

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 0001 OF 2012
(High Court HAC 128 of 2007s)

BETWEEN : **MONIKA MONITA ARORA**
Appellant

AND : **THE STATE**
Respondent

Coram : **Lecamwasam JA**
Waidyaratne JA
P. Fernando JA

Counsel : **Mr. P. Sharma for the Appellant**
Ms. J. Prasad for the Respondent

Date of Hearing : **12 September, 2016**

Date of Judgment : **30 September, 2016**

J U D G M E N T

Lecamwasam JA

- [1] I have read the draft judgment of my brother Waidyaratne JA and agree with the reasoning and conclusions.

Waidyaratne JA

- [2] This is an appeal against the conviction and sentence.
- [3] The Appellant was charged in the High Court on a count of Money Laundering contrary to Section 69(2) and 3(6) of the Proceeds of Crime Act 1997 and a count of corrupt practices contrary to Section 376(b) of the Penal Code, Cap.17.
- [4] On 12 December 2011 after the summing up the three assessors have unanimously opined that the Appellant was not guilty on both counts.
- [5] On 11 December 2011 the learned trial judge in his judgment disagreeing with the opinions of the assessors have found the Appellant guilty and convicted on both counts.
- [6] On 17 February 2011 the learned trial Judge has sentenced the Appellant on count 1 to 7 years imprisonment and on count 2 to 6 months imprisonment. The sentences were to run concurrently with a non-parole period of 6 years imprisonment.
- [7] On 2 June 2014 a Single Judge has granted leave to appeal against the conviction and sentence.
- [8] The grounds of appeal are:
 - (1) that the learned trial judge erred in law and fact in not accepting the unanimous 'not guilty' opinions of the assessors that the Appellant was not guilty of both counts on the information and such non-acceptance, and/or failure to give proper weight and/or consideration to the Assessors opinions as judges of facts rendered the judgment demonstrably perverse and/or unsafe or unsatisfactory.
 - (2) that whilst the learned trial judge provided reasons for differing from the majority opinion of the assessors such reasons provided

by the learned trial judge was inadequate and failed to provide cogent justification which can withhold critical examination in light of the whole of the evidence presented at trial.

- (3) that the learned trial judge at paragraph 9 of the judgment gave undue weight and regard to circumstantial evidence of PW15, PW16, PW17, PW18, PW19, PW20, PW21, PW22, PW23 and considering their evidence as the most important finding in the case when such evidence does not even satisfy any of the element of the offence of money laundering.
- (4) further to the above, the learned trial judge at paragraph 9 of the judgment failed to properly provide reasons why it is accepting the list of invoices, payment vouchers and Vinod Patel cheques and what weight the court gives such documents without any proper evidentiary analysis that it was in any way connected with the role, job description and or duty of the Appellant.
- (5) that the learned trial judge misdirected and did not give adequate directions to the assessors on the documents presented at trial such as the invoices, payment vouchers and cheques and how they were related or connected with the Appellant in the document generation, verification, signing and or countersigning which process was vital to the outcome of the cheque disbursement from ANZ Bank.
- (6) that in all the circumstances of the case, there has been a miscarriage of justice by reason of the failure of the State to prove the role of the Appellant in the invoices, payment vouchers and cheques generation without any independent expert evidence that would suggest the culpability of the Appellant.

- (7) that the learned trial judge failed to properly direct the assessors that the absence of any evidence of Umakant Patel to rebut the evidence of the Appellant that monies were given to him after it was withdrawn created a doubt in the prosecution case and gave credence to the wrong evidence of the Appellant and such evidence is consistent with the defence shown by the Appellant.
- (8) that the learned trial judge's summing up did not adequately address the evidence in its totality in favour of the Appellant and the Court's own discourse of the financial abilities of the Appellant to meet new responsibilities were tangential matters which have been overly inculcated to be part of the strands of evidence in an otherwise, weak prosecution case.
- (9) that the learned trial judge was wrong in law and fact to entertain the view that the Appellant was guilty and was involved in the dubious creation of the invoices, payment vouchers and cheques falsely and that she was aware that the encashed cheques were proceeds of crime when no such evidence was presented at trial of the criminality of encashing cheques under orders of her superiors.
- (10) that in all the circumstances of the case, the learned judge failed in the following:
 - (a) To hold the Prosecution case to proof on all the elements of the offence of Money Laundering and Corrupt Practices; and
 - (b) To be convinced beyond doubt that the Appellant was responsible for the creation of invoices, payment vouchers and cheques that was alleged to be encashed and laundered by her; and
 - (c) To accept beyond doubt that the 'circumstantial evidence' relied on by the State to prove connection of the invoices, payment vouchers and cheques and such 'circumstantial evidence' was

reliable and not speculative; and

(d) To properly evaluate the evidence of the meeting of the Appellant and Navin Sen (PW2) on the 13th of May 2007 and fairly analyse the evidence presented by the Appellant and her reasons why she refused to accept the evidence of PW2.

(11) that the Court failed to properly canvass and evaluate the evidence of the Appellant at trial and to discount her evidence with reason if it so chooses not to believe such evidence but such failure to provide reasons why the Appellant's evidence is not accepted renders the judgment demonstrably perverse and/or unsafe or unsatisfactory.

(12) that in all the circumstances, the sentence imposed upon the Appellant was manifestly excessive.

[9] The Single Judge in his ruling has correctly summarized the grounds of appeal against the conviction into one issue, that is whether the learned trial Judge has given cogent reasons for not accepting the assessors unanimous not guilty opinion to sustain the conviction on appeal.

The Single Judge also has granted leave against the sentence which appeared in the higher side of the tariff and to consider whether the total effective sentence is manifestly excessive in all circumstances of this case.

[10] The Appellant in his submissions titled "on Appeal against Conviction and Sentence" and the grounds stated therein appears to be the same grounds as urged in his amended application for leave to appeal.

[11] At the outset I wish to state that at the hearing counsel for the Appellant and the Respondent confirmed that the Judge's notes were not available. Both counsel on agreement have provided their notes to this court and agreed to proceed with the same. I also note, in the Appellant's submission on 'appeal against conviction and sentence' dated 2 August 2016, the Senior Court Officer of Court of Appeal on 25 September 2015 has advised that notes from the High Court trial cannot be provided

since it had been misplaced. Therefore, this court proceeded without the transcript of evidence. It is with great difficulty this court ascertained the strength of the prosecution and Appellant's evidence which was based on the summary of evidence contained in the summing up and the Judgment.

[12] The charges against the Appellant were:

"Count One

Statement of Offence

Money Laundering: Contrary to Section 69 (3) (b) of the Proceeds of Crime Act 1997

Particulars of Offence

MONICA ARORA, and Others between 9th December 2005 to 11th may 2007, at Nabua in the Central Division, laundered money by disposing \$472,466.47, being proceeds of crime, for her and others benefit, which she ought to reasonably know, derived indirectly from the falsification of Vinod Patel Company's books of account.

Count Two

Statement of Offence

Corrupt Act: Contrary to section 376(b) of the Penal Code, Cap.17

Particulars of Offence

MONICA ARORA, and Others on the 13th may 2007, at Sports City Plaza at Laucala in the Central Division, corruptly offered \$10,000 cash to Navin Sen, an accountant for Vinod Patel Company, to stop investigating the cashing of suspicious cheques belonging to Vinod Patel Company."

Facts

- [13] When the allegations arose the appellant was the secretary to the Managing Director of a registered private company named Vinod Patel Limited. She began her career as a cashier at the said Company and went up to become an accounts clerk before assuming duties as a secretary. As she underwent training on the policies, procedures and its computer software, she had a fair knowledge of the workings of the accounts division of the Company.
- [14] It was borne out in the evidence that she was responsible for the telegraphic transfers at the ANZ Bank at Centrepont in respect of overseas payments on behalf of the Company. However local payments did not come within her purview.
- [15] Between the period of 6th January 2006 and 11th May 2007 the appellant has encashed 36 cheques belonging to the Company and obtained a sum of \$472,466.47 in cash. The fact that it was the appellant who encashed all the 36 cheques was confirmed by the tellers attached to the ANZ Bank in their evidence.
- [16] It revealed before court that fictitious invoices, payment vouchers and cheques have been raised by falsifying ledgers and books maintained by the said Company. The prosecution marked and produced Exhibit 37 which depicted the summary of the relevant documents and cheques. It also came to light in the prosecution evidence that the signatures and initials of various employees and some of the Directors of the said Company have been forged when preparing and raising the above mentioned invoices, vouchers and cheques.
- [17] These fraudulent transactions that went on for some time was discovered by the Company's Chief Financial Officer Kumar Shankar on the 12 May 2007. Upon investigating into the matter he found out that a cheque for \$ 15, 172.38 had been encashed by the appellant and had obtained the monies of the said cheque.

- [18] According to Kumar Shankar when the appellant was confronted with regard to the said transaction she has confessed to him that she encashed the cheque and has later returned the monies.
- [19] In the meantime Kumar Shankar has directed the accountant – Navin Sen to look into this matter. On the 13th May 2007 the appellant has set up a meeting with Navin Sen at the Sports City Plaza and offered \$10,000 cash to Navin Sen to stop probing into the matter further.
- [20] At the trial the prosecution has marked and produced the originals of 36 cheques, the supporting invoices and the vouchers through Kumar Shankar to establish that the ledgers and the account books at Vinod Patel Company were falsified. As mentioned earlier the Exhibit 37 that was submitted to court by Kumar Shankar has itemized the serial number of the Company cheques, the numbers of the payment vouchers, the date of the payment vouchers, invoice numbers and the references, the amounts depicted in the invoices, details of the vouchers and the cheque numbers, the payee of the cheque etc.
- [21] The originals of the invoices, payment vouchers and the relevant cheques and the corresponding ANZ bank statements were marked and produced by the prosecution as Exhibits Nos. 5 to 151.
- [22] Kumar Shankar in his evidence stated in court that the above impugned documents have not been generated following the correct procedure and the signatures and the initials in the invoices, payment vouchers and the cheques are forgeries.
- [23] Navin Sen an accountant of the said Company in his testimony before court affirmed that none of the invoices and the payment vouchers were approved by his division and those are forgeries. He also pointed out that there are glaring discrepancies between the payment vouchers and the cheques as the payee in the payment vouchers and the cheques are different.

- [24] According to Navin Sen, unless there was a prior arrangement, the Company was not in the habit of issuing cash cheques when making payments as they conducted business only by way of not negotiable cheques
- [25] The above position was corroborated by the prosecution witness Kumar Shankar.
- [26] When the original cheques in the Exhibit 37 were shown to Jitendra Patel - a Director and authorized personnel to sign the cheques on behalf of the Company, he stated that his signature has been forged in all those documents.
- [27] Number of witnesses testified on behalf of the Company whose duties were to prepare, check and approve invoices and payment vouchers in day to day business. All of them denied preparing the impugned invoices, payment vouchers or the cheques.
- [28] The prosecution also placed evidence of the purported beneficiaries of the cheques whose names appeared as payees in the corresponding invoices and vouchers. All those who testified before court stated that they did not receive any monies from the said Company for the payments that were made using the forged cheques.
- [29] The appellant testified before court and took up the position that she did not falsify the ledgers and the accounts books belonging to the Company or any of the invoices, vouchers and cheques listed in the Exhibit 37.
- [30] However she did not deny encashing the 36 impugned cheques. She took up the position that she encashed those cheques on the instructions of the superiors. She alleged that she was instructed to do so by Kumar Shankar the Chief Financial Controller and Umakant Patel the Managing Director of the Company.
- [31] Denying the allegations levelled against her, the appellant stated that she handed over the monies so encashed to said Kumar Shankar and Umakant Patel and she did not commit the offence of money laundering as alleged by the prosecution.

- [32] As regards count No. 2 she denied offering \$10,000 to Navin Sen on the 13th May 2007 in order to stop conducting any investigations into the matter.

Grounds of Appeal

- [33] Whilst addressing the matters raised in the grounds of appeal I will now proceed to consider the main ground of appeal whether the learned trial Judge is correct in disregarding the opinions of the assessors and whether he has given cogent reasons for finding the Appellant guilty on both counts.
- [34] On the evidence available before Court it is common ground that the Appellant is the person who encashed the impugned 36 cheques. This fact was established by the prosecution by calling the bank tellers to testify. It should be noted here that the Appellant too did not deny this position. She took up the position that she encashed company cheques on many occasions.
- [35] As regards the 36 cheques, her position was that she handed over the monies to Kumar Shankar the Chief Financial Controller and Umakant Patel the Managing Director of the company.
- [36] Kumar Shankar in his evidence denied having received any monies pertaining to these transactions. Only instance where he admitted receiving money from the Appellant was when she returned \$15,172.38 that she obtained by encashing a cheque belonging to the Company. According to Kumar Shankar that was only after he questioned about the fraudulent encashment and the transaction she had handed over the money to him. In the circumstances the question arises whether the Appellant encashed the cheques without the authority of the Company.
- [37] The prosecution was unable to establish as to who falsified the ledgers and the account books maintained by the Company. However it was borne out by the evidence placed before Court that the invoices, vouchers and the cheques pertaining to the instant case were forgeries.

- [38] Incidentally, as per the evidence placed before the learned trial Judge only the supporting documents pertaining to these 36 cheques were forgeries and the prosecution witnesses did not mention a single occasion where they have discovered any other forged entry or a related bogus payment.
- [39] Therefore the question arises as to how only the documents pertaining to these forged cheques have been falsified. In those circumstances the learned trial Judge was entitled to draw an inference that the ledgers and the account books have been falsified for the purpose of committing an offence, which is clearly an unlawful act and a serious offence. Then the monies obtained as a result by the said unlawful act is illgotten money.
- [40] It is in evidence of Kumar Shankar that the husband of the Appellant returned a total of \$26,100 as part settlement of the monies received by the Appellant. This witness has further stated that the said payment was made by the husband of the Appellant using the ATM card belonging to the Appellant.
- [41] In the circumstances it is evidence before court that the total payment by the Appellant and her husband is a sum of \$41,272.38. It is also evidence that the said payment was made after the detection of the fraud.
- [42] The Appellant in her defence has claimed that she did not authorize her husband to make any payment and alleged that the company stole \$26,100 from her. However she accepted that she did not lodge any complaint regarding the above allegation with the authorities.
- [43] Another aspect that had to be decided by Court was whether Kumar Shankar Chief Financial Controller and Umakant Patel the Managing Director of the Company were involved in the fraud as alleged by the Appellant in her defence.
- [44] According to the evidence it was Kumar Shankar who first detected the fraud. If he was involved in these fictitious and illegal transactions it is difficult for this Court to see a reason as to why he became the whistle blower even at that late stage. It appears

from the evidence that if in fact they acted in collusion with the suspect or any other person, this fraud may not have seen the light of the day.

- [45] If not for the detection made by Kumar Shankar this fraud may not have come to light. Besides, if the Managing Director was involved in this matter this would not have reached the courts. On the other hand if either of them was involved in the preparation of these forged documents they could have obtained monies directly from the bank without getting the Appellant involved.
- [46] Further, before leaving this particular area of evidence, there is a vital question that arises before Court on the available evidence. It is as to why the Appellant returned good part of the monies that were fraudulently obtained on those forged cheques from the Company. This amount included the cheque that the Appellant had encashed on 11 May 2007 for a sum of \$15,172.38. This in the opinion of the learned trial Judge would have affected the position of the Appellant taken up in her defence that it was Kumar Shankar and Umakant Patel who had instructed her to encash the cheques. However, Kumar Shankar had refuted and directly denied the suggestion of the Appellant in his evidence even though Umakant Patel was absent and unavailable to give evidence at the trial.
- [47] As observed earlier it is correct that the prosecution did not place any material before court as to who forged the impugned documents. However, it is established through evidence that it was the Appellant who encashed all 36 impugned cheques from the bank. This was not challenged by the Appellant. Thus it is a proven fact.
- [48] In the circumstances the prosecution has quite correctly not charged the Appellant on a count of falsification of accounts. The fact that ledgers and account books of the Company have been falsified is only an item of evidence placed before court. In the circumstances failure to prove who falsified the accounts or forged the documents does not weaken the prosecution case against the Appellant in respect of the charge of money laundering.

- [49] The learned Trial Judge in his judgment had to consider whether the prosecution has proved the ingredients of the offence levelled against the Appellant beyond reasonable doubt.
- [50] It is evident that money was obtained by the Appellant by encashing the cheques belonging to the Company. It is evident that those cheques are forgeries. As borne out of the evidence not only the cheques, even the supporting documents were forgeries and false in content.
- [51] In dealing with this appeal another important matter that surfaces for initial determination and which the learned trial Judge should have considered in the light of the available evidence is whether it is possible to state with certainty that the Appellant could be found guilty for the offence of money laundering?
- [52] In view of the grounds of appeal raised by the Appellant this court is now required primarily to examine whether the learned trial Judge had adequately dealt with the elements of the offence of money laundering and whether the evidence adduced in court has been properly evaluated in the backdrop of the offence.
- [53] In the instant case as mentioned earlier, the learned trial Judge rejected the unanimous opinion of not guilty by the assessors and held the Appellant guilty of both counts of money laundering and corruption.
- [54] In the circumstances the grounds of appeal that allege that the learned trial Judge has either not directed the assessors properly or misdirected the assessors on the facts and law, would necessarily fail as the assessors found the Appellant not guilty on any of the charges.
- [55] Therefore what is left to decide is whether the learned trial Judge has not misdirected himself and has given cogent reasons for deciding to vary with the opinion of the assessors and finally finding the Appellant guilty on the available evidence before the court.

[56] Upon carefully reading the Judgment of the learned trial Judge it appears that he has addressed his mind to the available evidence in this case.

[57] The learned Trial Judge in his judgment has considered the following.

As mentioned above the first count is that of money laundering. In a count of money laundering there is no obligation on the part of the prosecution to prove as to how the proceeds of crime were utilized. It would suffice if the prosecution establishes that the Appellant took the money by way of an illegal means or the money was obtained unlawfully.

[58] In the instant case the prosecution was unable to establish as to who committed the forgeries of the invoices, vouchers and the cheques. But the evidence established beyond reasonable doubt that it was the Appellant who ultimately encashed the cheques.

[59] Then the question arises whether the monies obtained are proceeds of crime which is an element of the offence of money laundering.

In this context it is apt to consider a recent judgment in **Stephen v. The State** [2016] FJCA 70; AAU53.2012 (27 May 2016) in which it discussed the phrase “proceeds of crime” in detail. As it was stated in the above judgment “proceeds of crime” is the ill gotten money or property that gets converted into legitimacy through laundering.

[60] Proceeds of crime has a definitive legal meaning. To simplify the definition of proceeds of crime in relation to the instant case that needs to be understood by law is whether the monies received by the Appellant after encashment of cheques are totally or partly due to a commission of a serious crime.

[61] A serious crime in the eyes of the law is an offence which is prescribed as punishable by death or imprisonment for a period of one year. (Section 3 of Proceeds of Crime Act, 2007).

- [62] In the circumstances, if we are to consider both definitions together, it would mean that if the encashment of the impugned cheques and the cash received partly or totally upon its encashment which were derived upon commission of an offence which could be punishable by death or imprisonment for a period over one year , then the encashment of cheques and cash received upon its encashment, becomes tainted and therefore could be termed as proceeds of crime.
- [63] The Appellant has received monies through fraudulent means of unlawful activity. The Appellant has not obtained it through any legitimate source. In the circumstances it can be held that what the Appellant obtained through a fraudulent means are proceeds of crime.
- [64] In terms of the money laundering law it is not necessary to establish that the Appellant committed the predicate offences namely falsifying of accounts or forgery. It might have been a third party who committed the offences that led to the penultimate offence. That by itself does not absolve the Appellant of guilt under the money laundering law if all elements are established beyond reasonable doubt.
- [65] The next question that has to be addressed is whether the Appellant knew or ought reasonably to have known that the money derived from some form of unlawful activity.
- [66] In this regard again I wish to consider the judgment of **Stephen v. The State** (supra) in which it has discussed the mental element of an accused in detail.
- [67] As stated in the above judgment in order to substantiate the offence of money laundering the prosecution is required to prove that the perpetrator 'know' or 'ought to reasonably have known' that the money or other property involved in the crime has been derived or realized directly or indirectly by some unlawful activities.
- [68] In the instant case the evidence was that the Appellant was a long standing employee of the Company who has undergone training in the accounts division for well over 6

months. In the circumstances she possessed a fair working knowledge of the accounts division of the Company.

- [69] However the Appellant was only attending to foreign telegraphic transfers at the ANZ Bank where the Company was involved. In such situation the Appellant should have been familiar with the signatures of the signatories to the cheques.
- [70] The Appellant admitted that she encashed the 36 impugned cheques which the prosecution has proved beyond reasonable doubt that were forgeries.
- [71] It transpired in evidence that those were the only cheques that were detected to be forgeries. Then if the court assumes for a moment that the Appellant did not get to see the supporting documents such as invoices or the vouchers in day to day work, the Appellant ought to have seen that the signatures of Kumar Shankar the Chief Financial Controller and especially Umakant Patel the Managing Director her immediate Supervisor in the cheques that she encashed which were proved to be forgeries. Hence I find that the learned Trial Judge had addressed the above elements and given reasons based on the evidence.
- [72] In the above circumstances the learned trial Judge cannot be faulted if he determined that the Appellant knew or ought to reasonably have known that the cheques that the Appellant cashed were fraudulently prepared and the monies so obtained by encashing the cheques were proceeds of crime.
- [73] Hence, I am of the view that the learned Trial Judge has addressed the essential matters based on the evidence and has given cogent reasons according to law.
- [74] Now I will turn to the second charge that was preferred against the Appellant, which is a corruption charge. According to the evidence of Navin Sen accountant at Vinod Patel Limited, when he confronted the Appellant regarding the alleged fraudulent transaction, she has set up a meeting with him on the 13 May 2007 at the Sports City Plaza and had offered \$10,000.00 cash to stop probing further into the matter.

- [75] Refuting the said allegation the Appellant took up the position that she spent that day at home as it happened to be 'Mothers Day'. Further she stated as a married woman she would not have met a man alone.
- [76] The learned trial Judge in paragraph 16 of the judgment has considered the evidence of Navin Sen in detail, in the backdrop of the evidence of the Appellant. In paragraph 19 he has held that evidence of Navin Sen to be creditworthy. Furthermore in paragraph 20 he has stated that he looked at the evidence of both the prosecution and the defence objectively and he found that the prosecution witnesses to be credible.
- [77] Having come to the conclusion that the Appellant was not credible, the learned trial Judge has rejected the evidence of the Appellant. At the conclusion of the evaluation of the evidence he has determined that the prosecution has proved both counts against the Appellant beyond reasonable doubt which included the charge of corruption.
- [78] Upon examining the judgment, I am of the view that the learned trial Judge has given cogent reasons for finding the Appellant guilty on both counts.
- [79] Furthermore when considering the question whether the learned trial Judge has given cogent reasons for not accepting the unanimous opinions of the assessors to sustain the appeal, it is important to examine both the summing up and the Judgment delivered by the learned trial Judge.
- [80] Although the summing up is meant for the assessors, it would reveal whether the learned trial Judge was alive to the law and fact pertaining to the offences of money laundering and corruption.
- [81] In the summing up the learned trial Judge has very clearly set out the facts relevant to the case elicited in evidence from the stand point of the prosecution and the defence. I do not wish to repeat it as I have discussed it above in detail. The elements of the two offences which the Appellant has been charged have been explicitly explained by the learned trial Judge. He has clearly placed the law relating to the offences before the assessors.

- [82] However, for reasons best known to the assessors, they have found the Appellant not guilty on both counts. I will not go to the merits or demerits of the opinions expressed by the assessors as this court is not called upon to make any determination in this regard.
- [83] The learned trial Judge having disregarded the opinions of the assessors in his judgment dated 14 December 2014 has once again dealt with the available evidence in the case and has come to a finding that the prosecution has proved the elements of both charges against the Appellant beyond reasonable doubt.
- [84] In this context I am of the view that we cannot compartmentalise the evidence discussed in both the summing up and the judgment as both deal with one and the same matter.
- [85] In the instant case the summing up contained more information than the judgment. The learned trial Judge has dealt with the law more extensively in the summing up than in the judgment. However, as stated by me both have to be treated as part and parcel of the same case as the proceedings were before the same learned trial Judge on the same evidence.
- [86] In the above circumstances when taken together both form the basis for the decision of the learned trial Judge. The fact that the learned trial Judge has been alive to the applicable laws is amply demonstrated by both proceedings and in my view the summing up lend support to the judgment.
- [87] When I consider the entire proceedings I am of the view that the reasons given by the learned trial Judge in his judgment finding the Appellant guilty on both counts are cogent.
- [88] In the circumstances for the reasons stated above I find no merit in the ground of appeal. Therefore I dismiss the appeal on the conviction.
- [89] The Appellant has raised the ground of appeal against the sentence on the basis that on all circumstances the sentence imposed is manifestly excessive.

- [90] The learned trial Judge on 17 February 2012, after conviction has sentenced the Appellant to 7 years imprisonment on the count of money laundering and 6 months imprisonment on count 2 for corruption practices. The sentences were to run concurrently with a non parole period of 6 years imprisonment.
- [91] The learned Trial Judge in his sentencing judgment has considered the cases in Fiji and other jurisdictions on the relevant offences. The trial Judge appears to have followed the tariff considered in the case of R v. Siu [2007] NSWCCA 259. The learned trial Judge for good reasons has followed the tariff of 8 to 12 years envisaged by the above authorities and the legislation in Fiji pertaining to the offence of money laundering.
- [92] In the case of Shyam v. State [2015] FJCA; AAU0098.2013 (15 February 2015) Goundar J has stated that the tariff for an offence of money laundering is in the range from 5 to 12 years imprisonment.
- [93] Further it is very clear that the legislators in Fiji have taken the offence of money laundering seriously as the law provides a maximum penalty of 20 years imprisonment or a fine not exceeding \$120,000.00 or both on conviction.
- [94] As cited by both parties, the principle upon which Appellate Courts review sentencing direction has been decided in the case of House v. The King [1936] HCA 40; (1936) 55 CLR 505.

“It must appear that some errors has been made in exercising the direction. If the Judge acts upon a wrong principle, if he allowed extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consider, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the material for doing so. It may not appear how the primary judge has reached the result embodied in his Order, but if

upon the facts it is unreasonable or plainly unjust the appellate court may infer that in some way there has been a failure properly to exercise the direction which the law reposes in the court of first instance. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is revised on the ground that a substantial wrong has in fact occurred."

- [95] In the instant case the Appellant has not given any reason to substantiate her position as to how or why the sentence is manifestly excessive.
- [96] The Appellant has not indicated that the learned trial Judge was wrong in principle, considered irrelevant facts, failed to consider relevant facts or mistook facts when he pronounced the sentence.
- [97] On the other hand the learned trial Judge as discussed above has considered the domestic and overseas judgments and guided by the authorities has arrived at a lower range starting point for the offence of money laundering.
- [98] Having considered the gravity of the offence and the involvement, the role played by the Appellant according to the evidence adduced at the trial the learned trial Judge has arrived at the proper sentence of 7 years imprisonment. The sentence on Count 2 is not questioned. Thereafter, by determining the two sentences to run concurrently with the non parole period of 6 years imprisonment, I find that the learned Trial Judge has acted within the law and justifiably. Hence, I find no merit on the appeal against the sentence. The appeal against the sentence is dismissed.

P. Fernando JA

- [99] I have read the draft judgment of my brother Waidyaratne JA and also agree with the reasoning and conclusions.

Orders of the Court

Appeal against the conviction and sentence is dismissed.



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Hon. Mr Justice S. Lecamwasam
JUSTICE OF APPEAL

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Hon. Mr Justice K. Waidyaratne
JUSTICE OF APPEAL

A handwritten signature in blue ink, appearing to read "P. Fernando", written over a horizontal line.

Hon. Mr Justice P. Fernando
JUSTICE OF APPEAL