

PUBLIC PROSECUTOR

V

FRANCIS MANTAKTAK
GASPARD PALAUD

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Aiding and Abetting Misappropriation

GASPARD PALAUD

Misappropriation

Gaspard Palaud was the Branch manager of the Vanuatu Commodities marketing Board at Luganville at the time of the offence. Francis Mantaktak was the Deputy Branch manager. Mr Mantaktak had the responsibility of managing the cash which came into the office. The offences took place over a period of time during 1993. Whilst Francis Mantaktak had worked for a number of years for VCMB, Mr Palaud was appointed to his position in 1993.

Gaspard Palaud, for reasons which are not clear to me, felt that he had a need for extra money. He has claimed that he needed the money to finance some building operations being carried out by a company in which he had an interest. A business colleague in that business does not agree that monies of the kind that were misappropriated were paid into the business. Mr Palaud claimed that he intended to repay the money taken when the building contracts were completed and payment received. He has not made any repayments.

The VCMB has regulations which provide for the payment of advances of salary. Mr Palaud asked Mr Mantaktak to make cash payments to him, by way of salary advances, on a number of occasions. Mr Mantaktak was in a most difficult position. He was subject to the direction of Mr Palaud. Mr Palaud was a political appointee to his position. I am satisfied that in reality, if not theoretically, Mr Mantaktak had no choice but to carry out the directions of Mr Palaud. In any event, the method for the payment of the advances did not in any way comply with the requirements of the company.

Mr Mantaktak kept records of the requests for payment by Mr Palaud, which were usually in Mr Palaud's handwriting. These records showed that during 1993, Mr Palaud misappropriated 327,000Vt.

During the time that the misappropriations were taking place, Mr Mantaktak requested an audit of the books of the Luganville office. He hoped that this would reveal what was going on and bring it to an end. He was greatly distressed and concerned by what was happening but felt that he could not directly report the matter. His first request

for an audit was refused by the head office because of the regard they had for him the way he had managed the affairs of the office.

Eventually there was an audit taken and Mr Mantaktak pointed out immediately to the auditors what had been taking place. He produced the written requests for the advances, left for him by Mr Palaud. Ultimately on 10 June 1994, Mr Mantaktak made a detailed written report of the matter which exposed exactly what had been happening. The report comprises part of the police file and depositions in the case. The co-operation shown by Mr Mantaktak, both with his employees and with the police demonstrates that he really felt that he was unable to take any other course of action but to follow Mr Palaud's directions. I regard the criminality of Mr Mantaktak as slight in this case.

On the other hand I view Mr Palaud's position as entirely different. He commenced his employment with the VCMB in 1993. As has been said his appointment was political. He had previously been employed by BP in Luganville. In late 1992, he was dismissed for alleged dishonesty. He was dealt with by the court for 2 charges of theft and the order of the court was that he was given a conditional discharge for 1 year and ordered to repay the monies taken. By this matter, he would appear to have offended within 1 year of being given the conditional discharge. In 1988, Mr Palaud was convicted of the offence of unlawful entry for which he was fined 2000VT. He is therefore a person with previous convictions. Notwithstanding these convictions he was given a responsible position which he was soon after his appointment to abuse.

I think that Mr Palaud regarded himself as either above or immune from the law. I do not think that he is truly remorseful for what he has done. Evidence has been called before me that he since this matter found God and that he will mend his ways. I hope that this is so and that in future he will not find himself back before the courts. In addition I have been told that he has established a business in brick making and that he has some orders already. He employs people in this enterprise. I think that the business is of such a nature that it will be possible for him to allow it to continue whilst in prison. Even if this is not so, I do not think that the prospect of repayment of the money by the accused is sufficient in this case for him to avoid going to gaol.

Francis Mantaktak has been kept on in his employment with the VCMB. I regard this decision by the Board as being entirely proper. I am of the opinion that the criminality of Mr Mantaktak is slight, perhaps only of a technical nature. I expressed some doubt as to whether in the circumstances he was actually guilty of an offence. I think in the end, because of his knowledge of the regulations he was aware that what he was doing was wrong, but that his reason for doing it was that he did not know how to deal with the demands of his politically appointed superior. He must have felt that he had no real choice at all. This must have been the view of the Board in keeping him on. He has not benefited in any way from the misappropriation here. He did not receive one vatu of it for himself. Ironically, it is a term of his continued employment, that he repay the money taken from his salary. He has already repaid in excess of 100,000Vt.

SENTENCE

1. FRANCIS MANTAKTAK

In the circumstances I do not think that it is appropriate for a conviction to be recorded against him. Accordingly, pursuant to S 43(1) of the Penal Code Act, I discharge Francis Mantaktak without conviction

2. GASPARD PALAUD

Mr Palaud, having offended in the way that he did, and not being a first offender is sentenced to be imprisoned for 1 year and 3 months. I order that he pay the sum of 327,000Vt by way of restitution, to the VCMB. Such sum recoverable as a civil debt.

The accused have the right to appeal and if they wish to do so, must do so in writing within 14 days.

In the course of the hearing, the matter of a conviction of Mr Palaud in 1992 was raised. It appeared that he had been given a conditional discharge for offences of theft. I enquired as to whether it would not be appropriate to deal with this matter now, rather than requiring MR Palaud to be brought back to court at some later time. As a result, I have obtained the Court file that relates to this matter. I am afraid that a perusal of the file leaves me only with some confusion. The Learned Prosecutor assumed that the matter had been dealt with under S 42(1) of the Penal Code. The Magistrate's note or order does not reveal this to be so. In fact the record shows that the Court " . . . in its opinion, there is a doubt about the vatv that was missing because no one had actually seen the accused took money." The accused was strongly warned and given a "conditional discharge" for 1 year. I am unable to determine what that means and I am not satisfied that there was in fact a conviction. I do not believe therefore that there is anything that can or ought to be done about this matter.

In sentencing the accused, I have disregarded this matter because of the confusion as to the record. I have treated him as having the one prior conviction, from 1988.

[Handwritten Signature]
Judge

4 November, 1994

