

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 313 of 2018

IN THE MATTER of an application by the
ATTORNEY-GENERAL OF FIJI for leave to apply
for an Order of Committal.

AND:

IN THE MATTER of RAJENDRA CHAUDHRY
Lawyer, New Zealand.

BEFORE: Hon. Acting Chief Justice Kamal Kumar

COUNSEL: Ms P. Prasad, Ms O. Solimailagi and Ms M. Ali for
Applicant

Mr A. K. Singh for Respondent

DATE OF HEARING: 25 April 2019

SENTENCE

Introduction

1. On 4 April 2019:-

- (i) This Court found Respondent guilty of contempt of court;
- (ii) Directed Respondent to file Mitigating Affidavit by 16 April 2019;

- (iii) Directed Applicant to file and serve Affidavit in Response (if necessary) by 22 April 2019;
 - (iv) Adjourned the proceeding to 25 April 2019, at 2.30pm for sentence hearing.
2. Respondent did not file any Mitigating affidavit.
 3. On 23 April 2019, Applicant filed Affidavit in respect to sentencing.
 4. On 25 April 2019, Respondent was represented by his Counsel when Counsel for the Applicant and Respondent handed in submissions and made oral submissions.

Preliminary Issue

5. Respondent's Counsel raised preliminary issue in respect to Applicant's Affidavit filed on 23 April 2019 (hereinafter referred to as "Applicant's Affidavit") in that the Applicant's Affidavit deals comments posted by the Respondent after he was found guilty by this Court.
6. Respondent by his Counsel relied on section 245 of Criminal Procedure Act 2009 ("CPA") which provides as follows:-

"245. Upon a person being convicted of any offence the court may, with his or her consent and the consent of the prosecutor, take into consideration in deciding the sentence to be imposed any other untried offence of a like character which the accused admits to having committed."
7. CPA applies to offences committed under Crimes Act 2009 and offence of contempt of court is not subject to Crimes Act 2009.

8. This Court accepts Applicant's Submission that in absence of any statute law in this jurisdiction dealing with contempt proceedings, common law principles apply.

Fiji Times Ltd v. Attorney-General of Fiji [2017] FJSC 13; CBV005.2015 (21 April 2017).

9. In Bingul v R [2009] NSWCCA 239 (18 September 2009) New South Wales Court of Appeal at paragraph 69 stated as follows:-

"As the appellant submitted there is authority for the proposition that offences committed after the date of the commission of the offence for which the offender stands for sentence may not be taken into account for the purpose of imposing a heavier sentence, but may be considered for the purpose of deciding whether the offender is deserving of leniency: R v Hutchins 91958) 75 WN (NSW) 75; R v Kennedy (unreported 29 May 1990 NSW Court of Criminal Appeal); R v Boney (unreported 22 July 1991 NSW Court of Criminal Appeal); and see generally R v MAK and MSK [2006] NSW CA 381; 167 A Crim. R 159 at [58] 173."

10. Counsel for Applicant and Respondent relied on the above statement in support of their Submissions.

11. This Court notes that the NSW Court of Appeal in disagreeing with Appellant's Submission that later offences "were dealt with by sentencing judge so automatically to deny leniency" stated as follows:-

"I would read her Honour's remarks as reflecting a view that the later offences could and should be taken into account by her in denying leniency."

12. The NSW Court of Appeal in above case was of the view that whether to take later offences into consideration when passing sentence in granting or denying leniency is discretionary and the Judge can in exercise of Judge's discretion take offence committed after the offence for which the offender is found guilty to assess whether to grant leniency and if so to what extent.

13. In this instance, the Respondent has failed to file mitigating Affidavit and have not asked for Court's leniency in any respect.
14. If the Respondent would have filed mitigating Affidavit or sought leniency from Court, then this Court in exercise of its discretion would have read and considered the contents of Applicant's Affidavit.
15. Respondent by his Counsel submitted that the contents of Applicant's Affidavit contains posts, published by Respondent after he was found guilty of the contempt of Court which fact is not disputed by the Applicant's Counsel.
16. Since, the Respondent has not filed Mitigating Affidavit or sought Court's leniency, this Court will not take into consideration the content of Applicant's Affidavit in passing sentence.

Sentence

17. The principles of sentencing have been very succinctly and clearly stated in Attorney-General for the State of New South Wales v. Radio 2UE Sydney Pty Limited and John Laws [1998] NSW SC Action No. 40236 of 1998 (11 March 1998) and Gallagher v. Durrack (1983) 152 CLR 238.
18. The Court in State v Fiji Times Ltd, Ex parte Attorney General [2013] FJHC 59; HBC343.2011 (20 February 2013) stated as follows:-

"[11]. The task for the Court now is to determine how should its power to punish the Respondents for contempt of court under Order 52 of the High Court Rules be exercised? In my judgment this is a case of contempt of court which should be punished by a penalty that reflects the public interest, acts as deterrence and appropriately denounces the conduct of the Respondents. This is not a case where the mere ordeal of court proceedings and an offer to pay costs with an

apology is sufficient. Such an approach would send suggest that the court does not take seriously the role of safeguarding the community from scurrilous attacks on its judiciary amounting to contempt scandalizing the court.

[12]. In determining what penalty should be imposed on each of the Respondents there are a number of factors that have been identified in the authorities that are usually considered to be relevant. In Attorney General for the State of New South Wales - v- Radio 2UE Sydney Pty Limited and John Laws (unreported appeal decision of the New South Wales Supreme Court No. 40236 of 1998 delivered 11 March 1998; [1998] NSWSC 29) Powell J A observed:

*"In determining what, if any, is the penalty appropriate to be imposed on a person found guilty of a contempt of court, it is proper for the Court to have regard to such matters as **the objective seriousness of the contempt found established, the culpability** as for example, whether the relevant statement was made, or the relevant act was **done deliberately, with intent to interfere with the administration of justice, or recklessly, or as the result of gross negligence, or, although intended, without any appreciation of the potential consequences of the act or statement** - of the person found to have been guilty of the contempt and any other subjective factors."*

[13]. *Apart from seriousness and culpability, other factors that should be considered in the present case are (i) any early plea of guilty, (ii) any previous convictions, (iii) any demonstration of remorse and (iv) the personal circumstances of the Respondents."*

19. In Gallagher's case their Honours Gibbs C.J; Mason, Wilson and Brennan JJ at page 243, quoted at paragraph 2.3 of Applicant's Submission stated as follows:-

"The law endeavours to reconcile two principles, each of which is of cardinal importance, but which, in some circumstances, appear to come in conflict. One principle is that speech should be free, so that everyone has the right to comment in good faith on matters of public importance, including the administration of justice, even if the comment is outspoken, mistaken or

wrong-headed. The other principle is that "it is necessary for the purpose of maintaining public confidence in the administration of law that there shall be some certain and immediate method of repressing imputations upon Courts of justice which, if continued, are likely to impair their authority": per Dixon J. in R v Dunbabin; Ex parte Williams [1935] HCA 34; (1935) 53 CLR 434 at 447. The authority of the law rests on public confidence, and it is important to the stability of society that the confidence of the public should not be shaken by baseless attacks on the integrity or impartiality of courts or judges. However, in many cases, the good sense of the community will be a sufficient safeguard against the scandalous disparagement of a court or judge, and the summary remedy of fine or imprisonment "is applied only where the Court is satisfied that it is necessary in the interests of the ordered and fearless administration of justice and where the attacks are unwarrantable": R v Fletcher; Ex parte Kisch, per Evatt J [1935] HCA 1; (1935) 52 CLR 248 at 257."(Emphasis added).

20. Applicant relied on following case authorities dealing with contempt of court in Fiji:-
- (a) **Vijaya Paramanandam v Attorney-General** (1972) 18 FLR 90 (23 June 1972) ('Paramanandam case');
 - (b) **Chaudhry v Attorney General** [1999] FJHC 28; [1999] 45 FLR 87 (4 May 1999) ('Chaudhry case');
 - (c) **In Re Application by the Attorney General of Fiji** [2009] Civil Action No.124 of 2008 (22 January 2009) ('The Fiji Times case (2009)');
 - (d) **Nicholas v The Attorney-General of Fiji** (2013) C.A. No. 364 of 2011 [8 February 2013] ('Nicholas case');
 - (e) **Fiji Times Ltd v Attorney General of Fiji** [2017] FJSC 13; CBV0005.2015 (21 April 2017) ('The Fiji Times case (2017)'); and

(f) **Viliame Finau & Ors v Civil Aviation Authority of Fiji & Ors**, Lautoka
High Court Civil Action No. HBC 117 of 2017 (6 July 2018) ('ATS case').

21. The table at paragraph 3.1 of Applicant's Submission in relation to the material facts and sentence passed in above cases is reproduced with some addition:-

<u>Name of Case</u>	<u>Facts</u>	<u>Penalty</u>
Parmanandam case	The material constituting the contempt was contained in a lengthy speech made at a political meeting, part of which was subsequently published in a pamphlet alleging: <i>"the NFP platform[is] to clean the judiciary once and for all"</i> , magistrates were being appointed as Judges which called into question whether they may be <i>"sacrificing a principle or a rule, or a particular rule of law, for the sake of expediency or for the sake of promotion"</i> , questioning the appointment of an Australian as Chief Justice with his position being paid by the Australian government and how this reflected upon Fiji's independence, questioning appointments to the Court of Appeal when <i>"their future appointments in sessions depend entirely upon" the Chief Justice</i> , and that <i>"TWO SUVA LAWYERS WERE CONDEMNED IN ABSENTIA IN A COURT OF LAW"</i> by the Chief Justice which the Court of Appeal found <i>"was a clear imputation that the Chief Justice had disregarded basic and elementary principles of justice"</i> and was imputation that was false. Contemnor apologises to both Supreme Court and Court of Appeal.	Six months imprisonment reduced to three months by Court of Appeal.
Chaudhry case	The material constituting the contempt was published in a pamphlet which repeated suggestions that some judges and magistrates were corrupt. This was published in the Daily Post on 14 July 1997 under the heading <i>"Judiciary Corrupt"</i> and was as follows:	Court costs to be paid within 7 days fixed at FJ\$500

	<p><i>“There has been public suspicion since the coups that many in our judicial system are corrupt. In several cases well known lawyers have been identified as receiving agents for magistrates and judges. A number of lawyers are known to arrange for them to appear before their preferred magistrates or judges.”</i></p>	
<p>The Fiji Times case (2009)</p>	<p>On 22 October 2008, the following letter to the Editor was published on page 6 of <i>The Fiji Times</i> as follows:</p> <p><i>“Court ruling</i></p> <p><i>A DARK day in the annals of Fiji’s judiciary and legal history was brought about by the totally biased, corrupt and self preserving judgment handed down by Anthony Gates, John Byrnes [sic] and Devendra Pathik [sic] in the Qarase vs Bainimarama case.</i></p> <p><i>I do not know Mr Qarase nor am I a member of the SDL but I know when an injustice [sic] has been committed and I believe that the injustice in this case must be condemned by all law abiding citizens ...</i></p> <p><i>The judiciary was tainted from the day Justice Daniel Fatiaki was forcefully removed and Anthony Gates unashamedly usurped his position.</i></p> <p><i>Gates’ efforts to legalise the immunity is laughable given the immunity was designed to protect him also.</i></p> <p><i>Thank you Mr Qarase and keep up the good fight against oppression, tyranny and injustice.</i></p> <p>VILI NAVUKITU Queensland, Australia”</p> <p>The contemnors pleaded guilty.</p>	<p>Parties pleaded guilty.</p> <p>The editor-in-chief of the Fiji Times was sentenced to a term of imprisonment of three months which was suspended upon him entering into a good behaviour bond for 12 months.</p> <p>The publisher was discharged without conviction upon entering into a good behaviour bond for 12 months.</p> <p>Fiji Times Limited was ordered to pay a fine of FJ\$100,000.00.</p> <p>Fiji Times</p>

		Limited was ordered to enter into a \$50,000 bond for 2 years on behalf of its Chairman.
Nicholas case	<p>The contemnor was quoted in an article that appeared in the website of the Sunday Star Times on 6 November 2011 containing the following the words:</p> <p><i>'You should be aware that with no judiciary there, his case has been reviewed by one Australian Judge. It is not a court per se.'</i></p> <p>Contemnor pleaded guilty to the offence of contempt of court.</p>	<p>Fined \$15,000 and \$3500 costs. Ordered to arrange for an apology directed to the judiciary of Fiji.</p>
The Fiji Times case (2017)	<p>On Monday 7 November 2011, an article entitled "FIFA Probes Doc" was published on page 30 of the Fiji Times. The impugned article contained the words and statement:</p> <p><i>'You should be aware that with no judiciary there, his case has been reviewed by one Australian Judge. It is not a court per se.'</i></p>	<p>Fiji Times Limited was fined FJ\$300,000.00.</p> <p>The Second Respondent (Brian O'Flaherty) was ordered to pay a fine of FJ\$10,000.00. (Reduced to \$7,500.00 by Court of Appeal).</p> <p>The Third Respondent (Fred Wesley) was sentenced to a term of six months</p>

		imprisonment.
ATS case	The contemnor had brought a claim against the defendants seeking a declaration that the Articles of Association of Air Terminal Services (Fiji) Ltd which permitted the removal of directors as oppressive and prejudicial and that the contemnors removal as a director was illegal, oppressive, null and void. The Defendants filed a strike out application. Before the court delivered its judgment on the strike out application, the contemnor filed an ex parte application to stop an AGM. The application was heard and dismissed on the day it was filed. The contemnor then went ahead and made various statements and interviews regarding the outcome of the case, the judge who was nominated to hear the case and the entire Fijian judiciary. The video was made publicly accessible on the social networking site Facebook.	Costs in the sum of \$9000.00 to the Applicants and convicted as charged for contempt of scandalising the court and sentenced to immediate imprisonment of a period of three (3) months.

22. In Parmanandam’s case Court of Appeal agreed with High Court that the “contempt was gross and deserving a sentence of imprisonment”.
23. Court of Appeal further stated that the fact that Appellant is a “Barrister and Solicitor enhances the gravity of the offence though at same time it no doubt would intensify the degree of mental suffering attained upon such a sentence”.
24. In this instance, this Court finds that the comments subject to this proceedings was quite gross and much more serious in nature than comments in cases cited at paragraph 20 of this Judgment, which deserves imprisonment term.
25. The comments made by the Respondent on his Facebook page and quoted at paragraph 38 of the Judgment delivered on 4 April 2019, are as follows:-

- (i) on 3 September 2018 at 2.14 pm, the Respondent posted a statement containing the following words:

*“Biggest obstacle to freedom in Fiji
Is the corrupt and pliant judiciary full of Sri Lankan
monkeys and locals who need a job!
Headed by a crook – yes a double dipping crook called
Anthony Gates!”*

- (ii) on 4 September 2018 at 1.39 pm, the Respondent posted a statement containing the following words:

*“The Judiciary will be an election issue
Questions and comments for the corrupt and thoroughly
incompetent Fiji CJ Anthony Gates!...
Since the abrogation of the 1997 Constitution, our
judiciary has been compromised...”*

On 5 September 2018 at 5.26 pm, the Respondent posted a statement containing the following words:

*“Judiciary will be a major election issue!
Why aren't local judicial officers sent for overseas training?
Come on corrupt CJ Gates we want answers and now!
From a friend:
Fiji bench members sent for criminal judicial training to the
UK, overseas judges only, poor locals jhinga Maro in Fiji.”*

- (iii) on 11 September 2018 at 6.13 am, the Respondent posted statements containing the following words:

*“Another reason why the corrupt Fiji judiciary will be an
election issue!
Corrupt judicial appointments exposed by a conscientious
Sri Lankan....
It should be noted that no Judge who has gone to Fiji from the
AG's chamber has even been appointed as a District Court
Judge in Sri Lanka far less a High Court, Appeals Court or
Supreme Court Judge and that gives an indication of their
relative lack of seniority in the AG's department when we
send them to Fiji”*

Further, on 11 September 2018 at 6.43 am, the Respondent posted statements containing the following words:

“Fiji’s corrupt Anthony Gates exposed!”

(iv) on 11 September 2018 at 5.35 pm, the Respondent posted a statement containing the following words:

“More on the corrupt Fiji judiciary run by Sri Lankan regime lackeys! ...

The Sri Lankan Court of Appeal now in Suva, dispensing supreme injustice in Fiji.”

(v) on 12 September 2018 at 6.30 pm, the Respondent posted a statement containing the following words:

“More on the corrupt Fiji judiciary

Colossal loss of money and a junket as I see it!...

Meanwhile, President of the Fiji Court of Appeal, Bill Calanchini is being trained at Cambridge while resident justice Sri Lankan Suresh Chandra is heading to Brazil to be trained at the ripe old age of 70.

Why train them at the end of their judicial careers unless they’re so unqualified and inexperienced?

Is it another junket or rort?”

on 13 September 2018 at 6.07 pm, the Respondent posted a statement containing the following words:

“More on the corrupt judiciary

This time it concerns CR aka Yohan Liyanage aka Monkey Face! Gross waste of taxpayer monies investing in this bum!”

(vi) on 14 September 2018 at 8.20 am, the Respondent posted a statement containing the following words:

“Remember the corrupt Fiji Judiciary which is the number one threat to democracy today!

The practices and removal of the corrupt Judiciary will be a key election issue.”

(vii) on 16 September 2018 at 9.02 am, the Respondent posted a statement containing the following words:

“More on the corrupt Fiji judiciary

Fiji tax dollars to train an incompetent pathetic Sri Lankan monkey!”

(viii) on 18 September 2018 at 5.32 am, the Respondent posted a statement containing the following words:

“Yo corrupt thieving lying CJ Gates”

(ix) on 20 October 2018 at 10.24 am, the Respondent posted a statement containing the following words:

“Meet Anthony Gates

Fiji’s illegal lying thieving CJ. Any wonder the people have no faith in the Judiciary! More to come.”

Further, at 10.26 am, the Respondent posted a statement containing the following words:

“The Fiji Judiciary

Is corrupt and that’s a fact! I dare anyone to prove me wrong.”

Also, at 8.29 pm, the Respondent posted a statement containing the following words:

“I say

Bring it on!

I stand by my posts on the corrupt Fiji judiciary! The regime is rattled as I have made the corrupt Fiji judiciary an election issue!

Post regime change there will be a major change overhaul of the judiciary and boy aren’t some of them going to be answering some serious questions and that include Anthony Corrupt Thieving Lying Gates!

And let’s see how the corrupt Fiji judiciary can explain being a judge in its own cause! This and matters of

jurisdiction will make this a case where the corrupt and pliant judiciary will see that picking a fight with me will come with devastating consequences!

Let's get ready to rumble folks!"

On 29 October at 8.19 pm, the Respondent posted statements containing the following words:

"More on the corrupt CJ Gates!

From a friend:

"Ratu Naiqama case on constitutional redress was heard 14052016 by Gates, no judgement delivered yet he has time for the Rabuka appeal by FICAC."

(x) on 30 October 2018 at 7.02 pm, the Respondent posted a statement containing the following words:

"Clear case of double standards by a corrupt judiciary

Why is Rabuka appeal rushed through and FFP Minister Mahend Kanwa Reddy's appeal still somewhere in the court system despite his case being much older (15 May 2018 when appeal appealed filed by FICAC) than SLR's case.

Why did the corrupt CJ Anthony Gates not abide by the statutory service 3 clear days service prior to the matter being listed for first call re FICAC appeal against Rabuka acquittal?

Section 18A of the PPRD only applies only to a charge and not an appeal and that is what the corrupt judiciary is doing with the Reddy case so why rush the SLR appeal?

"Court to finalise decisions

18A. A court must promptly make a decision with respect to a charge filed for an election related offence under this Act, the Electoral (Registration of Voters) Act 2012 and the Political Parties (Registration, Conduct, Funding and Disclosures) Act2013."

Why the rush to proceed against Rabuka and not against Mahendra Kanwa Reddy – whose acquittal for a supposed election related offence – was also appealed by FICAC? Why the double standards by the judiciary?

SLR must file for recusal of this corrupt judge."

- (xi) on 31 October 2018 at 6.20 am, the Respondent posted a statement containing the following words:

“Coming up

How the Court of Appeal and Supreme Court judges disbelieved the corrupt CJ Anthony Gates in the Qaranivalu appeal.

Gates being discredited by his peers who still unashamedly sits as the CJ.

Gates is a disgrace by any standard.

A thief also who was caught double dipping by the Auditor General.

He is corrupt and heads a judiciary which is devoid of any credibility.”

26. This Court notes that the Respondent’s Counsel conceded that the comments published by the Respondent and subject to this proceedings is much more serious than that published by contemnors in Parmanandam’s case and Chaudhry case.
27. In passing sentence this Court takes into consideration that:-
- (i) The comment published by the Respondent are quite serious in nature;
 - (ii) Publication of the comments by the Respondent was done deliberately with intent to interfere with administration of justice;
 - (iii) Respondent published the comments recklessly;
 - (iv) The comments were aimed at undermining the public confidence in administration of justice in Fiji and Fijian Democracy;
 - (v) The comments (most of it) “are very damaging and calculated to tarnish the reputation, integrity and dignity of the Fijian Judicial System;
 - (vi) Publishing photos of Chief Justice at that time and Chief Registrar have exposed them to ridicule and embarrassment in the eyes of the public

which puts fear in fair-minded person as to state of administration of justice in Fiji in the hands of two senior judicial officers;

(vii) Respondent has not shown any remorse for his action and not sought any leniency from this Court;

(viii) The comments were totally unwarranted and scandalous.

28. There is a need to deter like-minded person from publishing comments which affects the public's confidence in the justice system and the democratic process.

29. In addition to factors stated in paragraph 27 of this Judgment, this Court also takes note that at this time and age, with rapid development of communication technology and social media the public should be more cautious to avoid publishing unjustified, unscrupulous and unwarranted comments scandalizing Courts, judicial officers and judicial system as a whole.

30. This Court holds that due to serious nature of the comments and what is stated at paragraphs 24 to 29 of this Judgment, this Court should impose a fine in addition to prison term.

Costs

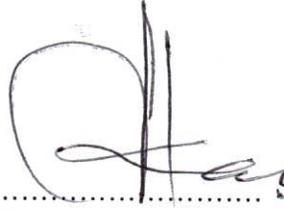
31. This Court on 4 April 2019, ordered costs against Respondent upto the stage of finding him guilty of contempt of court.

32. In respect to sentencing this Court notes that Applicant made detailed submission and provided case authorities.

Orders

33. This Court Orders that:-

- (i) The Respondent, Rajendra Chaudhry be imprisoned for fifteen (15) months from date of his arrest;
- (ii) Bench Warrant be issued for arrest of the Respondent, Rajendra Chaudhry;
- (iii) The Respondent, Rajendra Chaudhry do pay fine in the sum of Fifty Thousand Dollars (\$50,000.00) within twenty-eight (28) days from date of this Judgment;
- (iv) The Respondent, Rajendra Chaudhry pay to the Applicant cost for sentence hearing assessed in the sum of Three Thousand Dollars (\$3,000.00).


.....
Kamal Kumar
JUDGE



At Suva
30 May 2019

For the Applicant: OFFICE OF THE ATTORNEY-GENERAL

For the Respondent: SINGH AND SINGH LAWYERS