

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 034 OF 2013

BETWEEN : STATE

APPLICANT

AND : ELLERIDGE COLVEYN URAZ-UD DEAN

RESPONDENT

COUNSEL : Ms J Fatiaki for the State
: Respondent in Person

Date of Hearing : 24/03/2014

Date of Ruling : 16/05/2014

RULING

[01] The Respondent currently stands charged in the Magistrates' Court Nasinu with two counts of being in possession of an illicit drug (0.1 grams of Cannabis Sativa and 0.4 grams of Methamphetamine) contrary to Section 5(a) of the Illicit Drugs Control Act 2004.

[02] When this case was first called before the Learned Magistrate Nasinu, the police prosecutor made an application to transfer this case to the High Court. Accordingly the case is transferred to this court.

JURISDICTION ISSUES:

[03] The Illicit Drugs Control Act 2004 does not specify as to which court has the jurisdiction in terms of offences as stipulated in the Act. This however is remedied by the following provisions as stipulated in the Criminal Procedure Decree No: 43 of 2009.

Section 5(1) and (2) of the Criminal Procedure Decree 2009 states as follows:

- 5(1) Any offence under any law other than the Crimes Decree 2009 shall be tried by the court that is vested by that law with jurisdiction to hear the matter.
- (2) When no court is prescribed in any law creating an offence and such offence is not stated to be an indictable offence or summary offence, it may be tried in the Magistrates Court in accordance with any limitations placed on the jurisdiction of classes of magistrate prescribed in any law dealing with the administration and jurisdiction of the Magistrates Courts.

Section 7(1) and (2) of the Criminal Procedure Decree 2009 states as follows:

- 7(1) A magistrate may, in the cases in which such sentence are authorised by law, pass the following sentences, namely-
 - (a) imprisonment for a term not exceeding 10 years; or
 - (b) fine not exceeding 150 penalty units.
- (2) A magistrate may impose consecutive sentence upon a person convicted of more than one offence in a trial, but in no case shall an offender be sentenced to imprisonment for a longer period than 14 years.

[04] Justice Temo in **Sulua v State** [31st May 2012] AAU0093 of 2008 at paragraph 119 stated as follows:

"..Categories numbers 1-3 are to be tried in the Magistrate Court, which has jurisdiction, by virtue of Sections 5(1) and (2) of the Criminal Procedure Decree No: 43 of 2009..."

At paragraph 115 of the judgment, his Lordship summarized the categories and the relevant category regarding the current charges is that as follows:

Category 1:

Possession of 0-100 grams of Cannabis sativa –a non-custodial sentence to be given, for example, fines community service, counselling, discharge with a strong warning, etc. Only in the worst cases, should a suspended prison sentence or a short sharp prison sentence be considered.

[05] After making the transfer application before the Learned Magistrate Nasinu, the Divisional Prosecuting Officer made an application pursuant to Section 5(b) of the Proceeds of Crimes Act 1997 to confiscate the sum of \$1.486.20 as a "proceeds of

crime". The Learned Magistrate Nasinu disregarding/ignoring the correct legal position allowed the application and confiscated the sum mentioned above.

[06] Section 5(b) of the Proceeds of Crimes Act states as follows:

5(1) Subject to section (2), where a person is **convicted** of a serious offence committed after the coming into force of this Act, the Director of Public Prosecution may apply to the Court for one or both of the following orders:

(a) A forfeiture order against that is tainted property in respect of the offence;

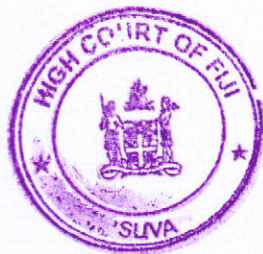
(b) A pecuniary penalty order against the person in respect of benefit derived by the person from the commission of the offence.

[07] As per Section 5(1) of Proceeds of Crime Act 1997, a confiscation application can only be made after entering a conviction (post-conviction) against the Respondent. In this case the prosecution only filed charges against the Respondent.

[08] Further the Learned Magistrate at Nasinu did not have the "Jurisdiction" to make an order under Section 5(1) of the Proceeds of Crime Act, as Section 3 of the Proceeds of Crimes Act 1997 defines "Court" as meaning the High Court.

[09] Therefore, I declare the Pecuniary Order dated 21/01/2014, granted under Section 5(1) of the Proceeds of Crimes Act 1997 by the Learned Magistrate at Nasinu is a "Nullity" for want of jurisdiction.

[10] Further, acting under Section 4(2) of Criminal Procedure Decree 2009, I remit this case to the Magistrates' Court at Nasinu.



A handwritten signature in black ink, appearing to read "P Kumararatnam".

P Kumararatnam
JUDGE

At Suva
16/05/2014