IN THE SUPREME COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 85 of 1978

BETWEEN:

SATYA SILAN s/o Raman Nair Appellant

- and -

REGINAM Respondent

Appellant in Person.
Mr. M. Jennings, Counsel for the Respondent

JUDGMENT

The appellant pleaded guilty to fraudulently converting $60.00 to his own use contrary to section 311(1)(c)(i) of the Penal Code. It was the proceeds of the sale of a number of temple magazines which has been entrusted to him for that purpose.

He was imprisoned for 3½ years. At the time he was on probation for the offence of larceny from a dwelling house and received 6 months concurrently for that offence.

The appellant has a long list of conviction commencing in 1961 mainly for offences of dishonesty. His last conviction was in September 1977 and the offence under consideration was committed only a few months later in January, 1978.

He appeals against his sentence.

I am of the opinion that the magistrate's approach to the question of sentence was not strictly correct. The learned magistrate placed great emphasis on the appellant's previous convictions. Of course he was obliged to consider them when assessing sentence but the result should not be such as to suggest that the accused is suffering more for his bad record than for the offence. I would have regarded 18 months as a proper sentence having regard to his past record.

Turning now to the sentence of 6 months for what the magistrate termed "breach of probation" the original offence was larceny from a dwelling house. The learned magistrate should have formally put to the appellant the date and place of his conviction the charge and particulars and obtained his specific admissions that he was so charged and then that he was convicted after trial or on his own plea of guilty as the case may be; then his admission that he consented to be placed on probation. He should then be specifically asked whether he has any reason to offer as to why he should not now be punished for that offence. He is not being punished for "breach of probation" but for larceny from a dwelling house. It would be useful to quote the number of the case and the Court to avoid the possibility of his being again dealt with for that offence on some future occasion. A note should appear in the original case file to indicate this.

At the appeal I put these matters to the appellant who affirmatively replied to them. The appellant said he stole $12.00. I would point out that the offence of fraudulent conversion for which

the appellant received 3½ years is a misdemeanour carrying a maximum of 7 years, whereas larceny in a dwelling house contrary to section 302 (a) of the Penal Code for which he received 6 months is a felony with a maximum of 14 years imprisonment. Again I would have regarded 18 months as appropriate and that it should be consecutive to emphasise that the appellant is not getting away without punishment for that offence for which he was put on probation.

He had also received one months' imprisonment consecutively for breach of bail bond.

In the end, the sentences I impose do not add up to much less than the total imposed by the magistrate, but with respect I would suggest that his approach was erroneous. The two main sentences are set aside and substituted as follows:-

> For the offence of fraudulent conversion the appellant will go to prison for 18 months. For larceny from a dwelling house in September 1977 for which he was placed on probation - 18 months consecutive. The sentence of one month for breach of bail bond to remain. The total is therefore 37 months in all.

LAUTOKA,
22nd September, 1978.

(Sgd.) J.T. Williams
JUDGE