

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 009 OF 2010

STATE

vs

SHIRLEY SANGEETA CHAND
f/n Alfred Shiri Prasad

Ms S. Puamau for the State
Mr. H.A. Shah for the Accused

Date of Hearing: 9 March 2010
Date of Ruling: 12 March 2010

R U L I N G

- [1] On the 8th day of March 2010, the Information by the Director of Public Prosecutions was filed in the Criminal Registry at the Lautoka High Court.

- [2] When the matter was called before me today, Mr. H.A. Shah for the accused, disputed the offence being charged pursuant to the Penal Code, Cap. 17 which he submits has now been repealed. He submits that as from the 1st February 2010, all criminal actions shall be governed by the Crimes Decree 2010 unless they were commenced prior to the 1st February 2010. He based that submission on section 392(1) of the Decree.
- [3] The prosecution relies on section 393(1) which states that the Penal Code shall apply to offences committed against that Code prior to the commencement of the Decree (i.e. 1 February 2010). The section reads as follows:
- "S. 313(1) - For all purposes associated with the application of section 392, the Penal Code shall still apply to any offence committed against the Penal Code prior to the commencement of this Decree, and for the purposes of proceedings relating to such offences the Penal Code shall be deemed to be still in force."**
- [4] The wording and intent of the section is very clear but the provision is obscured by the phrase *"for all purposes associated*

with the application of section 392". Section 392 refers to proceedings already started or completed before the commencement of the Decree and refers in addition to sentencing.

It reads:

"S. 392(1) - Nothing in this Decree affects the validity of any court proceedings for an offence under the Penal Code which has been commenced or conducted prior to the commencement of this Decree.

(2) When imposing sentences for any offence under the Penal Code which was committed prior to the commencement of this Decree, the court shall apply the penalties prescribed for that offence by the Penal Code."

[5] It is quite evident that section 392 and section 293 should be read in conjunction with each other - section 392 for its own specific purposes and section 393 thereafter for all purposes.

[6] The laying of charges for offences prior to the 1st February 2010 does not come within the ambit of section 392, with the result that the first phrase of the section 393 (for all purposes associated with

the application of section 392) is meaningless. If the new Decree was to apply to all offences, no matter when committed, then there would be no need for section 393 at all.

- [7] It is worthy of note that the Criminal Procedure Code 2010 which came into law on the very same day as the Crimes Decree 2010 is retrospective. By section 301 the procedure of any proceedings prior to operation of the Decree can be governed by the new Criminal Procedure Decree 2010 if judgment has not been made. No such retrospective clause is contained in the Crimes Decree.
- [8] I rule that the offence charged against the accused on the Information of the Director of Public Prosecutions dated the 8th March 2010, is properly and validly charged under the Penal Code, Chapter 17 Laws of Fiji.



At Lautoka
12 March 2010

Paul K. Madigan

Judge