

Case No 428/93

**IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)**

In the matter between

MOHANPRAKASH SEWBHAJAN

APPELLANT

and

THE STATE

RESPONDENT

CORAM: VIVIER, EKSTEEN et OLIVIER JJA.

HEARD: 16 August 1996.

DELIVERED: 16 August 1996.

**TRANSCRIPT OF REASONS ORALLY DELIVERED IN OPEN
COURT ON FRIDAY 16 AUGUST 1996, BY VIVIER JA AND
CONCURRED IN BY EKSTEEN JA AND OLIVIER JA.**

VIVIER JA:

The appellant and one Vishnu Ramlakan ("Ramlakan") were convicted in the Durban regional court on a charge of theft. Ramlakan was sentenced to three years' imprisonment and the appellant to two years' imprisonment. Their appeals against their convictions and sentences to the Natal Provincial Division were dismissed but leave was granted to the appellant to appeal to this Court against his sentence only.

The essential facts which are no longer in dispute are the following. The appellant and Ramlakan were both employed by a firm called Versatile Interiors, the former as a painter and the latter as a machinist. On Monday 24 August 1992 the appellant and Ramlakan approached the firm's driver, one Naidoo, whose duties included drawing the firm's wages on Fridays, with a plan which involved appropriating the coming Friday's wages for

themselves and fabricating a version of robbery. The plan was that Naidoo would go to the firm's bank in Florida Road, Durban as usual on the coming Friday morning, draw the wages and then meet up with the other two at a bus stop opposite the bank. He would hand over the firm's vehicle and the wages and report to the firm that he had been robbed. The plan was further discussed on the Tuesday and Wednesday of that week.

On Friday morning 28 August 1992, Ramlakan did not turn up for work and the appellant left again soon after arriving at his work after having received a telephone call ostensibly summoning him to a family funeral. Naidoo, obviously realising that the other two intended going ahead with the plan, then got cold feet and reported the whole scheme to his employer. The police were informed and it was decided that Naidoo should go ahead as planned and that the police would follow him. Naidoo duly drew

the wages in an amount of R7 725-05 and when he came out of the bank Ramlakan and the appellant were waiting for him as arranged. He picked them up in the firm's vehicle and drove off. Along the way the wages were divided amongst the three of them. The appellant took Naidoo's share as well saying that he would keep it for him as he should not have the money on him when he arrived back at work. The appellant put his and Naidoo's share of the money in the cubbyhole of the vehicle. The plan was that the other two would drop Naidoo off after a few kilometres but he soon realised that the police had lost them and persuaded them to stop at the Britannia Hotel where they had a few drinks. At the hotel Naidoo managed to slip away and he reported his position to his employer by telephone. From there they drove to the Belgica Hotel where Naidoo again managed to slip away and to phone his employer who alerted the police. The police eventually arrived

and found the appellant and Ramlakan drinking in the bar of the hotel. They were searched and the amount of R2 500-00 was found in Ramlakan's shirt pocket and the keys of the firm's vehicle in the appellant's pocket. The rest of the money, with the exception of about two hundred rand, was found in a bank bag inside the cubbyhole of the vehicle.

In his judgment on sentence the magistrate said that he regarded the offence as a serious one. He said that robberies were so prevalent in his district that it was easy for an employee to convince his employer that a real robbery instead of a faked one had taken place. He knew of quite a few cases in his court where employees had attempted to get their hands on money in this way. The magistrate further pointed out that the appellant had stolen from his own employer and had in this way abused his position of trust. He had, moreover, tried to persuade Naidoo to do the same. His

motive was greed. The magistrate said that in all the circumstances, and having regard to the demands of society that an adequate punishment be imposed for this type of offence, he was not prepared to impose a sentence other than one of direct imprisonment.

In my view the magistrate's approach cannot be faulted. To the aggravating factors mentioned by him should be added the fact that the offence was carefully planned over at least a week so that the appellant had enough time for reflection and reconsideration.

The known personal circumstances of the appellant are that he must be regarded as a first offender, he is married with three young children and he was in fixed employment at the time of the trial, earning R1 000 per month. Counsel for the appellant submitted that the magistrate erred in not considering a sentence of correctional supervision which he submitted was the appropriate

sentence in all the circumstances of the case. I cannot accept that the magistrate did not consider imposing a sentence of correctional supervision. The fact that he does not expressly mention in his judgment that he did so does not mean that he overlooked such a sentence. As I have mentioned, the magistrate said that he did not see his way clear to keeping the appellant out of prison. It must be assumed, therefore, that he considered all the alternative sentences which would keep the appellant out of prison, including one of correctional supervision. I agree with the magistrate that such a sentence would not be appropriate in the circumstances of this case.

In my view the magistrate has not misdirected himself in deciding upon a sentence of imprisonment as the appropriate sentence, nor can it be said that the sentence is so severe that it

justifies interference by this Court.

The appeal is dismissed.

W. VIVIER JA.