 8 November 2001, the applicant prepared a petition of appeal dated 17 December 2001 which reached the Court of Appeal on 28 December 2001. The applicant headed this document as “Application for appeal and leave to appeal out of time against sentence...of Suva Magistrates Court”.

10 The document when filed was outside the time limit for appealing a High Court judgment but this is not the chief difficulty. On examination the document attacks the convictions in the Magistrates Court as well as the sentence imposed. Even on a generous interpretation the contents cannot be regarded as an application for leave to appeal out of time against the High Court judgment. Often the courts are prepared to overlook technicalities where prisoners are

15 acting for themselves but there must be some limit. Here the deficiencies exceed any reasonable limit. Further, the applicant simply does not address the basic problem that his original attempt to appeal was 3 years late. Even ignoring the defects of form, there is no underlying substance to indicate any basis for arguing that the High Court Judge’s exercise of discretion could be upset.

20 In my judgment the application is vexatious or frivolous within the meaning of s 35(2) of the Court of Appeal Act as amended. Acting under that section I dismiss the application.

Application dismissed.

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