

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Criminal Case No: HAR 003 of 2014

BETWEEN:

THE STATE

AND:

LATCHMAN

Counsel: Mr. S. Naidu for Applicant
Respondent in person

Date of Hearing: 23 July 2014

Date of Judgment: 2 January 2015

JUDGMENT

[1] This is a review of a discharge order made by the Nasinu Magistrates' Court. The revisionary jurisdiction is provided by section 260 of the Criminal Procedure Decree. Section 260 (1) states:

The High Court may call for and examine the record of any criminal proceedings before any Magistrates Court for the purpose of satisfying itself as to-

(a) *The correctness, legality or propriety of any finding, sentence or order recorded or passed; and*

(b) *The regularity of any proceedings of any Magistrates Court.*

[2] The respondent was charged with a spate of offences in the Nasinu Magistrates' Court as follows:

- Nasinu CF 583/08 - Count 1: Larceny
- Count 2: Forgery
- Count 3: Uttering a Forged document
- Count 4: Obtaining good on forged document.
- Nasinu CF 923/08 - Obtaining Money by False Pretence
- Nasinu CF 195/10 - Count 1: Larceny
- Count 2: Obtaining Money by False Pretences
- Nasinu CF 634/08 - Obtaining Money by False Pretences
- Nasinu CF 584/08 - Assault Occasioning Actual Bodily Harm
- Nasinu CF 636/08 - Count 1: Conversion
- Count 2: Obtaining Goods by False Pretence

[3] On 26 July 2013, a police prosecutor applied to have the respondent discharged in all the cases due to the non-execution of a bench warrant for 12 months. The learned Magistrate acceded to the request and discharged the respondent pursuant to section 170 of the Criminal Procedure Decree.


[4] I called for a review of the discharge order after I dealt with the respondent's application for bail in the High Court at Labasa in relation to a sexual offence case. In that bail application, it was revealed that the appellant had pending cases in Labasa, Ba and Nasinu Magistrates' Courts.

[5] When the learned Magistrate discharged the respondent in the Nasinu cases, the respondent was in custody on remand in the Labasa cases.

- [6] It appears that the police prosecutor who appeared in the Nasinu cases was unaware of the respondent's remand status in Labasa. Otherwise, he would have asked for a production order instead of a discharge. In any event, the discharge under section 170 of the Criminal Procedure Decree was made without jurisdiction. Section 170 provides:

During the hearing of any case, the magistrate must not normally allow any adjournment other than from day to day consecutively until the trial has reached its conclusion, unless there is good cause, which is to be stated in the record.

- [7] Section 170 had no application in this case. Section 170 applies to adjournments once the trial has commenced. In this case, the trial had not commenced and there was no application for an adjournment. Section 170 does not give the Magistrates' Court power to discharge an Accused who has a pending bench warrant against him. The discharge order in these cases was therefore made without jurisdiction and was unlawful.
- [8] For these reasons, I quash the discharge order made by the Magistrates' Court at Nasinu and order that the cases proceed to trial. The respondent is now a serving prisoner in Labasa. He still has some outstanding cases in the Labasa Magistrates' Court. After his Labasa cases are heard, he is to be transferred to Viti Levu for the hearing of his pending Nasinu and Ba cases. The Deputy Registrar, Labasa is to forward a copy of this judgment to the respective registries.


Daniel Goundar
JUDGE



At Labasa
2 January 2015

Solicitors:

Office of the Director of Public Prosecutions for State
Respondent In Person